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MILITARY Planning Commission, Oklahoma Strategic	457	Board of Examiners for SPEECH-LANGUAGE Pathology and Audiology	690
Department of MINES	460	STATE Employee Charitable Contributions, Oversight Committee for (<i>Formerly: STATE Agency Review Committee</i>)	695
Oklahoma MOTOR Vehicle Commission	465	STATE Use Committee (<i>Formerly: Committee on Purchases of Products and Services of the Severely HANDICAPPED</i>) – See Title 304	
Board of Regents of MURRAY State College	470	Oklahoma STUDENT Loan Authority	700
Oklahoma State Bureau of NARCOTICS and Dangerous Drugs Control	475	TASK Force 2000	705
Board of Regents of NORTHERN Oklahoma College	480	Oklahoma TAX Commission	710
Oklahoma Board of NURSING	485	Oklahoma Commission for TEACHER Preparation	712
Oklahoma State Board of Examiners for LONG-TERM Care Administrators (<i>Formerly: Oklahoma State Board of Examiners for NURSING Home Administrators</i>)	490	TEACHERS' Retirement System	715
Board of Regents of OKLAHOMA City Community College	495	State TEXTBOOK Committee	720
Board of Regents of OKLAHOMA Colleges	500	TOBACCO Settlement Endowment Trust Fund	723
Board of Examiners in OPTOMETRY	505	Oklahoma TOURISM and Recreation Department	725
State Board of OSTEOPATHIC Examiners	510	Department of TRANSPORTATION	730
PARDON and Parole Board	515	Oklahoma TRANSPORTATION Authority (<i>Name changed to Oklahoma TURNPIKE Authority 11-1-05</i>) - See Title 731	
Oklahoma PEANUT Commission	520	Oklahoma TURNPIKE Authority (<i>Formerly: Oklahoma TRANSPORTATION Authority AND Oklahoma TURNPIKE Authority</i>) - See also Title 745	731
Oklahoma State PENSION Commission	525	State TREASURER	735
State Board of Examiners of PERFUSIONISTS	527	Board of Regents of TULSA Community College	740
Office of PERSONNEL Management	530	Oklahoma TURNPIKE Authority (<i>Name changed to Oklahoma TRANSPORTATION Authority 11-1-99 - no rules enacted in this Title - See Title 731</i>)	745
Oklahoma State Board of PHARMACY	535	Board of Trustees for the UNIVERSITY Center at Tulsa	750
PHYSICIAN Manpower Training Commission	540	UNIVERSITY Hospitals Authority	752
Board of PODIATRIC Medical Examiners	545	UNIVERSITY Hospitals Trust	753
Oklahoma POLICE Pension and Retirement System	550	Board of Regents of the UNIVERSITY of Oklahoma	755
State Department of POLLUTION Control (<i>abolished 1-1-93</i>)	555	Board of Regents of the UNIVERSITY of Science and Arts of Oklahoma	760
POLYGRAPH Examiners Board	560	Oklahoma USED Motor Vehicle and Parts Commission	765
Oklahoma Board of PRIVATE Vocational Schools	565	Oklahoma Department of VETERANS Affairs	770
State Board for PROPERTY and Casualty Rates (<i>abolished 7-1-06; see also Title 365</i>)	570	Board of VETERINARY Medical Examiners	775
State Board of Examiners of PSYCHOLOGISTS	575	Oklahoma Department of CAREER and Technology Education (<i>Formerly: Oklahoma Department of VOCATIONAL and Technical Education</i>)	780
Department of CENTRAL Services (<i>Formerly: Office of PUBLIC Affairs</i>)	580	Oklahoma WATER Resources Board	785
PUBLIC Employees Relations Board	585	Board of Regents of WESTERN Oklahoma State College	790
Oklahoma PUBLIC Employees Retirement System	590	Oklahoma WHEAT Commission	795
Department of PUBLIC Safety	595	Department of WILDLIFE Conservation	800
REAL Estate Appraiser Board	600	WILL Rogers and J.M. Davis Memorials Commission	805
Oklahoma REAL Estate Commission	605		
Board of Regents of REDLANDS Community College	607		
State REGENTS for Higher Education	610		
State Department of REHABILITATION Services	612		
Board of Regents of ROGERS State College	615		
Board of Regents of ROSE State College	620		
Oklahoma SAVINGS and Loan Board (<i>abolished 7-1-93</i>)	625		
SCENIC Rivers Commission	630		

Notices of Rulemaking Intent

Prior to adoption and gubernatorial/legislative review of a proposed PERMANENT rulemaking action, an agency must publish a Notice of Rulemaking Intent in the *Register*. In addition, an agency may publish a Notice of Rulemaking Intent in the *Register* prior to adoption of a proposed EMERGENCY or PREEMPTIVE rulemaking action.

A Notice of Rulemaking Intent announces a comment period, or a comment period and public hearing, and provides other information about the intended rulemaking action as required by law, including where copies of proposed rules may be obtained.

For additional information on Notices of Rulemaking Intent, see 75 O.S., Section 303.

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 1. ORGANIZATION, OPERATIONS, PROCEDURES, AND POLICIES

[OAR Docket #09-1448]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

40:1-1-3 [AMENDED]

SUMMARY:

40:1-1-3, correcting addresses and notice information.

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §§751-759.1; 22 O.S. §991(a)

COMMENT PERIOD:

Persons may submit written and oral comments to J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111 during the period from December 15, 2009 to January 14, 2010.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303 (B) (9), "persons may demand a hearing" by contacting J. Robert Blakeburn at (405) 425-2460 no later than 5:00 p.m. on January 14, 2010.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to J. Robert Blakeburn at the above address during the period from December 15, 2009 to January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Board of Tests for Alcohol and Drug Influence's office located at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111. Copies may also be obtained by written request mailed to the attention of J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303 (D), a rule impact statement is being prepared and will be available for review after December

15, 2009 at the above address for the Board of Tests for Alcohol and Drug Influence's office.

CONTACT PERSON:

J. Robert Blakeburn, (405) 425-2460

[OAR Docket #09-1448; filed 11-30-09]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 10. PERSONNEL

[OAR Docket #09-1449]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Breath-Alcohol Analysts

40:10-3-1 [AMENDED]

40:10-3-2 [AMENDED]

40:10-3-3 [AMENDED]

40:10-3-4 [AMENDED]

40:10-3-5 [AMENDED]

40:10-3-7 [AMENDED]

Subchapter 7. Forensic Alcohol and Drug Analysts

40:10-7-1 [AMENDED]

40:10-7-2 [AMENDED]

SUMMARY:

40:10-3-1, 40:10-3-2, 40:10-3-3, 40:10-3-4, 40:10-3-5; Deleting residency requirements and requiring employment by an Oklahoma agency.

40:10-3-7; Deleting residency requirement and CLEET instructor status.

40:10-7-1, 2; Deleting residency requirements.

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §§751-759.1; 22 O.S. §991(a)

COMMENT PERIOD:

Persons may submit written and oral comments to J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111 during the period from December 15, 2009 to January 14, 2010.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303 (B) (9), "persons may demand a hearing" by contacting J. Robert Blakeburn at (405) 425-2460 no later than 5:00 p.m. on January 14, 2010.

Notices of Rulemaking Intent

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to J. Robert Blakeburn at the above address during the period from December 15, 2009 to January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Board of Tests for Alcohol and Drug Influence's office located at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111. Copies may also be obtained by written request mailed to the attention of J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303 (D), a rule impact statement is being prepared and will be available for review after December 15, 2009 at the above address for the Board of Tests for Alcohol and Drug Influence's office.

CONTACT PERSON:

J. Robert Blakeburn, (405) 425-2460

[OAR Docket #09-1449; filed 11-30-09]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 15. LABORATORIES AND FACILITIES

[OAR Docket #09-1451]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

40:15-1-2 [AMENDED]

40:15-1-3 [AMENDED]

SUMMARY:

40:15-1-2: Deleting references to retained breath specimens.

40:15-1-3: Deleting references to saliva and urine

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §§ 751-759.1; 22 O.S. §991(a)

COMMENT PERIOD:

Persons may submit written and oral comments to J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111 during the period from December 15, 2009 to January 14, 2010.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303 (B) (9), "persons may demand a

hearing" by contacting J. Robert Blakeburn at (405) 425-2460 no later than 5:00 p.m. on January 14, 2010.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to J. Robert Blakeburn at the above address during the period from December 15, 2009 to January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Board of Tests for Alcohol and Drug Influence's office located at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111. Copies may also be obtained by written request mailed to the attention of J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303 (D), a rule impact statement is being prepared and will be available for review after December 15, 2009 at the above address for the Board of Tests for Alcohol and Drug Influence's office.

CONTACT PERSON:

J. Robert Blakeburn, (405) 425-2460 (procedural and legal questions); Jeff Dean, (405) 425-2460 (technical questions)

[OAR Docket #09-1451; filed 11-30-09]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 20. SPECIMENS

[OAR Docket #09-1452]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

40:20-1-2 [REVOKED]

40:20-1-3 [AMENDED]

SUMMARY:

40:20-1-2: Revoking entire subsection

40:20-1-3: Incorporating current 40:20-1-2(d) and deleting references to local policy

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §§751-759.1; 22 O.S. §§991(a)

COMMENT PERIOD:

Persons may submit written and oral comments to J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111 during the period from December 15, 2009 to January 14, 2010.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303 (B) (9), "persons may demand a hearing" by contacting J. Robert Blakeburn at (405) 425-2460 no later than 5:00 p.m. on January 14, 2010.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to J. Robert Blakeburn at the above address during the period from December 15, 2009 to January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Board of Tests for Alcohol and Drug Influence's office located at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111. Copies may also be obtained by written request mailed to the attention of J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303 (D), a rule impact statement is being prepared and will be available for review after December 15, 2009 at the above address for the Board of Tests for Alcohol and Drug Influence's office.

CONTACT PERSON:

J. Robert Blakeburn, (405) 425-2460

[OAR Docket #09-1452; filed 11-30-09]

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 30. ANALYSIS OF ALCOHOL IN BREATH**

[OAR Docket #09-1453]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- 40:30-1-3 [AMENDED]
- 40:30-1-3.1 [AMENDED]

SUMMARY:

40:30-1-3 and 40:30-1-3.1, correcting nomenclature

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §§751-759.1; 22 O.S. §991(a)

COMMENT PERIOD:

Persons may submit written and oral comments to J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111 during the period from December 15, 2009 to January 14, 2010.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303 (B) (9), "persons may demand a hearing" by contacting J. Robert Blakeburn at (405) 425-2460 no later than 5:00 p.m. on January 14, 2010.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to J. Robert Blakeburn at the above address during the period from December 15, 2009 to January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Board of Tests for Alcohol and Drug Influence's office located at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111. Copies may also be obtained by written request mailed to the attention of J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303 (D), a rule impact statement is being prepared and will be available for review after December 15, 2009 at the above address for the Board of Tests for Alcohol and Drug Influence's office.

CONTACT PERSON:

J. Robert Blakeburn, (405) 425-2460

[OAR Docket #09-1453; filed 11-30-09]

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 35. ANALYSIS OF ALCOHOL IN BLOOD**

[OAR Docket #09-1454]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- 40:35-1-2 [AMENDED]

SUMMARY:

40:35-1-2: updating procedures

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §§751-759.1; 22 O.S. § 991(a)

COMMENT PERIOD:

Persons may submit written and oral comments to J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111 during the period from December 15, 2009 to January 14, 2010.

Notices of Rulemaking Intent

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303 (B) (9), "persons may demand a hearing" by contacting J. Robert Blakeburn at (405) 425-2460 no later than 5:00 p.m. on January 14, 2010.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to J. Robert Blakeburn at the above address during the period from December 15, 2009 to January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Board of Tests for Alcohol and Drug Influence's office located at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111. Copies may also be obtained by written request mailed to the attention of J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303 (D), a rule impact statement is being prepared and will be available for review after December 15, 2009 at the above address for the Board of Tests for Alcohol and Drug Influence's office.

CONTACT PERSON:

J. Robert Blakeburn, (405) 425-2460

[OAR Docket #09-1454; filed 11-30-09]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 40. ANALYSIS OF OTHER INTOXICATING SUBSTANCES

[OAR Docket #09-1455]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

40:40-1-2 [AMENDED]

SUMMARY:

40:40-1-2, Deleting requirements for quantitative analysis

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §§ 751-759.1; 22 O.S. §991(a)

COMMENT PERIOD:

Persons may submit written and oral comments to J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111 during the period from December 15, 2009 to January 15, 2010.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303 (B) (9), "persons may demand a

hearing" by contacting J. Robert Blakeburn at (405) 425-2460 no later than 5:00 p.m. on January 14, 2010.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to J. Robert Blakeburn at the above address during the period from December 15, 2009 to January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Board of Tests for Alcohol and Drug Influence's office located at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111. Copies may also be obtained by written request mailed to the attention of J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303 (D), a rule impact statement is being prepared and will be available for review after December 15, 2009 at the above address for the Board of Tests for Alcohol and Drug Influence's office.

CONTACT PERSON:

J. Robert Blakeburn, (405) 425-2460 (procedural and legal questions); Jeff Dean, (405) 425-2460 (technical questions Chapters 10-45)

[OAR Docket #09-1455; filed 11-30-09]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 50. IGNITION INTERLOCK DEVICES

[OAR Docket #09-1456]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

40:50-1-1 [AMENDED]

40:50-1-2 [AMENDED]

40:50-1-3 [AMENDED]

40:50-1-4 [AMENDED]

40:50-1-5 [AMENDED]

40:50-1-6 [AMENDED]

40:50-1-7 [AMENDED]

40:50-1-8 [AMENDED]

40:50-1-9 [AMENDED]

40:50-1-10 [AMENDED]

40:50-1-11 [AMENDED]

SUMMARY:

40:50-1-1: Explanation of terms and actions - Creating, deleting and clarifying definitions.

40:50-1-2: Modifying device approval process

40:50-1-3: Contents relocated to another section. Re-titled and incorporating industry standards, government requirements and field experience.

40:50-1-4: Contents relocated to another section. Re-titled and incorporating industry standards, government requirements and field experience.

40:50-1-5: Creating, deleting and clarifying maintenance and calibration requirements to incorporate industry standards, government requirements and field experience.

40:50-1-6: Contents relocated to another section. Re-titled incorporating industry standards, government requirements and field experience.

40:50-1-7: Creating, deleting and clarifying certification and inspection of service centers to incorporate new or revised industry standards, government requirements and field experience.

40:50-1-8: Creating, deleting and clarifying certification and inspection of service centers to incorporate new or revised industry standards, government requirements and field experience.

40:50-1-9: Creating, deleting and clarifying certification and inspection of service centers; incorporating industry standards, government requirements and field experience.

40:50-1-10: Creating, deleting and clarifying certification and inspection of service centers; incorporating industry standards, government requirements and field experience.

40:50-1-11: Creating, deleting and clarifying certification and inspection of service centers to incorporate new or revised industry standards, government requirements and field experience.

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §§ 751-759.1; 22 O.S. §991(a)

COMMENT PERIOD:

Persons may submit written and oral comments to J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111 during the period from December 15, 2009 to January 14, 2010.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303 (B) (9), "persons may demand a hearing" by contacting J. Robert Blakeburn at (405) 425-2460 no later than 5:00 p.m. on January 14, 2010.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to J. Robert Blakeburn at the above address during the period from December 15, 2009 to January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Board of Tests for Alcohol and Drug Influence's office located

at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111. Copies may also be obtained by written request mailed to the attention of J. Robert Blakeburn at 3600 N. Martin Luther King Blvd., Oklahoma City, OK 73111.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303 (D), a rule impact statement is being prepared and will be available for review after December 15, 2009 at the above address for the Board of Tests for Alcohol and Drug Influence's office.

CONTACT PERSON:

J. Robert Blakeburn, (405) 425-2460 (procedural and legal questions); Toby Taylor, (405) 425-2460 (technical questions).

[OAR Docket #09-1456; filed 11-30-09]

**TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 65. OKLAHOMA QUALITY JOBS PROGRAM**

[OAR Docket #09-1362]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 11. 21st Century Quality Jobs Incentive Act [NEW]
- 150:65-11-1 [NEW]
- 150:65-11-2 [NEW]
- 150:65-11-3 [NEW]
- 150:65-11-4 [NEW]

SUMMARY:

This action is to clarify the clarify the application process and the administration of the 21st Century Quality Jobs Incentive Act, a new incentive offered by the State of Oklahoma, which was recently enacted by the Oklahoma Legislature, and became effective November 1, 2009.

AUTHORITY:

The legislation establishing the Oklahoma Department of Commerce, 74 O.S. §§ 5001 et seq., and Section 7 of Senate Bill 938 of the 1st Session of the 52nd Oklahoma Legislature executed by the Governor of the State of Oklahoma on May 22, 2009. Also, the authority of the Oklahoma Department of Commerce to charge fees for review of the applications is set forth in 74 O.S. § 5012.1.

COMMENT PERIOD:

Written and oral comments will be accepted from December 16, 2009 through January 15, 2010 during regular business hours by contacting Donald R. Hackler, Jr., Deputy General Counsel, Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma 73104 (405) 815-5359.

PUBLIC HEARING:

A public hearing will be held at 9:00 a.m. on Friday, January 15, 2010, at Gallery 1-2, 900 North Stiles Avenue,

Notices of Rulemaking Intent

Oklahoma City, Oklahoma. Time limitations may be imposed on oral presentations to ensure that all persons who desire to make oral comments will have an opportunity to do so.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Donald R. Hackler, Jr., Deputy General Counsel, Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma 73104.

COPIES OF THE PROPOSED RULES:

Copies of the proposed rules may be obtained without charge from the Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma 73104 by contacting Donald R. Hackler, Jr. at (405) 815-5359.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available at the offices of the Oklahoma Department of Commerce (address below).

CONTACT PERSON:

Donald R. Hackler, Jr., Deputy General Counsel, Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma 73104 (405) 815-5359.

[OAR Docket #09-1362; filed 11-13-09]

TITLE 155. OKLAHOMA CONSERVATION COMMISSION CHAPTER 45. CONTROLLED BURN INDEMNITY FUND

[OAR Docket #09-1347]

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking

PROPOSED RULES:

Chapter 45. Controlled Burn Indemnity Fund [NEW]

SUMMARY:

These proposed rules are to assist in the implementation of the Oklahoma Controlled Burn Indemnity Fund Program. The intent of this program is to provide landowners, who perform properly planned and executed controlled burns (prescribed fires), some

limited coverage for property losses incurred from a fire beyond the control of the burner (agent/landowner). These proposed rules will allow the Indemnity Fund Program to organize and maintain itself by defining eligible parties, allowable costs, methods, limitation of reimbursement, corrective action, completed work, and standards that will protect the health, safety and welfare of the state and its

environment. These proposed rules will also set out the procedures for speedy and timely reimbursement of allowable costs to eligible parties.

AUTHORITY:

Oklahoma Controlled Burn Indemnity Fund contained in 2 O.S. 2007 § 16-28.3; and the Oklahoma Conservation Commission and the Conservation District Act contained in 27A O.S. 2001 §§ 3-1-101 et seq.

COMMENT PERIOD:

Persons may submit written comments to Darrel Dominick at 2800 North Lincoln Boulevard, Suite 160, Oklahoma City, Oklahoma 73105-4210, Darrel.Dominick@conservation.ok.gov during the period from December 15, 2009 until 5:00 p.m. on January 25, 2010.

PUBLIC HEARING:

A public hearing will be held at 10:00 a.m., January 25, 2010, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting www.conservation.ok.gov or by contacting Darrel Dominick, Oklahoma Conservation Commission, 2800 N. Lincoln Blvd., Suite 160, Oklahoma City, Oklahoma 73105-4210, (405) 372-7102, Darrel.Dominick@conservation.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above addresses.

CONTACT PERSON:

Darrel Dominick, (405) 372-7201, e-mail address: Darrel.Dominick@conservation.ok.gov.

[OAR Docket #09-1347; filed 11-9-09]

TITLE 195. BOARD OF DENTISTRY CHAPTER 2. INTERNAL OPERATIONS AND PROCEDURES

[OAR Docket #09-1349]

RULEMAKING ACTION:

Notice of proposed Permanent rulemaking

PROPOSED RULES:

195:2-1-7. Fees [AMENDED]

SUMMARY:

The Oklahoma Board of Dentistry spent approximately \$25,000.00 more than received in revenue for 2009. This amended rule modestly increases fees to offset this short fall.

AUTHORITY:

59 O.S. 328.15 (A) & 328.51a Fee Schedule; Board of Dentistry

COMMENT PERIOD:

A comment period is scheduled from **January 4, 2010 to February 5, 2010**. Comments may be addressed to the Office of the Board of Dentistry, 201 North East 38th Terrace, Suite 2, Oklahoma City, Oklahoma 73105.

PUBLIC HEARING:

A public hearing has been scheduled for Tuesday, **February 9, 2010**, at 9:00 a.m., at the office of the Board, 201 North East 38th Terrace, Suite 2, Oklahoma City, Oklahoma. The hearing will conclude at 12:00 p.m. (noon). The Board has scheduled a meeting on February 19, 2010 to adopt the rules after the public hearing to ensure sufficient time is provided for each member to review all information from both the comment period and the hearing process.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board with information, in dollar amounts if possible, about this increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with this proposed rule. Any hardship in connection to this increase will be considered. Business entities may submit this information in writing during the comment period to Linda C. Campbell, Executive Director, at the office of the Board.

COPIES OF PROPOSED RULES:

Copies of the proposed rule for review by the public may be obtained at the Board office address or by the web site at www.dentist.state.ok.us Proposed rules will also be published in the January, 2010 Newsletter publication.

RULE IMPACT STATEMENT:

Rule Impact Statement has been prepared and copies will be available for inspection at the office of the Board.

CONTACT PERSON:

Linda C. Campbell, Executive Director, (405) 524-9037/Facsimile (405) 524-2223

[OAR Docket #09-1349; filed 11-10-09]

**TITLE 195. BOARD OF DENTISTRY
CHAPTER 4. CATASTROPHIC HEALTH
EMERGENCY PLAN**

[OAR Docket #09-1350]

RULEMAKING ACTION:

Notice of proposed Permanent rulemaking

PROPOSED RULES:

195:4-1-1 [NEW]

195:4-1-2 [NEW]

SUMMARY:

The Oklahoma Board of Dentistry has accepted a Catastrophic Health Emergency Plan from Governor's Task Force on Children and Oral Health. The plan requires a rule change to ensure implementation.

AUTHORITY:

59 O.S. 328.15 (A); Board of Dentistry

COMMENT PERIOD:

A comment period is scheduled from **January 4, 2010 to February 5, 2010**. Comments may be addressed to the Office of the Board of Dentistry, 201 North East 38th Terrace, Suite 2, Oklahoma City, Oklahoma 73105.

PUBLIC HEARING:

A public hearing has been scheduled for Tuesday, **February 9, 2010**, at 9:00 a.m., at the office of the Board, 201 North East 38th Terrace, Suite 2, Oklahoma City, Oklahoma. The hearing will conclude at 12:00 (noon). The Board has scheduled a meeting on February 19, 2010 to adopt the rules after the public hearing to ensure sufficient time is provided for each member to review all information from both the comment period and the hearing process.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board with information, in dollar amounts if possible, about this increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with this proposed rule. Any hardship in connection to this increase will be considered. Business entities may submit this information in writing during the comment period to Linda C. Campbell, Executive Director, at the office of the Board.

COPIES OF PROPOSED RULES:

Copies of the proposed rule for review by the public may be obtained at the Board office address or by the web site at www.dentist.state.ok.us Proposed rules will also be published in the January, 2010 Newsletter publication.

RULE IMPACT STATEMENT:

Rule Impact Statement has been prepared and copies will be available for inspection at the office of the Board.

CONTACT PERSON:

Linda C. Campbell, Executive Director, (405) 524-9037/Facsimile (405) 524-2223

[OAR Docket #09-1350; filed 11-10-09]

**TITLE 195. BOARD OF DENTISTRY
CHAPTER 24. ADVERTISING AND USE OF
TRADE NAMES**

[OAR Docket #09-1351]

RULEMAKING ACTION:

Notice of proposed Permanent rulemaking

PROPOSED RULES:

195:24-1-1 [NEW]

195:24-1-2 [NEW]

SUMMARY:

The Oklahoma Board of Dentistry is presenting new rules based on newly enacted legislation found in 59 O.S. Section

Notices of Rulemaking Intent

328.31a Practice under trade names effective November 1, 2009.

AUTHORITY:

59 O.S. 328.15 (A); Board of Dentistry

COMMENT PERIOD:

A comment period is scheduled from **January 4, 2010 to February 5, 2010**. Comments may be addressed to the Office of the Board of Dentistry, 201 North East 38th Terrace, Suite 2, Oklahoma City, Oklahoma 73105.

PUBLIC HEARING:

A public hearing has been scheduled for Tuesday, **February 9, 2010**, at 9:00 a.m., at the office of the Board, 201 North East 38th Terrace, Suite 2, Oklahoma City, Oklahoma. The hearing will conclude at 12:00 p.m. (noon). The Board has scheduled a meeting on February 19, 2010 to adopt the rules after the public hearing to ensure sufficient time is provided for each member to review all information from both the comment period and the hearing process.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board with information, in dollar amounts if possible, about this increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with this proposed rule. Any hardship in connection to this increase will be considered. Business entities may submit this information in writing during the comment period to Linda C. Campbell, Executive Director, at the office of the Board.

COPIES OF PROPOSED RULES:

Copies of the proposed rule for review by the public may be obtained at the Board office address or by the web site at www.dentist.state.ok.us Proposed rules will also be published in the January, 2010 Newsletter publication.

RULE IMPACT STATEMENT:

Rule Impact Statement has been prepared and copies will be available for inspection at the office of the Board.

CONTACT PERSON:

Linda C. Campbell, Executive Director, (405) 524-9037/Facsimile (405) 524-2223

[OAR Docket #09-1351; filed 11-10-09]

**TITLE 210. STATE DEPARTMENT OF
EDUCATION
CHAPTER 15. CURRICULUM AND
INSTRUCTION**

[OAR Docket #09-1385]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Priority Academic Student Skills
Part 25. Technology ~~Education~~Engineering

210:15-3-196. Overview of technology ~~education~~engineering for grades 6-10 [AMENDED]

210:15-3-197. Technology ~~education~~engineering for grades 6-10 [AMENDED]

SUMMARY:

The proposed rule amendments clarify terms and concepts now current in national standards for technology education and to comply with review requirements set forth in 70 O. S. § 11-103.6.

AUTHORITY:

70 O.S. § 3-104, State Board of Education

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., February 24, 2010, at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on Thursday, February 25, 2010, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies are on file for public viewing in the office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 7, 2009.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #09-1385; filed 11-24-09]

**TITLE 210. STATE DEPARTMENT OF
EDUCATION
CHAPTER 15. CURRICULUM AND
INSTRUCTION**

[OAR Docket #09-1386]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Priority Academic Student Skills
Part 3. Kindergarten
210:15-3-5.3. Language arts [AMENDED]

Part 5. Language Arts

- 210:15-3-12. Language arts for grade 1 [AMENDED]
- 210:15-3-13. Language arts for grade 2 [AMENDED]
- 210:15-3-14. Language arts for grade 3 [AMENDED]
- 210:15-3-15. Language arts for grade 4 [AMENDED]
- 210:15-3-16. Language arts for grade 5 [AMENDED]
- 210:15-3-17. Language arts for grade 6 [AMENDED]
- 210:15-3-18. Language arts for grade 7 [AMENDED]
- 210:15-3-19. Language arts for grade 8 [AMENDED]
- 210:15-3-20. Language arts for grade 9 [AMENDED]
- 210:15-3-21. Language arts for grade 10 [AMENDED]
- 210:15-3-22. Language arts for grade 11 [AMENDED]
- 210:15-3-23. Language arts for grade 12 [AMENDED]

SUMMARY:

The proposed rule amendments revise the core curriculum to comply with the requirements set forth in 70 O. S. § 11-103.6(a) and to provide additional clarity and detail to the *Priority Academic Student Skills*.

AUTHORITY:

70 O.S. § 3-104, State Board of Education

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., February 24, 2010, at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on Thursday, February 25, 2010, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies are on file for public viewing in the office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 7, 2009.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #09-1386; filed 11-24-09]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF**

[OAR Docket #09-1384]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 9. Professional Standards: Teacher Education and Certification
 - Part 1. General Teaching Certificate Requirements
 - 210:20-9-10.1. Competency-based teacher licensure and certification system [AMENDED]
 - Part 17. Full (Subject Matter) Competencies for Licensure and Certification
 - 210:20-9-172. Full (subject matter) competencies for licensure and certification [AMENDED]
- Subchapter 11. Professional Standards: Accreditation Standards for Approved Teacher Education Programs
 - 210:20-11-3. General education and professional education [AMENDED]

SUMMARY:

The purpose of the proposed rule amendments is to change the name technology education to technology engineering and to amend the competencies for licensure and certification.

AUTHORITY:

70 O.S. § 3-104, State Board of Education

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., February 24, 2010, at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on Thursday, February 25, 2010, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies are on file for public viewing in the office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 7, 2009.

Notices of Rulemaking Intent

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #09-1384; filed 11-24-09]

**TITLE 210. STATE DEPARTMENT OF
EDUCATION
CHAPTER 40. GRANTS AND
PROGRAMS-IN-AID**

[OAR Docket #09-1387]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 52. Advanced Placement Incentive Program
210:40-52-5. Equipment and materials grants and vertical
teaming grants [AMENDED]

SUMMARY:

The proposed rule amendments will include programs that include middle schools across the state. Language will include programs that train teachers where currently the grant language only encompasses materials and equipment. Districts that do not spend their grant money will have funds withheld from AP incentive funds rather than state aid.

AUTHORITY:

70 O.S. § 3-104, State Board of Education

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., February 24, 2010, at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on Thursday, February 25, 2010, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies are on file for public viewing in the office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 7, 2009.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #09-1387; filed 11-24-09]

**TITLE 245. STATE BOARD OF LICENSURE
FOR PROFESSIONAL ENGINEERS AND
LAND SURVEYORS
CHAPTER 15. LICENSURE AND PRACTICE
OF PROFESSIONAL ENGINEERS AND
LAND SURVEYORS**

[OAR Docket #09-1439]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions [AMENDED]
Subchapter 3. Application and Eligibility for Licensing
[AMENDED]
Subchapter 7. Licensure [AMENDED]
Subchapter 11. Continuing Education [AMENDED]
Subchapter 13. Minimum Standards for the Practice of
Land Surveying [AMENDED]
Subchapter 17. Licensee's Seal [AMENDED]
Subchapter 19. Organizational Practice [AMENDED]
Subchapter 23. Violations [AMENDED]

SUMMARY:

The proposed revisions to the subchapters are as follows:

Subchapter 1. General Provisions: The proposed amendments will provide a definition for "Professional Engineer, Retired" and "Professional Land Surveyor, Retired". It will also modify the definitions of a "Related Science Degree".

Subchapter 3. Application and Eligibility for Licensing: The proposed amendments will modify the engineering and land surveying requirements for licensure to be in conjunction with statutory changes effective November 1, 2008 and the proposed revision to the definition of Related Science Degree, as well as clean up language.

Subchapter 7. Licensure: Provide for a retired status for professional engineers and land surveyors

Subchapter 11. Continuing Education: Delete the provision for exemption for call to emergency service (which could be considered under an existing exemption), and provide a provision for a retired status.

Subchapter 13. Minimum Standards for Land Surveying: Remove the requirement for the date of expiration of a Certificate of Authorization to be placed on plans; provide instructions for monumenting the exterior corners of a subdivision; and provide a requirement that a survey plat must be created when a land or boundary survey is done.

Subchapter 17. Licensee's Seal: Clean up language; remove the requirement for the date of expiration of the Certificate of Authorization to be placed on plans; provide instructions for revising plans.

Subchapter 19. Organizational Practice: The proposed amendments will clarify the need to have a certificate of authorization only if a company is offering engineering or surveying services to the public as long as they are not using the word "engineer" or "surveyor" or any derivative thereof in the name of the firm.

Subchapter 23. Violations: The proposed amendments will further define practicing without a license and the grounds for violations and penalties, as well as delete duplicative language in the statutes.

AUTHORITY:

59 O.S. 475.1 et seq; 65 O.S., 1991 Sections 3-116 et seq; 75 O.S. Sections 301 et seq

COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 17, 2010 at: Oklahoma Engineering Center, 201 N.E. 27th St., Room 120, Oklahoma City, OK 73105, Attn: Kathy Hart.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303(B)(9), "persons may demand a hearing" by contacting Kathy Hart at (405) 521-2874 no later than 4:30 p.m. on January 17, 2010.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the rules may be obtained by contacting Kathy Hart at the Board office, 201 N.E. 27th St., Room 120, Oklahoma City, OK 73105. Persons requesting more than one copy of the proposed rules will be charged \$.25 per page plus actual mailing costs. Copies of the proposed rules may also be downloaded from our website at www.pels.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a rule impact statement will be issued and made available at the offices of the Board (address above).

CONTACT PERSON:

Kathy Hart, Executive Director, (405) 521-2874 ext. 24

[OAR Docket #09-1439; filed 11-25-09]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE**

[OAR Docket #09-1438]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 7. Environmental Permit Process
Part 5. Land Protection Division Tiers and Time Lines
252:4-7-61 [REVOKED]

252:4-7-62 [REVOKED]

252:4-7-63 [REVOKED]

SUMMARY:

In 2009, the Oklahoma legislature amended the Oklahoma Brownfields Voluntary Redevelopment Act to better streamline the Brownfields program. One of the amendments clarified that a Certificate of Completion and a Certificate of No Action Necessary were not "permits" as defined in 27A O.S. § 2-14-103. Therefore, it is no longer necessary for the Brownfields program to conform to the permitting tier hierarchy.

This rule revocation process is progressing in tandem with the rulemaking for the new Chapter 221 which includes rules for public involvement in the Brownfields process. For further information, refer to the Notice of Rulemaking Intent for Chapter 221.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101 and 2-2-201 and Article XV, Oklahoma Brownfields Voluntary Redevelopment Act, § 2-15-101 et seq.

COMMENT PERIOD:

Deliver or mail written comments on the proposed rule revocation to the contact person from December 15, 2009, through January 20, 2010. Oral comments may be made at the Hazardous Waste Management Advisory Council meeting on January 28, 2010, or at the meeting of the Environmental Quality Board on February 26, 2010.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council at 10:00 a.m. on January 28, 2010, in the multi-purpose room on the 1st floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

Before the Environmental Quality Board at 9:30 a.m. on February 26th, 2010, in the

in the multi-purpose room on the 1st floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by the proposed rule revocation provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease in the level of direct costs such as fees and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule revocation.

COPY OF PROPOSED RULE CHANGES:

A copy of the proposed rule revocation may be obtained from the contact person or may viewed on the DEQ web site at www.deq.state.ok.us or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

Notices of Rulemaking Intent

RULE IMPACT STATEMENT:

The Rule Impact Statement for the proposed rule revocation will be on file at the Department of Environmental Quality and may be requested from the contact person.

CONTACT PERSON:

Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at rita.kottke@deq.ok.gov, phone 405-702-5157, or fax 405-702-5101.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the public hearing to be held before the Hazardous Waste Management Advisory Council meeting or the Environmental Quality Board meeting and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-5100 or by using TDD relay number 1-800-522-8506.

[OAR Docket #09-1438; filed 11-25-09]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #09-1437]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 17. Incinerators

Part 1. General Provisions

252:100-17-1. Purpose [AMENDED]

252:100-17-1.1. Reference to 40 CFR [AMENDED]

252:100-17-1.2. Terminology related to 40 CFR [REVOKED]

252:100-17-1.3. Incinerators and fuel-burning equipment or units [NEW]

Part 3. General Purpose Incinerators [AMENDED]

252:100-17-2. Applicability [AMENDED]

252:100-17-2.1. Exemptions [AMENDED]

252:100-17-2.2. Definitions [AMENDED]

252:100-17-4. Particulate matter [AMENDED]

252:100-17-5. Incinerator design and operation requirements [AMENDED]

252:100-17-5.1. Alternative incinerator design requirements [AMENDED]

252:100-17-7. Test methods [AMENDED]

Part 4. Biomedical Waste Incinerators [NEW]

252:100-17-8. Applicability [NEW]

252:100-17-9. Definitions [NEW]

252:100-17-10. Design and operation [NEW]

252:100-17-11. Emission limits [NEW]

Appendix A. Allowable Emissions for Incinerators with Capacities of 100 Lb/Hr or Greater [REVOKED]

Appendix A. Allowable Particulate Matter Emission Rate for Incinerators [NEW]

Appendix B. Allowable Emissions for Incinerators with Capacities less than 100 Lbs/Hr [REVOKED]

Appendix Q. Incorporation By Reference [REVOKED]

Appendix Q. Incorporation By Reference [NEW]

SUMMARY:

The Department is proposing to amend Parts 1 and 3 of OAC 252:100-17, Incinerators, to remove obsolete language and clarify the remaining provisions. In addition, the Department is proposing to revoke Appendix A, Allowable Emissions for Incinerators with Capacities in Excess of 100 lb/hr and Appendix B, Allowable Emissions for Incinerators with Capacities Less than 100 lb/hr. The current provisions of both appendices are proposed to be rolled into a new Appendix A, Allowable Particulate Matter Emission Rate for Incinerators.

The Department is proposing to add a new Part 4, Biomedical Waste Incinerators, to Subchapter 17, Incinerators. The new part will incorporate the control technology requirements for this type of incinerator originally established under Subchapter 41, Control of Emission of Hazardous and Toxic Air Contaminants, which was revoked in 2007. In addition, the Department has identified regulatory gaps in Subchapter 17, Part 7, Hospital, Medical and Infectious Waste Incinerators, when pathological waste, low-level radioactive waste, and chemotherapeutic waste is incinerated. The addition of Part 4 will reestablish the Department's authority to require design and emission standards for biomedical waste incinerators and close the regulatory gap in Part 7 of Subchapter 17.

The Department is proposing to update Appendix Q, Incorporation By Reference, to incorporate by reference the latest changes to U.S. Environmental Protection Agency air program regulations.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S. § 2-2-101; Air Quality Advisory Council powers and duties, 27A O.S. § 2-2-201; and Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 through -117.

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on January 20, 2010. For comments received at least five (5) business days prior to the Council meeting, staff will post written responses on the Department's web page at least one (1) day prior to the Council meeting. Copies of the written responses will be provided to the Council and the public at that Council meeting. Oral comments may be made at the January 20, 2010 hearing and at the February 26, 2010 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, January 20, 2010, at the DEQ headquarters, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board at 9:30 a.m. on Friday, February 26, 2010, at the DEQ headquarters, 707 N. Robinson, Oklahoma City, OK 73102.

These hearings shall also serve as public hearings to receive comments on the proposed revisions to the State

Implementation Plan (SIP) under the requirements of 40 C.F.R. § 51.102 of the U.S. Environmental Protection Agency regulations and 27A O.S. § 2-5-107(6)(c).

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities or any other members of the public affected by these rules provide the Department, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

The proposed rules are available for review 30 days prior to the hearing on the DEQ Air Quality Division website at http://www.deq.state.ok.us/AQDnew/council_mtgs/index.htm. Copies also may be obtained from the Department by calling Cheryl E. Bradley, Environmental Programs Manager, at (405) 702-4100.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained by contacting Cheryl E. Bradley at (405) 702-4100.

CONTACT PERSON:

Please send written comments on the proposed rule changes to Cheryl E. Bradley at cheryl.bradley@deq.ok.gov. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, ATTN: Cheryl E. Bradley. The Air Quality Division FAX number is (405)702-4101.

PERSONS WITH DISABILITIES:

Should you desire to attend but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405)702-4216. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #09-1437; filed 11-25-09]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 220. BROWNFIELDS [REVOKED]

[OAR Docket #09-1436]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking **PROPOSED RULES:**

Chapter 220. Brownfields [REVOKED]

SUMMARY:

Title 252, Chapter 220 was originally promulgated to implement the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. § 2-15-101 *et seq.*, in order to foster voluntary redevelopment and reuse of abandoned, idled or underused industrial or commercial facilities at which

expansion or redevelopment of the real property is complicated by pollution. Subsequently, the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, was amended to provide specific grant programs for Brownfields with specific eligibility requirements and to provide further protections for those persons redeveloping Brownfields sites. Additionally, the Oklahoma legislature amended the state Brownfields law in 2009 to better streamline the Brownfields program.

Therefore, the current Brownfields rules, Chapter 220, became inconsistent with both federal and state law. The DEQ proposes to revoke Chapter 220 and adopt a new Chapter to cover much of the same content but in a more streamlined context and format. Additionally, the Revolving Loan Fund rules were rewritten to be in compliance with the federal law.

This rule revocation process is progressing in tandem with the rulemaking process of the new Chapter 221. For further information, refer to the Notice of Rulemaking Intent for Chapter 221.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101 and 2-2-201 and Article XV, Oklahoma Brownfields Voluntary Redevelopment Act, § 2-15-101 *et seq.*

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from December 15, 2009, through January 20, 2010. Oral comments may be made at the Hazardous Waste Management Advisory Council meeting on January 28, 2010, or at the meeting of the Environmental Quality Board on February 26, 2010.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council at 10:00 a.m. on January 28, 2010, in the multi-purpose room on the 1st floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

Before the Environmental Quality Board at 9:30 a.m. on February 26th, 2010, in the

multi-purpose room on the 1st floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by these proposed rules provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease in the level of direct costs such as fees and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPY OF PROPOSED RULE CHANGES:

A copy of the proposed rules may be obtained from the contact person or may viewed on the DEQ web site at www.deq.state.ok.us or may be reviewed at the Department

Notices of Rulemaking Intent

of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

The Rule Impact Statement for the proposed rules will be on file at the Department of Environmental Quality and may be requested from the contact person.

CONTACT PERSON:

Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at rita.kottke@deq.ok.gov, phone 405-702-5157, or fax 405-702-5101.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the public hearing to be held before the Hazardous Waste Management Advisory Council meeting or the Environmental Quality Board meeting and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-5100 or by using TDD relay number 1-800-522-8506.

[OAR Docket #09-1436; filed 11-25-09]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 221. BROWNFIELDS

[OAR Docket #09-1435]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions [NEW]

Subchapter 3. The Brownfield Program [NEW]

Subchapter 5. Verification of Brownfields Projects [NEW]

Subchapter 7. Revolving Loan Funds (RLF) [NEW]

SUMMARY:

The Oklahoma Legislature amended the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. § 2-15, effective July 1, 2009. A new chapter of Brownfield rules has been developed to be consistent with the Brownfields law as well as to be compliant with U.S.E.P.A. Brownfield program policies.

The rules in Subchapter 1, General Provisions, include definitions, methodology, transitioning from voluntary cleanup to Brownfields, Superfund and Brownfields, Responsible Parties and other topics.

The Brownfield Program, Subchapter 3, describes the program and its requirements for participation. These rules address eligibility, site characterization, future use, risk evaluation, risk-based cleanup levels, remedial option evaluation, preferred option, approval process, public participation, evaluation of public comments, remediation plans, completion of remedial actions and other topics.

Subchapter 5, Verification of Brownfields Projects, contains the same rules as in Chapter 220. There are two rules, one dealing with applicability and the other with verification of

projects. These rules pertain to projects eligible for funds from the Wastewater Facility Construction Revolving Loan Account, 82 O.S. § 1084.1 *et seq* and other state or federal funding sources.

Revolving Loan Funds, Subchapter 7, are funds available to private entities, political subdivisions or units of local government, including municipal and county governments and school districts, and federally recognized Indian tribes seeking to use the funds for brownfield cleanup activities. The rules in this subchapter address federal cross-cutting requirements, borrower eligibility, eligible and ineligible fund uses, environmental requirements, project selection criteria, public involvement, special terms and conditions, loan discounts and other topics.

The DEQ proposes to revoke the current chapter of Brownfields rules, OAC 252:220, subsequent to OAC 252:221 being adopted. This rulemaking is progressing in tandem with the rule revocation process of Chapter 220 and three rules in Chapter 4, *i.e.* 252:4-7-61, 62 and 63. For further information, refer to the Notice of Rulemaking Intent for Chapter 220 and the Notice of Rulemaking Intent for Chapter 4.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101 and 2-2-201 and Article XV, Oklahoma Brownfields Voluntary Redevelopment Act, § 2-15-101 *et seq*.

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from December 15, 2009, through January 20, 2010. Oral comments may be made at the Hazardous Waste Management Advisory Council meeting on January 28, 2010, or at the meeting of the Environmental Quality Board on February 26, 2010.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council at 10:00 a.m. on January 28, 2010, in the multi-purpose room on the 1st floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

Before the Environmental Quality Board at 9:30 a.m. on February 26th, 2010, in the

in the multi-purpose room on the 1st floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by these proposed rules provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease in the level of direct costs such as fees and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPY OF PROPOSED RULE CHANGES:

A copy of the proposed rules may be obtained from the contact person or may viewed on the DEQ web site at

www.deq.state.ok.us or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

The Rule Impact Statement for the proposed rules will be on file at the Department of Environmental Quality and may be requested from the contact person.

CONTACT PERSON:

Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at rita.kottke@deq.ok.gov, phone 405-702-5157, or fax 405-702-5101.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the public hearing to be held before the Hazardous Waste Management Advisory Council meeting or the Environmental Quality Board meeting and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-5100 or by using TDD relay number 1-800-522-8506.

[OAR Docket #09-1435; filed 11-25-09]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 515. MANAGEMENT OF SOLID WASTE**

[OAR Docket #09-1433]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 39. Oklahoma E-Waste Recycling [NEW]
- 252:515-39-1. Purpose, authority and applicability [NEW]
- 252:515-39-2. Definitions [NEW]
- 252:515-39-3. Annual fees [NEW]
- 252:515-39-4. Records [NEW]

SUMMARY:

The purpose of proposed Subchapter 39 is to implement the requirements of Senate Bill 1631, passed by the Oklahoma Legislature during its 2008 session. The Bill created the Oklahoma Computer Equipment Recovery Act, 27A O.S. § 2-11-601, *et seq.*, which Act gives the DEQ the authority to govern and regulate certain collection, recycling and reuse of computers and computer monitors in the State of Oklahoma. The statutory effective date was January 1, 2009.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Solid Waste Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Oklahoma Computer Equipment Recovery Act § 2-11-601 *et seq.*

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from December 15, 2009 through January

18, 2010. Oral comments may be made at the Solid Waste Management Advisory Council meeting on January 21, 2010, or at the meeting of the Environmental Quality Board on February 26, 2010.

PUBLIC HEARINGS:

Before the Solid Waste Management Advisory Council at 9:00 a.m. on January 21, 2010, in the multipurpose room on the 1st floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board at 9:30 a.m. on February 26, 2010, in the multipurpose room on the 1st floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by these proposed rules provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease in the level of direct costs such as fees and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPY OF PROPOSED RULE CHANGES:

A copy of the proposed rules may be obtained from the contact person or may viewed on the DEQ web site at www.deq.state.ok.us or at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

RULE IMPACT STATEMENT:

The Rule Impact Statement for the proposed rules will be on file at the Department of Environmental Quality and may be requested from the contact person.

CONTACT PERSON:

The contact person is Mike Stickney, Land Protection Division, DEQ. Mr. Stickney can be reached at mike.stickney@deq.ok.gov (e-mail), (405) 702-5100 (phone) or (405) 702-5101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearings and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #09-1433; filed 11-25-09]

Notices of Rulemaking Intent

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #09-1434]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
- 252:515-1-2. Definitions [AMENDED]
- 252:515-1-8. Special considerations [AMENDED]
- Supchapter 3. Permit Provisions and Applications
- Part 1. General Provisions
- 252:515-3-2. Permit not required [AMENDED]
- Part 3. Permit Applications and Modifications
- 252:515-3-42. Permits for transfer stations [NEW]
- Supchapter 15. Methane Gas Monitoring and Control
- 252:515-15-1. Applicability, ~~with~~ ~~exceptions~~ [AMENDED]
- Supchapter 19. Operational Requirements
- Part 3. Operational Requirements for all Disposal Facilities
- 252:515-19-31. Prohibited wastes [AMENDED]
- Part 11. Additional Operational Requirements for Solid Waste Composting Facilities
- 252:515-19-111. Acceptable composting materials [AMENDED]
- Supchapter 29. Exclusion of Prohibited Wastes
- 252:515-29-1. Applicability [AMENDED]

SUMMARY:

The Department is proposing changes to Subchapter 1, General Provisions, to clarify certain definitions. In addition, the Department proposes to amend certain permit modification requirements for C&D landfills and transfer stations.

The Department is proposing changes to Subchapter 3, Permit Provisions and Applications, to clarify and modify yard waste composting requirements and to add a permit requirement that transfer stations shall have a waste exclusion plan.

The Department is proposing changes to Subchapter 15, Methane Gas Monitoring and Control, to remove the exemption for C&D landfills.

The Department is proposing changes to Subchapter 19, Operational Requirements, to add a prohibition with exception, for the disposal of unsorted baled municipal solid waste at a disposal facility. In addition, the Department proposes to modify the list of prohibited materials at composting facilities.

The Department is proposing changes to Subchapter 29, Exclusion of Prohibited Wastes, to add that transfer stations must have a waste exclusion plan and to remove C&D landfills from certain notification requirements.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., § 2-2-101 and Solid Waste Management Advisory Council powers and duties, 27A O.S., § 2-2-201.

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from December 15, 2009 through January 18, 2010. Oral comments may be made at the Solid Waste Management Advisory Council meeting on January 21, 2010, or at the meeting of the Environmental Quality Board on February 26, 2010.

PUBLIC HEARINGS:

Before the Solid Waste Management Advisory Council at 9:00 a.m. on January 21, 2010, in the multipurpose room on the 1st floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board at 9:30 a.m. on February 26, 2010, in the multipurpose room on the 1st floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by these proposed rules provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease in the level of direct costs such as fees and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPY OF PROPOSED RULE CHANGES:

A copy of the proposed rules may be obtained from the contact person or may viewed on the DEQ web site at www.deq.state.ok.us or at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

RULE IMPACT STATEMENT:

The Rule Impact Statement for the proposed rules will be on file at the Department of Environmental Quality and may be requested from the contact person.

CONTACT PERSON:

The contact person is Mike Stickney, Land Protection Division, DEQ. Mr. Stickney can be reached at mike.stickney@deq.ok.gov (e-mail), (405) 702-5100 (phone) or (405) 702-5101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearings and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #09-1434; filed 11-25-09]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 606. OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM (OPDES) STANDARDS**

[OAR Docket #09-1432]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Introduction

252:606-1-4. Date of federal regulations incorporated [AMENDED]

SUMMARY:

The Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules from July 1, 2008, to July 1, 2009.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 15, 2009, through January 18, 2010. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 19, 2010, and at the Environmental Quality Board meeting on February 26, 2010.

PUBLIC HEARING:

Before the Water Quality Management Advisory Council on January 19, 2010, at 1:00 p.m. at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

Before the Environmental Quality Board on February 26, 2010, at 9:30 a.m. at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities affected by these rules provide the DEQ, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, or reviewed online at <http://www.deq.state.ok.us/wqdnew/>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <http://www.deq.state.ok.us/wqdnew/>.

CONTACT PERSON:

The contact person is Donald D. Maisch. Mr. Maisch can be reached at don.maisch@deq.ok.gov (e-mail), (405) 702-7189 (phone) or (405) 702-7199 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #09-1432; filed 11-25-09]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 690. WATER QUALITY STANDARDS IMPLEMENTATION**

[OAR Docket #09-1431]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Introduction

252:690-1-3. Technical Acronyms [AMENDED]

252:690-1-4. Incorporation of USEPA regulations by reference [AMENDED]

SUMMARY:

The Department proposes to update the publication date of the federal rules adopted by reference from July 1, 2008, to July 1, 2009. Additionally, the proposed changes would update the incorporation by reference for 40 CFR, Parts 260 - 279, which are Department programs that generally affect Oklahoma Water Quality Standards application and implementation, as the incorporated references had become outdated. Finally, the Department proposes to modify the term "MQL" to remove the reference to EPA, Region 6 from the technical acronym.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 15, 2009, through January 18, 2010. Oral comments may be made at the Water Quality Management Advisory Council meeting on January 19, 2010, and at the Environmental Quality Board meeting on February 26, 2010.

PUBLIC HEARING:

Before the Water Quality Management Advisory Council on January 19, 2010, at 1:00 p.m. at the Department of

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Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

Before the Environmental Quality Board on February 26, 2010, at 9:30 a.m. at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities affected by these rules provide the DEQ, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, or reviewed online at <http://www.deq.state.ok.us/wqdnew/index.htm>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <http://www.deq.state.ok.us/wqdnew/index.htm>.

CONTACT PERSON:

The contact person is Donald D. Maisch. Mr. Maisch can be reached at don.maisch@deq.ok.gov (e-mail), (405) 702-7189 (phone) or (405) 702-7199 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #09-1431; filed 11-25-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #09-1422]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Organization and Administration
317:1-1-8. through 317:1-1-9. [AMENDED]
317:1-1-9.1. [NEW]
317:1-1-10. [REVOKED]
317:1-1-17. [AMENDED]

Subchapter 3. Formal and Informal Procedures

317:1-3-3.1. [AMENDED]

317:1-3-3.2. [REVOKED]

317:1-3-4. [NEW]

Subchapter 5. Compliance with Section 504 of the Rehabilitation Act of 1973 [REVOKED]

317:1-5-1. through 317:1-5-5. [REVOKED]

Subchapter 7. Compliance with the Americans with Disabilities Act Of 1990 [REVOKED]

317:1-7-1. through 317:1-7-8. [REVOKED]

Subchapter 9. Civil Rights and Nondiscrimination [REVOKED]

317:1-9-1. through 317:1-9-10. [REVOKED]

(Reference APA WF # 09-37)

SUMMARY:

Rules are revised to remove unnecessary language concerning certain federal laws, to correct references to federal laws and state statute, amend policy on open records requirements and include a process for ensuring proper review and approval/disapproval by the Oklahoma Health Care Authority for rate methodology changes.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, (405)522-7153.

[OAR Docket #09-1422; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 2. GRIEVANCE PROCEDURES AND PROCESS**

[OAR Docket #09-1414]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

317:2-1-1. through 317:2-1-2. [AMENDED]
317:2-1-6. through 317:2-1-13. [AMENDED]
(Reference APA WF # 09-24)

SUMMARY:

Rules are revised to include language regarding member and provider appeals processes, specifically concerning the time frames allowed for responses to appeals from the Oklahoma Health Care Authority and the Administrative Law Judge. Additionally, the rule revision clarifies the process for administrative sanction appeals and the process for provider suspension or termination. Clarification of the rules process is needed to ensure unnecessary legal action by SoonerCare members or providers due to misinterpretation of the rules.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405- 522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, (405)522-7153.

[OAR Docket #09-1414; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE**

[OAR Docket #09-1400]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties
Part 85. ADvantage Program Waiver Services
317:30-5-763.1. [AMENDED]
Part 95. Agency Personal Care Services
317:30-5-950. [AMENDED]
317:30-5-952. [AMENDED]
(Reference APA WF # 09-02A)

SUMMARY:

Rules are revised to remove references to the Long Term Care Authority as the Administrative Agent of the ADvantage Program. The Oklahoma Department of Human Services has discontinued contracting with the Long Term Care Authority of Tulsa to perform the function as the Administrative Agent for the ADvantage Program. The Oklahoma Department of Human Services/Aging Services Division has assumed the administrative responsibility for the ADvantage Program. Rules are further revised to update definitions, terminology, and procedures.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.180; 42 CFR 440.167

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority,

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4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, 405-522-7153.

[OAR Docket #09-1400; filed 11-25-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #09-1402]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. General Provider Policies

Part 3. Medical Program Information

317:30-3-61. [NEW]

(Reference APA WF # 09-04)

SUMMARY:

Rules are revised to include language regarding minimum standards necessary for the operation of a self-directed services program for persons who qualify to be institutionalized but are living in a home and community based setting. Current self-direction programs, funded through the Oklahoma Health Care Authority, have varying methodologies for implementation and reporting and are therefore more costly to administer than a single system of self-direction.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, (405)522-7153.

[OAR Docket #09-1402; filed 11-25-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #09-1403]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties

Part 85. Advantage Program Waiver Services

317:30-5-761. [AMENDED]

317:30-5-763. [AMENDED]

317:30-5-764. [AMENDED]

(Reference APA WF # 09-06A)

SUMMARY:

ADvantage Program Waiver Services rules are revised to add Assisted Living services as a compensable service under the ADvantage Waiver program. Assisted Living

services are personal care and supportive services that are furnished to ADvantage members who reside in an ADvantage-certified assisted living center. Services include 24-hour on-site response capability to meet scheduled or unpredictable resident needs and to provide supervision, safety and security. ADvantage reimbursement for Assisted Living Services includes personal care, housekeeping, laundry, meal preparation, periodic nursing evaluations, nursing supervision during nursing intervention, intermittent or unscheduled nursing care, medication administration, assistance with cognitive orientation, assistance with transfer and ambulation, planned programs for socialization, activities and exercise and for arranging or coordinating transportation to and from medical appointments. Services, except for planned programs for socialization, activities and exercise, are to meet specific needs of the participant as determined through individualized assessment and documented on the participant's service plan. Provider standards regarding physical environment, sanitation, health and safety, staff to resident ratios, staff training and qualifications, staff supervision, residents' rights, incident reporting, and provision of or arrangement for necessary health services are included. Three per diem reimbursement rate levels based on different levels of the member's need for service are established. ADvantage members who reside in an ADvantage Assisted Living Services Center have a personal needs allowance set at 150% of the SSI Federal Benefit Rate; the member will be responsible for room and board costs which will not exceed 90% of the SSI Federal Benefit Rate. Rule revisions are needed to allow for reimbursement of Assisted Living services under the ADvantage Waiver program.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.180; 42 CFR 440.181

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to

Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, 405-522-7153.

[OAR Docket #09-1403; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE**

[OAR Docket #09-1405]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-1. [AMENDED]

Part 69. Certified Registered Nurse Anesthetists

317:30-5-605. [AMENDED]

317:30-5-607. [AMENDED]

317:30-5-608. [REVOKED]

317:30-5-609. [REVOKED]

317:30-5-610. [REVOKED]

317:30-5-611. [AMENDED]

Part 70. Anesthesiologist Assistants [NEW]

317:30-5-612. [NEW]

317:30-5-613. [NEW]

317:30-5-614. [NEW]

317:30-5-615. [NEW]

(Reference APA WF # 09-09)

SUMMARY:

Rules are revised to include a new provider type - Anesthesiologist Assistant (AA), as allowed by the Oklahoma Anesthesiologist Assistant Act. AA's will be allowed to perform anesthesiologist services under the direct supervision of a licensed anesthesiologist.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; and Sections 3201 through 3208 of Title 59 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours

Notices of Rulemaking Intent

by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, 405-522-7153.

[OAR Docket #09-1405; filed 11-25-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #09-1406]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties

Part 5. Pharmacies

317:30-5-72.1. [AMENDED]

(Reference APA WF # 09-10)

SUMMARY:

Rules are revised to provide clarification and consistency with practices for coverage for certain nutritional formulas and bars for children diagnosed with certain metabolic disorders. Currently rules only indicate nutritional formula and bars are covered for persons diagnosed with PKU. OHCA practice is that certain nutritional formulas and bars are covered with the diagnosis of certain metabolic disorders and prior authorization.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, (405)522-7153.

[OAR Docket #09-1406; filed 11-25-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #09-1409]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. General Provider Policies

Part 1. General Scope and Administration

317:30-3-27. [AMENDED]

Subchapter 5. Individual Providers and Specialties

Part 110. Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/Us)

317:30-5-1091. [AMENDED]

(Reference APA WF # 09-16)

SUMMARY:

Rules are revised to add Indian Health Service Facilities, Tribally Operated Facilities and Urban Indian Clinics as distant site providers under the telemedicine delivery system, allowing segments of the Native American population in rural areas access to specialty healthcare services. Additionally this rule includes public health nursing as an allowable service available to qualifying individuals in the Native American population on a statewide basis.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, (405)522-7153.

[OAR Docket #09-1409; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE**

[OAR Docket #09-1410]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-24. [AMENDED]

(Reference APA WF # 09-19A)

SUMMARY:

Rules are revised to clarify SoonerCare member responsibilities regarding the reporting of third party liability, utilization of private insurance and notification to medical providers of SoonerCare coverage. Additionally, the rule revision provides notification to members of their agreement to allow sharing of medical information, if needed, to State or Federal agencies, medical providers, or an OHCA designee upon their acceptance of medical services provided through the SoonerCare program.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

Notices of Rulemaking Intent

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development,
(405)522-7153.

[OAR Docket #09-1410; filed 11-25-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #09-1415]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. General Provider Policies

Part 5. Eligibility

317:30-3-80. [REVOKED]

(Reference APA WF # 09-26)

SUMMARY:

DME rules are revised to revoke an outdated DME policy related to oxygen and oxygen equipment and the requirements for prior authorization. Current DME rules already clarify that no prior authorization is required for oxygen and oxygen equipment. Revoking this rule will alleviate confusion and make rules consistent.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to

Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development,
405-522-7153.

[OAR Docket #09-1415; filed 11-25-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #09-1417]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. General Provider Policies

Part 3. General Medical Program Information

317:30-3-59. [AMENDED]

317:30-3-60. [AMENDED]

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-2. [AMENDED]

317:30-5-9. [AMENDED]

317:30-5-20. [AMENDED]

Part 3. Hospitals

317:30-5-42.17. [AMENDED]

(Reference APA WF # 09-28)

SUMMARY:

General coverage rules are revised to make OHCA rules consistent with reimbursement practices and make coverage rules more consistent throughout policy. Revisions include allowing separate payment for the insertion and/or implantation of contraceptive devices during a physician office visit, the removal of physician supervision of hemodialysis or peritoneal dialysis as a general coverage exclusion for both adults and children, the clarification of intent in regards to general coverage and general coverage exclusions for both adults and children, the removal of follow-up consultations, the removal of tympanometry as a general coverage exclusion for children, the clarification of covered critical care guidelines, and general policy cleanup as it relates to these sections.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, 405-522-7153.

[OAR Docket #09-1417; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE**

[OAR Docket #09-1418]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties

Part 6. Inpatient Psychiatric Hospitals

317:30-5-95. [AMENDED]

(Reference APA WF # 09-29)

SUMMARY:

Rules are revised to allow licensing requirements exceptions for hospitals and residential psychiatric treatment centers that

are operated by the state mental hospital. Persons between the ages of 18-21 currently are eligible to receive residential psychiatric treatment services but the licensing agency in Oklahoma is only able to license facilities for persons up to the age of 18. OHCA rules deem that facilities have to be licensed. Title 63 O.S. Section 1-702 exempts hospitals operated by the federal government, state mental hospitals and community-based structured crisis centers from licensing requirements.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 1-702 of Title 63.

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, (405)522-7153.

[OAR Docket #09-1418; filed 11-25-09]

Notices of Rulemaking Intent

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #09-1419]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties

Part 4. Long Term Care Hospitals

317:30-5-65. [AMENDED]

Part 17. Medical Suppliers

317:30-5-211.10. [AMENDED]

317:30-5-211.17. [NEW]

(Reference APA WF # 09-32)

SUMMARY:

Agency rules are revised to make DME rules consistent with reimbursement practices and provide consistency throughout policy. Revisions include clarifying the intent of wheelchair coverage for members residing in a long term care facility or ICF/MR and the elimination of the OHCA Certificate of Medical Necessity (CMN) as a document requirement for requesting prior authorization or determining medical necessity for wheelchairs.

Rules are revised to comply with the Consumer Protection for Wheeled Mobility Act found at 56 O.S. 1015.3. The Act requires either a specialty evaluation or direct in-person involvement in the wheelchair selection process by an Assistive Technology Professional (ATP) for all wheelchairs purchased by SoonerCare. Prior to this act, there has been no requirement for suppliers to show competence in matching members with the right wheelchair. Many members spend all day in their wheelchairs and the common problems caused by getting the wrong chair include orthopedic deformation and pressure sores that are painful, debilitating, and slow and costly to heal.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; The Consumer Protection for Wheeled Mobility Act, Section 1015.3 of Title 56 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development,
405-522-7153.

[OAR Docket #09-1419; filed 11-25-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #09-1420]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals

317:30-5-42.11. [AMENDED]

(Reference APA WF # 09-34)

SUMMARY:

Rules are revised to provide clarification for providers billing for observation/treatment services. The revision gives examples of outpatient observation services that are not covered when they are provided. This change provides clarification and education to providers.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, (405)522-7153.

[OAR Docket #09-1420; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE
AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE
FOR SERVICE**

[OAR Docket #09-1421]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties
Part 17. Medical Suppliers
317:30-5-211.18. [NEW]
(Reference APA WF # 09-35)

SUMMARY:

Durable medical equipment (DME) rules are written to establish a policy of ownership for all purchased durable medical equipment, prosthetics, orthotics, and supplies. This rule allows all durable medical equipment purchased by SoonerCare to remain the property of OHCA to be used for the benefit of the requesting member until it is no longer medically necessary. This is the first rule in complying with Oklahoma state law (56 O.S. 1011.11) mandating OHCA to promulgate rules and establish procedures necessary to implement a durable medical equipment retrieval program.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, 405-522-7153.

[OAR Docket #09-1421; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE
AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE
FOR SERVICE**

[OAR Docket #09-1423]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-22. [AMENDED]
(Reference APA WF # 09-38)

Notices of Rulemaking Intent

SUMMARY:

Rules are revised to allow flexibility in the types of prenatal assessment forms that may be used. Currently rules specify that American College of Obstetricians and Gynecologist (ACOG) assessment form must be used.

Rules are revised to limit the number of ultrasounds performed by an active candidate or Board Certified diplomate in Maternal-Fetal Medicine (MFM) to a maximum of 6 follow-up ultrasounds and to require a prior authorization thereafter. Currently there is an inconsistency in the regular obstetrical care policy which does not state any limitation on the number of ultrasounds permitted without authorization if performed by a MFM while the high risk policy states a limit of 6 for the same provider type.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, (405)522-7153.

[OAR Docket #09-1423; filed 11-25-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #09-1424]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Services
317:30-5-241.3. [AMENDED]
(Reference APA WF # 09-39)

SUMMARY:

Rules are revised to provide consistency with policy and practices. Language that defines the parameters of Behavioral Health Rehabilitation Services was inadvertently omitted during the reformatting of the Outpatient Behavioral Health rules.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development,
(405)522-7153.

[OAR Docket #09-1424; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE
AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE
FOR SERVICE**

[OAR Docket #09-1425]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 5. Individual Providers and Specialties
- Part 17. Medical Suppliers
- 317:30-5-210.1. [NEW]
- 317:30-5-210.2. [NEW]
- 317:30-5-211.1. [AMENDED]
- 317:30-5-211.8. [REVOKED]
- 317:30-5-211.13. [AMENDED]
- 317:30-5-211.14. [AMENDED]
- 317:30-5-212. [REVOKED]
- 317:30-5-216. [AMENDED]

(Reference APA WF # 09-42)

SUMMARY:

Durable medical equipment (DME) rules are revised to provide further clarification in regards to the services available to adults and the additional services available to children. These revisions will further align policy with reimbursement practices and help alleviate confusion to the provider community. Revisions include specifying general coverage for adults, providing definition and clarification in regards to adult coverage of prosthetic and orthotic devices, specifying general coverage for children, and general policy cleanup as it relates to these sections.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development,
405-522-7153.

[OAR Docket #09-1425; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE
AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE
FOR SERVICE**

[OAR Docket #09-1429]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 5. Individual Providers and Specialties
- Part 10. Bariatric Surgery
- 317:30-5-137. [AMENDED]
- 317:30-5-137.1. [NEW]
- 317:30-5-137.2. [NEW]
- 317:30-5-138. [REVOKED]
- 317:30-5-139. [REVOKED]

(Reference APA WF # 09-49)

SUMMARY:

Bariatric surgery rules are revised to re-order the prior authorization process in policy and provide further clarification of the prior authorization process. This revision effectively re-orders policy to present member candidacy guidelines prior to presenting coverage guidelines. This will facilitate the current prior authorization process and encourage providers to request a member candidacy prior authorization before requesting the prior authorization for the surgery. These revisions are not changing the prior authorization process, only reinforcing the current process.

Notices of Rulemaking Intent

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, 405-522-7153.

[OAR Docket #09-1429; filed 11-25-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY

[OAR Docket #09-1401]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 17. ADvantage Waiver Services

317:35-17-12. [AMENDED]

317:35-17-17. through 317:35-17-18. [AMENDED]

317:35-17-20. [REVOKED]

317:35-17-21.1. [AMENDED]

(Reference APA WF # 09-02B)

SUMMARY:

Rules are revised to remove references to the Long Term Care Authority as the Administrative Agent of the ADvantage Program. The Oklahoma Department of Human Services has discontinued contracting with the Long Term Care Authority of Tulsa to perform the function as the Administrative Agent for the ADvantage Program. The Oklahoma Department of Human Services/Aging Services Division has assumed the administrative responsibility for the ADvantage Program. Rules are further revised to update definitions, terminology, and procedures.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.180; 42 CFR 440.167

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, 405-522-7153.

[OAR Docket #09-1401; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY**

[OAR Docket #09-1404]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 17. ADvantage Waiver Services

317:35-17-1. [AMENDED]

317:35-17-11. [AMENDED]

(Reference APA WF # 09-06B)

SUMMARY:

ADvantage Program Waiver Services rules are revised to add Assisted Living services as a compensable service under the ADvantage Waiver program. Assisted Living services are personal care and supportive services that are furnished to ADvantage members who reside in an ADvantage-certified assisted living center. Services include 24-hour on-site response capability to meet scheduled or unpredictable resident needs and to provide supervision, safety and security. ADvantage reimbursement for Assisted Living Services includes personal care, housekeeping, laundry, meal preparation, periodic nursing evaluations, nursing supervision during nursing intervention, intermittent or unscheduled nursing care, medication administration, assistance with cognitive orientation, assistance with transfer and ambulation, planned programs for socialization, activities and exercise and for arranging or coordinating transportation to and from medical appointments. Services, except for planned programs for socialization, activities and exercise, are to meet specific needs of the participant as determined through individualized assessment and documented on the participant's service plan. Provider standards regarding physical environment, sanitation, health and safety, staff to resident ratios, staff training and qualifications, staff supervision, residents' rights, incident reporting, and provision of or arrangement for necessary health services are included. Three per diem reimbursement rate levels based on different levels of the member's need for service are established. ADvantage members who reside in an ADvantage Assisted Living Services Center have a personal needs allowance set at 150% of the SSI Federal Benefit Rate; the member will be responsible for room and board costs which will not exceed 90% of the SSI Federal Benefit Rate. Rule revisions are needed to allow for reimbursement of Assisted Living services under the ADvantage Waiver program.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.180; 42 CFR 440.181

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours

by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, 405-522-7153.

[OAR Docket #09-1404; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY**

[OAR Docket #09-1407]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Eligibility and Countable Income

Part 5. Countable Income and Resources

317:35-5-41.9. [AMENDED]

(Reference APA WF #09-15A)

SUMMARY:

Rules are revised to allow an additional \$25.00 per week in unemployment compensation for job seeking Oklahomans, as allowed by the American Recovery and Reinvestment Act of 2009. The additional \$25.00 per week of regular unemployment compensation will be paid to unemployed Oklahomans through June 30, 2010, as well as an additional amount of emergency unemployment compensation

Notices of Rulemaking Intent

through May 31, 2010. The bill mandates that the additional compensation shall not be considered in determining eligibility for Medicaid benefits. Eligibility rules are revised to disregard the additional income when determining eligibility for the SoonerCare program.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, (405)522-7153.

[OAR Docket #09-1407; filed 11-25-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY

[OAR Docket #09-1411]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 13. ~~Client~~ Member Rights and Responsibilities
317:35-13-4. [AMENDED]

(Reference APA WF # 09-19B)

SUMMARY:

Rules are revised to clarify SoonerCare member responsibilities regarding the reporting of third party liability, utilization of private insurance and notification to medical providers of SoonerCare coverage. Additionally, the rule revision provides notification to members of their agreement to allow sharing of medical information, if needed, to State or Federal agencies, medical providers, or an OHCA designee upon their acceptance of medical services provided through the SoonerCare program.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405- 522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, (405)522-7153.

[OAR Docket #09-1411; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY**

[OAR Docket #09-1413]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 5. Eligibility and Countable Income
 - Part 5. Countable Income and Resources
 - 317:35-5-42. [AMENDED]
 - Subchapter 10. Medical Aid to Families with Dependent Children
 - Part 5. Income
 - 317:35-10-26. [AMENDED]
- (Reference APA WF # 09-22)**

SUMMARY:

Rules are revised to exempt \$25.00 per week in unemployment compensation for job seeking Oklahomans, as allowed by the American Recovery and Reinvestment Act of 2009. The additional \$25.00 per week of regular unemployment compensation will be paid to unemployed Oklahomans through June 30, 2010, as well as an additional amount of emergency unemployment compensation through May 31, 2010. The bill mandates that the additional compensation shall not be considered in determining eligibility for Medicaid benefits. Eligibility rules are revised to disregard the additional income when determining eligibility for the SoonerCare program.

Agency eligibility rules are revised to disregard the earned income from temporary census employment. Every ten years, the Census Bureau conducts the decennial census. For the 2010 Census, the Census Bureau expects to hire more than 900,000 employees over the course of the census. Most of these employees are enumerators who conduct fieldwork who are hired very locally and who only work for a brief period of time. States are given the option by CMS to disregard this temporary income, which Oklahoma has done for the last several decennial censuses. This disregard has been added to our state plan and rules must be revised to agree with the plan.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; the American Recovery and Reinvestment Act of 2009, Public Law # 111-5; Section 1902(r)(2) and 1931 of the Social Security Act

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, 405-522-7153.

[OAR Docket #09-1413; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY**

[OAR Docket #09-1426]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 5. Eligibility and Countable Income
 - Part 5. Countable Income and Resources
 - 317:35-5-41.2. [AMENDED]
- (Reference APA WF # 09-43)**

SUMMARY:

SoonerCare eligibility rules are revised to comply with Senate Bill 987 of the 1st Session of the 52nd Oklahoma Legislature (2009) by increasing certain burial trust account thresholds from \$7,500 to \$10,000 effective November 1, 2009. Oklahoma law provides that a purchaser of a prepaid funeral contract may elect to make the contract irrevocable. Current rules stipulate that the face value amount in an irrevocable contract cannot exceed \$7,500 plus accrued interest. When the amount is in excess of \$7,500, the individual is ineligible for SoonerCare. Senate Bill 987 increases the irrevocable burial contract limit from \$7,500 to \$10,000 effective November

Notices of Rulemaking Intent

1, 2009. Therefore, rule revisions are needed to increase the threshold to \$10,000.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Senate Bill 987 of the 1st Session of the 52nd Oklahoma Legislature (2009)

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, 405-522-7153.

[OAR Docket #09-1426; filed 11-25-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY

[OAR Docket #09-1427]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 17. ADvantage Waiver Services
317:35-17-14. [AMENDED]

(Reference APA WF # 09-45)

SUMMARY:

Rules are revised to remove references to the Long Term Care Authority as the Administrative Agent of the ADvantage Program. The Oklahoma Department of Human Services has discontinued contracting with the Long Term Care Authority of Tulsa to perform the function as the Administrative Agent for the ADvantage Program. The Oklahoma Department of Human Services/Aging Services Division has assumed the administrative responsibility for the ADvantage Program. Rules are further revised to update definitions, terminology, and procedures.

ADvantage Case Management service rules are revised to allow two extra working days for the ADvantage Administration (the Oklahoma Department of Human Services Aging Services Division) to review and either authorize or deny the service plan or amendment. Currently, rules specify that OKDHS staff has three working days to act on the service plan or amendment submitted by the Case Manager. The OKDHS Aging Services Division has requested the revision to allow two additional days as current policy does not allow sufficient time for a thorough review of the material. Additional revisions add current case management practices and procedures to rules.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.180; 42 CFR 440.181

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, 405-522-7153.

[OAR Docket #09-1427; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY**

[OAR Docket #09-1430]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 15. Personal Care Services
317:35-15-8.1. [AMENDED]
(Reference APA WF # 09-50)

SUMMARY:

Rules are revised to remove references to the Long Term Care Authority as the Administrative Agent of the ADvantage Program. The Oklahoma Department of Human Services has discontinued contracting with the Long Term Care Authority of Tulsa to perform the function as the Administrative Agent for the ADvantage Program. The Oklahoma Department of Human Services/Aging Services Division has assumed the administrative responsibility for the ADvantage Program. Rules are further revised to update definitions, terminology, and procedures.

The Oklahoma Department of Human Services/Aging Services Division has requested an amendment to rules that would revise who could be paid to serve as a Personal Care Assistant (PCA) to SoonerCare members approved for State Plan Personal Care services. Current policy allows the OKDHS Director under certain circumstances to approve payment from OKDHS state funds for Personal Care to a legally responsible family member. Those situations include instances when no other PCA is available, available PCAs are unable to provide care to the member, or the needs of the member are so extensive that the legally responsible family member who provides the care is prohibited from working outside the home due to the member's need for care. OKDHS has requested the discontinuance of this exception as a cost saving measure since OKDHS is responsible for paying the entire cost of the PCAs' services for these individuals. Currently, there are ten individuals who will be affected by this revision to policy; these individuals will remain eligible for Personal Care services and efforts are being made to find other non-related PCAs for these individuals.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.180; 42 CFR 440.167

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, 405-522-7153.

[OAR Docket #09-1430; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 40. DEVELOPMENTAL DISABILITIES SERVICES**

[OAR Docket #09-1412]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Member Services
Part 1. Companion/Adult Foster Care Agency Companion Services
317:40-5-5. [AMENDED]
(Reference APA WF # 09-21)

Notices of Rulemaking Intent

SUMMARY:

Rules are revised to correct policy references regarding responsibilities of Agency Companion Services provided to the developmentally disabled. Without the rule change reference corrections, the potential for oversight of incident reporting and quality assurance is increased, resulting in a lower over-all quality of care for the developmentally disabled through Agency Companion Services.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009 through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405- 522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, (405)522-7153.

[OAR Docket #09-1412; filed 11-25-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 40. DEVELOPMENTAL DISABILITIES SERVICES

[OAR Docket #09-1428]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 9. Self-directed Services [NEW]
317:40-9-1. [NEW]

(Reference APA WF # 09-48)

SUMMARY:

Rules are revised to allow for SoonerCare members receiving services through the In-Home Supports Waivers, the option to self-direct those services. Self-direction allows a greater freedom of choice and is proven to be a more efficient and cost effective method of service delivery. Under the self-directed services program each member is given a set budget amount and is given the opportunity to decide which goods and services provide the best outcomes for his/her quality of life. During this time of shrinking state budgets, the necessity to operate programs in a more efficient manner is of paramount importance.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, (405)522-7153.

[OAR Docket #09-1428; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 45. INSURE OKLAHOMA/OKLAHOMA EMPLOYER AND EMPLOYEE PARTNERSHIP FOR INSURANCE COVERAGE**

[OAR Docket #09-1408]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 11. Insure Oklahoma/O-EPIC IP
Part 5. Insure Oklahoma/O-EPIC IP Member Eligibility
317:45-11-20. [AMENDED]
(Reference APA WF #09-15B)

SUMMARY:

Rules are revised to allow an additional \$25.00 per week in unemployment compensation for job seeking Oklahomans, as allowed by the American Recovery and Reinvestment Act of 2009. The additional \$25.00 per week of regular unemployment compensation will be paid to unemployed Oklahomans through June 30, 2010, as well as an additional amount of emergency unemployment compensation through May 31, 2010. The bill mandates that the additional compensation shall not be considered in determining eligibility for Medicaid benefits. Eligibility rules are revised to disregard the additional income when determining eligibility for the SoonerCare program.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 16 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405- 522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, (405)522-7153.

[OAR Docket #09-1408; filed 11-25-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 45. INSURE OKLAHOMA/OKLAHOMA EMPLOYER AND EMPLOYEE PARTNERSHIP FOR INSURANCE COVERAGE**

[OAR Docket #09-1416]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 11. Insure Oklahoma/O-EPIC IP
Part 3. Insure Oklahoma/O-EPIC IP Member Health Care Benefits
317:45-11-11. [AMENDED]
(Reference APA WF # 09-27)

SUMMARY:

Insure Oklahoma/O-EPIC rules are revised to clarify the intent of non-covered benefits related to weight loss intervention and treatment including bariatric surgical procedures, other weight loss surgeries and procedures, drugs primarily used for weight loss, and nutrition services prescribed only for the intent of weight loss under the Individual Plan (IP) program. These benefits have never been covered under the IP program; this simply provides the clarification.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

Notices of Rulemaking Intent

COMMENT PERIOD:

Written and oral comments will be accepted December 16, 2009, through January 14, 2010, during regular business hours by contacting Tywanda Cox, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7153.

PUBLIC HEARING:

A public hearing is scheduled for Tuesday, January 19, 2010, at 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Tywanda Cox, at the above address, before the close of the comment period on January 14, 2010.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed contact person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Tywanda Cox, Director, Policy Development, 405-522-7153.

[OAR Docket #09-1416; filed 11-25-09]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 1. FUNCTION AND STRUCTURE OF THE DEPARTMENT

[OAR Docket #09-1388]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

340:1-1-17 [AMENDED]

(Reference APA WF 09-22)

SUMMARY:

Subchapter 1 of Chapter 1 proposed rule revisions reflect current names of divisions within Oklahoma Department of Human Services (OKDHS).

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Sections 250 et seq. of Title 75 of the Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2009 through January 14, 2010 during regular business hours by contacting Dena Thayer, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-521-4326.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 14, 2010 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

CONTACT PERSON:

Dena Thayer, Programs Administrator, 405-521-4326.

[OAR Docket #09-1388; filed 11-24-09]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #09-1389]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Human Resources Management Division (HRMD)

Part 5. Administrative Procedures

340:2-1-58 [AMENDED]

(Reference APA WF 09-21)

SUMMARY:

The proposed revisions to Subchapter 1 of Chapter 2 amend rules to: (1) clarify how Oklahoma Department of Human Services (OKDHS) will operate and deliver services to the citizens of Oklahoma during hazardous weather conditions and temporary office closings due to imminent peril or unsafe conditions; and (2) remove language that is internal OKDHS procedures.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Section 840-2.20A of Title 74 of the Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2009 through January 14, 2010 during regular business hours by contacting Kevin Sharp, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-521-6829.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 14, 2010 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

CONTACT PERSON:

Dena Thayer, Programs Administrator, 405-521-4326.

[OAR Docket #09-1389; filed 11-24-09]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 5. ADULT PROTECTIVE SERVICES**

[OAR Docket #09-1390]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
 - 340:5-1-1 through 340:5-1-6 [AMENDED]
 - 340:5-1-8 [AMENDED]
- Subchapter 3. Reports of Maltreatment of Vulnerable Adults
 - 340:5-3-1 [AMENDED]
 - 340:5-3-5 through 340:5-3-6 [AMENDED]
- Subchapter 5. Investigation of Adult Protective Services Referrals
 - 340:5-5-2 through 340:5-5-7 [AMENDED]
 - 340:5-5-8 [NEW]

(Reference APA WF 09-24)

SUMMARY:

The proposed revisions to Subchapters 1, 3, and 5 of Chapter 5 amend the rules to: (1) add federal law enforcement

agency to the list of persons who may review or receive information from the case record; (2) add clarification of when information may be excluded from disclosure; (3) add new definitions and amend existing definitions; (4) require Oklahoma Department of Human Services (OKDHS) staff to immediately submit all reports of abuse, neglect, or exploitation for screening; (5) clarify that the Oklahoma Department of Mental Health and Substance Abuse treats seriously mentally ill and substance abusers when voluntarily requested and the Adult Protective Services (APS) specialist's role when reports are received for this population; (6) clarify the timeframe for screening new reports to identify emergency situations, ensure correct assignment of the report, and facilitate the timely initiation of the investigation; (7) require that an additional interview be conducted with the person reporting the abuse, neglect, or exploitation; (8) add findings to the elements of an investigation; (9) include information regarding the vulnerable adult's right to religious beliefs for healing; (10) add language clarifying the APS specialist shall not consent or deny consent to a do not resuscitate (DNR) order; (11) add information regarding restricted visitation with a vulnerable adult; (12) add information about when the APS specialist can request the court to order a psychological or psychiatric evaluation; (13) correct a policy cite; (14) add a new rule to provide direction for case destruction; (15) add language about when involuntary court orders are dismissed; (16) add other clarifying information; and (17) update language to current terminology.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Section 10-101 through 10-111 of Title 43A of the Oklahoma Statutes; and Section 40.5 through 40.7 of Title 22 of the Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2009 through January 14, 2010 during regular business hours by contacting Laura Brown, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-521-4396.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 14, 2010 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

Notices of Rulemaking Intent

CONTACT PERSON:

Dena Thayer, Programs Administrator, 405-521-4326.

[OAR Docket #09-1390; filed 11-24-09]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 15. STATE SUPPLEMENTAL PAYMENT**

[OAR Docket #09-1391]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

340:15-1-4 [AMENDED]

(Reference APA WF 09-23)

SUMMARY:

The proposed revisions to Chapter 15 amend the rules to add: (1) language to give a \$500 earned income disregard for applicants and recipients of the State Supplemental Payment (SSP) Program who are blind; and (2) clarifying language.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Sections 161 et seq. of Title 56 of the Oklahoma Statutes; and Section 15 of Title 7 of the Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2009 through January 14, 2010 during regular business hours by contacting Laura Brown, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-521-4396.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 14, 2010 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

CONTACT PERSON:

Dena Thayer, Programs Administrator, 405-521-4326.

[OAR Docket #09-1391; filed 11-24-09]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES DIVISION**

[OAR Docket #09-1379]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

340:100-1-2 [AMENDED]

Subchapter 3. Administration

Part 1. General Administration

340:100-3-4 [AMENDED]

Part 3. ~~Operations~~ Administration

340:100-3-29 [AMENDED]

340:100-3-38.5 [AMENDED]

Subchapter 5. Client Services

Part 1. Admission and Safeguards

340:100-5-2 through 340:100-5-3 [AMENDED]

Part 3. Service Provisions

340:100-5-20 [NEW]

340:100-5-22 [AMENDED]

340:100-5-22.5 through 340:100-5-22.6 [AMENDED]

Part 5. Individual Planning

340:100-5-52 through 340:5-53 [AMENDED]

Subchapter 17. Employment Services

Part 5. Other State Funded Employment Services

340:100-17-30 [AMENDED]

(Reference APA WF 09-20)

SUMMARY:

The proposed revisions to Subchapters 1, 3, 5, and 17 of Chapter 100 amend the rules to: (1) bring the terminology associated with programs and services offered by Developmental Disabilities Services Division (DDSD) to the current standard in the field of providing services to persons with developmental disabilities and certain other related conditions; (2) clarify the monitoring responsibilities of personal funds for different residential placements and allow the use of personal funds for minor repairs to a residence; (3) provide rules for operation of the Respite Voucher Program; (4) clarify the requirements of the Foster Grandparent Program; (5) remove the supervisory staff training requirement for service recipients or representatives who elect to self-direct services and require the approved self-directed training course; (6) clarify transition and discharge planning requirements; (7) remove eligibility criteria for services not provided by DDSD; (8) include room and personal searches within allowable restrictive procedures; (9) prohibit the use of cell phones in alternative group homes; (10) specify training requirements; (11) clarify Oklahoma Department of Human Services (OKDHS) provider payments and their approved use; (12) disallow the use of room and board funds to support a roommate who is not a recipient of DDSD services; (13) provide clarification about the responsibility of any roommate

in paying his or her fair share in the cost of operating a household; (14) disallow the use of room and board payments for supporting more than one household except when a transition is occurring; (15) clarify the responsible party for paying for co-payments and over the counter medications; (16) provide clarification for the approval process for the use of property replacement funds; (17) specify information to be included in the monthly report of progress; (18) specify case management for recipients of state funded non-waiver services; (19) clarify planning requirements for the Individual Plan; and (20) limit therapeutic leave in state funded employment services to a maximum of 10% of the authorized units with a maximum of 150 hours per service recipient per fiscal year.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 1, 2, 3, and 4 of the Oklahoma Constitution; Section 1412 of Title 10 of the Oklahoma Statutes (10 O.S. § 1412); Section 1020 of Title 56 of the Oklahoma Statutes (56 O.S. §1020); and Section 1175.6b of Title 22 of the Oklahoma Statutes (22 O.S. § 1175.6b).

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2009 through January 14, 2010 during regular business hours by contacting Samantha Galloway, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-521-4989.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 14, 2010 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by contacting the above listed person.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

CONTACT PERSON:

Dena Thayer, Programs Administrator, 405-521-4326.

[OAR Docket #09-1379; filed 11-24-09]

**TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION
CHAPTER 15. PHYSICIAN ASSISTANTS**

[OAR Docket #09-1443]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Licensure of Physician Assistants
435:15-3-18. License renewal period; reinstatement
[AMENDED]

SUMMARY:

The proposed rule amendments simplify the late renewal requirements for Physician Assistant licensure.

AUTHORITY:

State Board of Medical Licensure and Supervision, 59 O.S., §519.3, §519.8

COMMENT PERIOD:

The comment period will run from December 15, 2009 to March 12, 2010. Written comments may be sent to the office of the Board, PO Box 18256, Oklahoma City, OK 73154-0256.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 26, 2010, 9:00 a.m. at the office of the Board, 101 NE 51st Street, Oklahoma City, Oklahoma. Written notice of intent to make oral comment must be received by this office no later than March 12, 2010.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained at the office of the Board, prior to December 21, 2009 at 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma. On December 21, 2009 and after, copies of the proposed rules may be obtained at the office of the Board, 101 NE 51st, Oklahoma City, Oklahoma. The proposed rules are also available on the Board's web site at www.okmedicalboard.org.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and available at the same locations listed above for reviewing and obtaining copies of the proposed rules.

CONTACT PERSON:

Kathy Plant, Executive Secretary (405) 848-6841, ext. 122

[OAR Docket #09-1443; filed 11-25-09]

**TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION
CHAPTER 40. REGISTERED ELECTROLOGISTS**

[OAR Docket #09-1444]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

435:40-1-5. Academic requirements for examination and licensure [AMENDED]

Notices of Rulemaking Intent

SUMMARY:

The proposed rule amendments simplify the language of educational requirements remove the specification of certain courses for those with a bachelor's degree in allied health or biological-life sciences as those courses are covered by the degree requirements.

AUTHORITY:

State Board of Medical Licensure and Supervision, 59 O.S. § 536.4.

COMMENT PERIOD:

The comment period will run from December 15, 2009 to March 12, 2010. Written comments may be sent to the office of the Board, PO Box 18256, Oklahoma City, OK 73154-0256.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 26, 2010, 9:00 a.m. at the office of the Board, 101 NE 51st Street, Oklahoma City, Oklahoma. Written notice of intent to make oral comment must be received by this office no later than March 12, 2010.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained at the office of the Board, prior to December 21, 2009 at 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma. On December 21, 2009 and after, copies of the proposed rules may be obtained at the office of the Board, 101 NE 51st, Oklahoma City, Oklahoma. The proposed rules are also available on the Board's web site at www.okmedicalboard.org.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and available at the same locations listed above for reviewing and obtaining copies of the proposed rules.

CONTACT PERSON:

Kathy Plant, Executive Secretary (405) 848-6841, ext. 122

[OAR Docket #09-1444; filed 11-25-09]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 45. RESPIRATORY CARE PRACTITIONER

[OAR Docket #09-1445]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Regulation of Practice
435:45-5-1. Continuing education [AMENDED]

SUMMARY:

The proposed rule amendments would modify the method of verifying compliance with continuing education requirements for Respiratory Care Practitioners licensed by the Board.

Currently, all continuing education certificates are submitted on paper to the Board office with the renewal application. Beginning in 2010, Respiratory Care Practitioners will renew their licenses on-line. The amendments will allow the Board to randomly select a percentage licensees to audit for compliance with continuing education requirements.

AUTHORITY:

State Board of Medical Licensure and Supervision, 59 O.S., Section 2031(3)

COMMENT PERIOD:

The comment period will run from December 15, 2009 to January 29, 2010. Written comments may be sent to the office of the Board, PO Box 18256, Oklahoma City, OK 73154-0256.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on February 4, 2010, 11:30 a.m. at the office of the Board, 101 NE 51st Street, Oklahoma City, Oklahoma. Written notice of intent to make oral comment must be received by this office no later than January 29, 2010.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained at the office of the Board, prior to December 21, 2009 at 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma. On December 21, 2009 and after, copies of the proposed rules may be obtained at the office of the Board, 101 NE 51st, Oklahoma City, Oklahoma. The proposed rules are also available on the Board's web site at www.okmedicalboard.org.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and available after December 15, 2009 at the office of the Board, prior to December 21, 2009 at 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma. On December 21, 2009 and after, copies of the rule impact statement may be obtained at the office of the Board, 101 NE 51st, Oklahoma City, Oklahoma. The rule impact statement also will be available on the Board's web site at www.okmedicalboard.org.

CONTACT PERSON:

Kathy Plant, Executive Secretary (405) 848-6841, ext. 122

[OAR Docket #09-1445; filed 11-25-09]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 70. THERAPEUTIC RECREATION

[OAR Docket #09-1446]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 70. Therapeutic Recreation [NEW]

SUMMARY:

The proposed new rules implement the provisions in Senate Bill 546, the Therapeutic Recreation Practice Act, which becomes effective November 1, 2010. The rules clarify requirements for licensure, re-licensure and regulation of Therapeutic Recreation Specialists.

AUTHORITY:

State Board of Medical Licensure and Supervision, 59 O.S., § 540.5

COMMENT PERIOD:

The comment period will run from December 15, 2009 to February 4, 2010. Written comments may be sent to the office of the Board, PO Box 18256, Oklahoma City, OK 73154-0256.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on February 11, 2010, 3:00 p.m. at the office of the Board, 101 NE 51st Street, Oklahoma City, Oklahoma. Written notice of intent to make oral comment must be received by this office no later than February 4, 2010.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained at the office of the Board, prior to December 21, 2009 at 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma. On December 21, 2009 and after, copies of the proposed rules may be obtained at the office of the Board, 101 NE 51st, Oklahoma City, Oklahoma. The proposed rules are also available on the Board's web site at www.okmedicalboard.org.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and available at the same locations listed above for reviewing and obtaining copies of the proposed rules.

CONTACT PERSON:

Kathy Plant, Executive Secretary (405) 848-6841, ext. 122

[OAR Docket #09-1446; filed 11-25-09]

**TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #09-1393]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

- Subchapter 7. Individual Proceedings
- 535:1-7-3. Hearings [AMENDED]
- 535:1-7-6. Hearing records and record maintenance [AMENDED]
- 535:1-7-7. Final orders [AMENDED]
- 535:1-7-8. Appeal [AMENDED]

Subchapter 11. Fees

- 535:1-11-1. Annual licenses, permits and renewals [AMENDED]
- 535:1-11-3. Practical experience licenses and certificates [AMENDED]
- 535:1-11-4. ~~Other fees Public access, open records~~ [AMENDED]
- 535:1-11-5. Miscellaneous [AMENDED]

SUMMARY:

The revisions in 535:1-7-3 describes changes in notice for continuance requirements. The removal of the portion of the rule regarding retaining tape recordings changes the 535:1-7-6 for hearing records and maintenance that is covered in the Administrative Procedures Act (APA). The change in 535:1-7-7 will correct the final order rule language. Revisions of 535:1-7-8 removes language that is already better covered under the APA. The revisions in Subchapter 7 are additionally at the recommendation of our Assistant Attorney General liaison.

The revisions 535:1-11-1 add the fee for a pharmacy license as authorized under 353.18 (A) for a long-term care pharmacy remote site. The change in 535:1-11-3 updates the fee for pharmacy intern to better reflect the cost of maintaining and following Oklahoma pharmacy interns. The revision in 535:1-11-4 clean up the language describing other fees and it adds a fee for certified letters of good standing or letters of verification that take a good deal of staff time. Revisions in 535:1-11-5 are updating for the changes made in HB 1180 to special inspection and fine fees.

AUTHORITY:

Title 51 O.S. 24A et seq., Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.3, 353.5 - 353.7, 353.9, 353.11, 353.18; 353.20, 353.22, 353.24 - 353.26, 353.29, 353.30; Title 75 O.S., Section 302, 305, 307, and 309; Title 63 O.S., Sec 2-201, 2-208 and 2-210; and Title 51 Sec. 24 A.5 (3) and Title 59 O.S. Sec. 353.7(15).

COMMENT PERIOD:

The comment period will run from December 15, 2009 through February 16, 2010, at 1:00 p.m. Written comments may be sent to the offices of the Board, 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 3, 2010, at 1:00 p.m. in our office at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Written notice of intent to make oral comment must be received by this office no later than February 16, 2010, at 1:00 p.m.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue

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loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

COPIES OF PROPOSED RULES:

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Suite 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available on and after December 15, 2009, at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

CONTACT PERSON:

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. The Board phone number is (405) 521-3815 and the FAX number is (405) 521-3758.

[OAR Docket #09-1393; filed 11-25-09]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 10. PHARMACISTS; INTERNS, PRECEPTORS AND TRAINING AREAS

[OAR Docket #09-1394]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Pharmacists

535:10-3-1.2. Violations of professional conduct
[AMENDED]

Subchapter 5. Interns, Preceptors and Training Areas

535:10-5-3. Intern requirements; licenses [AMENDED]

535:10-5-4. Intern practice requirements [AMENDED]

535:10-5-8. Preceptor requirements [AMENDED]

535:10-5-9. Training area requirements [AMENDED]

Subchapter 7. Pharmacist Licensure

535:10-7-4. General requirements for pharmacist licensure applicants [AMENDED]

535:10-7-10. Pharmacist reinstatement

SUMMARY:

The rule change in 535:10-3-1.2 (24) - (27) adds to violations of professional conduct failure by the pharmacist of pharmacist in charge to fulfill their responsibilities in under the rules of 535:15. It adds dispensing outdated drugs, failure to cooperate in Board investigations, failure to adequately supervise pharmacy interns or pharmacy technicians as violations. It corrects 535:10-3-1.2 (20) to use a Board approved law exam.

The revisions in 535:10-5-3 correct numbering and cleanup language to make the rule more clear. In 535:10-5-4 will not allow a licensed intern to work in any capacity if a preceptor

is not on duty. The rules in 535:10-5-8 and 535:10-5-9 will change preceptor and training licenses to run together with pharmacist and pharmacy licenses after December 31, 2011.

The changes in 535:10-7-4, Oklahoma law examination requirements, will allow the Board to choose which law examination to use; such as the NABP Multiple State Licensure jurisprudence/law examination which allows access to nationwide computer testing.

It corrects 535:10-7-10 (f) to use a Board approved law exam.

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.9, 353.11, 353.16A, 353.18, 353.20, 353.22, and 353.24 - 353.26 and 364.

COMMENT PERIOD:

The comment period will run from December 15, 2009 through February 16, 2010, at 1:00 p.m. Written comments may be sent to the offices of the Board, 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 3, 2010, at 1:00 p.m. in our office at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Written notice of intent to make oral comment must be received by this office no later than February 16, 2010, at 1:00 p.m.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

COPIES OF PROPOSED RULES:

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Suite 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available on and after December 15, 2009, at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

CONTACT PERSON:

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

[OAR Docket #09-1394; filed 11-25-09]

**TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 10. PHARMACISTS; INTERNS, PRECEPTORS AND TRAINING AREAS**

[OAR Docket #09-1395]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 9. Pharmaceutical Care
- 535:10-9-4. Purpose [AMENDED]
- 535:10-9-4.1. Definitions [NEW]
- 535:10-9-5. Agreements [AMENDED]
- 535:10-9-6. Minimum requirements for collaborative medication therapy management agreement(s) [NEW]
- 535:10-9-7. Collaborative medication therapy management process [NEW]
- 535:10-9-8. Collaborative medication therapy management authorization requirement [NEW]
- 535:10-9-12. Unauthorized practice [NEW]

SUMMARY:

Collaborative medication therapy management (CMTM) rules. The rule change in 535:10-9-4 adds to the purpose statement collaborative medication therapy management. In 535:10-9-4.1 it adds required definitions for collaborative medication therapy management (CMTM). The rule change in 535:10-9-5 assures that only allopathic and osteopathic physicians may authorize CMTM and limits it to bordering states. The rule adds to 535:10-9-6 the minimum requirements for CMTM agreements. The amended rule in 535:10-9-7 describes the CMTM process. In 535:10-9-8 described the CMTM authorization requirements.

The changes in 535:10-9-12, specifically state that a collaborating pharmacist shall not practice beyond the scope of the CMTM agreement, the written protocol and Oklahoma law and it further states that unauthorized practice will subject the pharmacist to action under law and rules.

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.9, 353.11, 353.16A, 353.18, 353.20, 353.22, and 353.24 - 353.26, 353.30 and 364.

COMMENT PERIOD:

The comment period will run from December 15, 2009 through February 16, 2010, at 1:00 p.m. Written comments may be sent to the offices of the Board, 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 3, 2010, at 1:00 p.m. in our office at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Written notice of intent to make oral comment must be received by this office no later than February 16, 2010, at 1:00 p.m.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

COPIES OF PROPOSED RULES:

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Suite 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available on and after December 15, 2009, at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

CONTACT PERSON:

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

[OAR Docket #09-1395; filed 11-25-09]

**TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 15. PHARMACIES**

[OAR Docket #09-1392]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
- 535:15-1-1. Purpose [AMENDED]
- Subchapter 3. Pharmacies
- 535:15-3-2. Pharmacy responsibilities [AMENDED]
- 535:15-3-4. Physical requirements for pharmacies [AMENDED]
- 535:15-3-9. Non-resident pharmacies [AMENDED]
- Subchapter 5. Hospital Pharmacies
- 535:15-5-3. Applicability [AMENDED]
- 535:15-5-4. Registration [AMENDED]
- 535:15-5-10. Director of pharmacy responsibilities [AMENDED]
- Subchapter 6. Hospital Drug Rooms
- 535:15-6-1. Purpose [AMENDED]
- 535:15-6-5. Drug room and PIC responsibilities and duties [AMENDED]
- Subchapter 9. Parenteral Pharmacy Permits
- 535:15-9-6. Parenteral pharmacy physical requirements [AMENDED]
- Subchapter 13. Pharmacy Supportive Personnel

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535:15-13-5. Supervision of pharmacy technicians [AMENDED]

535:15-13-8. Technician annual permit requirement [AMENDED]

SUMMARY:

The revision in 535:15-1.1 adds clarity to the purpose statement. Added is that compliance with the rules of this Subchapter is the responsibility of the pharmacist manager, the pharmacy, and in some cases the pharmacist. Revisions in 535:15-3-2 clarifies the responsibilities of the pharmacist and pharmacy manager. The revision also requires the district manager of pharmacies to be licensed as a pharmacist in the state of Oklahoma. The revision in 535:15-3-4 requires pharmacies be located in a commercial location; it clarifies the minimum temperature for hot water; updates the poison and exempt narcotic book requirements; and it clarifies who may make balance exceptions. This revision also removes the requirement that a pharmacy have sterilization equipment. The revision in 535:15-3-9 requires non-resident pharmacies to be in a commercial location.

The revision in 535:15-5-3 updates the applicability statement to improve clarity. The change in 535:15-5-4 adds minimum hours for hospital pharmacies. The revision in 535:15-5-10 clarifies the wording under (d) adverse drug events program and under (j) further describes staffing requirements.

The rule revision in 535:15-6-1 clarifies the rules apply to the drug room, the pharmacist; and/or pharmacist in charge. The revision in 535:15-6-5 allows a drug room with a full-time pharmacist, who more than meets the 52 routine visits to documentation using their daily reports. This rule also requires the establishment and maintenance of effective controls against diversion of prescription drugs.

The change in 535:15-9-6 expands the library selection for parenteral pharmacy permits.

The rule revisions in 535:15-13-5 requires pharmacist, pharmacy managers and the pharmacy to be responsible to supervise and/or assure supervision takes place for pharmacy technicians.

The revision in 535:15-13-8 regarding technician annual permit clarifies what the Board must review concerning applicants regarding arrests, charges, etc. and clarifies what suspension and revocation the Board shall consider.

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.

COMMENT PERIOD:

The comment period will run from December 15, 2009 through February 16, 2010, at 1:00 p.m. Written comments may be sent to the offices of the Board, 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 3, 2010, at

1:00 p.m. in our office at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Written notice of intent to make oral comment must be received by this office no later than February 16, 2010, at 1:00 p.m.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

COPIES OF PROPOSED RULES:

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Suite 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available on and after December 15, 2009, at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

CONTACT PERSON:

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

[OAR Docket #09-1392; filed 11-25-09]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 15. PHARMACIES

[OAR Docket #09-1396]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 4. Remote Medication Order Processing (RMOP) for Hospitals and RMOP Pharmacy [NEW]

535:15-4-1. Purpose [NEW]

535:15-4-2. Definitions [NEW]

535:15-4-3. Registration [NEW]

535:15-4-4. Staffing requirements [NEW]

535:15-4-5. Responsibilities and duties of RMOP pharmacies, pharmacist managers [pharmacist in charge (PIC)] [NEW]

535:15-4-6. Governing body [NEW]

535:15-4-7. Unlawful acts and violations [NEW]

Subchapter 5. Hospital Pharmacies

535:15-5-2. Definitions [AMENDED]

535:15-5-19. Remote medication order processing (RMOP) [NEW]

Subchapter 6. Hospital Drug Rooms

535:15-6-2. Definitions [AMENDED]
535:15-6-20. Remote medication order processing (RMOP) [NEW]

SUMMARY:

Hospital remote order entry rules. The revision in 535:15-5.2 updates hospital pharmacy rules to include the definition of remote medication order processing and remote site for hospital pharmacies. The new rule in 535:15-5-19 adds remote medication order processing rules for hospital pharmacies.

The new rule in 535:15-4.1 adds the purpose statement to the new subchapter for remote medication order processing and remote medication order processing pharmacies. The new rule in 535:15-4-2 adds definitions regarding remote medication order processing in this subchapter. The rules in 535:15-4-3 describes registration requirements and in 535:15-4-4 describes staffing requirements. The rule in 535:15-4-5 describes the responsibilities and duties of RMOP pharmacies and the pharmacy manager [pharmacist-in-charge (PIC)]. The new rule in 535:15-4-6 describes the governing body and in 535:15-4-7 describes unlawful acts and violations.

The revision in 535:15-6.2 updates hospital pharmacy rules to include the definition of remote medication order processing and remote site for hospital drug rooms. The new rule in 535:15-6-20 adds remote medication order processing rules for hospital drug rooms.

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.

COMMENT PERIOD:

The comment period will run from December 15, 2009 through February 16, 2010, at 1:00 p.m. Written comments may be sent to the offices of the Board, 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 3, 2010, at 1:00 p.m. in our office at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Written notice of intent to make oral comment must be received by this office no later than February 16, 2010, at 1:00 p.m.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

COPIES OF PROPOSED RULES:

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Suite 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available on and after December 15, 2009, at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

CONTACT PERSON:

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

[OAR Docket #09-1396; filed 11-25-09]

**TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 20. MANUFACTURERS, PACKAGERS, AND WHOLESALERS**

[OAR Docket #09-1397]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 3. Manufacturers
535:20-3-6.3. Security [AMENDED]
- Subchapter 5. Packagers
535:20-5-6.3. Security [AMENDED]
- Subchapter 7. Wholesalers and Pedigree Rules
535:20-7-7.3. Security and anti-counterfeiting [AMENDED]
- 535:20-7-9.1. Prohibited conduct [AMENDED]
- Subchapter 9. Medical Gas Suppliers and Distributors
535:20-9-3. Medical gas suppliers [AMENDED]
- 535:20-9-4. Medical gas distributors [AMENDED]

SUMMARY:

The revisions in 535:20-3-6.3, 535:10-5-6.3, 535:20-7-7.3, 535:20-9-3 and 535:10-9-4 security sections lay out manufacturer, packager, wholesaler, medical gas supplier and medical gas distributor responsibilities to establish and maintain controls to protect against theft, diversion, or counterfeiting; and require the same regarding suspicious order monitoring and require registrants to **not** shipping orders they have verified are suspicious.

The revision in 535:20-3-9 prohibited conduct adds failure to maintain a suspicious order monitoring records and failure to notify the Board.

The revisions in 535:20-9-3 and 535:20-9-4 for medical gas suppliers and medical gas distributor security sections lay out responsibilities to establish and maintain controls regarding suspicious order monitoring and require registrants to **not** shipping orders they have verified are suspicious.

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A,

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353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.

COMMENT PERIOD:

The comment period will run from December 15, 2009 through February 16, 2010, at 1:00 p.m. Written comments may be sent to the offices of the Board, 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 3, 2010, at 1:00 p.m. in our office at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Written notice of intent to make oral comment must be received by this office no later than February 16, 2010, at 1:00 p.m.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

COPIES OF PROPOSED RULES:

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Suite 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available on and after December 15, 2009, at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

CONTACT PERSON:

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

[OAR Docket #09-1397; filed 11-25-09]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 25. RULES AFFECTING VARIOUS REGISTRANTS

[OAR Docket #09-1398]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Subchapter 3. Applicants, Registrants, and Applications
535:25-3-3. Qualifications and requirements for registrant applicants [AMENDED]

Subchapter 9. Violation of the Rules of Registrant Conduct
535:25-9-8. Failure to maintain effective controls
[AMENDED]

SUMMARY:

The revision in 535:25-3-3 corrects grammar. The revision in 535:25-9-8 clarifies that it includes prescription controlled dangerous drugs or substances (CDS) and it adds as a violation failure to establish and maintain a suspicious order monitoring program.

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.

COMMENT PERIOD

The comment period will run from December 15, 2009 through February 16, 2010, at 1:00 p.m. Written comments may be sent to the offices of the Board, 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 3, 2010, at 1:00 p.m. in our office at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Written notice of intent to make oral comment must be received by this office no later than February 16, 2010, at 1:00 p.m.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

COPIES OF PROPOSED RULES:

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Suite 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and be available on and after December 15, 2009, at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

CONTACT PERSON:

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

[OAR Docket #09-1398; filed 11-25-09]

**TITLE 545. BOARD OF PODIATRIC
MEDICAL EXAMINERS
CHAPTER 15. EXAMINATION/LICENSURE**

[OAR Docket #09-1447]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 15. Examination/Licensure

545:15-1-2. Examination [AMENDED]

SUMMARY:

The proposed rule amendments remove the requirement that the examination for licensure be given during the month of March on an annual basis. It also removed the requirement that applicants who fail the exam, retake the entire exam in March of the following year. It will give the Board the flexibility to set the exam and exam retake dates as needed.

AUTHORITY:

Title 59 O.S., Section 141, State Board of Podiatric Medical Examiners

COMMENT PERIOD:

The comment period will run from December 15, 2009 to March 19, 2010. Written comments may be sent to the office of the Board, PO Box 18256, Oklahoma City, OK 73154-0256.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 27, 2010, 9:00 a.m. at the office of the Board, 101 N.E. 51st Street, Oklahoma City, Oklahoma. Written notice of intent to make oral comment must be received by this office no later than March 19, 2010.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained at the office of the Board, 101 N.E. 51st Street, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and available after December 15, 2009 at the office of the Board, 101 N.E. 51st Street, Oklahoma City, Oklahoma, 73118.

CONTACT PERSON:

Kathy Plant, Executive Secretary (405) 848-6841, ext. 122

[OAR Docket #09-1447; filed 11-25-09]

**TITLE 715. TEACHERS' RETIREMENT
SYSTEM
CHAPTER 10. GENERAL OPERATIONS**

[OAR Docket #09-1374]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 13. Contributions for Membership Service

715:10-13-1 [AMENDED]

715:10-13-5 [AMENDED]

Subchapter 17. Post-Retirement Employment

715:10-17-7 [AMENDED]

715:10-17-12 [AMENDED]

Subchapter 19. Tax-Sheltered Annuity Program

715:10-19-1 [AMENDED]

715:10-19-2 [AMENDED]

715:10-19-3 [AMENDED]

715:10-19-4 [AMENDED]

715:10-19-5 [AMENDED]

715:10-19-7 [AMENDED]

715:10-19-8 [AMENDED]

715:10-19-9 [AMENDED]

715:10-19-11 [AMENDED]

715:10-19-12 [AMENDED]

715:10-19-13 [AMENDED]

Subchapter 21. Investment Policy [REVOKED]

715:10-21-1 [REVOKED]

715:10-21-2 [REVOKED]

SUMMARY:

715:10-13-1 is being amended to clarify fringe benefits and regular annual compensation. 715:10-13-5 is being amended to clarify that interest may be adjusted on annual compensation corrections in cases where a compensation correction should have been identified by TRS staff but was not.

715:10-17-7 is being amended to clarify when a disabled retiree must complete a TRS Report of Earned Income by Disabled Member Form; removes age "65" and inserts age "62".

715:10-17-12 is being amended to require remitting agencies to submit all earnings reports in a magnetic media format.

715:10-19-1, 715:10-19-2, 715:10-19-3, 715:10-19-4, 715:10-19-5, 715:10-19-7, 715:10-19-9, 715:10-19-11, 715:10-19-12, 715:10-19-13 were adopted as emergency rules and now are being promulgated as permanent rules to ensure continued compliance with Internal Revenue Code Section 403(b).

715:10-19-8 was adopted as an emergency rule and is being promulgated as a permanent rule to ensure continued compliance with Internal Revenue Code Section 403(b) and to clarify that 403(b) funds may be used to purchase permissive service credit.

715:10-21-1 and 715:10-21-2 are being revoked as permanent rules to update the TRS investment policy.

Since all sections under "Subchapter 21. Investment Policy" will be revoked, the word "[REVOKED]" will be added to the subchapter title.

AUTHORITY:

70 O.S. Section 17-101, et seq., especially Section 17-106; Board of Trustees

COMMENT PERIOD:

Written comments may be made from December 15, 2009, through January 14, 2010, filed and available for inspection

Notices of Rulemaking Intent

in the Office of the Executive Secretary, Teachers' Retirement System of Oklahoma, 5th Floor, Oliver Hodge Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma, from 8:00 a.m. until 4:30 p.m., Monday through Friday, excluding holidays, or by mailing same to the Executive Secretary, Teachers' Retirement System of Oklahoma, P.O. Box 53524, Oklahoma City, OK 73152.

PUBLIC HEARING:

A public hearing will be held from 9:00 a.m. to 10:00 a.m. on January 15, 2010, at the offices of the Teachers' Retirement System, 5th Floor, Oliver Hodge Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma. Written notice of intent to make oral comments is encouraged. Individuals who file a written notice to comment will be scheduled to speak before comments are accepted from the audience. Written notice may be filed with the Executive Secretary, Teachers' Retirement System of Oklahoma, 5th Floor, Oliver Hodge Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105, until 4:30 p.m. on January 14, 2010. Written notice may be mailed to: Executive Secretary, Teachers' Retirement System of Oklahoma, P.O. Box 53524, Oklahoma City, OK 73152

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained for review from the Teachers' Retirement System of Oklahoma, 5th Floor, Oliver Hodge Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105, and also will be available on the TRS website (www.ok.gov/TRS).

RULE IMPACT STATEMENT:

The Oklahoma Teachers' Retirement System will issue a rule impact statement. Copies of the statement will be available on the TRS website (www.ok.gov/TRS) or may be obtained from the Teachers' Retirement System of Oklahoma, 5th Floor, Oliver Hodge Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105, beginning December 15, 2009, between 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding holidays.

CONTACT PERSON:

Kim Bold, Rules Liaison (405) 521-2387.

[OAR Docket #09-1374; filed 11-18-09]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 50. FINANCIAL ASSISTANCE

[OAR Docket #09-1399]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures

785:50-8-6. Disbursements of funds [AMENDED]
Subchapter 9. Clean Water State Revolving Fund Regulations

Part 1. General Provisions

785:50-9-9. Definitions [AMENDED]

Part 3. General Program Requirements [AMENDED]

785:50-9-21. Eligible project [AMENDED]

785:50-9-23. Clean water SRF project priority system [AMENDED]

785:50-9-30. Planning documents [AMENDED]

785:50-9-45. Compliance with federal authorities [AMENDED]

Part 7. SRF Environmental Review Process

785:50-9-60. Requirement of environmental review [AMENDED]

785:50-9-61. Environmental information required by the Board [AMENDED]

785:50-9-62. Environmental review by the Board [AMENDED]

SUMMARY:

The Oklahoma Water Resources Board ("OWRB") proposes to amend this Chapter of the Oklahoma Administrative Code ("OAC") as follows:

Section 785:50-8-6 is proposed to be amended to include language that would allow for applicants who have received a REAP grant to be able to request an extension of time for circumstances outside to their control that prevent them from completing the construction process. The intended effect of the amendments is to accommodate REAP grant applicants that have an unexpected delay with construction requirements to be able to request an extension in order to still receive the REAP grant funding.

Sections 785:50-9-9, 785:50-9-21, and 785:50-9-23 are proposed to be amended to change the definition of Urban Storm Water Activities to Brownfield Activities and to change the definition of Storm Sewer to Storm Sewer Activities. These changes are proposed to accurately reflect the differences in the two activities and remove redundancy in the rules. These amendments are needed to clarify the different activities in accordance with the U.S. Environmental Protection Agency guidelines. The intended effect of the proposed amendment is to clarify the distinction between Urban Storm Water Activities, Storm Sewer Activities, and Brownfield Activities consistent with state and federal guidelines and the U.S. Environmental Protection Agency.

Section: 785:50-9-21 is proposed to place Brownfield activities in the correct category under eligible projects and add language to storm sewer actives to reflect the correct definition. The intended effect is to clarify the distinction between Storm Sewer Activities and Brownfield Activities.

Section 785:50-9-23 is proposed to be amended to include priority points for projects that address specific programmatic priorities set forth by the U.S. Environmental Protection Agency or the Board. The intended effect of the proposed amendment is to allow flexibility in the scoring criteria

to reflect the current priorities of the U.S. Environmental Protection Agency or the Board.

Section 785:50-9-30 is proposed to be amended to include planning documents that do not require the findings of an engineer. These changes are proposed to incorporate projects that have a design plan that is not completed by an engineer but are still considered eligible projects under U.S. Environmental Protection Agency guidelines. The intended effect of the proposed amendment is to increase the flexibility of the planning document criteria.

Section 785:50-9-45 is proposed to be amended to include those laws that are required to be included in loan agreements and other funding documents under the Clean Water SRF Program. The intended effect of the proposed amendment is to remain current with U.S. Environmental Protection Agency regulations.

Sections 785:50-9-60, 785:50-9-61 and 785:50-9-62 are proposed to be amended to provide for greater flexibility in environmental requirements of loans for the Clean Water State Revolving Fund ("SRF") projects. These amendments will correspond to the changes created by the U.S. Environmental Protection Agency. The intended effect of the proposed amendments is to make the rules consistent with the environmental process and other loan terms allowed by state and federal law.

Other amendments may be considered as a result of public comments.

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. §§ 1085.31 et seq.; 82 O.S. §§ 1085.51, et seq.; 62 O.S. § 2003.

COMMENT PERIOD:

Persons wishing to present data, views, or arguments orally or in writing may do so at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 18, 2010.

PUBLIC HEARING:

A public hearing is scheduled for January 19, 2010, beginning at 10:00 A.M. in the Board Room of the OWRB's

offices located at 3800 North Classen, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide to the OWRB, within the Comment Period from December 15, 2009 through January 18, 2010, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kate Burum at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 18, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Water Resources Board, 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118, upon prepayment of the copying charge, or on the OWRB's web site, www.owrb.state.ok.us.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review at the OWRB's office, 3800 North Classen, Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at www.owrb.state.ok.us.

CONTACT PERSON:

Kate Burum, Staff Attorney and Funds Manager, 405-530-8800.

[OAR Docket #09-1399; filed 11-25-09]

Continued Hearings/Comment Periods

If an agency continues a hearing or comment period announced in a published Notice of Rulemaking Intent, the agency may submit a notice of such continuation to the Office of Administrative Rules (OAR). The OAR publishes the continuation notice in the *Register* if such publication can be achieved at least five days prior to the announced date of the continued hearing or closing date of the continued comment period.

For additional information on continued hearings and comment periods, see OAC 655:10-7-28.

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 65. ANESTHESIOLOGIST ASSISTANTS

[OAR Docket #09-1440]

RULEMAKING ACTION:

Continued comment period and public hearing relating to a proposed PERMENENT rulemaking action

PROPOSED RULES:

- Subchapter 1. Administration and organization [NEW]
- 435:65-1-3. License required [RENUMBERED TO 435:65-3-1]
- 435:65-1-3.1. Definitions [NEW]
- 435:65-1-4. Application for initial licensure/renewal of license [RENUMBERED TO 435:65-3-2]
- 435:65-1-4.1. Advisory Committee on Anesthesiologist Assistants - terms of members - removal from Committee [NEW]
- 435:65-1-5. Supervision [RENUMBERED TO 435:65-7-1]
- 435:65-1-5.1. Method of operations - Committee meetings - quorum - advise Board [NEW]
- 435:65-1-8. Fees [REVOKED]
- Subchapter 3. Application for licensure [NEW]
- 435:65-3-1. License required [NEW]
- 435:65-3-2. Application for initial licensure/renewal of license - procedures [NEW]
- 435:65-3-3. Required documentation [NEW]
- 435:65-3-4. Authorization to practice temporarily [NEW]
- 435:65-3-5. Licensure by endorsement [NEW]
- Subchapter 5. Biennial renewal [NEW]
- 435:65-5-1. Requirements for renewal of license [NEW]
- 435:65-5-2. Renewal procedure [NEW]
- 435:65-5-3. Late renewal [NEW]
- Subchapter 7. Regulation of practice [NEW]
- 435:65-7-1. Supervision [NEW]
- 435:65-7-2. Supervision; physician responsibility; independent care prohibited [NEW]

REGISTER PUBLICATION OF NOTICE:

The Notice of Rulemaking Intent for this action was published at 27 Ok Reg 95.

CONTINUED COMMENT PERIOD:

Original comment period:

October 1, 2009 to November 16, 2009

Continued to:

January 4, 2010

CONTINUED PUBLIC HEARING:

Original public hearing:

November 19, 2009, 9:00 a.m. at the office of the Board, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma.

Continued to:

January 14, 2010, 9:00 a.m. at the office of the Board, 101 NE 51st Street, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained at the office of the Board, prior to December 21, 2009 at 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma. On December 21, 2009 and after, copies of the proposed rules may be obtained at the office of the Board, 101 NE 51st, Oklahoma City, Oklahoma. The proposed rules are also available on the Board's web site at www.okmedicalboard.org.

RULE IMPACT STATEMENT:

Pusuant to 75 O.S., §303(D), a rule impact statement was prepared and is available at the same locations listed above for reviewing and obtaining copies of the proposed rules.

ADDITIONAL INFORMATION:

For additional information, contact Kathy Plant, Executive Secretary at (405) 848-6841, ext. 122 or at kplant@okmedicalboard.org.

[OAR Docket #09-1440; filed 11-25-09]

Submissions for Review

Within 10 calendar days after adoption by an agency of a proposed PERMANENT rulemaking action, the agency must submit the proposed rules to the Governor and the Legislature for review. In addition, the agency must publish in the *Register* a "statement" that the rules have been submitted for gubernatorial/legislative review.

For additional information on submissions for gubernatorial/legislative review, see 75 O.S., Section 303.1, 303.2, and 308.

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 10. PHYSICIANS AND SURGEONS

[OAR Docket #09-1441]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 7. Regulation of Physician and Surgeon Practice

435:10-7-2. Use of Board certification

SUBMITTED TO GOVERNOR:

November 25, 2009

SUBMITTED TO HOUSE:

November 25, 2009

SUBMITTED TO SENATE:

November 25, 2009

[OAR Docket #09-1441; filed 11-25-09]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 10. PHYSICIANS AND SURGEONS

[OAR Docket #09-1442]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. General Provisions

435:10-1-4. Definitions [AMENDED]

Subchapter 7. Regulation of Physician and Surgeon Practice

435:10-7-4. Unprofessional conduct [AMENDED]

SUBMITTED TO GOVERNOR:

November 25, 2009

SUBMITTED TO HOUSE:

November 25, 2009

SUBMITTED TO SENATE:

November 25, 2009

[OAR Docket #09-1442; filed 11-25-09]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 15. CONSUMER RIGHTS

[OAR Docket #09-1382]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. General Provisions

450:15-1-1. Purpose [AMENDED]

450:15-1-2. Definitions [AMENDED]

Subchapter 3. Consumer Rights

Part 1. Mental Health and Drug or Alcohol Abuse Services Consumer Bill of Rights

450:15-3-8. Right to freedom from mistreatment, abuse and neglect [AMENDED]

Part 3. Consumer Grievance Procedure

450:15-3-45. Consumer grievance policy and procedures [AMENDED]

Part 11. Resident Rights, Mental Health Residential Care Facilities

450:15-3-81. Resident rights [AMENDED]

Subchapter 7. Office of Consumer Advocacy [AMENDED]

Part 1. Duties [AMENDED]

450:15-7-2. Office of Consumer Advocacy purpose and authority [AMENDED]

450:15-7-3. Advocate General [AMENDED]

450:15-7-4. ODMHSAS facility advocacy [AMENDED]

Part 2. Investigations

450:15-7-6. Reporting suspected maltreatment [AMENDED]

450:15-7-7. Administrator's responsibilities regarding allegations reportable to the Office of Consumer Advocacy [AMENDED]

450:15-7-8. Processing reports of maltreatment received by the Office of Consumer Advocacy [AMENDED]

450:15-7-9. Investigation procedures [AMENDED]

450:15-7-10. Rights and responsibilities of accused individuals [AMENDED]

450:15-7-11. Responsibilities [AMENDED]

450:15-7-12. Educational employees [AMENDED]

450:15-7-14. Investigative interviews [AMENDED]

450:15-7-15. Investigative report and findings [AMENDED]

SUBMITTED TO GOVERNOR:

November 23, 2009

SUBMITTED TO HOUSE:

November 23, 2009

Submissions for Review

SUBMITTED TO SENATE:

November 23, 2009

[OAR Docket #09-1382; filed 11-24-09]

**TITLE 450. DEPARTMENT OF MENTAL
HEALTH AND SUBSTANCE ABUSE
SERVICES
CHAPTER 30. STANDARDS AND CRITERIA
FOR STATE-OPERATED INPATIENT
SERVICES**

[OAR Docket #09-1381]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 9. Role of State-operated Inpatient Psychiatric
Units

450:30-9-3.1. Voluntary formal and informal admissions to
a state-operated inpatient psychiatric unit [AMENDED]

SUBMITTED TO GOVERNOR:

November 23, 2009

SUBMITTED TO HOUSE:

November 23, 2009

SUBMITTED TO SENATE:

November 23, 2009

[OAR Docket #09-1381; filed 11-24-09]

**TITLE 450. DEPARTMENT OF MENTAL
HEALTH AND SUBSTANCE ABUSE
SERVICES
CHAPTER 55. STANDARDS AND CRITERIA
FOR PROGRAMS OF ASSERTIVE
COMMUNITY TREATMENT**

[OAR Docket #09-1380]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. General Provisions

450:55-1-2. Definitions [AMENDED]

Subchapter 3. Program Description and Pact Services

450:55-3-2. Admission criteria [AMENDED]

450:55-3-5. Hours of operation and staff coverage
[AMENDED]

450:55-3-6. Service intensity [AMENDED]

450:55-3-7. Staffing requirements [AMENDED]

Subchapter 5. Pact Clinical Documentation

450:55-5-3. Documentation of individual treatment team
members [AMENDED]

450:55-5-5. Comprehensive assessment [AMENDED]

450:55-5-6. Treatment team meeting [AMENDED]

450:55-5-7. Treatment planning [AMENDED]

450:55-5-9. PACT progress note [AMENDED]

Subchapter 11. Organizational Management

450:55-11-2. Program organization [AMENDED]

SUBMITTED TO GOVERNOR:

November 23, 2009

SUBMITTED TO HOUSE:

November 23, 2009

SUBMITTED TO SENATE:

November 23, 2009

[OAR Docket #09-1380; filed 11-24-09]

Gubernatorial Approvals

Upon notification of approval by the Governor of an agency's proposed PERMANENT rulemaking action, the agency must submit a notice of such gubernatorial approval for publication in the *Register*.
For additional information on gubernatorial approvals, see 75 O.S., Section 303.2.

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 13. FUEL ALCOHOL

[OAR Docket #09-1356]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

35:13-1-1 [AMENDED]

35:13-1-2 [AMENDED]

GUBERNATORIAL APPROVAL:

November 3, 2009

[OAR Docket #09-1356; filed 11-12-09]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 15. ANIMAL INDUSTRY

[OAR Docket #09-1357]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 16. Contagious Equine Metritis

35:15-16-1 [AMENDED]

Subchapter 36. Scrapie

35:15-36-1 [AMENDED]

35:15-36-2 [AMENDED]

GUBERNATORIAL APPROVAL:

November 3, 2009

[OAR Docket #09-1357; filed 11-12-09]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 30. CONSUMER PROTECTION

[OAR Docket #09-1358]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 17. Combined Pesticide

Part 1. Commercial and Non-Commercial Categories of Pesticide Application

35:30-17-3. Categories of pesticide dealer permits [AMENDED]

35:30-17-3.1. ~~Pesticide Restricted use pesticide dealer permit required~~ [AMENDED]

35:30-17-3.3. Non-restricted use pesticide dealer permit [REVOKED]

GUBERNATORIAL APPROVAL:

November 3, 2009

[OAR Docket #09-1358; filed 11-12-09]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 30. CONSUMER PROTECTION

[OAR Docket #09-1359]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 17. Combined Pesticide

Part 6. Pesticidal Product Producing Establishments

35:30-17-13 [AMENDED]

Part 21. Standards for Disposal of Pesticide and Pesticide Containers

35:30-17-89.1 [AMENDED]

GUBERNATORIAL APPROVAL:

November 3, 2009

[OAR Docket #09-1359; filed 11-12-09]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 37. FOOD SAFETY

[OAR Docket #09-1360]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Meat Inspection

Part 1. General Provisions

35:37-3-1 [AMENDED]

35:37-3-3 [AMENDED]

Subchapter 5. Poultry Products Inspection

Part 1. General Provisions

35:37-5-1 [AMENDED]

35:37-5-2 [AMENDED]

Gubernatorial Approvals

GUBERNATORIAL APPROVAL:

November 3, 2009

[OAR Docket #09-1360; filed 11-12-09]

**TITLE 35. OKLAHOMA DEPARTMENT OF
AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 44. AGRICULTURE POLLUTANT
DISCHARGE ELIMINATION SYSTEM**

[OAR Docket #09-1361]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Concentrated Animal Feeding Operations
35:44-3-3 [AMENDED]

GUBERNATORIAL APPROVAL:

November 3, 2009

[OAR Docket #09-1361; filed 11-12-09]

**TITLE 325. OKLAHOMA HORSE RACING
COMMISSION
CHAPTER 75. OKLAHOMA-BRED
PROGRAM**

[OAR Docket #09-1375]

RULEMAKING ACTION:

Gubernatorial approval of permanent rule

RULE:

325:75-1-15 [AMENDED]

GUBERNATORIAL APPROVAL:

November 9, 2009

[OAR Docket #09-1375; filed 11-19-09]

Emergency Adoptions

An agency may adopt new rules, or amendments to or revocations of existing rules, on an emergency basis if the agency determines that "an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency rule[s] [A]n agency may promulgate, at any time, any such [emergency] rule[s], provided the Governor first approves such rule[s]" [75 O.S., Section 253(A)].

An emergency action is effective immediately upon approval by the Governor or on a later date specified by the agency in the preamble of the emergency rule document. An emergency rule expires on July 15 after the next regular legislative session following promulgation, or on an earlier date specified by the agency, if not already superseded by a permanent rule or terminated through legislative action as described in 75 O.S., Section 253(H)(2).

Emergency rules are not published in the *Oklahoma Administrative Code*; however, a source note entry, which references the *Register* publication of the emergency action, is added to the *Code* upon promulgation of a superseding permanent rule or expiration/termination of the emergency action.

For additional information on the emergency rulemaking process, see 75 O.S., Section 253.

TITLE 135. COMMISSION ON CHILDREN AND YOUTH CHAPTER 10. PROGRAMS, BOARDS, AND COUNCILS: OPERATION AND ADMINISTRATION

[OAR Docket #09-1377]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 24. Certification of Children's Shelters Operated by the Oklahoma Department of Human Services [NEW]

135:10-24-1. Origin and authority [NEW]

135:10-24-2. Duties and responsibilities [NEW]

135:10-24-3. Certification process [NEW]

AUTHORITY:

Commission on Children and Youth; 10 O.S., Section 601.4(9).

DATES:

Adoption:

September 3, 2009

Approved by Governor:

October 2, 2009

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

The rules incorporate existing Oklahoma Department of Human Services standards for licensure of children's shelters. See 135:10-24-3(b)(2). The rules provide a process for certification but do not create substantive standards other than those approved by the Department for all shelters, both public and private.

FINDING OF EMERGENCY:

A compelling public interest exists in the Commission complying with amendments to 10 O.S., Section 601.3, as enacted by Laws 2009, HB 1734, c. 338, section 2, emergency effective May 21, 2009.

ANALYSIS:

The statutory amendments as codified at 10 O.S. Section 601.3(4) mandate that the Oklahoma Commission on Children and Youth develop a system of certification in accordance with the Child Care Facilities Licensing Act, Title 10 O.S., Section 401-404.1, for the children's shelters managed and operated by the Department of Human Services pursuant to 10 O.S., Section 7004-3.1, renumbered as 10A O.S., Section 1-9-111. The amendments transfer the duty of certification from the Oklahoma Department of Human Services, which operates the shelters, to the Commission.

CONTACT PERSON:

Grant E. Moak, Office of Attorney General, 313 N.E. 21st Street, Oklahoma City, OK 73105, 405/522-0152.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING EMERGENCY RULES ARE
CONSIDERED PROMULGATED UPON APPROVAL BY
THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION
253(D):

SUBCHAPTER 24. CERTIFICATION OF CHILDREN'S SHELTERS OPERATED BY THE OKLAHOMA DEPARTMENT OF HUMAN SERVICES

135:10-24-1. Origin and authority

(a) The legislature established the Oklahoma Commission on Children and Youth responsibilities for developing a certification program for the children's shelters managed and operated by the Oklahoma Department of Human Services in 10 O.S. §601.3(4).

(b) The Commission on Children and Youth shall have the authority:

- (1) To establish a system of certification in accordance with the Oklahoma Child Care Facilities Licensing Act;
- (2) To issue certifications based upon compliance with minimum requirements;
- (3) To revoke certification based upon failure to meet minimum requirements.

135:10-24-2. Duties and responsibilities

The Commission on Children and Youth shall designate OCCY staff to perform the following duties:

- (1) Provide continuing technical assistance and consultation to the shelters to obtain and maintain compliance with minimum requirements;
- (2) Take corrective action based upon non-compliance with minimum requirements;
- (3) Monitor shelter programs to maintain compliance with minimum requirements;
- (4) Issue certifications based upon compliance with minimum requirements;
- (5) Facilitate and perform training for shelter administration and staff;
- (6) Maintain official certification records.

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135:10-24-3. Certification process

(a) **Definitions.**

- (1) **"Commission"** means the Oklahoma Commission on Children and Youth.
- (2) **"Manager" or "Operator"** means the representative of the Department of Human Services who has been given authority to act on behalf of the state-operated children's shelter.
- (3) **"State-operated children's shelter"** means the Laura Dester Shelter, the Pauline E. Mayer Shelter, the Pauline E. Mayer Annex, or any other shelter operated by the Oklahoma Department of Human Services.

(b) **Types of issuances.**

- (1) **Six-month temporary certification.** State-operated children's shelters may be granted a six-month temporary certification if documentation does not show compliance with all critical certification requirements.
- (2) **Certification.** State-operated children's shelters may be granted an operating certification that is valid for twelve months from the date of its issuance when certification staff determines that the shelter is operating in a compliance with its own policy and procedures and in compliance with current Oklahoma Department of Human Services Licensing Requirements for Residential Child Care Facilities and any additional Commission requirements.

(c) **Case Management.**

(1) **Periodic visits.**

- (A) Certification staff annually shall conduct one unannounced visit to each state-operated children's shelter to document compliance with all certification requirements and at least two announced visits to monitor compliance with certification requirements.
- (B) During each unannounced compliance visit, certification staff shall:
 - (i) Observe the entire facility, including outdoor play space and vehicles used for transportation, if available, and
 - (ii) Check resident files and staff files, insurance verifications, and fire and health inspections within the preceding twelve months for compliance with certification requirements.
- (C) During each announced monitoring visit, certification staff shall:
 - (i) Provide technical assistance to facility personnel to meet and maintain certification requirements;
 - (ii) Consult with facility personnel to meet and maintain certification requirements and improve the quality of care at the facility.

(2) **Forms.** The OCCY Certification staff shall use standardized certification forms available for public inspection and copy at www.okkids.org.

(3) **Reports.** The OCCY Certification staff annually shall issue two monitoring reports and one compliance report.

(4) **Oklahoma Department of Human Services, Office of Client Advocacy Reports (OCA).** The OCCY

Certification staff shall review all referrals to OCA that concern the state-operated children's shelters and all investigation reports issued by the OCA to ensure compliance by the state-operated children's shelters with certification requirements.

(d) **Non-compliance with requirements.**

(1) **Documentation of non-compliance.** The licensing staff shall document clearly and concisely on the monitoring reports and the compliance report areas of non-compliance and the discussion with the operator.

(A) A plan of correction, including an agreed-upon time period for correction of the non-compliance, shall be documented on the monitoring report for each area of non-compliance.

(B) Immediate correction shall be required when the non-compliance has a direct impact on the health, safety, or well-being of a child or children in care.

(C) The certification staff shall request that the operator sign the monitoring reports and the compliance report, explaining that the operator's signature indicates acknowledgment of information recorded.

(D) If the person in charge refuses to sign, the refusal shall be documented on the report.

(E) The operator shall be given a copy of the completed report.

(2) **Referrals to fire and health officials.** If non-compliance regarding fire or health requirements places children at risk of harm or remains uncorrected, the certification staff shall request an inspection by a fire, health, or Oklahoma Department of Environmental Quality (ODEQ) official.

(3) **Case management responses to non-compliant facilities.** The responses in this subsection may be used when there is repeated, numerous, or serious non-compliance with certification requirements.

(A) **Technical assistance.** Technical assistance is offered along with referrals to consultants or training resources, if necessary, to assist the operator in meeting and maintaining certification requirements.

(B) **Follow-up phone call.** Phone calls are documented on OCCU standardized forms.

(C) **Non-compliance letter.** A non-compliance letter may be written to the operator. The certification staff shall send a copy of the report and the non-compliance letter to the operator's supervisor.

(D) **Return monitoring visit.** A return monitoring visit may be made if there is repeated, numerous, or serious non-compliance with certification requirements or when non-compliance places children at imminent risk of harm. If the non-compliance is associated with a specific time of day, such as understaff after school or a lack of early morning supervision, the return visit shall be made at that approximate time.

(E) **Use of witnesses.** The certification staff may be accompanied by a witness during monitoring visits if the facility has had numerous, repeated, or serious areas of non-compliance or if denial or revocation of the license is being considered. The witness may be

an OCCY employee or representative from the health or fire department. The witness shall sign the monitoring report in the space provided.

(F) **Increased monitoring visits.** Certification staff may increase the frequency of monitoring when there have been numerous, repeated or serious areas of non-compliance or when the need for additional technical assistance is indicated.

(G) **Notice to comply.** The certification staff shall provide the facility with a notice to comply, and the facility shall document the plan of correction. Immediate correction may be required if the area of non-compliance places the health, safety, or well-being of a child or children in care at risk.

(i) If the plan submitted by the operator is unacceptable to the certification staff, the staff shall negotiate and document a revised plan.

(ii) If the operator does not submit a response within a reasonable time period, the certification staff shall contact the operator and document the conversation. If concerns exist or he operator is uncooperative, the certification staff shall send a letter stating that failure to respond may result in denial or revocation of certification.

(H) **Office conference.** The certification staff may schedule an office conference with the operator of the facility. Areas of non-compliance and progress toward meeting the plan(s) of correction shall be reviewed and technical assistance shall be offered. The conference shall be documented.

(I) **Consent agreement.** OCCY and the operator of the facility may enter into a consent agreement whereby the facility agrees to specific conditions in lieu of certification denial or revocation.

(J) **Revocation.** The certification staff may recommend that the certification be denied or revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children.

(4) **Case management responses when children are at risk.** If the certification staff documents a situation where children may be at imminent risk of harm, or if the Office of Juvenile System Oversight is investigating a complaint that children may be at imminent risk of harm, the certification staff may consider the following options:

(A) The operator shall be asked to immediately correct the situation where children may be at risk of harm.

(B) The operator may agree to enter into a consent agreement whereby the facility shall agree to specific conditions.

(C) The certification staff may recommend that the certification be denied or revoked when the operator fails to take necessary steps to eliminate the situation giving rise to the imminent risk of harm.

(e) **Denial or revocation process.**

(1) Certification staff shall submit recommendation to deny or revoke facility certifications to the OCCY Director or the OCCY Director designee.

(2) Facility operators shall submit responses to recommendations to deny or to revoke facility certifications to the OCCY Director or the OCCY Director designee.

(3) The OCCY Director or the OCCY Director designee shall be the final decision maker regarding recommendations to deny or to revoke facility certifications.

(4) Facility operator may appeal certification denial or certification revocation final decisions to the Commission.

(f) **Complaint procedure.** All complaints received by OCCY concerning the state-operated children's shelters shall be referred to the OCCY Office of Juvenile System Oversight.

(g) **Public inspection of certification files.**

(1) **Legal basis.** The Oklahoma Commission on Children and Youth (OCCY) is subject to the Oklahoma Open Records Act, Section 24A.1 et. seq. of Title 51 of the inspection unless they are required by law to be kept confidential.

(2) **Certification records.** All OCCY records of facilities required to be certified under Section 601.3 of Title 10 of the Oklahoma Statutes that are considered public records shall be open and available for public inspection during reasonable hours.

(3) **Location of case records.** Certification records shall be located in the OCCY office and shall be inspected at that location. Certification records shall be inspected in the presence of certification staff. The OCCY office is located at 500 N. Broadway Ave., Suite 300, Oklahoma City, Oklahoma.

(4) **Preparation of case files for inspection.** The certification staff carefully shall review the entire record and shall remove confidential information.

(5) **Release of confidential information.** Confidential information shall only be released as provided by statute.

[OAR Docket #09-1377; filed 11-20-09]

**TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 65. OKLAHOMA QUALITY JOBS PROGRAM**

[OAR Docket #09-1348]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 11. 21st Century Quality Jobs Incentive Act [NEW]
150:65-11-1 [NEW]
150:65-11-2 [NEW]
150:65-11-3 [NEW]
150:65-11-4 [NEW]

AUTHORITY:
The legislation establishing the Oklahoma Department of Commerce, 74 O.S. §§ 5001 et seq., and Section 7 of Senate Bill 938 of the 1st Session of the 52nd Oklahoma Legislature executed by the Governor of the State of Oklahoma on May 22, 2009. Also, the authority of the Oklahoma Department of Commerce to charge fees for review of the applications is set forth in 74 O.S. § 5012.1.

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DATES:

Adoption:

September 21, 2009

Approved by Governor:

November 2, 2009

Effective:

Immediately upon the Approval by the Governor or November 1, 2009, whichever is later.

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

Section 7 of Senate Bill 938 of the 1st Session of the 52nd Oklahoma Legislature, executed by the Governor on May 22, 2009, mandates the Oklahoma Department of Commerce to promulgate rules for the 21st Century Quality Jobs Incentive Act. Senate Bill 938 will be effective November 1, 2009.

ANALYSIS:

The Emergency Rules provide a systematic, equitable method for making application for the 21st Century Quality Jobs Act incentive.

CONTACT PERSON:

Donald R. Hackler, Jr. (405) 815-5359

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR NOVEMBER 1, 2009, WHICHEVER IS LATER:

SUBCHAPTER 11. 21ST CENTURY QUALITY JOBS INCENTIVE ACT

150:65-11-1. Purpose

The purpose of this chapter is to implement the provisions of the 21st Century Quality Jobs Incentive Act, 68 O.S. Section 3911, et seq., which provides appropriate incentives to support the establishment of growth industries in this state.

150:65-11-2. Definitions

For purposes of this chapter, the following words and terms shall have the following meaning unless the context clearly indicates otherwise.

"Commission" means the Oklahoma Tax Commission established pursuant to 68 O.S. Section 102 and any successor agencies thereto.

"Department" means the Oklahoma Department of Commerce established pursuant to 74 O.S. §§ 5001 et seq. and any successor agencies thereto.

"Director" means the duly appointed and acting Director of the Department or during any period of time that the position of Director is vacant; such term shall refer to the person serving as the acting or interim director.

"21st Century Contract" means the contract between the applicant and the Oklahoma Department of Commerce that

establishes the incentive benefit amount under the 21st Century Quality Jobs Incentive Act.

"21st Century Contract Incentive" means the amount of the incentive calculated by the Oklahoma Department of Commerce and included in the 21st Century Contract between the applicant and the Oklahoma Department of Commerce.

150:65-11-3. Application

For the purpose of evaluating the applications to the 21st Century Quality Jobs Incentive Act, the Department will require all applicants to submit an application in a form prescribed by departmental guidelines as provided in the application packet. All applications will be required to contain sufficient information to permit the Department to comprehensively review the application.

150:65-11-4. Origination fees

The Department shall charge an origination fee for each approved 21st Century Contract. The fee shall be deducted from the first incentive payment payable by the Commission. The fee shall be \$2,500 per contract where the 21st Century Contract Incentive is less than \$10,000,000; \$5,000 per contract where the 21st Century Contract Incentive is at least \$10,000,000 and no more than \$50,000,000; and \$7,500 per contract where the 21st Century Contract Incentive is more than \$50,000,000.

[OAR Docket #09-1348; filed 11-9-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #09-1368]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. Organization and Administration

317:1-1-8. through 317:1-1-9. [AMENDED]

317:1-1-9.1. [NEW]

317:1-1-10. [REVOKED]

317:1-1-17. [AMENDED]

Subchapter 3. Formal and Informal Procedures

317:1-3-3.1. [AMENDED]

317:1-3-3.2. [REVOKED]

317:1-3-4. [NEW]

Subchapter 5. Compliance with Section 504 of the

Rehabilitation Act of 1973 [REVOKED]

317:1-5-1. through 317:1-5-5. [REVOKED]

Subchapter 7. Compliance with the Americans with Disabilities Act Of 1990 [REVOKED]

317:1-7-1. through 317:1-7-8. [REVOKED]

Subchapter 9. Civil Rights and Nondiscrimination [REVOKED]

317:1-9-1. through 317:1-9-6. [REVOKED]

317:1-9-9. through 317:1-9-10. [REVOKED]

(Reference APA WF # 09-37)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

DATES:

Adoption:

October 8, 2009

Approved by Governor:

November 3, 2009

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules to remove unnecessary policy concerning certain federal requirements, to correct references to federal laws and state statute, amend policy on open records requirements and include a process for ensuring proper review and approval/disapproval by the Oklahoma Health Care Authority for rate methodology changes. References to federal regulations regarding employment of individuals with disabilities was removed as the Oklahoma Health Care Authority is exempt from compliance with certain parts of the regulation. Leaving references in policy will result in confusion over employer/employee rights and responsibilities, opening up the potential for unnecessary litigation against the agency. Additionally, the revised process for reviewing and approving/disapproving rate methodology changes must be reflected in policy in order to assist healthcare providers and the general public with knowledge about the public process for rate changes. Absent knowledge of the process, some individuals may miss the opportunity to provide valuable input regarding rate adjustments, potentially resulting in a lower quality of care for SoonerCare members.

ANALYSIS:

Rules are revised to remove unnecessary language concerning certain federal laws, to correct references to federal laws and state statute, amend policy on open records requirements and include a process for ensuring proper review and approval/disapproval by the Oklahoma Health Care Authority for rate methodology changes.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D):

SUBCHAPTER 1. ORGANIZATION AND ADMINISTRATION

317:1-1-8. Administrator

The Administrator is the chief executive officer of the Oklahoma Health Care Authority and acts for the Authority in all matters provided by law [63:5008]. The Administrator determines the internal organization of the Health Care Authority and employs staff as may be necessary to perform the duties of the Authority as authorized by statute. The Administrator is responsible for the development of all internal policies and procedures necessary for the Authority to carry out its functions and to achieve all short-and long-term agency goals. The powers and duties of the Administrator include supervision of all activities of the Authority, formulation and recommendation of rules for approval or rejection by the Authority Board and enforcement of rules promulgated by the Board. The Administrator is also responsible for directing the preparation

of all plans, reports and proposals necessary for the agency's function or as required by law.

317:1-1-9. Location for information and for filing

(a) Any person may obtain information from, make a request of the Authority by writing to: Oklahoma Health Care Authority, 4545 North Lincoln, Suite 124, Oklahoma City, Oklahoma 73105.

(b) Written submissions and requests may be submitted in person between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday- or faxed to ~~The telephone number is~~ (405) 530-3439-530-3214.

(c) The date on which papers are actually received at the Authority will be recorded as the date of filing.

317:1-1-9.1. Compliance with the Open Records Act

Oklahoma Statutes require compliance with the Open Records Act found at 51 O.S. §§ 24A.3-24A.29. The administrative regulations that follow are meant to clarify OHCA procedure and interpretation of state law regarding open records.

(1) Records request.

(A) A form is provided on OHCA's website that may be electronically mailed to the agency to request records from the Oklahoma Health Care Authority. The form may also be downloaded, completed and mailed to the agency. An open records form can be obtained by writing to the Open Records Coordinator, OHCA Legal Division, PO Drawer, 18497, Oklahoma City, Oklahoma 73154-0497.

(B) The person requesting records may also provide a written narrative at the address noted in paragraph (A). The written request must provide enough detail to allow the agency to ascertain the needs of the requestor. For example, a request asking for "all data relating to provider "b"" is not sufficient for the agency to properly answer the request. The reason the request in this example cannot be answered without further inquiry is that it has no time limitation nor any database information restriction. This type of request will be unavoidably delayed and eventually returned to the sender for additional information.

(C) In the event of any records request (electronic or otherwise) the agency will estimate the work involved in answering the request and bill the requestor either:

- (i) the reasonable direct cost of record copying or mechanical reproduction; or
- (ii) the reasonable cost of record search and the direct cost of record copying (or mechanical reproduction).

(D) The amount in paragraph (C)(i) is charged for all requests that are not solely for commercial purposes or requests that cause an excessive disruption of the essential functions of the public body.

(E) The amount in paragraph (C)(ii) is charged for all requests that are solely for commercial purposes

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or requests that cause an excessive disruption of the essential functions of the public body.

(F) OHCA generally waives the payment requirement from media searches and government agency searches because it considers these record requests to be matters of public interest.

(G) OHCA generally regards requests for pharmacy or other payment data as requests solely for commercial purposes.

(2) OHCA fees for copying and search.

(A) As required by law, OHCA posts its copying fees and search fees in the Oklahoma County Clerk's office and at its principal place of business.

(B) OHCA also posts its schedule on its public website at www.okhca.org. The legally recognized schedule however, is the schedule posted at its principal place of business and County Clerk's office.

(C) OHCA's fee schedule specifically takes into account the statutory limit of fees for copying and certified copies.

(D) OHCA's fee schedule minimizes costs by using electronic data transmission when possible. Its fee schedule takes into account charges for electronic search and data devices (such as storage media).

(E) OHCA must receive any fees associated with the fee request before the records will be provided.

(3) Open records request exceptions. OHCA may deny record requests in anticipation of litigation against the agency. The Oklahoma Civil Discovery Code is properly used for these requests. OHCA may deny open records requests for the reasons stated in any of the exceptions provided in the Open Records Act. The use of the exceptions is not to thwart the accountability of state government.

(4) Timeliness of responses. The agency endeavors to answer all record requests within a reasonable time as required by law. Generally a reasonable period of time is 30 days from receipt of a specific record request depending upon the following factors:

(A) the ability to communicate with the requestor regarding federal or state law redaction requirements;

(B) the workload within the agency regarding open record requests and program activity;

(C) the inability to produce the record with or without redaction;

(D) the specificity of the written request;

(E) payment of the fee; and

(F) the size and complexity of the data request.

~~records. The records disposition schedule for the Authority will be available for public inspection.~~

~~(b) Most records of the Authority are available for public inspection and release, but some are not. The records that are not available for general public access may include records described as confidential in this Section or in other Chapters in this Title, and other records that laws require or permit the Authority to keep confidential. The Authority normally keeps the following records confidential but may choose, in some cases, to make them public if law permits it:~~

~~(1) Records which relate to internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation [51:24A.7(A)(2)(1)];~~

~~(2) Before taking action, personal notes and personally created materials (other than the Authority's budget request) prepared by the Authority staff as an aid to memory [51:24A.9];~~

~~(3) Before taking action, research material leading to the adoption of a policy or the implementation of a project [51:24A.9];~~

~~(4) Records coming into the possession of the Authority from the federal government or records generated or gathered as a result of federal legislation may be kept confidential to the extent required by federal law [51:24A.13]; and~~

~~(5) Documents, such as medical records and records protected by the attorney-client privilege, that are exempt from the Oklahoma Open Records Act or are specifically required or permitted by law to be kept confidential;~~

~~(e) In order to avoid giving unfair advantage to competitors or bidders, the Authority will keep confidential records relating to:~~

~~(1) Specifications for competitive bidding prior to publication by the public body;~~

~~(2) Prior to the opening of bids by the Authority or its representatives, the contents of sealed bids solicited through requests for proposals or requests for information under Department of Central Services purchasing rules or those established by the Oklahoma Health Care Authority, with the exception of procurements of managed care Health Plans; and~~

~~(3) State determined rates ranges established for the purpose of negotiating contract awards with qualified Health Plans for the Medicaid Managed Care program, including initial bid and subsequent bid offers prior to final contract awards.~~

~~(d) Except for the records described in this Section and records required by law to be kept confidential, all records of the Authority are available for public inspection in accordance with the Oklahoma Open Records Act, Sections 24A.1 through 24A.18 of Title 51 of the Oklahoma Statutes.~~

~~(e) Provisions for copying and search fees are contained in the statute, with these exceptions being noted; no copy fee is charged to other public entities, to applicants, recipients or their representatives, or employees or former employees seeking information from their case file or employment records; and no search fee is charged to news media, schools, authors,~~

317:1-1-10. Documents and records [REVOKED]

~~(a) Documents filed with or presented to the Authority will be retained in the files of the Authority for the length of time required by state and federal laws. Documents will be disposed of in a manner consistent with the Records Management Act, Sections 201 through 216 and 305 through 317 of Title 67 of the Oklahoma Statutes, and Sections 564 through 576 of Title 74 of the Oklahoma Statutes, which pertain to archives and~~

or "taxpayers seeking to determine whether those entrusted with the affairs of its government are honestly, faithfully, and competently performing their duties as public servants". The fees listed in (1) (4) of this Subsection may stand alone or be charged in combination. For example, a person may be charged a search fee in addition to a fee for photocopying.

(1) **Fees for photocopying.** The Authority has established a fee schedule for photocopying documents having the dimensions of 8 1/2 x 14 inches or smaller:

- (A) if less than 10 pages, 25 cents per page;
- (B) if between 10 and 100 pages, 10 cents per page; and
- (C) if over 100 pages, 5 cents per page, or a maximum of one dollar (\$1.00) per copied page for a certified copy.

(2) **Fees for search.** Requests that are for a commercial purpose or clearly would cause excessive disruption of office function will be charged a search fee of \$25.00 per hour for staff time spent in the search.

(3) **Fees for other types of reproduction.** Requests for computer runs, microfilming or reproduction other than photocopying, will be charged at the cost to the Authority of duplicating the information involved. Such requests are to be forwarded to the State Office where the fee will be developed with the appropriate division.

(4) **Payments of fees.** All fees are paid prior to delivering the copies, and if the request is for search only, the fee is paid before the person is allowed to review the material. All fees are paid by check or money order; cash is not accepted. The fee payment is transmitted to the State Office, Attention Division of Finance and Central Services. In addition, a receipt is to be given upon payment. A copy of the manual material is maintained to explain the fee schedules to interested persons.

317:1-1-17. Purchasing department

The Purchasing Department is the department within the Oklahoma Health Care Authority responsible for the acquisition of goods, equipment and services for the operation of the Oklahoma Health Care Authority and for acquisition of goods, equipment and services necessary for implementation of the Oklahoma Medicaid Health Care Options System SoonerCare Program. All acquisitions of the Purchasing Department are purchased under guidelines approved by the Oklahoma Health Care Authority and in compliance with all applicable state statutes.

SUBCHAPTER 3. FORMAL AND INFORMAL PROCEDURES

317:1-3-3.1. Drug Utilization Review Board

(a) The Oklahoma Medicaid SoonerCare Drug Utilization Review (DUR) Board shall be responsible for advising the Chief Executive Officer (hereinafter referred to as the CEO) of the Oklahoma Health Care Authority on retrospective and prospective drug utilization programs and review of formulary

pharmacy benefit issues including clinical guideline applications.

(b) The DUR Board Members shall be appointed, and may be reappointed, by the CEO as provided by law.

317:1-3-3.2. DUR responsibility for Health Plan proposals for modifying medication coverage [REVOKED]

(a) Coverage of a medication by Health Plans is to be the same or exceed the coverage of the Oklahoma Health Care Authority (OHCA) fee for service program except as provided in (b) (1) (4) of this Section.

(b) The Health Plan must present in written text (See OAC 317:25-5-3) and the OHCA DUR Board will review as follows:

(1) The non restricted covered medications per medication therapeutic category. Non restricted covered medications refer to covered medications which may be received by a member with a prescription and no additional review process.

(2) The review process per medication therapeutic category by which restricted medications are approved. Restricted medications refer to medications which may be received by member with a prescription and an additional review process, such as prior authorization or case management.

(3) The brand name exception process.

(4) The non covered medications. Non covered medications refer to medications which may not be obtained by a member in a Health Plan.

(c) Approval or non approval of a Health Plan medication coverage proposal will be based on the conditions listed in (1) (5) of this subsection:

(1) Therapeutic appropriateness of proposed medication coverage;

(2) Functionality of proposed medication coverage;

(3) Probable impact on patient's therapeutic outcome, and the role of the physician and the application of the guidelines;

(4) Potential cost impact on non capitated or fee for services benefits;

(5) Inclusion of all therapeutic categories.

(d) The DUR Board may recommend the Health Plan's medication coverage proposal in its entirety, or limit the recommendation to specific components within the proposal. The Oklahoma Health Care Authority shall have final approval of all reviews by the DUR Board with regard to the medication coverage proposals submitted by Health Plans.

317:1-3-4. State Plan Amendment Rate Committee

(a) **Definitions.** Unless the context clearly indicates otherwise, the following words and terms when used in this section are defined as follows:

(1) **Public Process** means a process as defined by federal law under 42.U.S.C § 1396a(A)(13)(A).

(2) **State Plan Amendment** means the document described in the Federal Regulations at 42 C.F.R. § 430.10.

(3) **State Plan Amendment Rate Committee (SPARC)** means a committee comprised of administrative and executive level staff designated by the Chief Executive Officer for the Oklahoma Health Care Authority. The SPARC facilitates the rate setting process by conducting public hearings at which the public, vendors, and OHCA staff are afforded the opportunity to provide testimony and documented evidence in support of rate recommendations. The SPARC only operates to make recommendations for changes to rates that necessitate a State Plan Amendment. Rates that do not necessitate a State Plan Amendment do not require a hearing.

(4) **Rate Change** means a change that affects the numerical value of payment from the Medicaid agency to the provider including the application of pre-existing factors that increase or decrease a rate. A Rate Change is not a method change. Rates found in contracts are excluded from the definition of rate change because they are set consensually in a contract. A method or methodology change, as defined below, is not a rate change.

(5) **Method Change or Methodology Change** means a change to how the rate is calculated, not the end result of the rate. In Medicaid rate setting the application of pre-existing factors many times, results in rate changes. The application of pre-existing factors, even if it results in a different rate is not a method change. A method change occurs when OHCA adds, subtracts or alters the factors used to construct the rate.

(b) **Meeting of the State Plan Amendment Rate Committee (SPARC)**. In certain instances the SPARC meets to hold public hearings regarding rates set by the Oklahoma Health Care Authority. Under certain provisions of federal law, the agency is required to hold a public hearing to gather public comment regarding proposed method changes or methodology changes regarding the rates it pays its medical providers.

(1) The SPARC only meets when a method change or methodology change occurs in a rate paid from OHCA to a medical provider.

(2) The SPARC does not meet to establish any contractually set rate to a contractor or a contractually bid rate nor does the SPARC meet to hear rate changes.

(c) **SPARC public hearing process.**

(1) The five person panel conducts an open meeting under the Oklahoma Open Meetings Act.

(2) The proceedings are recorded.

(3) The panel hears agency presentations of proposals for method changes or methodology changes and considers comments of any member of the public who desires to comment upon the rate. The Chairperson controls both the agency presentation of proposals and the presentation of comments on the proposed method change.

(4) The panel votes to approve or disapprove the proposed method change in the open meeting, but may adjourn the meeting to gather further information, if necessary. The panel also may adjourn for legal advice during the proceeding. The OHCA board will vote to approve or disapprove the rate methodology upon approval by the SPARC.

(d) **Composition of the SPARC.** The Chief Executive Office appoints OHCA officials to serve on the SPARC. Officials may consist of other state agency employees whose agencies assist in the administration of the Medicaid State Plan.

SUBCHAPTER 5. COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973 [REVOKED]

317:1-5-1. Purpose [REVOKED]

~~Section 504 of the Rehabilitation Act of 1973 prohibits any entity receiving federal financial assistance from excluding any individual from participation in benefits or any other form of discrimination in any other program or activity. It is the policy of the Oklahoma Health Care Authority to actively work to ensure that discriminatory activities of any kind do not occur within any program or activity of the Authority.~~

317:1-5-2. General prohibitions against discrimination [REVOKED]

~~Section 504 of the Rehabilitation Act of 1973, states in part: *no qualified individual with disabilities, shall, on the basis of disability, be excluded from participation in, be denied the benefits of, otherwise be subjected to discrimination under any program or activity that receives benefits from federal financial assistance.*~~

317:1-5-3. Qualified individuals with disabilities [REVOKED]

~~Section 504 of the Rehabilitation Act, guarantees the civil rights of qualified individuals with disabilities and defines qualified individuals with disabilities to mean: *with respect to employment, an individual with disabilities who, with reasonable accommodation, can perform the essential functions of the job in question; and with respect to services, an individual with disabilities who meets the essential eligibility requirements for the receipt of such services.*~~

317:1-5-4. Self evaluation by departments for compliance [REVOKED]

~~Each division within the Authority will evaluate on an on-going basis its current rules and practices to ensure compliance with Section 504 of the Rehabilitation Act of 1973. It is the responsibility of each division to evaluate their programs, activities and employment practices to assure that persons with disabilities have full access. Necessary modifications may be made with the assistance of interested persons, including persons with disabilities. Divisions which determine a problem exists in their area or which desire materials or resources to reasonably accommodate program or service participants or employees with disabilities will coordinate this with the Deputy Administrator or supervisor who administers their area.~~

317:1-5-5. Preemployment medical examinations [REVOKED]

Preemployment medical examinations are not permitted by Section 504 of the Rehabilitation Act of 1973. However, offers of employment may be conditioned on the results of medical examinations, so long as all entering employees are subjected to such an examination, the results are not used in a discriminatory manner, and all medical records are collected and maintained on separate forms that are accorded strict confidentiality. Prohibitions against preemployment inquiries, or gathered medical or similar information prior to the conditional offering of a job include information solicited through interviews, application forms, letters of recommendation, or any other means. The confidentiality of medical records may not be breached except that:

- (1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped and regarding necessary accommodations;
- (2) First aid and safety personnel may be informed, when appropriate, if the condition might require emergency treatment; and
- (3) Government officials investigating compliance with Section 504 shall be provided relevant information upon request.

SUBCHAPTER 7. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990 [REVOKED]

317:1-7-1. Purpose [REVOKED]

The Americans with Disabilities Act of 1990 (ADA) extends the framework of federal civil rights laws to people with disabilities. It became effective January 26, 1992. The Act expressly prohibits discrimination by state or local agencies against individuals with disabilities, regardless of citizenship status or nationality, in employment, public services, public transportation, public accommodations and telecommunications services. Requirements regarding accessibility to facilities for the disabled in the ADA were adopted from the Architectural Barriers Act of 1968. The ADA is divided into these components:

- (1) **Title I—Employment.** Employers may not discriminate against qualified individuals with disabilities. Employers must reasonably accommodate the disabilities of qualified applicants or employees, including modifying work stations and equipment, unless undue hardship would result.
- (2) **Title II—Public Services.** State and local governments may not discriminate against qualified individuals with disabilities. Newly constructed state and local government buildings, including transit facilities, must be accessible. Alterations to existing state and local government buildings must be done in an accessible manner. New buses and rail vehicles for fixed route systems must be accessible.
- (3) **Title III—Public Accommodations.** Restaurants, hotels, theaters, shopping centers and malls, retail stores,

museums, libraries, parks, private schools, day care centers, and other similar places of public accommodation may not discriminate on the basis of disability. Physical barriers in existing public accommodations must be removed if readily achievable. New construction in public accommodations and commercial facilities (non residential facilities affecting commerce) must be accessible.

(4) **Title IV—Telecommunications.** Telephone companies must provide telecommunications relay services for hearing impaired and speech impaired individuals 24 hours per day.

317:1-7-2. Definitions [REVOKED]

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Disability" does not include:

- (A) sexual behavior disorders;
- (B) compulsive gambling, kleptomania or pyromania;
- (C) psychoactive substance abuse disorders resulting from current illegal use of drugs; or
- (D) homosexuality and bisexuality.

"Drug" means a controlled substance, as defined in Schedules I through V of Section 202 of the Controlled Substances Act [21 U.S.C. 812].

"Equal employment opportunity" means an opportunity to enjoy equal benefits and privileges of employment as are available to an average similarly situated employee without a disability.

"Essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. The term does not include the marginal functions of the position.

"Has a record of such impairment" means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

"Illegal use of drugs" means the use of drugs whose possession or distribution is unlawful under the Controlled Substances Act, as periodically updated by the Food and Drug Administration.

"Is regarded as having such an impairment" means:

- (A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation;
- (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
- (C) has none of the impairments defined herein but is treated by a covered entity as having a substantially limiting impairment.

"Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

"Physical or mental impairment" means:

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(A) any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitor urinary, hemic and lymphatic, skin, and endocrine; or

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Qualified individual with a disability" means an individual with a disability who satisfies the requisite skill, experience, education and other job related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. For purposes of organizational policy, the Authority differentiates between a qualified person with a disability in the area of employment and a qualified person with a disability in the area of DRS programs. A qualified individual with a disability is one who, with or without reasonable accommodation, can perform the essential functions of the position that the individual holds or desires. For the purposes of the ADA, consideration shall be given to the employer's judgement regarding what functions of a job are essential. If an employer has prepared a written job description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

"Reasonable accommodation" means:

(A) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or,

(B) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or,

(C) modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees.

"Substantially limits" means:

(A) unable to perform a major life activity that the average person in the general population can perform; or,

(B) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same life activity.

317:1-7-3.

The Oklahoma Health Care Authority and the Americans with Disabilities Act [REVOKED]

The Oklahoma Health Care Authority complies with the provisions of the ADA by prohibiting discrimination against individuals with disabilities. This prohibition applies to:

(1) Authority employees and individuals seeking employment. Qualified individuals with disabilities must receive equal consideration in:

(A) job application procedures;

(B) hiring advancement and discharge proceedings;

(C) employee compensation;

(D) job training; and

(E) other terms, conditions and privileges of employment.

(2) Authority clients and persons applying for services. Qualified individuals with disabilities must have equal access to all services, programs and activities offered or provided by the Authority.

(A) The Authority may comply with the Act by making its facility more accessible or by redesigning equipment or communication devices subject to the limitation in OAC 317:1-7-7.

(B) More specifically, the Authority may use the following mechanisms to comply with paragraph (2) of this subsection:

(i) Use auxiliary aids or services as designated in 28 C.F.R. §35.104 such as qualified interpreters, notetakers, transcription services, telephone handset amplifiers, telecommunications devices for deaf persons (TDD's), and brailled materials;

(ii) The use of assistive technology in the agency grievance process;

(iii) The availability of the grievance process in an alternate format;

(iv) The acquisition or modification of equipment or devices;

(v) The reassignment of services to accessible buildings, home visits, home hearings, or other ways to make its services more deliverable;

(vi) The use of an advocate, if necessary, to speak for the client; and

(vii) Other services and actions.

317:1-7-4.

Requirement for reasonable accommodation [REVOKED]

All divisions and units within the Oklahoma Health Care Authority are required to make reasonable accommodation to the known physical and mental limitations of otherwise qualified disabled employees, applicants and clients unless it can be demonstrated that the accommodation requested would impose an undue hardship on the operations of the Authority. Employment opportunities may not be denied to qualified disabled

individuals if the basis for denial is the need to make reasonable accommodations to that person's physical or mental limitations. An otherwise qualified disabled person who is an applicant or client is not discriminated against because he or she does not meet the eligibility requirements of the program. Reasonable accommodation does not require the creation of new positions or promotion for employees with disabilities. However, reassignment of employees to existing positions may be necessary. Such a reassignment should be at the same grade and salary level and one for which the employee is qualified with or without reasonable accommodation. Once it has been determined that no reasonable accommodation is possible and an employee can not perform his or her job satisfactorily, if a reassignment is not possible and the individual does not desire to apply for disability retirement, the employee may be removed from his or her position for failure to perform if:

- (1) there are no positions available for reassignment or placement; or
- (2) the employee refuses an offer of reassignment or placement.

317:1-7-5. Examples of reasonable accommodation [REVOKED]

(a) Examples of reasonable accommodation include, but are not limited to:

- (1) making facilities used by employees readily accessible to and usable by persons with disabilities, such as making common areas accessible including entrances, hallways, restrooms, cafeterias and lounges;
- (2) job restructuring, part time or modified work schedules, acquisition or modification of equipment and devices and the provision of readers or interpreters;
- (3) for blind and visually impaired employees—rearranging fixtures and supplies, labeling shelves in braille, avoiding clutter in corridors and passageways, use of writing and drawing aids, optical aids such as magnifiers;
- (4) for deaf and hard of hearing employees—shifting of phone answering responsibilities to other employees, use of amplification devices, use of a co-worker for receiving and transmitting communications that require use of the telephone during office conferences;
- (5) for the mentally retarded employees—breaking down other jobs into smaller, simple components and reassigning simple tasks; or reassigning simpler duties from higher level employees; and
- (6) for the physically less mobile—making architectural and other physical accommodations as needed.

(b) Each reasonable accommodation for a disabled employee is to be documented and all documents will be maintained in an appropriate manner within the Personnel Department.

317:1-7-6. Requests for reasonable accommodation [REVOKED]

(a) An employee who wishes to file a request for reasonable accommodation should do so through a supervisor who will

secure the proper forms from the Human Resources Division. An employee who disagrees with the proposed resolution to the request should contact his or her supervisor and mechanisms for resolving the dispute will be instituted through the Human Resources Division. All steps in the process should be documented completely by involved personnel. All requests and records related to the request will be maintained in an appropriate manner by the Human Resources Division. If there is a dispute between the Oklahoma Health Care Authority and an employee regarding reasonable accommodation, the employee may file a complaint with any state or federal agency which has jurisdiction over ADA complaints.

(b) A client requesting reasonable accommodation should be directed to the Office of the General Counsel, Oklahoma Health Care Authority, Suite 124, 4545 N. Lincoln Blvd., Oklahoma City, OK, 73105, or such address in the future which is the official mailing address of the Authority. The General Counsel will confer with the appropriate Director regarding the client's request for accommodation and notify the client of the resolution.

317:1-7-6.1. Requests to make services accessible [REVOKED]

In the case a client or applicant for OHCA is denied a request to OHCA to make services more accessible under the Americans with Disabilities Act, the client may appeal the denial to an OHCA Administrative Law Judge under OAC 317:2-1-2(c)(1)(A) or may appeal to the Department of Health and Human Services under 28 C.F.R. §35.190(3) or may seek any other remedy provided under law.

317:1-7-7. Undue hardship/undue burden [REVOKED]

(a) **Employment.** The responsibility of the Authority to provide a reasonable accommodation to a job applicant or an employee is limited to those situations in which it would not be an undue hardship. Undue hardship means an action requiring significant difficulty or expense; one which is unduly, costly, extensive, substantial, disruptive or that will fundamentally alter the nature of the employment. The concept of undue hardship is not limited to financial difficulty, e.g., when an action would fundamentally alter the nature of the employment position. Whether a particular accommodation will be an undue hardship is determined on a case by case basis. Factors to be considered include:

- (1) the nature and cost of the accommodation needed or requested;
- (2) the overall financial resources of the Authority;
- (3) the overall size of the Authority with respect to the number of employees;
- (4) the number, type and location of the Authority facilities;
- (5) the type of operations of the Authority, including composition, structure and functions of the workforce; and
- (6) the impact of the accommodation on the operation of the Authority.

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(b) **Programs.** The Authority is required to make its programs accessible when viewed in their entirety. It is not required to provide program access when it would result in a fundamental alteration in the nature of the program or undue financial or administrative burdens. However, if measures to provide full program access would result in a fundamental alteration or undue burdens, the Authority is still required to provide as much program access as possible without resulting in fundamental alteration or undue burdens. Furthermore, the Authority has the obligation to prove that providing program access would result in a fundamental alteration or undue burden and all funding resources must be considered. The decision that fundamental alteration or undue burdens would result must be made by the Administrator of the Authority. The decision must be documented in a written statement including the reasons for reaching the conclusion that fundamental alteration of undue burdens would result.

317:1-7-8. Retaliation or coercion [REVOKED]

Individuals who exercise their rights under the ADA, or who assist others in exercising their rights, are protected from retaliation or coercion. Prohibited activities include harassment, threats, intimidation, or interference in the exercises of rights under the law.

SUBCHAPTER 9. CIVIL RIGHTS AND NONDISCRIMINATION [REVOKED]

317:1-9-1. Purpose [REVOKED]

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, national origin, sex, age or disability. It is the policy of the Oklahoma Health Care Authority to actively work to ensure that the civil rights of all employees and program participants are protected.

317:1-9-2. Statement of compliance [REVOKED]

The Oklahoma Health Care Authority will administer the programs and will conduct its business, either directly, indirectly or through contractual or other arrangements, in compliance with Title VI of the Civil Rights Act of 1964 and 1991, Title 45, Code of Federal Regulations, Parts 80 and 84 and the Age Discrimination Act of 1975, Part 90.

317:1-9-3. Practices prohibited [REVOKED]

In addition to the prohibition of practices addressed under the ADA, the Authority and any members of its staff, employees, contractees, subcontractees or any other persons associated with the Authority shall not:

- (1) discriminate nor allow any other person associated with the Authority to discriminate based on the grounds of race, color, national origin, sex, age or disability.
- (2) issue or allow to be issued policies, regulations, directives or other public communication which will have

the effect of subjecting individuals to discrimination because of their race, color, national origin, sex, age or disability.

317:1-9-4. Administration of programs [REVOKED]

Prior to implementation of any new programs or new methods for providing existing services, the Authority will review all components of such programs or services and prepare a report which will show what impact, if any, the program or services shall have on persons protected by Subchapters 5, 7 and 9 of this Chapter. The Authority will take positive action, consistent with Title VI regulations, ADA, or Section 504 regulations, to overcome the effects of conditions which result or will result in limiting participation in any program by persons protected by these Subchapters.

317:1-9-5. Dissemination of nondiscriminatory information [REVOKED]

The Authority will inform all employees, clients, applicants and the general public that all services, any and all other benefits under its programs are provided on a nondiscriminatory basis.

317:1-9-6. Assignment of responsibility [REVOKED]

The Authority will take the following actions:

- (1) The Administrator of the Authority will assume full responsibility for compliance with Title VI of the Civil Rights Act of 1964, and Section 504 of the Vocational Rehabilitation Act of 1973.
- (2) The Authority has assigned full compliance responsibility to all department heads of every administrative unit.
- (3) The department heads of every administrative unit will keep and maintain essential records and files relative to Title VI and Section 504.
- (4) The Authority will take positive action, consistent with Title VI regulations or Section 504 regulations, to overcome the effects of conditions which result or have resulted in limited participation in any program by persons of a particular race, color, national origin, sex, age or handicap.

317:1-9-9. Complaints [REVOKED]

(a) Any person who believes that he/she, or any specific class of person, has been subjected to discrimination in an Authority program subject to Title VI or Section 504 may, personally or by a representative, file a written complaint. Authority personnel will assist the complainant in the writing of the complaint if such assistance is needed. Complaints may be filed with the Authority. The complaint will be brought to the attention of the Administrator or a designated Deputy Administrator. A complaint must be filed no later than 180 days from the date of an alleged discriminatory act. The time for filing

may however, be extended by the Administrator or a designated Deputy Administrator.

(b) Following investigation of the complaint, if the responsible official for the Authority believes discrimination did, in fact occur, necessary action will be taken to correct the discriminatory practice, or to require it to be corrected, and to prevent any recurrence of such discrimination. The Authority will take follow up action to determine that the corrective measures have eliminated the conditions that contributed to the discriminatory act.

(c) The complainant will be advised in writing within 30 days from the receipt of the complaint as to the findings of the Authority regarding the complaint. In the same written notice the complainant will be advised that if he/she is not satisfied with the decision they may appeal the decision (see OAC 317:2-1 for grievance procedures and process). The Authority will maintain records to show the nature of the complaint, the details of the investigation, and the action taken by the Authority. If the complaint has been found to be valid, the records will indicate the nature of the corrective action taken. All complaint records will be available for review by the Authority or other state or judicial entities to which the complainant may appeal as provided by law.

317:1-9-10. Employment practices [REVOKED]

The Authority, in compliance with 45 CFT 84 Subpart B, affirms that no qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity of the Authority. The Authority, in compliance with Title VI of the Civil Rights Act of 1964 affirms that no qualified person shall, on the basis of race, color, national origin, sex, age or disability, be subjected to discrimination in employment under any program or activity of the Authority.

[OAR Docket #09-1368; filed 11-13-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE**

[OAR Docket #09-1364]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-24. [AMENDED]
(Reference APA WF # 09-19A)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

DATES:

Adoption:

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules to clarify member responsibilities regarding the reporting of third party liability, utilization of private insurance and notification to medical providers of SoonerCare coverage. Implementation of this rule will reduce the amount of federal and state dollars utilized for healthcare, reducing the burden of providing costly healthcare from strained State Agency budgets and shifting it to third party resources.

ANALYSIS:

The rule revision provides clarification of member responsibilities regarding the reporting of third party liability, utilization of private insurance and notification to medical providers of SoonerCare coverage. The rule provides that SoonerCare members with additional insurance are required to inform medical providers of their coverage from all sources. The rule also clarifies that SoonerCare members having private insurance must comply with all requirements of the private carrier before seeking coverage through SoonerCare. Lastly the rule clarifies that individuals applying for SoonerCare services must notify their providers of the intent to apply and of any retroactive eligibility determinations.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D):

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-24. Third party resources liability

As the Medicaid Agency, OHCA is the last resource for payment the payer of last resort, with few exceptions. When other resources are available, those resources must first be utilized. One exception Exceptions to this policy are those receiving medical treatment through Indian Health Services and those eligible for the Crime Victims Compensation Act. Guidance for third party liability under the Insure Oklahoma program is found in OAC 317:45, Oklahoma Employer and Employee Partnership for Insurance Coverage.

- (1) If the children or other individuals in a case are covered a member has coverage by an absent parent's insurance program or any other policy holder, the that insurance resource must be used prior to filing a Medicaid SoonerCare claim. This includes Health Maintenance Organizations (HMO), Preferred Provider Organizations (PPO) and any other insuring arrangement if the covered individuals live in the coverage area. Clients covered by insurance, who elect to use providers who do not have a

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~~contract with their insurance company, arrangements that provide a member access to healthcare. Members must comply with all requirements of their primary insurance as well as SoonerCare requirements in order to take advantage of both coverages. For example, a member must comply with the network restrictions of both the primary and SoonerCare plans as well as prior authorization requirements. If the member does not comply with the requirements of the primary plan, he/she will be responsible for the charges incurred. Denials by private insurance companies because the recipient member did not secure a preauthorization to or use a non-participating participating provider is not a sufficient reason for Medicaid SoonerCare to make payment. When a If the provider is aware of private insurance or liability, a claim must first be filed with that source. When private insurance information is known to the OHCA, the REVS System or commercial swipe care vendor will reflect an insurance indicator eligibility verification system will reflect that information. If payment is denied from another source by the primary insurance, except as stated above, the provider should must attach the Explanation of Benefits (EOB), stating the reason for the denial, to the claim submitted to the Fiscal Agent. When payment is received from another source, that payment amount should must be shown reflected on the claim form filed with that Fiscal Agent.~~

(2) It is possible that other resources are available but are unknown to OHCA. Providers ~~should will~~ routinely question Medicaid patients SoonerCare members to determine whether any other resources are available. In some instances, coverage may not be obvious, for example, the patient member may be covered by a policy on which he/she is not the subscriber (e.g., a child whose absent parent maintains medical and hospital coverage).

(3) ~~In the event~~ If the provider receives payment from another source after OHCA has made payment, it is necessary that the provider reimburse OHCA for the Title XIX (Medicaid) payment. The provider may retain ~~that portion of the other~~ the primary insurance payment, if any, that represents payment for services that are not covered services under Medicaid SoonerCare. By accepting the Authority's OHCA's payment, the provider agrees to accept ~~the reasonable charge~~ it as payment in full and, therefore, cannot retain any portion of other resource money as payment for reduced charges on covered services. Other than SoonerCare copayments, a provider cannot bill a member for any unpaid portion of the bill or for a claim that is not paid because of provider administrative error. If, after reimbursing OHCA and retaining a portion of the other payment in satisfaction of any non-covered services there is money remaining, it must be refunded to the patient member.

(4) ~~There are instances where insurance companies have made payment by a single check for both the hospitalization service and the physician's fees, and the entire amount has been credited to one provider, rather than being distributed according to the type of coverage under the policy. The hospital must show credit for~~

~~the respective amounts against the billed charges. This calculation is subject to final review and audit by the Fiscal Agent or OHCA. If a member is covered by a private health insurance policy or plan, he/she is required to inform medical providers of the coverage, including:~~

- ~~(A) provision of applicable policy numbers;~~
- ~~(B) assignment payments to medical providers;~~
- ~~(C) provision of information to OHCA of any coverage changes; and~~
- ~~(D) release of money received from a health insurance plan to the provider if the provider has not already received payment or to the OHCA if the provider has already been paid by the OHCA.~~

(5) ~~If the patient is a recipient of Medical Assistance only, it is understood that the payment received from OHCA represents full payment for services rendered. In those instances where the patient has excess income, and/or insurance, payment will be made by OHCA for the difference between the amount paid by insurance and/or spenddown and the allowable charge, if any. Members are responsible for notifying their providers of the intent to make application for SoonerCare coverage and of any retroactive eligibility determinations. Members may be responsible for any financial liability if they fail to notify the provider of the eligibility determinations and as a result, the provider is unable to secure payment from OHCA.~~

(6) ~~For claims processed by the Fiscal Agent, the excess shown on the OHCA Notification of Eligibility will be applied to providers' claims on a first in basis. When a provider receives notice on the Detail of Remittance that spenddown was applied to his/her claim, the amount shown may be collected from the patient. The patient will also receive a notice indicating the name of the provider and the amount of spenddown applied. Members must present evidence of SoonerCare and any other health insurance coverage to a medical provider each time services are requested. Members may be responsible for any financial liability if they fail to furnish the necessary information before the receipt of services and as a result, the provider is unable to secure payment from OHCA.~~

[OAR Docket #09-1364; filed 11-13-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #09-1366]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:

Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-59. [AMENDED]
317:30-3-60. [AMENDED]
Subchapter 5. Individual Providers and Specialties

Part 1. Physicians
 317:30-5-2. [AMENDED]
 317:30-5-9. [AMENDED]
 317:30-5-20. [AMENDED]
 Part 3. Hospitals
 317:30-5-42.17. [AMENDED]
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Superseded rules:

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-2. [AMENDED]

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(Reference APA WF # 09-09)

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to the agency's general coverage guidelines. Rules are revised to clarify the intent of covered and non-covered benefits and provide consistency throughout policy. These emergency rule revisions will make rules consistent with reimbursement practices and clarify coverage and access to healthcare for Oklahomans, thereby reducing confusion among Soonercare providers regarding general coverage and general coverage exclusions and ultimately reducing the amount of uncompensated care provided by healthcare providers.

ANALYSIS:

General coverage rules are revised to make OHCA rules consistent with reimbursement practices and make coverage rules more consistent throughout policy. Revisions include allowing separate payment for the insertion and/or implantation of contraceptive devices during a physician office visit, the removal of physician supervision of hemodialysis or peritoneal dialysis as a general coverage exclusion for both adults and children, the clarification of intent in regards to general coverage and general coverage exclusions for both adults and children, the removal of follow-up consultations, the removal of tympanometry as a general coverage exclusion for children, the clarification of covered critical care guidelines, and general policy cleanup as it relates to these sections.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D):

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-59. General program exclusions - adults

The following are excluded from Soonercare coverage for adults:

- (1) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.
- (2) Services or any expense incurred for cosmetic surgery.
- (3) Services of two physicians for the same type of service to the same patient member at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. ~~Follow up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the patient's status.~~ If the consultant physician initiates treatment at the initial consultation and participates thereafter in the patient's member's care, the procedure codes for subsequent hospital care ~~should~~ must be used.
- (4) Refractions and visual aids.
- (5) ~~A separate payment for pre-operative care, if provided on the day before or the day of surgery, or for typical post-operative follow up care~~ Pre-operative care within 24 hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).
- (6) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or Reversal reversal of sterilization procedures for the purposes of conception.
- (7) ~~Non-therapeutic~~ Non-therapeutic hysterectomies. ~~Therapeutic hysterectomies require that the following information to be attached to the claim:~~
 - (A) ~~a copy of an acceptable acknowledgment form signed by the patient, or,~~
 - (B) ~~an acknowledgment by the physician that the patient has already been rendered sterile, or,~~
 - (C) ~~a physician's certification that the hysterectomy was performed under a life-threatening emergency situation.~~
- (8) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)
- (9) Medical services considered ~~to be~~ experimental or investigational.
- (10) Services of a Certified Surgical Assistant.

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- (11) Services of a Chiropractor. Payment is made for Chiropractor services on Crossover claims for coinsurance and/or deductible only.
- (12) Services of an independent licensed Physical and/or Occupational Therapist.
- (13) Services of a Psychologist.
- (14) Services of an independent licensed Speech and Hearing Therapist.
- (15) Payment for more than four outpatient visits per month (home; or office;—outpatient—hospital) per patient member, except those visits in connection with family planning or related to emergency medical conditions.
- (16) Payment for more than two nursing home facility visits per month.
- (17) More than one inpatient visit per day per physician.
- (18) Payment for removal of benign skin lesions unless medically necessary.
- (19) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.
- (20) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.
- (21) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.
- (22) Mileage.
- (23) A routine hospital visit on the date of discharge unless the member expired.
- (24) Direct payment to perfusionist as this is considered part of the hospital reimbursement.
- (25) Inpatient chemical dependency treatment.
- (26) Fertility treatment.
- (27) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

317:30-3-60. General program exclusions - children

(a) The following are excluded from Medicaid SoonerCare coverage for children:

- (1) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.
- (2) Services or any expense incurred for cosmetic surgery; unless the physician certifies the procedure emotionally necessary for the emotional well being of the patient.
- (3) Services of two physicians for the same type of service to the same patient member at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the patient's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the patient's—member's care, the

procedure codes for subsequent hospital care should must be used.

(4) Separate payment for post operative care when payment is made for surgery Pre-operative care within 24 hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).

(5) Sterilization of persons members who are under 21 years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.

(6) Hysterectomy, unless therapeutic and unless a copy of an acknowledgment form, signed by the patient or an acknowledgment by the physician that the patient has already been rendered sterile is attached to the claim Non-therapeutic hysterectomies.

(7) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (See OAC 317:30-5-6 or 317:30-5-50).

(8) Medical services considered to be experimental or investigational.

(9) Services of a Certified Surgical Assistant.

(10) Services of a Chiropractor.

~~(11) Services of a Registered Physical Therapist.~~

~~(12) More than one inpatient visit per day per physician.~~

(12) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(13) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.

(14) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.

(15) Direct payment to perfusionist as this is considered part of the hospital reimbursement.

(16) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(17) Mileage.

(18) A routine hospital visit on date of discharge unless the member expired.

(b) Notwithstanding the exclusions listed in (1)-~~(12)~~ (18) of subsection (a), the Early and Periodic, Screening, Diagnosis and Treatment Program (EPSDT) provides for coverage of needed medical services normally outside the scope of the medical program when performed in connection with an EPSDT screening and prior authorized.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-2. General coverage by category

(a) **Adults.** Payment for adults is made to physicians for medical and surgical services within the scope of the Oklahoma Health Care Authority's (OHCA's) SoonerCare program, provided the services are reasonable and necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Coverage of certain services must be based on a determination made by the OHCA's medical consultant in individual circumstances.

(1) Coverage includes the following medically necessary services:

(A) Inpatient hospital visits for all SoonerCare covered stays. All inpatient services are subject to post-payment review by the OHCA, or its designated agent.

(B) Inpatient psychotherapy by a physician.

(C) Inpatient psychological testing by a physician.

(D) One inpatient visit per day, per physician.

(E) Certain surgical procedures performed in a Medicare certified free-standing ambulatory ~~surgicenter~~ surgery center (ASC) or a Medicare certified hospital that offers outpatient surgical services. Refer to the Medicare approved list of covered services that can be performed at an ASC ~~List of Covered Surgical Procedures.~~

(F) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for members with proven malignancies or opportunistic infections.

(G) Direct physician services on an outpatient basis. A maximum of four visits are allowed per month per member in office or home regardless of the number of physicians providing treatment. Additional visits per month are allowed for those services related to emergency medical conditions and for services in connection with Family Planning.

(H) Direct physician services in a nursing facility for those members residing in a long-term care facility. A maximum of two nursing facility visits per month are allowed. To receive payment for a second nursing facility visit in a month denied by Medicare for a Medicare/SoonerCare ~~patient member~~, attach the EOMB from Medicare showing denial and mark "carrier denied coverage".

(I) Diagnostic x-ray and laboratory services.

(J) Mammography screening and additional follow-up mammograms.

(K) Obstetrical care.

(L) Pacemakers and prostheses inserted during the course of a surgical procedure.

(M) Prior authorized examinations for the purpose of determining medical eligibility for programs administered by OHCA. A copy of the authorization, OKDHS form 08MA016E, Authorization for Examination and Billing, must accompany the claim.

(N) If a physician renders direct care to a member on the same day as a dialysis treatment, payment is allowed for a separately identifiable service unrelated to the dialysis.

(O) Family planning includes sterilization procedures for legally competent members 21 years of age and over who voluntarily request such a procedure and execute the federally mandated consent form with his/her physician. A copy of the consent form must be attached to the claim form. Separate payment is allowed for ~~I.U.D. insertion~~ the insertion and/or implantation of contraceptive devices during an office visit. Certain family planning products may be obtained through the Vendor Drug Program. Reversal of sterilization procedures for the purposes of conception is not allowed. Reversal of sterilization procedures are allowed when medically indicated and substantiating documentation is attached to the claim.

(P) Genetic counseling (~~requires special medical review prior to approval~~).

~~(Q) Weekly blood counts for members receiving the drug Clozaril.~~

~~(R) Complete blood count (CBC) and platelet count prior to receiving chemotherapeutic agents, radiation therapy or medication such as DPA-D Penicillamine on a regular basis for treatment other than for malignancy.~~ (Q) Laboratory testing (such as complete blood count (CBC), platelet count, or urinalysis) for monitoring members receiving chemotherapy, radiation therapy, or medications that require monitoring during treatment.

~~(SR)~~ Payment for ultrasounds for pregnant women as specified in OAC 317:30-5-22.

~~(TS)~~ Payment to the attending physician in a teaching medical facility for compensable services when the physician signs as claimant and renders personal and identifiable services to the member in conformity with federal regulations.

~~(UT)~~ Payment to clinical fellow or chief resident in an outpatient academic setting when the following conditions are met:

- (i) Recognition as clinical faculty with participation in such activities as faculty call, faculty meetings, and having hospital privileges;
- (ii) Board certification or completion of an accredited residency program in the fellowship specialty area;
- (iii) Hold unrestricted license to practice medicine in Oklahoma;
- (iv) If Clinical Fellow, practicing during second or subsequent year of fellowship;
- (v) Seeing members without supervision;

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- (vi) Services provided not for primary purpose of medical education for the clinical fellow or chief resident;
 - (vii) Submit billing in own name with appropriate Oklahoma SoonerCare provider number.
 - (viii) Additionally if a clinical fellow practicing during the first year of fellowship, the clinical fellow must be practicing within their area of primary training. The services must be performed within the context of their primary specialty and only to the extent as allowed by their accrediting body.
- (~~W~~U) Payment to the attending physician for the services of a currently Oklahoma licensed physician in training when the following conditions are met.
- (i) Attending physician performs chart review and ~~sign~~ signs off on the billed encounter;
 - (ii) Attending physician is present in the clinic/or hospital setting and available for consultation;
 - (iii) Documentation of written policy and applicable training of physicians in the training program regarding when to seek the consultation of the attending physician.
- (~~W~~V) Payment to the attending physician for the outpatient services of an unlicensed physician in a training program when the following conditions are met:
- (i) The member must be at least minimally examined by the attending physician or a licensed physician under the supervision of the attending physician;
 - (ii) The contact must be documented in the medical record.
- (~~X~~W) The Payment payment to a physician for supervision medically directing the services of a CRNA or for the direct supervision of the services of an Anesthesiologist Assistant (AA) is limited services unless the CRNA bills directly. The maximum allowable fee for the services of both providers combined is limited to the maximum allowable had the service been performed solely by the anesthesiologist.
- (~~Y~~X) One pap smear per year for women of child bearing age. Two follow-up pap smears are covered when medically indicated.
- (~~Z~~Y) Medically necessary solid organ and bone marrow/stem cell transplantation services for children and adults are covered services based upon the conditions listed in (i)-(iv) of this subparagraph:
- (i) Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.
 - (ii) To be prior authorized all procedures are reviewed based on appropriate medical criteria.
 - (iii) To be compensable under the SoonerCare program, all organ transplants must be performed at a facility which meets the requirements contained in Section 1138 of the Social Security Act.

- (iv) Procedures considered experimental or investigational are not covered.
- (~~AA~~Z) Donor search and procurement services are covered for transplants consistent with the methods used by the Medicare program for organ acquisition costs.
- (i) Donor expenses incurred for complications are covered only if they are directly and immediately attributable to the donation procedure.
 - (ii) Donor expenses that occur after the 90 day global reimbursement period must be submitted to the OHCA for review.
- (~~BB~~AA) Total parenteral nutritional therapy (TPN) for identified diagnoses and when prior authorized.
- (~~CC~~BB) Ventilator equipment.
- (~~DD~~CC) Home dialysis equipment and supplies.
- (~~EE~~DD) Ambulatory services for treatment of members with tuberculosis (TB). This includes, but is not limited to, physician visits, outpatient hospital services, rural health clinic visits and prescriptions. Drugs prescribed for the treatment of TB beyond the prescriptions covered under SoonerCare require prior authorization by the University of Oklahoma College of Pharmacy Help Desk using form "Petition for TB Related Therapy". Ambulatory services to members infected with TB are not limited to the scope of the SoonerCare program, but require prior authorization when the scope is exceeded.
- (~~FF~~EE) Smoking and Tobacco Use Cessation Counseling for treatment of individuals using tobacco.
- (i) Smoking and Tobacco Use Cessation Counseling consists of the 5As:
 - (I) Asking the member to describe their smoking use;
 - (II) Advising the member to quit;
 - (III) Assessing the willingness of the member to quit;
 - (IV) Assisting the member with referrals and plans to quit; and
 - (V) Arranging for follow-up.
 - (ii) Up to eight sessions are covered per year per individual.
 - (iii) Smoking and Tobacco Use Cessation Counseling is a covered service when performed by physicians, physician assistants, advanced registered nurse practitioners, certified nurse midwives, dentists, and Oklahoma State Health Department and FQHC nursing staff. It is reimbursed in addition to any other appropriate global payments for obstetrical care, PCP care coordination payments, evaluation and management codes, or other appropriate services rendered. It must be a significant, separately identifiable service, unique from any other service provided on the same day.
 - (iv) Chart documentation must include a separate note and signature along with the member specific information addressed in the five steps

and the time spent by the practitioner performing the counseling. Anything under three minutes is considered part of a routine visit.

~~(GG FF)~~ Immunizations as specified by the Advisory Committee on Immunization Practices (ACIP) guidelines.

- (2) General coverage exclusions include the following:
 - (A) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.
 - (B) Services or any expense incurred for cosmetic surgery.
 - (C) Services of two physicians for the same type of service to the same member at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. ~~Follow up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the member's status.~~ If the consultant physician initiates treatment at the initial consultation and participates thereafter in the member's care, the procedure codes for subsequent hospital care must be used.
 - (D) Refractions and visual aids.
 - (E) ~~A separate payment for pre-operative care, if provided on the day before or the day of surgery, or for typical post-operative follow-up care~~ Pre-operative care within 24 hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).
 - (F) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.
 - (G) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.
 - (H) Non-therapeutic ~~hysterectomy~~ hysterectomies.
 - (I) Medical services considered experimental or investigational.
 - (J) Payment for more than four outpatient visits per month (home or office) per member, except those visits in connection with family planning, or related to emergency medical conditions.
 - (K) Payment for more than two nursing facility visits per month.
 - (L) More than one inpatient visit per day per physician.
 - ~~(M) Physician supervision of hemodialysis or peritoneal dialysis.~~
 - ~~(NM)~~ Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review

or multidisciplinary opinion, dictation, and similar functions.

~~(ON)~~ Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

~~(PO)~~ Payment for the services of ~~physicians' assistants, social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.~~

~~(QP)~~ Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury, or illness, ~~related to~~ including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or ~~when that~~ the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)

~~(R)~~ Night calls.

~~(SQ)~~ Speech and Hearing services.

~~(TR)~~ Mileage.

~~(US)~~ A routine hospital visit on the date of discharge unless the member expired.

~~(VT)~~ Direct payment to perfusionist as this is considered part of the hospital reimbursement.

~~(WU)~~ Inpatient chemical dependency treatment.

~~(XV)~~ Fertility treatment.

~~(YW)~~ Payment for removal of benign skin lesions unless medically necessary.

(b) **Children.** Payment is made to physicians for medical and surgical services for members under the age of 21 within the scope of the Authority's SoonerCare program, provided the services are medically necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services for children are comparable to those listed for adults. In addition to those services listed for adults, the following services are covered for children.

(1) **Pre-authorization of inpatient psychiatric services.** All inpatient psychiatric services for members under 21 years of age must be prior authorized by an agency designated by the Oklahoma Health Care Authority. All psychiatric services are prior authorized for an approved length of stay. Non-authorized inpatient psychiatric services are not SoonerCare compensable.

(A) ~~Effective October 1, 1993, all~~ All residential and acute psychiatric services are authorized based on the medical necessity criteria as described in OAC 317:30-5-95.25, 317:30-5-95.27 and 317:30-5-95.29.

(B) Out of state placements are not authorized unless it is determined that the needed medical services are more readily available in another state or it is a general practice for members in a particular border locality to use resources in another state. If a medical emergency occurs while a member is out of the State, treatment for medical services is covered as if provided within the State. A prime consideration for placements is proximity to the family or guardian in

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order to involve the family or guardian in discharge and reintegration planning.

(2) **General acute care inpatient service limitations.**

All general acute care inpatient hospital services for members under the age of 21 are not limited. All inpatient care must be medically necessary.

(3) **Procedures for requesting extensions for inpatient services.**

The physician and/or facility must provide necessary justification to enable OHCA, or its designated agent, to make a determination of medical necessity and appropriateness of treatment options. Extension requests for psychiatric admissions must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation validating the need for continued treatment in accordance with the medical necessity criteria described in OAC 317:30-5-95.26, 317:30-5-95.28 and 317:30-5-95.30. Requests must be made prior to the expiration of the approved inpatient stay. All decisions of OHCA or its designated agent are final.

(4) **Utilization control requirements for psychiatric beds.**

Utilization control requirements for inpatient psychiatric services for members under 21 years of age apply to all hospitals and residential psychiatric treatment facilities.

(5) **Early and periodic screening diagnosis and treatment program.**

Payment is made to eligible providers for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of members under age 21. These services include medical, dental, vision, hearing and other necessary health care. Refer to OAC 317:30-3-65.2 through 317:30-3-65.11 for specific guidelines.

(6) **Child abuse/neglect findings.**

Instances of child abuse and/or neglect discovered through screenings and regular exams are to be reported in accordance with State Law. Section 7103 of Title 10 of the Oklahoma Statutes mandates reporting suspected abuse or neglect to the Oklahoma Department of Human Services. Section 7104 of Title 10 of the Oklahoma Statutes further requires reporting of criminally injurious conduct to the nearest law enforcement agency.

(7) **General exclusions.** The following are excluded from coverage for members under the age of 21:

(A) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery unless the physician certifies the procedure emotionally necessary.

(C) Services of two physicians for the same type of service to the same member at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. ~~Follow up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the member's status.~~ If the consultant physician initiates treatment at the initial consultation and participates

thereafter in the member's care, the procedure codes for subsequent hospital care must be used.

~~(D) A separate payment for pre-operative care, if provided on the day before or the day of surgery, or for typical post-operative follow-up care~~ Pre-operative care within 24 hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).

(E) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(F) Sterilization of ~~persons~~ members who are under 21 years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.

~~(G) Non-therapeutic hysterectomy.~~ Non-therapeutic hysterectomies.

(H) Medical Services considered experimental or investigational.

(I) More than one inpatient visit per day per physician.

(J) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)

~~(K) Physician supervision of hemodialysis or peritoneal dialysis.~~

~~(L)~~ (K) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.

~~(M)~~ (L) Payment for the services of ~~physicians' assistants~~ social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.

~~(N)~~ (M) Direct payment to perfusionist as this is considered part of the hospital reimbursement.

~~(O)~~ (N) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

~~(P)~~ (O) ~~Night calls.~~

~~(Q)~~ (P) Mileage.

~~(R)~~ (Q) A routine hospital visit on date of discharge unless the member expired.

~~(S)~~ (R) ~~Tympanometry.~~

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the OHCA allowable for comparable services. Claims filed with Medicare Part B should automatically cross over to OHCA. The explanation of Medicare Benefits (EOMB) reflects a message that the claim was referred to SoonerCare.

If such a message is not present, a claim for coinsurance and deductible must be filed with the OHCA within 90 days of the date of Medicare payment or within one year of the date of service in order to be considered timely filed.

- (1) In certain circumstances, some claims do not automatically "cross over". Providers must file a claim for coinsurance and/or deductible to SoonerCare within 90 days of the Medicare payment or within one year from the date of service.
- (2) If payment was denied by Medicare Part B and the service is a SoonerCare covered service, mark the claim "denied by Medicare" and attach the Medicare EOMB showing the reason for the denial.

317:30-5-9. Medical services

(a) **Use of medical modifiers.** The Physicians' Current Procedural Terminology (CPT) and the second level HCPCS provide for 2-digit medical modifiers to further describe medical services. Modifiers are used when appropriate.

(b) **Covered office services.**

- (1) Payment is made for four office visits (or home) per month per member, for adults (over age 21), regardless of the number of physicians involved. Additional visits per month are allowed for services related to emergency medical conditions.
- (2) Visits for the purpose of family planning are excluded from the four per month limitation.
- (3) Payment is allowed for ~~insertion of IUD~~ the insertion and/or implantation of contraceptive devices in addition to the office visit.
- (4) Separate payment will be made for the following supplies when furnished during a physician's office visit.
 - (A) Casting materials
 - (B) Dressing for burns
 - (C) ~~Intrauterine device~~ Contraceptive devices
 - (D) IV Fluids
 - ~~(E) Medications administered by IV~~
 - ~~(F) Glucose administered IV in connection with chemotherapy in office~~
- (5) Payment is made for routine physical exams only as prior authorized by the OKDHS and are not counted as an office visit.
- (6) Medically necessary office lab and X-rays are covered.
- (7) Hearing exams by physician for members between the ages of 21 and 65 are covered only as a diagnostic exam to determine type, nature and extent of hearing loss.
- (8) Hearing aid evaluations are covered for members under 21 years of age.
- (9) IPPB (Intermittent Positive Pressure Breathing) is covered when performed in physician's office.
- (10) Payment is made for both an office visit and an injection of joints performed during the visit if the joint injection code does not have a global coverage designation.
- (11) Payment is made for an office visit in addition to allergy testing.
- (12) Separate payment is made for antigen.

(13) Eye exams are covered for members between ages 21 and 65 for medical diagnosis only.

(14) If a physician personally sees a member on the same day as a dialysis treatment, payment can be made for a separately identifiable service unrelated to the dialysis.

(15) Separate payment is made for the following specimen collections:

- (A) Catheterization for collection of specimen; and
- (B) Routine Venipuncture.

(16) The Professional Component for electrocardiograms, electroencephalograms, electromyograms, and similar procedures are covered on an inpatient basis as long as the interpretation is not performed by the attending physician.

(17) Cast removal is covered only when the cast is removed by a physician other than the one who applied the cast.

(c) **Non-covered office services.**

(1) Payment is not made separately for an office visit and rectal exam, pelvic exam or breast exam. Office visits including one of these types of exams should be coded with the appropriate office visit code.

(2) Payment cannot be made for prescriptions or medication dispensed by a physician in his office.

(3) Payment will not be made for completion of forms, abstracts, narrative reports or other reports, separate charge for use of office or telephone calls.

(4) Additional payment will not be made for ~~night calls, unusual hours or~~ mileage.

(5) Payment is not made for an office visit where the member did not keep appointment.

(6) Refractive services are not covered for persons between the ages of 21 and 65.

(7) Removal of stitches is considered part of post-operative care.

(8) Payment is not made for a consultation in the office when the physician also bills for surgery.

(9) Separate payment is not made for oxygen administered during an office visit.

(d) **Covered inpatient medical services.**

(1) Payment is allowed for inpatient hospital visits for all SoonerCare covered admissions. Psychiatric admissions must be prior authorized.

(2) Payment is allowed for the services of two physicians when supplemental skills are required and different specialties are involved. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. ~~Follow up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the member's status.~~ If the consultant physician initiates treatment at the initial consultation and participates thereafter in the member's care, the procedure codes for subsequent hospital care are must be used.

(3) Certain medical procedures are allowed in addition to office visits.

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- (4) Payment for critical care is all-inclusive and includes payment for all services that day. Payment for critical care, first hour is limited to one unit per day and 4 units per month. ~~Payment for critical care, each additional 30 minutes is limited to two units per day/month.~~
- (e) **Non-covered inpatient medical services.**
- (1) For inpatient services, all visits to a member on a single day are considered one service except where specified. Payment is made for only one visit per day.
- (2) A hospital admittance or visit and surgery on the same day would not be covered if post-operative days are included in the surgical procedure. If there are no post-operative days, a physician can be paid for visits.
- (3) Drugs administered to inpatients are included in the hospital payment.
- (4) Payment will not be made to a physician for an admission or new patient work-up when the member receives surgery in out-patient surgery or ambulatory surgery center.
- (5) Payment is not made to the attending physician for interpretation of tests on his own patient.
- (f) **Other medical services.**
- (1) Payment will be made to physicians providing Emergency Department services.
- (2) Payment is made for two nursing ~~home~~ facility visits per month. The appropriate CPT code is used.
- (3) When payment is made for "Evaluation of arrhythmias" or "Evaluation of sinus node", the stress study of the arrhythmia includes inducing the arrhythmia and evaluating the effects of drugs, exercise, etc. upon the arrhythmia.
- (4) When the physician bills twice for the same procedure on the same day, it must be supported by a written report.
- (B) ~~Effective May 1, 1993, reimbursement~~ Reimbursement rate for laboratory procedures is the lesser of the HCFA National 60% fee or the local carrier's allowable (whichever is lower).
- (C) All claims for laboratory services are considered medically necessary unless specifically disallowed in this Chapter.
- (2) **Compensable outpatient laboratory services.** Medically necessary laboratory services are covered. ~~Genetic counseling requires special medical review prior to approval.~~
- (3) **Noncompensable laboratory services.**
- (A) Separate payment is not made for blood specimens obtained by venipuncture or urine specimens collected by a laboratory. These services are considered part of the laboratory analysis.
- (B) Claims for inpatient full service laboratory procedures are not covered since this is considered a part of the hospital rate.
- (4) **Covered services by a pathologist.**
- (A) A pathologist may be paid for interpretation of inpatient surgical pathology specimen. The appropriate CPT procedure code and modifier is used.
- (B) Full service or interpretation of surgical pathology for outpatient surgery performed in an outpatient hospital or Ambulatory Surgery Center setting.
- (5) **Non-compensable services by a pathologist.** The following are non-compensable pathologist services:
- (A) Tissue examinations for identification of teeth and foreign objects.
- (B) Experimental or investigational procedures.
- (C) Interpretation of clinical laboratory procedures.

317:30-5-20. Laboratory services

This Section covers the guidelines for payment of laboratory services by a provider in his/her office, a certified laboratory and for a pathologist's interpretation of laboratory procedures.

- (1) **Covered lab services.** Providers may be paid for covered clinical diagnostic laboratory services only when they personally perform or supervise the performance of the test. If a provider refers specimen to a certified laboratory or a hospital laboratory serving outpatients, the certified laboratory or the hospital must bill for performing the test.

(A) ~~Effective September 1, 1992, reimbursement~~ Reimbursement for lab services is made in accordance with the Clinical Laboratory Improvement Amendment of 1988 (CLIA). These regulations provide that payment may be made only for services furnished by a laboratory that meets CLIA conditions, including those furnished in physicians' offices. Eligible providers must be certified under the CLIA program and have obtained a CLIA ID number from HCFA and have a current contract on file with the OHCA. Payment is made only for those services which fall within the approved specialties/subspecialties.

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317:30-5-42.17. Non-covered services

In addition to the general program exclusions [OAC 317:30-5-2(a)(2)] the following are excluded from coverage:

- (1) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.
- (2) Procedures that result in sterilization which do not meet the guidelines set forth in this Chapter of rules.
- (3) Reversal of sterilization procedures for the purposes of conception are not covered.
- (4) Medical services considered ~~to be~~ experimental or investigational.
- (5) Payment for removal of benign skin lesions unless medically necessary.
- (6) Refractions and visual aids.
- (7) Charges incurred while ~~patient~~ the member is in a skilled nursing or swing bed.

[OAR Docket #09-1366; filed 11-13-09]

**TITLE 317. OKLAHOMA HEALTH CARE
AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE
FOR SERVICE**

[OAR Docket #09-1369]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 21. Outpatient Behavioral Health Services

317:30-5-241.3. [AMENDED]

(Reference APA WF # 09-39)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

DATES:

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to amend policy to reflect that family inclusion is allowable for Behavioral Health Rehabilitation Services. Currently rules specify that in an individual setting only the BHRS and the member are present for the session. During the reformatting of the Outpatient Behavioral Health rules language was inadvertently left out which allows family inclusion for BHRS sessions.

ANALYSIS:

Rules are being revised to allow family inclusion during Behavioral Health Rehabilitation Services. This revision will provide consistency between OHCA policy and practices.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING EMERGENCY RULES ARE
CONSIDERED PROMULGATED AND EFFECTIVE
UPON APPROVAL BY THE GOVERNOR AS SET
FORTH IN 75 O.S., SECTION 253(D):**

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS
AND SPECIALTIES**

**PART 21. OUTPATIENT BEHAVIORAL HEALTH
SERVICES**

**317:30-5-241.3. Behavioral Health Rehabilitation (BHR)
services**

(a) **Definition.** BHRS are behavioral health remedial services which are necessary to improve the member's ability to function in the community. They are performed to improve the

skills and abilities of members to live interdependently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. This service may include the Evidence Based Practice of Illness, Management, and Recovery.

(1) **Clinical restrictions.**

~~(A) Individual. Only the BHRS and member are present for the session.~~

~~(B) Group. This service is generally performed with only the members—member(s), but may include a member—and the member's family/support system group that focuses on the member's diagnosis, management, and recovery based curriculum.~~

(2) **Qualified providers.** A BHRS, AODTP, or LBHP may perform BHR, following a treatment curriculum approved by a LBHP or AODTP for AOD. Staff must be appropriately trained in a recognized behavioral/management intervention program such as MANDT or CAPE or trauma informed methodology.

(3) **Group sizes.** The minimum staffing ratio is fourteen members for each BHRS, AODTP, or LBHP for adults and eight to one for children under the age of eighteen.

(4) **Limitations.**

(A) **Transportation.** Travel time to and from BHR treatment is not compensable.

(B) **Time.** Breaks, lunchtime and times when the member is unable or unwilling to participate are not compensable and must be deducted from the overall billed time.

(C) **Location.** In order to develop and improve the member's community and interpersonal functioning and self care abilities, rehabilitation may take place in settings away from the outpatient behavioral health agency site. When this occurs, the BHRS, AODTP, or LBHP must be present and interacting, teaching, or supporting the defined learning objectives of the member for the entire claimed time.

(D) **Billing.** Residents of ICF/MR facilities and children receiving RBMS in a group home or therapeutic foster home are not eligible for this service, unless prior approved by OHCA or its designated agent.

(i) **Group.** The maximum is 24 units per day for adults and 16 units per day for children.

(ii) **Individual.** The maximum is six units per day. Children under an ODMHSAS Systems of Care program may be prior authorized additional units as part of an intensive transition period.

(b) **Medication training and support.**

(1) **Definition.** Medication Training and Support is a documented review and educational session by a registered nurse, or physician assistant focusing on a member's response to medication and compliance with the medication regimen. The review must include an assessment of medication compliance and medication side effects. Vital signs must be taken including pulse, blood pressure and respiration and documented within the progress notes.

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A physician is not required to be present, but must be available for consult. Medication Training and Support is designed to maintain the member on the appropriate level of the least intrusive medications, encourage normalization and prevent hospitalization.

(2) **Limitations.**

(A) Medication Training and Support may not be billed for SoonerCare members who reside in ICF/MR facilities.

(B) One unit is allowed per month per patient without prior authorization.

(3) **Qualified professionals.** Must be provided by a licensed registered nurse, or a physician assistant as a direct service under the supervision of a physician.

[OAR Docket #09-1369; filed 11-13-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #09-1367]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 4. Long Term Care Hospitals

317:30-5-65. [AMENDED]

Part 17. Medical Suppliers

317:30-5-211.10. [AMENDED]

317:30-5-211.17. [NEW]

(Reference APA WF # 09-32)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

DATES:

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October 8, 2009

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November 3, 2009

Effective:

January 1, 2010

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Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 5. Individual Providers and Specialties

Part 17. Medical Suppliers

317:30-5-211.17. [NEW]

Gubernatorial approval:

March 9, 2009

Register Publication:

26 Ok Reg 733

Docket number:

09-379

(Reference APA WF # 09-03)

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to the agency's durable medical equipment (DME) guidelines. Rules are revised to clarify the intent of wheelchair coverage for members residing in a long term care facility or intermediate care facility

for the mentally retarded (ICF/MR) and provide consistency throughout policy. These emergency rule revisions will make rules consistent with reimbursement practices and clarify coverage and access to healthcare for Oklahomans, thereby reducing confusion among SoonerCare providers regarding wheelchair coverage and requirements and ultimately reducing the amount of uncompensated care provided by healthcare providers.

ANALYSIS:

Agency rules are revised to make DME rules consistent with reimbursement practices and provide consistency throughout policy. Revisions include clarifying the intent of wheelchair coverage for members residing in a long term care facility or ICF/MR and the elimination of the OHCA Certificate of Medical Necessity (CMN) as a document requirement for requesting prior authorization or determining medical necessity for wheelchairs.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF JANUARY 1, 2010:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 4. LONG TERM CARE HOSPITALS

317:30-5-65. Ancillary services

Ancillary services are those items which are not considered routine services. Ancillary services may be billed separately to the SoonerCare program, unless reimbursement is available from Medicare or other insurance or benefit programs. Coverage criteria, utilization controls and program limitations are specified in Part 17 of OAC 317:30-5. Ancillary services are limited to the following services:

(1) Services requiring prior authorization:

(A) Ventilators and supplies.

(B) Total Parenteral Nutrition (TPN), and supplies.

(C) ~~Custom wheelchairs~~ Custom seating for wheelchairs.

(D) Enteral feeding.

(2) Services not requiring prior authorization:

(A) Permanent indwelling or male external catheters and catheter accessories.

(B) Colostomy and urostomy supplies.

(C) Tracheostomy supplies.

(D) Prescription drugs, laboratory procedures, and x-rays.

PART 17. MEDICAL SUPPLIERS

317:30-5-211.10. Durable medical equipment (DME)

(a) **DME.** DME includes, but is not limited to: medical supplies, orthotics and prosthetics, custom braces, therapeutic lenses, respiratory equipment and other qualifying items when acquired from a contracted DME provider.

(b) **Certificate of medical necessity.** Certain items of DME require a CMN/OHCA CMN which should be submitted with the request for prior authorization. These items include but are not limited to:

- (1) hospital beds;
- (2) support surfaces;
- ~~(3) wheelchairs;~~
- ~~(4)~~ (3) continuous positive airway pressure devices (~~Bi-CAP~~ BiPAP and CPAP);
- ~~(5)~~ (4) patient lift devices;
- ~~(6)~~ (5) external infusions pumps;
- ~~(7)~~ (6) enteral and parenteral nutrition;
- ~~(8)~~ (7) osteogenesis stimulators; and
- ~~(9)~~ (8) pneumatic compression devices.

(c) **Prior authorization.**

(1) **Rental.** Rental of hospital beds, support surfaces, ~~wheelchairs~~, continuous positive airway pressure devices (CPAP and BiPAP), pneumatic compression devices, and lifts require prior authorization and a completed CMN/OHCA CMN; medical necessity must be documented in the member's medical record and be signed by the physician.

(2) **Purchase.** Equipment will be purchased when a member requires the equipment for an extended period of time. During the prior authorization review the PA consultant may change the authorization from a rental to a purchase or a purchase to a rental based on the documentation submitted. The provider must indicate whether the DME item provided is new or used.

(d) **Backup equipment.** Backup equipment is considered part of the rental cost and not a covered service without prior authorization.

(e) **Home modification.** Equipment used for home modification is not a covered service.

317:30-5-211.17. Wheelchairs

(a) **Definitions.** The following words and terms, when used in this Section, have the following meaning, unless the context clearly indicates otherwise.

(1) **"Assistive technology professional" or "ATP"** means a for-service provider who is involved in analysis of the needs and training of a consumer in the use of a particular assistive technology device or is involved in the sale and service of rehabilitation equipment or commercially available assistive technology products and devices.

(2) **"Custom seating system"** means a wheelchair seating system which is individually made for a member using a plaster model of the member, a computer generated model of the member (e.g., CAD-CAM technology), or the detailed measurements of the member to create either:

(A) a molded, contoured, or carved (foam or other suitable material) custom-fabricated seating system that is incorporated into the wheelchair base; or

(B) a custom seating system made from multiple pre-fabricated components or a combination of custom fabricated materials and pre-fabricated components which have been configured and attached to the wheelchair base or incorporated into a wheelchair seat and/or back in a manner that the wheelchair could not be easily re-adapted for use by another individual.

(3) **"RESNA"** means the Rehabilitation Engineering and Assistive Technology Society of North America.

(4) **"Specialty evaluation"** means the determination and documentation of the consumer's pathology, history and prognosis, and the physiological, functional, and environmental factors that impact the selection of an appropriate wheeled mobility system.

(b) **Medical Necessity.** Medical necessity pursuant to OAC 317:30-5-211.2 is required for a wheelchair to be covered and reimbursed by SoonerCare.

(c) **Prior authorization.** Prior authorization pursuant to OAC 317:30-5-211.3 is required for a wheelchair to be covered and reimbursed by SoonerCare. All prior authorization requests for the purchase of a wheelchair must indicate the length of the warranty period and what is covered under the warranty.

(1) Wheelchairs, wheelchair parts and accessories, and wheelchair modifications that are beneficial primarily in allowing the member to perform leisure or recreational activities are not considered medically necessary and will not be authorized.

(2) Certain wheelchair parts, accessories, and/or modifications that are distinctly and separately requested and priced from the original wheelchair request require prior authorization.

(3) OHCA will deny prior authorization requests when the required forms have not been fully completed or the member's medical record does not provide sufficient information to establish medical necessity or to determine that the criteria for coverage has been met.

(d) **Coverage and limitations.**

(1) For a member who resides in a personal residence, assisted living facility, Intermediate Care Facility for the Mentally Retarded (ICF/MR) or long term care facility, the following criteria must be met for the authorization to purchase a wheelchair.

(A) The member must have a prescription signed by a physician, a physician assistant, or an advanced registered nurse practitioner.

(B) The member must meet the requirements for medical necessity as determined and approved by the Oklahoma Health Care Authority.

(C) The member must either have:

(i) a specialty evaluation that was performed by a licensed or certified medical professional, such as a physical therapist, occupational therapist, or a physician who has specific training and experience in rehabilitation wheelchair evaluations, and that documents the medical necessity for the wheelchair and its special features; or

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(ii) a wheelchair provided by a supplier that employs a RESNA certified assistive technology professional who specializes in wheelchairs and who has direct, in-person involvement in the wheelchair selection for the member.

(2) For members who reside in a long term care facility or ICF/MR, only custom seating systems for wheelchairs are eligible for direct reimbursement to providers of DME services. All standard manual and power wheelchairs are the responsibility of the facility and are considered part of the facility's per diem rate.

(e) **Rental, repairs, maintenance and delivery.** Refer to OAC 317:30-5-211.4 through 317:30-5-211.5.

(f) **Documentation.**

(1) The specialty evaluation or wheelchair selection documentation must be submitted with the prior authorization request.

(2) The specialty evaluation or wheelchair selection must be performed no longer than 90 days prior to the submission of the prior authorization request.

(3) The results of the specialty evaluation or wheelchair selection documentation must be supported by the information submitted on the member's medical record.

(4) A copy of the dated and signed written specialty evaluation or wheelchair selection document must be maintained by the wheelchair provider. The results of the specialty evaluation or wheelchair selection must be written, signed and dated by the medical professional who evaluated the member or the ATP who was involved in the wheelchair selection for the member.

[OAR Docket #09-1367; filed 11-13-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #09-1363]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 5. Pharmacies

317:30-5-72.1. [AMENDED]

(Reference APA WF # 09-10)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

DATES:

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to amend policy to reflect that coverage for certain nutritional formulas and bars for children are approved with a certain diagnosis and prior authorization. The revision is needed to reflect accurate agency practices and to ensure that children are not restricted to certain nutritional formulas and bars for persons diagnosed with Phenylketonuria (PKU) only.

ANALYSIS:

Rules are revised to provide clarification and consistency with practices for coverage for certain nutritional formulas and bars for children diagnosed with certain metabolic disorders. Currently rules only indicate nutritional formula and bars are covered for persons diagnosed with PKU. OHCA practice is that certain nutritional formulas and bars are covered with the diagnosis of certain metabolic disorders and prior authorization.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D):

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 5. PHARMACIES

317:30-5-72.1. Drug benefit

OHCA administers and maintains an Open Formulary subject to the provisions of Title 42, United States Code (U.S.C.), Section 1396r-8. The OHCA covers a drug that has been approved by the Food and Drug Administration (FDA) and whose manufacturers have entered into a drug rebate agreement with the Centers for Medicare and Medicaid Services (CMS), subject to the following exclusions and limitations.

(1) The following drugs, classes of drugs, or their medical uses are excluded from coverage:

(A) Agents used to promote fertility.

(B) Agents primarily used to promote hair growth.

(C) Agents used for cosmetic purposes.

(D) Agents used primarily for the treatment of anorexia or weight gain. Drugs used primarily for the treatment of obesity, such as appetite suppressants are not covered. Drugs used primarily to increase weight are not covered unless otherwise specified.

(E) Agents that are experimental or whose side effects make usage controversial.

(F) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or designee.

(2) The drug categories listed in (A) through (E) of this paragraph are covered at the option of the state and are subject to restrictions and limitations. An updated list of products in each of these drug categories is included on the OHCA's public website.

(A) Agents used for the systematic relief of cough and colds. Antihistamines for allergies or antihistamine use associated with asthmatic conditions may be covered when medically necessary and prior authorized.

(B) Vitamins and Minerals. Vitamins and minerals are not covered except under the following conditions:

- (i) prenatal vitamins are covered for pregnant women up to age 50;
- (ii) fluoride preparations are covered for persons under 16 years of age or pregnant; and
- (iii) vitamin D, metabolites, and analogs when used to treat end stage renal disease are covered.

(C) Agents used for smoking cessation. A limited smoking cessation benefit is available.

(D) Coverage of non-prescription or over the counter drugs is limited to:

- (i) Insulin, PKU formula and amino acid bars, other certain nutritional formulas and bars for children diagnosed with certain rare metabolic conditions,
- (ii) certain smoking cessation products,
- (iii) family planning products, and
- (iv) OTC products may be covered if the particular product is both cost-effective and clinically appropriate.

(E) Coverage of food supplements is limited to ~~Phenylketonuria (PKU)~~ PKU formula and amino acid bars for members diagnosed with PKU, other certain nutritional formulas and bars for children diagnosed with certain rare metabolic conditions when medically necessary and prior authorized.

(3) All covered outpatient drugs are subject to prior authorization as provided in OAC 317-30-5-77.2 and 317:30-5-77.3.

(4) All covered drugs may be excluded or coverage limited if:

(A) the prescribed use is not for a medically accepted indication as provided under 42 U.S.C. § 1396r-8; or

(B) the drug is subject to such restriction pursuant to the rebate agreement between the manufacturer and CMS.

[OAR Docket #09-1363; filed 11-13-09]

**TITLE 317. OKLAHOMA HEALTH CARE
AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR
ADULTS AND CHILDREN-ELIGIBILITY**

[OAR Docket #09-1365]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:

Subchapter 13. ~~Client~~ Member Rights and Responsibilities
317:35-13-4. [AMENDED]

(Reference APA WF # 09-19B)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

DATES:

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October 8, 2009

Approved by Governor:

November 3, 2009

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Immediately upon Governor's approval

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules to clarify that by applying for services, SoonerCare members agree to allow sharing of medical information to applicable state and federal agencies, medical providers and OHCA personnel. Implementation of this rule will result in improved collaboration with other health related agencies and health providers, resulting in more cost shared with third party payers, therefore reducing the burden of costly healthcare from already strained State Agency budgets.

ANALYSIS:

This rule revises policy to include language ensuring SoonerCare members agree to allow sharing of medical information, if needed, to state and federal agencies, medical providers and OHCA designees, upon their acceptance of SoonerCare services. Prior to this rule change medical information could only be released to other agencies to whom the member had applied for services. The current scope of information sharing creates limitations on the ability of the OHCA to properly review, monitor or obtain payment for services rendered. The revised rule will allow for a more comprehensive and efficient provision of services, as well as an increase in the ability of the OHCA to determine proper liability for payment of those services.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING EMERGENCY RULES ARE
CONSIDERED PROMULGATED AND EFFECTIVE
UPON APPROVAL BY THE GOVERNOR AS SET
FORTH IN 75 O.S., SECTION 253(D):**

**SUBCHAPTER 13. ~~CLIENT~~ MEMBER RIGHTS
AND RESPONSIBILITIES**

317:35-13-4. Release of medical information

Medical information paid for by the Agency is not to be released, even at the request of the individual to whom it pertains, except to another agency to which the individual has applied for services having the objective of protecting or advancing his/her welfare. However, there is nothing in Oklahoma law or federal law to prevent a physician from releasing medical information to the patient or an authorized representative of the patient. When a SoonerCare member or an authorized representative of a member, applies for services, explicit consent is given for the OHCA to release information to applicable state or federal agencies, medical providers, or an OHCA designee when the information is needed to provide, monitor or approve medical services or obtain payment of those services. Additionally, a physician may release medical information to the

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member or an authorized representative of the member upon written request. The physician, in such instance, would be governed by the physician-patient relationship.

~~(1) Medical information that a local office has obtained from Veterans Administration or from the Bureau of Disability Insurance (Social Security Administration) cannot be released to anyone outside the Agency.~~

~~(2) When a request is received in a local office for medical information not covered in the two preceding paragraphs, the local office refers the request immediately to the State Office, attention administrator of the division to which the request was made, where a decision will be made as to the appropriate action to be taken. The division administrator requests consultation from the Legal Division, if needed, in making this decision. The division supervisor notifies the local office of the decision.~~

~~(3) The only exception to referral to the DHS State Office is that the Physician's Report form may be released to another physician, medical facility or other medical provider when the medical information in the report is needed for the continuity of medical care of a client. The Form contains a statement giving the physician's consent and authorizing the Agency to furnish the report to other medical providers under this situation.~~

[OAR Docket #09-1365; filed 11-13-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY

[OAR Docket #09-1371]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 15. Personal Care Services

317:35-15-8.1. [AMENDED]

317:35-15-13.2. [AMENDED]

(Reference APA WF # 09-50)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.167

DATES:

Adoption:

October 8, 2009

Approved by Governor:

November 3, 2009

Effective:

December 1, 2009

Expiration:

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 15. Personal Care Services

317:35-15-8.1. [AMENDED]

(Reference APA WF # 09-02B)

Gubernatorial approval:

March 9, 2009

Register publication:

26 Ok Reg 758

Docket number:

09-382

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to discontinue an exception to Personal Care rules that allows a legally responsible family member to act as a Personal Care Assistant for a SoonerCare member with the approval of the Director of the Oklahoma Department of Human Services. Due to a serious shortfall in state funding, the Oklahoma Department of Human Services who is paying the entire cost of these services in these situations, has requested the discontinuance of this exception as a cost saving measure.

ANALYSIS:

The Oklahoma Department of Human Services/Aging Services Division has requested an amendment to rules that would revise who could be paid to serve as a Personal Care Assistant (PCA) to SoonerCare members approved for State Plan Personal Care services. Current policy allows the OKDHS Director under certain circumstances to approve payment from OKDHS state funds for Personal Care to a legally responsible family member. Those situations include instances when no other PCA is available, available PCAs are unable to provide care to the member, or the needs of the member are so extensive that the legally responsible family member who provides the care is prohibited from working outside the home due to the member's need for care. OKDHS has requested the discontinuance of this exception as a cost saving measure since OKDHS is responsible for paying the entire cost of the PCAs' services for these individuals. Currently, there are ten individuals who will be affected by this revision to policy; these individuals will remain eligible for Personal Care services and efforts are being made to find other non-related PCAs for these individuals.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF DECEMBER 1, 2009:

SUBCHAPTER 15. PERSONAL CARE SERVICES

317:35-15-8.1. Agency Personal Care services; billing, and problem resolution

The ADvantage Administration (AA) certifies qualified Personal Care service agencies and facilitates the execution of the agencies' SoonerCare contracts on behalf of OHCA. OHCA will check the list of providers that have been barred from Medicare/SoonerCare participation to ensure that the Personal Care services agency is not listed.

(1) **Payment for Personal Care.** Payment for Personal Care services is generally made for care in the member's "own home". In addition to an owned or rented home, a rented apartment, room or shelter shared with others is considered to be the member's "own home". A facility that meets the definition of a nursing facility, room and board, licensed residential care facility, licensed assisted living facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-890.1 et seq., and Section 1-1902 et seq., and/or in any other type of settings prohibited under applicable federal or state statutes, rules, regulations, or

other written instruments that have the effect of law is not a setting that qualifies as the member's "own home" for delivery of Personal Care services through SoonerCare. With prior approval of the OKDHS area nurse, Personal Care services may be provided in an educational or employment setting to assist the member in achieving vocational goals identified on the care plan.

(A) **Use of Personal Care service agency.** To provide Personal Care services, an agency must be licensed by the Oklahoma State Department of Health, meet certification standards identified by OKDHS and possess a current SoonerCare contract.

(B) **Reimbursement.** Personal Care services payment on behalf of a member is made according to the type of service and number of units of Personal Care services authorized in the Service Authorization Model (SAM) packet.

(i) The amount paid to Personal Care services providers for each unit of service is according to the established SoonerCare rates for the Personal Care services. Only authorized units contained in each eligible member's individual Service Authorization Model (SAM) packet are eligible for reimbursement. Providers serving more than one Personal Care service member residing in the same residence will assure that the members' Service Authorization Model (SAM) packets combine units in the most efficient manner possible to meet the needs of all eligible persons in the residence.

(ii) Payment for Personal Care services is for tasks performed in accordance with OAC 317:30-5-951 only when listed on an authorized plan of care. Payment for Personal Care skilled nursing service is made on behalf of the member for assessment/evaluation and associated service planning per assessment/service planning visit by the Personal Care Assessment/Service Planning Nurse.

(2) **Issue resolution.**

(A) If the member is dissatisfied with the Personal Care services provider agency or the assigned PCA, and has exhausted attempts to work with the Personal Care services agency's grievance process without resolution, the member may contact the OKDHS nurse to attempt to resolve the issues. The member has the right to appeal to the OHCA in accordance with OAC 317:2-1-2. For members receiving ADvantage services, the member or family should contact their case manager for the problem resolution. If the problem remains unresolved, the member or family should contact the Consumer Inquiry System (CIS). Providers are required to provide the CIS contact number to every member. The ADvantage Program member also has the right to appeal to the OHCA in accordance with OAC 317:2.

(B) When a problem with performance of the Personal Care attendant is identified, agency staff will conduct a counseling conference with the member

and/or the attendant as appropriate. Agency staff will counsel the attendant regarding problems with his/her performance.

(3) **Persons ineligible to serve as Personal Care Assistants.** Payment from SoonerCare funds for Personal Care services may not be made to an individual who is a legally responsible family member (spouse, legal guardian or parent of a minor child) of the member to whom he/she is providing personal care services.

317:35-15-13.2. Individual Personal Care contractor; billing, training, and problem resolution

While OHCA is the contractor authorized under federal law, the Oklahoma Department of Human Services (OKDHS) initiates initial contracts with qualified individuals for provision of Personal Care services as defined in OAC 317:35-15-2. The contract renewal for the PCA is the responsibility of the Oklahoma Health Care Authority (OHCA).

(1) **Payment for Personal Care.** Payment for Personal Care is generally made for care in the client's member's own home. A rented apartment, room or shelter shared with others is considered "own home". A facility that meets the definition of a nursing facility, room and board, licensed residential care facility, licensed assisted living facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-890.1 et seq., and Section 1-1902 et seq., does not constitute a suitable substitute home. Personal Care may not be approved if the client member lives in the PCA's home except with the interdisciplinary team's written approval. The potential individual PCA must meet the minimum requirements under (2) of this subsection. With ~~DHS~~ OKDHS area nurse approval, or for ADvantage waiver clients members, with service plan authorization and ADvantage Program Manager approval, Personal Care services may be provided in an educational or employment setting to assist the client-member in achieving vocational goals identified on the service plan.

(A) **Reimbursement.** Personal Care payment for a client member is made according to the number of units of service identified in the service plan.

(i) The unit amounts paid to individual contractors is according to the established rates. A service plan will be developed for each eligible individual in the home and units of service assigned to meet the needs of each client member. The service plans will combine units in the most efficient manner to meet the needs of all eligible persons in the household.

(ii) From the total amounts billed by the individual PCA in (i) of this subparagraph, the OHCA (acting as agent for the client-employer member-employer) withholds the appropriate percentage of FICA tax and sends it to the Internal Revenue Service as the individual contractor's contribution toward Social Security coverage. To assure that the individual contractor's social security account may be properly credited, it is

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vital that the individual contractor's social security number be entered correctly on each claim. In order for the OHCA to withhold FICA tax, the LTC nurse must obtain a signed OHCA Form HCA-66, Authorization for Withholding of FICA Tax in Personal Care, from the client member as soon as the area nurse, or designee, has approved Personal Care. A copy of the signed HCA-66 must be in the case record. A signed OHCA-0026, Personal Care Program Individual Contract, must be on file with the OHCA before the individual contractor's first claim can be submitted.

(iii) The contractor payment fee covers all Personal Care services included on the service and care plans developed by the LTC nurse or ADvantage case manager. Payment is made for direct services and care of the eligible client(s) member(s) only. The area nurse, or designee, authorizes the number of units of service the client member receives each month.

(iv) A client member may select more than one individual contractor. This may be necessary as indicated by the service and care plans.

(v) The individual contractor may provide Medicaid SoonerCare Personal Care services for several households during one week, as long as the daily number of paid service units do not exceed eight per day. The total number of hours per week cannot exceed 40.

(B) **Release of wage and/or employment information for individual contractors.** Any inquiry received by the local office requesting wage and/or employment information for an individual Personal Care contractor will be forwarded to the OHCA, Claims Resolution.

(2) **Client Member selection of individual PCA.** Clients Members and/or family members recruit, interview, conduct reference checks, and select the individual to be considered as an individual contractor. An individual contractor applicant must have a background check performed by the Oklahoma State Bureau of Investigation (OSBI). The results of the background check determine whether a person will be permitted to work as an individual Personal Care contractor. According to Section 1025.2 of Title 56 of the Oklahoma Statutes, before the client member employer makes an offer to employ or contract with a Medicaid SoonerCare Personal Care Assistant applicant to provide Personal Care Services to a person who receives state Medicaid SoonerCare Personal Care Services, the DHS OKDHS LTC nurse, acting for the client member, must check the DHS OKDHS Community Services Worker Registry to determine if the name of the applicant seeking employment or contract has been entered. The DHS OKDHS LTC nurse must also check the Certified Nurse Aid Registry. The DHS OKDHS LTC nurse must affirm that the applicant's name is not contained on either registry. The LTC nurse will notify the OHCA if the applicant is on the registry.

(A) **Persons eligible to serve as individual Personal Care Assistants.** Payment is made for Personal Care Services to an individual who:

- (i) is at least 18 years of age,
- (ii) has no pending notation related to abuse, neglect or exploitation as reported by the Oklahoma State Department of Health Nurse Aide Registry,
- (iii) is not included on the DHS OKDHS Community Services Worker Registry in accordance with Section 1025.2 of Title 56, of Oklahoma Statutes,
- (iv) has not been convicted of a crime as outlined in Title 63 of Oklahoma Statutes, Sections 1-1950 as determined by an OSBI background check,
- (v) demonstrates the ability to understand and carry out assigned tasks,
- (vi) is not a legally responsible family member (spouse, legal guardian, or parent of a minor child) of the client member being served,
- (vii) has a verifiable work history and/or personal references, verifiable identification, and
- (viii) meets any additional requirements as outlined in the contract and certification requirements with the Oklahoma Health Care Authority.

(B) **Persons ineligible to serve as Personal Care Assistants.** Payment from Medicaid SoonerCare funds for Personal Care services may not be made to an individual who is a legally responsible family member (spouse, legal guardian, or parent of a minor child) of the client member to whom he/she is providing personal care services.

~~(i) The DHS Director may give approval for payment from DHS state funds for Personal Care to a legally responsible family member of the client being served when no other PCA is available, available PCAs are unable to provide care to the client, or the needs of the client are so extensive that the legally responsible family member who provides the care is prohibited from working outside the home due to the client's need for care.~~

~~(ii) Payment cannot be made to a DHS OKDHS or OHCA employee. Payment cannot be made to an immediate family member of a DHS an OKDHS employee who works in the same county without OKDHS/Aging Services Division approval. When a family member relationship exists between a DHS an OKDHS LTC nurse and a PCA in the same county, the LTC nurse cannot manage services for a client member whose individual provider is a family member of the LTC nurse.~~

~~(iii) If it is determined that an employee is interfering in the process of providing Personal Care Services for personal or family benefit, he/she will be subject to disciplinary action.~~

(3) **Orientation of the Personal Care Assistant.** When a client member selects an individual PCA, the LTC nurse contacts the individual to report to the county office to complete the ODH form 805, Uniform Employment Application for Nurse Aide Staff, and the ~~DHS OKDHS form DDS-39 06PE039E~~, Employment Application Supplement, and for a determination of qualifications and orientation. This process is the responsibility of the LTC nurse. The PCA can begin work when:

- (A) he/she has been interviewed by the client member,
- (B) he/she has been oriented by the LTC nurse,
- (C) he/she has executed a contract (OHCA-0026) with the OHCA,
- (D) the effective service date has been established,
- (E) the Community Service Worker Registry has been checked and the PCA's name is not on the Registry,
- (F) the Oklahoma State Department of Health Nurse Aide Registry has been checked and no notations found, and
- (G) the OSBI background check has been completed.

(4) **Training of Personal Care Assistants.** It is the responsibility of the LTC nurse to make sure for each client, that the PCA has the training needed to carry out the plan of care prior to service initiation.

(5) **Problem resolution related to the performance of the Personal Care Assistant.** When it comes to the attention of the LTC nurse or ~~social~~ worker that there is a problem related to the performance of the PCA, a counseling conference is held between the ~~client—member~~, LTC nurse and ~~social~~ worker. The LTC nurse will counsel the PCA regarding problems with his/her performance. Counseling is considered when the staff believe that counseling will result in improved performance.

(6) **Termination of the PCA Provider Agreement.**

(A) A recommendation for the termination of a PCA's contract is submitted to the OHCA and the services of the PCA are suspended immediately when:

- (i) a PCA's performance is such that his/her continued participation in the program could pose a threat to the health and safety of the client member or others; or
- (ii) the PCA failed to comply with the expectations outlined in the PCA Provider Agreement and counseling is not appropriate or has not been effective; or
- (iii) a PCA's name appears on the ~~DHS OKDHS~~ Community Services Worker Registry, even though his/her name may not have appeared on the Registry at the time of application or hiring.

(B) The LTC nurse makes the recommendation for the termination of the PCA to the OHCA Legal Division with a copy to the ~~DHS OKDHS~~ State Office Aging Services Division. When the problem is related to allegations of abuse, neglect, or exploitation,

~~DHS OKDHS~~ Adult Protective Services, State Attorney General's Medicaid Unit, the OHCA, and the Oklahoma State Department of Health are notified by the LTC nurse.

[OAR Docket #09-1371; filed 11-13-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY**

[OAR Docket #09-1370]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 17. ADvantage Waiver Services
317:35-17-14. [AMENDED]
(Reference APA WF # 09-45)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.180; 42 CFR 440.181

DATES:
Adoption:
October 8, 2009

Approved by Governor:
November 3, 2009

Effective:
December 1, 2009

Expiration:
Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:

Subchapter 17. ADvantage Waiver Services
317:35-17-14. [AMENDED]

Register publication:
26 Reg 758

Docket number:
09-382

Gubernatorial approval:
March 9, 2009
(Reference APA WF # 09-02B)

INCORPORATIONS BY REFERENCE:
N/A

FINDING OF EMERGENCY:
The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to increase the period of time allotted for the review and approval of the ADvantage waiver service plan authorization by the Oklahoma Department of Human Services Aging Services Division. Current limits do not allow for adequate time for the medical eligibility determination which could jeopardize federal funding thereby putting members at a greater risk for nursing facility placement.

ANALYSIS:
ADvantage Case Management service rules are revised to allow two extra working days for the ADvantage Administration (the Oklahoma Department of Human Services Aging Services Division) to review and either authorize or deny the service plan or amendment. Currently, rules specify that OKDHS staff has three working days to act on the service plan or amendment submitted by the Case Manager. The OKDHS Aging Services Division has requested the revision to allow two additional days as current policy does not allow sufficient time for a thorough review of the material. Additional revisions add current case management practices and procedures to rules.

CONTACT PERSON:
Tywanda Cox at (405)522-7153

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF DECEMBER 1, 2009:

SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

317:35-17-14. Case Management management services

(a) Case management services involve ongoing assessment, service planning and implementation, service monitoring and evaluation, client member advocacy, and discharge planning.

(1) Within one working day of receipt of an ADvantage referral from the ADvantage Administration (AA), the case management supervisor assigns a case manager to the client member. Within three working days of being assigned an ADvantage client member, the case manager makes a home visit to review the ADvantage program (its purpose, philosophy, and the roles and responsibilities of the client member, service provider, case manager, ~~Administrative Agent~~ AA and OKDHS in the program), and review, update and complete the UCAT assessment, and to discuss service needs and ADvantage service providers. The Case Manager notifies in writing the client's member's UCAT identified primary physician that the client member has been determined eligible to receive ADvantage services. The notification is via a preprint form that contains the client's member's signed permission to release this health information and requests physician's office verification of primary and secondary diagnoses and diagnoses code obtained from the UCAT.

(2) Within ~~10 working~~ 14 calendar days of the receipt of an ADvantage referral, or the annual re-assessment visit, the case manager completes and submits to the ~~case management supervisor~~ AA an individualized care plan and service plan for the client member, signed by the member and the case management supervisor. The case manager completes and submits to the AA the annual reassessment service plan documents no sooner than 60 days before the existing service plan end date but sufficiently in advance of the end date to be received by the AA at least 30 calendar days before the end date of the existing service plan. Within 14 calendar days of receipt of a Service Plan Review Request (SPR) from the AA, the Case Manager provides corrected care plan and service plan documentation. Within five calendar days of assessed need, the case manager completes and submits a service plan addendum to the AA to amend current services on the care plan and service plan. The care plan and service plan are based on the client's member's service needs identified by the UCAT, Part III, and includes only those ADvantage services required to sustain and/or promote the health and safety of the client member. The case manager uses an interdisciplinary team (IDT) planning

approach for care plan and service plan development. If in-home care is the primary service, the IDT includes, at a minimum, the client member, a nurse from the ADvantage in-home care provider chosen by the client member, and the case manager. Otherwise, the client member and case manager constitute a minimum IDT.

(3) The case manager identifies long-term goals, challenges to meeting goals, and service goals including plan objectives, actions steps and expected outcomes. The case manager identifies services, service provider, funding source, units and frequency of service and service cost, cost by funding source and total cost for ADvantage services. The client member signs and indicates review/agreement with the care plan and service plan by indicating acceptance or non-acceptance of the plans. The client member, the client's member's legal guardian or legally authorized representative shall sign the service plan in the presence of the case manager. The signatures of two witnesses are required when the client member signs with a mark. If the client member refuses to cooperate in development of the service plan, or, if the client member refuses to sign the service plan, the case management agency refers the case to the AA for resolution. In addition, based on the UCAT and/or case progress notes that document chronic uncooperative or disruptive behaviors, the LTC nurse or AA may identify clients members that require AA intervention.

(A) For clients members that are uncooperative or disruptive, the AA develops an individualized Addendum to the Rights and Responsibilities Agreement to try to modify the client's member's uncooperative/disruptive behavior. The ~~rights~~ Rights and ~~responsibilities~~ Responsibilities addendum focuses on behaviors, both favorable and those that jeopardize the consumer's member's well-being and includes a design approach of incremental plans and addenda that allow the client member to achieve stepwise successes in the modification of their behavior.

(B) The AA may implement a service plan without the client's member's signature if the AA has developed an Addendum to the Rights and Responsibilities Agreement for the client member. For these clients members the presence of a document that "requires" their signature may itself trigger a "conflict". In these circumstances, mental health/behavioral issues may prevent the client member from controlling their behavior to act in their own interest. Since the person by virtue of level of care and the IDT assessment, needs ADvantage services to assure their health and safety, the AA may implement the service plan if the AA demonstrates effort to work with and obtain the client's member's agreement through an individualized Addendum to the Rights and Responsibilities Agreement. Should negotiations not result in agreement with the care plan and service plan, the client member may withdraw their request for services or request a fair hearing.

(4) CD-PASS Planning and Supports Coordination.

(A) The ADvantage Case Management provider assigns to the CD-PASS ~~client member~~ a Case Manager that has successfully completed training on CD-PASS, Independent Living Philosophy and ~~Person-centered planning~~ Person-Centered Planning. Case Managers that have completed this specialized CD-PASS training are referred to as Consumer-Directed Agent/Case Managers (CDA/CM) with respect to their CD-PASS service planning and support role in working with CD-PASS ~~clients members~~. The CDA/CM educates the ~~client member~~ about their rights and responsibilities as well as about community resources, service choices and options available to the ~~client member~~ to meet CD-PASS service goals and objectives.

(B) The ~~client member~~ may designate a family member or friend as an "authorized representative" to assist in the service planning process and in executing ~~client member~~ employer responsibilities. If the ~~client member~~ chooses to designate an "authorized representative", the designation and agreement identifying the "willing adult" to assume this role and responsibility is documented with dated signatures of the ~~client member~~, the designee and the ~~client's member's~~ Case Manager or the AA staff.

(i) A person having guardianship or power of attorney or other court sanctioned authorization to make decisions on behalf of the ~~client member~~ has legal standing to be the ~~client's member's~~ designated "authorized representative".

(ii) An individual hired to provide Personal Services Assistance to a ~~client member~~ may not be designated the "authorized representative" for the ~~client member~~.

(C) The CDA/CM provides support to the ~~client member~~ in the ~~Person-centered~~ Person-Centered CD-PASS ~~planning~~ Planning process. ~~Person-centered planning~~ Person-Centered Planning is a process directed by the participant, with assistance as needed from an "authorized representative" or support team. The process supports the ~~client member~~ to exercise choice and control and to assume a responsible role in developing, implementing and managing their services and supports. The process is intended to identify the strengths, capacities, preferences, needs and desired outcomes of the participant and it may enlist assistance from individuals freely chosen by the participant to serve as important contributors. The ~~person-centered planning~~ Person-Centered Planning process enables the participant to identify and access a personalized mix of paid and non-paid services and supports to help him/her achieve personally-defined outcomes in the most inclusive community setting. The focus of ~~person-center~~ planning Person-Centered Planning is on the individual's development of personal relationships, positive roles in community activities, and self-empowerment skills. Decisions are made and outcomes controlled by the participant.

Strengths, preferences and an individualized system of support are identified to assist the individual to achieve functional and meaningful goals and objectives. Principles of Person-Centered Planning are as follows:

(i) The person is the center of all planning activities.

(ii) The ~~client member~~ and their representative, or support team, are given the requisite information to assume a controlling role in the development, implementation and management of the ~~client's member's~~ services.

(iii) The individual and those who know and care about him or her are the fundamental sources of information and decision-making.

(iv) The individual directs and manages a planning process that identifies his or her strengths, capacities, preferences, desires, goals and support needs.

(v) ~~Person-centered planning~~ Person-Centered Planning results in personally-defined outcomes.

(D) The CDA/CM encourages and supports the ~~client member~~, or as applicable their designated "authorized representative", to lead, to the extent feasible, the CD-PASS service planning process for Personal Services Assistance. The CDA/CM helps the ~~client member~~ define support needs, service goals and service preferences including access to and use of generic community resources. Consistent with ~~client-direction~~ member-direction and preferences, the CDA/CM provides information and helps the ~~client member~~ locate and access community resources. Operating within the constraints of the Individual Budget Allocation (IBA) units, the CDA/CM assists the ~~client member~~ in translating the assessment of ~~client member~~ needs and preferences into an individually tailored, personalized service plan.

(E) To the extent the ~~client member~~ prefers, the CDA/CM develops assistance to meet ~~client member~~ needs using a combination of traditional Personal Care and CD-PASS PSA services. However, the CD-PASS IBA and the PSA unit authorization will be reduced proportional to agency Personal Care service utilization.

(F) The ~~client member~~ determines with the PSA to be hired, a start date for PSA services. The ~~client member~~ coordinates with the CDA/CM to finalize the service plan.

(G) Based on outcomes of the planning process, the CDA/CM prepares an ADvantage service plan or plan amendment to authorize CD-PASS Personal Service Assistance units consistent with this individual plan and notifies existing duplicative Personal Care service providers of the end date for those services.

(H) If the plan requires an APSA to provide assistance with Health Maintenance activities, the CDA/CM works with the ~~client member~~ and, as appropriate, arranges for training by a skilled nurse for

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the ~~client member~~ or ~~client's member's~~ family and the APSA to ensure that the APSA performs the specific Health Maintenance tasks safely and competently;

(i) If the ~~client's member's~~ APSA has been providing Advanced Supportive Restorative Assistance to the ~~client member~~ for the same tasks in the period immediately prior to being hired as the PSA, additional documentation of competence is not required;

(ii) If the ~~client member~~ and APSA attest that the APSA has been performing the specific Health Maintenance tasks to the ~~client's member's~~ satisfaction on an informal basis as a friend or family member for a minimum of two months in the period immediately prior to being hired as the PSA, and no evidence contra-indicates the attestation of safe and competent performance by the APSA, additional documentation is not required.

(I) The CDA/CM monitors the ~~client's member's~~ well being and the quality of supports and services and assists the ~~client member~~ in revising the PSA services plan as needed. If the ~~client's member's~~ need for services changes due to a change in health/disability status and/or a change in the level of support available from other sources to meet needs, the CDA/CM, based upon an updated assessment, amends the service plan to increase CD-PASS service units appropriate to meet additional ~~client member's~~ need and forwards the plan amendment to the AA for authorization and update of the ~~client's member's~~ IBA.

(J) The CDA/CM uses the ADvantage Risk Management process the results of which are binding on all parties to resolve service planning or service delivery disagreements between ~~clients members~~ and ADvantage service providers under the following circumstances:

(i) A claim is formally registered with the CDA/CM by the ~~client member~~ (or the ~~client's member's~~ family or "authorized representative"), the AA, or a provider that the disagreement poses a significant risk to the ~~client's member's~~ health or safety; and

(ii) The disagreement is about a service, or about the appropriate ~~frequency~~ ~~frequency~~, duration or other aspect of the service; or

(iii) The disagreement is about a behavior/action of the ~~client member~~, or about a behavior/action of the provider.

(K) The CDA/CM and the ~~client member~~ prepare an emergency ~~back up/emergency backup/emergency~~ response capability for CD-PASS PSA services in the event a PSA provider of services essential to the individual's health and welfare fails to deliver services. As part of the planning process, the CDA/CM and ~~client member~~ define what failure of service or neglect of service tasks would constitute a risk to health and welfare to trigger implementation of the

emergency backup. Any of the following may be used in planning for the backup:

(i) Identification of a qualified substitute provider of PSA services and preparation for their quick response to provide backup services when called upon in emergency circumstances (including execution of all qualifying background checks, training and employment processes); and/or,

(ii) Identification of one or more qualified substitute ADvantage agency service providers (Adult Day Care, Personal Care or Nursing Facility Respite provider) and preparation for their quick response to provide backup services when called upon in emergency circumstances.

(L) If the emergency backup fails, the CDA/CM is to request the AA to authorize and facilitate ~~client member~~ access to Adult Day Care, Agency Personal Care or Nursing Facility Respite services.

(5) The case manager submits the care plan and service plan to the case management supervisor for review. The case management supervisor documents the review/approval of the plans within two working days of receipt from the case manager or returns the plans to the case manager with notations of errors, problems, and concerns to be addressed. The case manager re-submits the corrected care plan and service plan to the case management supervisor within two working days. The case management supervisor returns the approved care plan and service plan to the case manager. Within one working day of receiving supervisory approval, the case manager ~~makes a copy of the plans and other client forwards, via postal mail, a legible copy of the care plan and service plan to the AA. Case managers are responsible for retaining all original documents for the client member's file, faxes a copy of the plan to the AA and forwards the original care plan and service plan and required documents at the agency. Only priority service needs and supporting documentation may be faxed to the AA with the word, "PRIORITY" being clearly indicated and the justification attached. "Priority" service needs are defined as services needing immediate authorization to protect the health and welfare of the member and/or avoid premature admission to the nursing facility. Corrections to service conditions set by the AA are not considered to be a priority unless the health and welfare of the member would otherwise be immediately jeopardized and/or the member would otherwise require premature admission to a nursing facility.~~

(6) Within one working day of notification of care plan and service plan authorization, the case manager communicates with the service plan providers and with the ~~client member~~ to facilitate service plan implementation. Within one working day of receipt of a copy or the computer-generated authorized service plan from the AA, the case manager sends (by mail or fax) copies of the authorized service plan or computer-generated copies to providers. Within five working days of notification of an initial or new service plan authorization, the case manager visits the ~~client member~~, gives the ~~client member~~ a copy

of the service plan or computer-generated copy of the service plan and evaluates the progress of the service plan implementation. The case manager evaluates service plan implementation on the following minimum schedule:

- (A) within 30 calendar days of the authorized effective date of the service plan or service plan addendum amendment; and
- (B) monthly after the initial 30 day follow-up evaluation date.

(b) **Authorization of service plans and amendments to service plans.** The ~~Administrative Agent~~ ADvantage Administration (AA) certifies the individual service plan and all service plan amendments for each ADvantage ~~client member~~. When the AA verifies ~~client member~~ ADvantage eligibility, plan cost effectiveness, that service providers are ADvantage authorized and ~~Medicaid~~ SoonerCare contracted, and that the delivery of ADvantage services are consistent with the ~~client's member's~~ level of care need, the service plan is authorized. Except as provided by the process described in OAC 317:30-5-761(6), family members may not receive payment for providing ADvantage waiver services. A family member is defined as an individual who is legally responsible for the ~~client member~~ (spouse or parent of a minor child).

- (1) If the service plan authorization or amendment request packet received from case management is complete and the service plan is within cost effectiveness guidelines, the AA authorizes or denies authorization within ~~three~~ five working days of receipt of the request. If the service plan authorization or amendment request packet received from case management is complete and the service plan is not within cost-effectiveness guidelines, the plan is referred for administrative review to develop an alternative cost-effective plan or assist the ~~client member~~ to access services in an alternate setting or program. If the request packet is not complete, the AA notifies the case manager immediately and puts a "hold" on authorization until the required additional documents are received from case management.
- (2) The AA authorizes the service plan by entering the authorization date and signing the submitted service plan. Notice of authorization and a copy of the authorized plan or a computer-generated copy of the authorized plan are provided to case management. AA authorization determinations are provided to case management within one working day of the certification date. A service plan may be authorized and implemented with specific services temporarily denied. The AA communicates to case management the conditions for approval of temporarily denied services. The case manager submits revisions for denied services to AA for approval.
- (3) For audit purposes (including SURS reviews), the computer-generated copy of the authorized service plan is documentation of service authorization for ADvantage waiver and State Plan Personal Care services. State or Federal quality review and audit officials may obtain a copy of specific service plans with original signatures by submitting a request to the AA.

(c) **Change in service plan.** The process for initiating a change in the service plan is described in this subsection.

(1) The service provider initiates the process for an increase or decrease in service to the ~~client's member's~~ service plan. The requested changes and justification for them are documented by the service provider and, if initiated by a direct care provider, submitted to the ~~client's member's~~ case manager. If in agreement, the case manager requests the service changes on a care plan and service plan amendment submitted to the AA within five calendar days of assessed need. The AA approves or denies the care plan and service plan changes within ~~two~~ working five calendar days of receipt of the plan.

(2) The ~~client member~~ initiates the process for replacing Personal Care services with Consumer-Directed Personal Services and Supports (CD-PASS) in geographic areas in which CD-PASS services are available. The ~~client member~~ may contact the AA using a CD-PASS services request form provided by the Case Manager or by calling the toll-free number established to process requests for CD-PASS services.

(3) A significant change in the ~~client's member's~~ physical condition or caregiver support, one that requires additional goals, deletion of goals or goal changes, or requires a four-hour or more adjustment in services per week, requires a UCAT reassessment by the case manager. The case manager, in consultation with AA, makes the determination of need for reassessment. Based on the reassessment and consultation with the AA, the ~~client member~~ may, as appropriate, be authorized for a new service plan or be eligible for a different service program. If the ~~client member~~ is significantly improved from the previous assessment and does not require ADvantage services, the case manager obtains the ~~client's member's~~ dated signature indicating voluntary withdrawal for ADvantage program services. If unable to obtain the ~~client's member's~~ consent for voluntary closure, the case manager requests assistance from the AA. The AA requests that the OKDHS area nurse initiate a reconsideration of level of care. If the ~~client's member's~~ service needs are different or have significantly increased, the case manager develops an amended or new service plan and care plan, as appropriate, and submits the new/amended plans for authorization.

[OAR Docket #09-1370; filed 11-13-09]

**TITLE 365. INSURANCE DEPARTMENT
CHAPTER 10. LIFE, ACCIDENT AND
HEALTH**

[OAR Docket #09-1378]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 5. Minimum Standards; Contract Guidelines
Part 17. Actuarial Opinion and Memorandum Regulation
365:10-5-177. Description of actuarial memorandum including an asset adequacy analysis [AMENDED]
Subchapter 17. Valuation of Life Insurance Policies Regulation (Including the Introduction and Use of New Select Mortality Factors)

Emergency Adoptions

365:10-17-4. General calculation requirements for basic reserves and premium deficiency reserves [AMENDED]
Subchapter 25. Regulation Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities
365:10-25-4. 2001 CSO Preferred Class Structure Table [AMENDED]
365:10-25-5. Conditions [AMENDED]

AUTHORITY:

Insurance Commissioner; 36 O.S. §§307.1 and 311

DATES:

Adoption:

November 2, 2009

Approved by Governor:

November 10, 2009

Effective:

Immediately upon approval by the Governor

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY RULES:

n/a

INCORPORATION BY REFERENCE:

n/a

FINDING OF EMERGENCY:

A compelling public interest requires the emergency rule due to the necessity to implement regulations at the statewide level as adopted by the National Association of Insurance Commissioners. These regulations must be effective prior to the end of the year in order to be applicable for 2009 annual statements filed by domestic and foreign insurers with the Oklahoma Insurance Department pursuant to 36 O.S. § 311.

ANALYSIS:

The amendment to Section 365:10-5-177 clarifies a requirement of the regulatory asset adequacy issues summary.

The amendment to Section 365:10-17-4 deletes requirements for which certain select mortality factors are subject; specifically that the percentage not be less than twenty percent (20%) and that the percentage not decrease in any successive policy years. The amendment also adds the requirement of disclosure by the actuary if the percentage is less than one hundred percent (100%) at any duration for any policy. The actuary shall disclose the impact of the insufficiency of assets to support payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods.

The amendment to Section 365:10-25-4 allows for the substitution of the 2001 CSO Preferred Class Structure Mortality Table and 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies with the consent of the Commissioner subject to the conditions set forth in 365:10-25-5. Section 365:10-25-5 is amended to prohibit the use of the 2001 CSO Preferred Class Structure Table for the valuation of policies issued prior to January 1, 2007 if particular frequencies of modes of payment of the reinsurance premium exist.

CONTACT PERSON:

Kelley Callahan, Oklahoma Insurance Department, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S. SECTION 253(D):

SUBCHAPTER 5. MINIMUM STANDARDS; CONTRACT GUIDELINES

PART 17. ACTUARIAL OPINION AND MEMORANDUM REGULATION

365:10-5-177. Description of actuarial memorandum including an asset adequacy analysis

(a) General.

(1) In accordance with Section 4061 of the Oklahoma Insurance Code, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves. The memorandum shall be made available for examination by the Commissioner upon his or her request but shall be returned to the company after such examination and shall not be considered a record of the Insurance Department or subject to automatic filing with the Commissioner.

(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Rule 365:10-5-173(b) of this regulation, with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the Commissioner requests a memorandum and no such memorandum exists or if the Commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this regulation, the Commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Commissioner.

(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the Commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the Commissioner pursuant to the statute governing this regulation. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this regulation for any one of the current year or the preceding three (3) years.

(5) In accordance with Section 4061 of the Oklahoma Insurance Code, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in Subsection (c). The regulatory asset adequacy issues summary will be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(b) **Details of the memorandum documenting asset adequacy analysis.** When an actuarial opinion is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy

referred to in Rule 365:10-5-173(d) of this regulation and any additional standards under this regulation. It shall specify:

- (1) For reserves:
 - (A) Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;
 - (B) Source of liability in force;
 - (C) Reserve method and basis;
 - (D) Investment reserves;
 - (E) Reinsurance arrangements
 - (F) Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis;
 - (G) Documentation of assumptions to test reserves for the following (The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.):
 - (i) Lapse rates (both base and excess);
 - (ii) Interest crediting rate strategy;
 - (iii) Mortality;
 - (iv) Policyholder dividend strategy;
 - (v) Competitor or market interest rate;
 - (vi) Annuitization rates;
 - (vii) Commissions and expenses; and
 - (viii) Morbidity.
- (2) For assets:
 - (A) Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;
 - (B) Investment and disinvestment assumptions;
 - (C) Source of asset data;
 - (D) Asset valuation bases;
 - (E) Documentation of assumptions made for (The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.):
 - (i) Default costs;
 - (ii) Bond call function;
 - (iii) Mortgage prepayment function;
 - (iv) Determining market value for assets sold due to disinvestment strategy; and
 - (v) Determining yield on assets acquired through the investment strategy.
- (3) Analysis basis:
 - (A) Methodology;
 - (B) Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;
 - (C) Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

- (D) Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and
 - (E) Effect of federal income taxes, reinsurance and other relevant factors.
- (4) Summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;
 - (5) Summary of results; and
 - (6) Conclusions.
- (c) **Details of the regulatory asset adequacy issues summary.**
- (1) The regulatory asset adequacy issues summary shall include:
 - (A) Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force.
 - (B) The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;
 - (C) The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;
 - (D) Comments on any interim results that may be of significant concern to the appointed actuary. For example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods;
 - (E) The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and
 - (F) Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

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- (2) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.
- (d) **Conformity to standards of practice.** The memorandum shall include the statement: "Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."
- (e) **Use of assets supporting the interest maintenance reserve and the asset valuation reserve.**
- (1) An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.
- (2) The amount of the assets used for the AVR shall be disclosed in the table of reserves and liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.
- (f) **Documentation.** The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

SUBCHAPTER 17. VALUATION OF LIFE INSURANCE POLICIES REGULATION (INCLUDING THE INTRODUCTION AND USE OF NEW SELECT MORTALITY FACTORS)

365:10-17-4. General calculation requirements for basic reserves and premium deficiency reserves

- (a) At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after the effective date of this regulation and promulgated by regulation by the Insurance Commissioner for this purpose). If select mortality factors are elected, they may be:
- (1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;
- (2) The select mortality factors in the Appendix BB of this chapter; or
- (3) Any other table of select mortality factors adopted by the NAIC after the effective date of this regulation and

promulgated by regulation by the Insurance Commissioner for the purpose of calculating basic reserves.

- (b) Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after the effective date of this regulation and promulgated by regulation by the Insurance Commissioner). If select mortality factors are elected, they may be:

- (1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;
- (2) The select mortality factors in the Appendix BB of this chapter of this regulation;
- (3) For durations in the first segment, X percent of the select mortality factors in the Appendix BB of this chapter, subject to the following:
- (A) X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;
- (B) ~~X shall not be less than twenty percent (20%);~~
- (C) ~~X shall not decrease in any successive policy years;~~
- (D) X is such that, when using the valuation interest rate used for basic reserves, unit (i) is greater than or equal to unit (ii);
- (i) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X;
- (ii) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;
- (E) X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first five (5) years after the valuation date;
- (F) The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of Section 365:10-17-3(b)(3);
- (G) The appointed actuary may decrease X at any valuation date as long as X does not decrease in any successive policy years and as long as it continues to meet all the requirements of Section 365:10-17-3(b)(3); and
- (H) The appointed actuary shall specifically take into account the adverse effect on expected mortality

and lapsation of any anticipated or actual increase in gross premiums.

(G) If X is less than 100 percent at any duration for any policy, the following requirements shall be met:

(i) The appointed actuary shall annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of Section 365:10-5-176; and

(ii) The appointed actuary shall disclose, in the Regulatory Asset Adequacy Issues Summary, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods; and

(iii) The appointed actuary shall annually opine for all policies subject to this regulation as to whether the mortality rates resulting from the application of X meet the requirements of Subsection B(3). This opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience.

(4) Any other table of select mortality factors adopted by the NAIC after the effective date of this regulation and promulgated by regulation by the Insurance Commissioner for the purpose of calculating deficiency reserves.

(c) This subsection applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. However, if the first segment is less than ten (10) years, the appropriate ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of issue.

(d) In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves.

(e) Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one year after the date of the change shall be the greatest of the following: (1) reserves calculated ignoring the guarantee, (2) reserves assuming the guarantee was made at issue, and (3) reserves assuming that the policy was issued on the date of the guarantee.

(f) The Insurance Commissioner may require that the company document the extent of the adequacy of reserves for specified blocks, including but not limited to policies issued prior to the effective date of this regulation. This documentation may include a demonstration of the extent to which aggregation with other non-specified blocks of business is

relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of Section 365:10-5-176.

**SUBCHAPTER 25. REGULATION PERMITTING
THE RECOGNITION OF PREFERRED
MORTALITY TABLES FOR USE IN
DETERMINING MINIMUM RESERVE
LIABILITIES**

365:10-25-4. 2001 CSO Preferred Class Structure Table

At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this regulation, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. For policies issued on or after July 14, 2003, and prior to January 1, 2007, these tables may be substituted with the consent of the Commissioner and subject to the conditions of Rule 365:10-25-5. In determining such consent, the Commissioner may rely on the consent of the Commissioner of the company's state of domicile. No such election shall be made until the company demonstrates at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of the NAIC model regulation, "Recognition of the 2001 CSO Mortality Table For Use In Determining Minimum Reserve Liabilities And Nonforfeiture Benefits Model Regulation."

365:10-25-5. Conditions

(a) For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the super preferred nonsmoker, preferred nonsmoker, and residual standard nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the residual standard nonsmoker table, the appointed actuary shall certify that:

(1) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(2) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic

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table corresponding to the valuation table being used for that class.

(b) For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the preferred smoker and residual standard smoker tables to substitute for the smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the preferred smoker table, the appointed actuary shall certify that:

(1) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table corresponding to the valuation table being used for that class.

(2) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

(c) Unless exempted by the commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Table shall annually file with the commissioner, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this regulation. The form of the reports shall be established by the commissioner or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner.

(d) The use of the 2001 CSO Preferred Class Structure Table for the valuation of policies issued prior to January 1, 2007 shall not be permitted in any statutory financial statement in which a company reports, with respect to any policy or portion of a policy coinsured, either of the following:

(1) In cases where the mode of payment of the reinsurance premium is less frequent than the mode of payment of the policy premium, a reserve credit that exceeds, by more than the amount specified in this paragraph as Y, the gross reserve calculated before reinsurance. Y is the amount of the gross reinsurance premium that

(A) provides coverage for the period from the next policy premium due date to the earlier of the end of the policy year and the next reinsurance premium due date, and

(B) would be refunded to the ceding entity upon the termination of the policy.

(2) In cases where the mode of payment of the reinsurance program is more frequent than the mode of payment of the policy premium, a reserve credit that is less than the gross reserve, calculated before reinsurance, by an amount that is less than the amount specified in this paragraph as Z. Z is the amount of the gross reinsurance premium that the ceding entity would need to pay the assuming company to provide reinsurance coverage from the period of

the next reinsurance premium due date to the next policy premium due date minus any liability established for the proportionate amount not remitted to the reinsurer.

(e) For purposes of subsection (d), both the reserve credit and the gross reserve before reinsurance (i) for the mean reserve method shall be defined as the mean reserve minus the deferred premium asset, and (ii) for the mid-terminal reserve method shall include the unearned premium reserve. A company may estimate and adjust its accounting on an aggregate basis in order to meet the conditions to use the 2001 CSO Preferred Class Structure Table.

[OAR Docket #09-1378; filed 11-23-09]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES CHAPTER 25. RISK MANAGEMENT PROGRAM

[OAR Docket #09-1372]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Casualty or Liability Claims Management, Payment and Reports

580:25-5-1 [AMENDED]

AUTHORITY:

Department of Central Services; 74 O.S. Section 85.58A

DATES:

Adoption:

October 12, 2009

Approved by Governor:

November 3, 2009

Effective:

Immediately upon gubernatorial approval

Expiration:

Effective through July 14, 2010 unless superseded by another rule or disapproved by the Legislature.

GUBERNATORIAL APPROVAL:

November 3, 2009

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Department of Central Services finds that a compelling public interest requires these emergency rules be adopted to ensure compliance with the Federal Medicare, Medicaid and SCHIP Extension Act (MMSEA) and avoid potential assessment of fines authorized by the Act. The federal law requires Risk Management (RM) to electronically report claim information and payments to the Centers for Medicare Services. Failure to report the required information may result in a fine of \$1,000 per claim, per day, until the claim is reported. Risk Management rules currently address agencies and other entities covered by the program and not the claimants. The federal law places the burden of gathering and transmitting required claimant information on Risk Management and failure or inability to obtain the information is not accepted as an excuse by MMSEA and will not allow Risk Management to avoid fines.

ANALYSIS:

Requirements have been added to the Claims management section to ensure Risk Management can collect all information from a claimant required to be reported to the federal government in order to comply with MMSEA. In addition, clarification is provided related to a claim that may be declared invalid for failure to provide the requested information.

Information has been added to clarify that Risk Management cannot accept responsibility for any programs it does not know about or administer directly because a state agency has purchased liability insurance without the knowledge of Risk Management [74 O.S. § 85.58A (E)]

CONTACT PERSON:

Gerry Smedley, Rules Liaison, 522-8519

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D):

SUBCHAPTER 5. CASUALTY OR LIABILITY CLAIMS MANAGEMENT, PAYMENT AND REPORTS

580:25-5-1. Claims management

(a) Settlement and payment of claims.

(1) General. While the Risk Management Division will explore alternatives, most claims may be paid from the state's respective risk pools and not from commercial insurance. This requires that procedures be established to administer and settle claims. Where the Risk Management Division has approved the acquisition of a policy or contract of liability insurance, the terms of which make it applicable to any liability incident, the Administrator shall, upon receiving notice of any liability incident or claim from an agency or other covered entity, ascertain the existence and applicability of such insurance, and, within a reasonable time thereafter, notify the insurer of the incident or claim, as may be required by the applicable policy or contract of insurance. The terms and conditions of the contract or policy shall govern the rights and obligations of the state, agency or other covered entity and the insurer with respect to the investigation, settlement, payment and defense of claims or suits against the state, an agency, and other covered entity or any of their employees.

(A) With respect to claims subject to a contract or policy of liability insurance the following shall apply:

(i) A State agency, or any other covered entity, and its authorized attorney shall cooperate with any and all requests for information made by the Risk Administrator, or his/her representative or the insurer, or risk denial of coverage.

(ii) In the case of any possible settlement, regardless of the deductible or self-insured retention level claim, a state agency or any other covered entity and its attorney, shall notify the Risk Administrator or his/her representative prior to a settlement offer being made.

(iii) If any State agency, or any other covered entity, or its attorney fails to reasonably cooperate with Risk Management or the insurer, or fails to notify the Risk Administrator or his representative, prior to a settlement offer being made on any claim subject to a contract or policy of liability insurance, the Risk Administrator may refuse to pay the claim.

(iv) Settlement of claims subject to a commercial contract of policy of liability insurance shall

also be subject to the liquidity of any accounts created for the self-insured retention pool established for that particular liability insurance policy or contract.

(v) Any litigation concerning the Comprehensive Professional Risk Management Program of the Department of Central Services shall be handled by the Attorney General of the State of Oklahoma. [74 O.S., Section 61.4] Accordingly, settlements of matters in litigation shall not be settled without consultation with the Office of Attorney General and the Risk Administrator.

(vi) Private counsel hired by Risk Management or by any state agency are subject to and must also comply with the rules and regulations of Risk Management with respect to claims subject to a contract or policy of liability insurance.

(B) Claimants shall provide to Risk Management any and all requested information in order for Risk Management to comply with all State and Federal laws. If a claimant fails to comply with such requests, claimant's claim shall be invalid and ineffective unless and until claimant provides the information to Risk Management necessary for it to comply with State and Federal laws. However, nothing in this section shall toll or delay the time limits provided by the Oklahoma Governmental Tort Claims Act governing a claimant's obligation in reporting a claim.

(C) Risk Management shall not be responsible, accountable, or liable for any insurance or self-insurance program outside of those offered by Risk Management under 74 O.S. § 85.58A or any other insurance or self-insurance program which fails to comply with the requirements of 74 O.S. § 85.58A under any State or Federal law.

(BD) Otherwise, in the absence of any applicable contract or policy of insurance, the following regulations shall be controlling:

(2) "Official State Business" and "Scope of Employment". Claims against the state shall be investigated to determine whether the employee was on official state business within the scope of their employment. For the purposes of the Risk Management Program, the determination of whether an employee's negligent actions will be covered is at the sole discretion of the Risk Management Division of the Department of Central Services. Risk Management will first look to see if the employee is paid for their employment from state tax proceeds, in the case of a volunteer, Risk Management will look to the organization utilizing the volunteers services to determine if the volunteer was reported as such in the annual Risk Management state employee/volunteer count. Next, Risk Management will determine whether the activity engaged in by the employee/volunteer at the time of said claim is officially sponsored by the insured organization. This determination is made by review of the information as well as additional investigation if necessary supplied on an official "Scope of Employment" form completed and

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turned into Risk Management by the organization. The Scope of Employment form shall be completed and signed by the supervisor of the employee involved in the accident. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.

(A) In the case of Institutions of Higher Education, for liability coverage purposes all extracurricular activity clubs, associations or organizations shall be treated in the following manner:

(i) Clubs, associations, and or organizations affiliated with a college or university shall be covered under the states self-insured liability insurance program for claims arising under the Oklahoma Governmental Tort Claims Act as long as the members are enrolled students of the college or university and the activity is part of a university/college course, athletic competition, or deemed by the college or university as an official university or college sponsored activity.

(ii) In order to obtain liability coverage for such clubs, associations, and or organizations, the college or university must have paid the annual tort and motor vehicle premiums assessed by State Risk Management. Premiums for such clubs, associations and organizations shall be established by State Risk Management. Any use of state property utilized in the activity sponsored by the university or college shall be in compliance with state law regarding the use of state property.

(iii) Claims arising out of the use of state vehicles or personal vehicles, while on official state business by students, will be deemed denied if the student is acting outside the scope of their volunteer/employment status.

(B) In the case of state agencies, use of state vehicles and liability coverage for such use shall be provided by State Risk Management in the following manner:

(i) Liability coverage will be afforded any state employee operating a motor vehicle while in the scope of their employment and on official state business. For the purposes of this section, motor vehicle includes state vehicles owned or leased by the agency, personal vehicles used by an employee for official state business, and privately leased vehicles.

(ii) State employees provided a state vehicle on a "24 hour" take home basis will be deemed to be covered during their established lunch period if the use of the vehicle is for driving to and from an eating establishment. Personal errands or activities undertaken during a lunch hour will not be covered by State Risk Management. The employee will assume all liability while engaging in such activities.

(3) **Claims settled for amounts not exceeding \$25,000.00.** A claim settlement in which a payment not exceeding \$25,000.00 is agreed upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel.

(4) **Claims settled for amounts exceeding \$25,000.00.** A claims settlement in which a payment exceeding \$25,000.00 is agreed upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel, except that the settlement shall not be effective until approved by the district court as provided by law.

(5) **Disposition of claims against the state.** In the case of any claim against the state or an agency, the Attorney General, or other authorized legal counsel representing the state or agency in place of the Attorney General, may defend, settle, deny, compromise or otherwise dispose of any liability incident or claim as may be deemed necessary and proper under existing Oklahoma law.

(6) **Disposition of claims against a political subdivision and other covered entities.** In the case of any claim against any other covered entity which is also a political subdivision as defined by the Oklahoma Governmental Tort Claims Act, 51 O.S. Section 151 et seq. (the Act), defense, settlement or compromise of any claim or liability incident may be made by authorized legal counsel for the political subdivision, and payment or settlement may also require approval of the governing body, if any, of such political subdivision, as required by the Act, in addition to the approvals specified in 580:25-5-1(a)(2) and (3).

(7) **Limitations.** In no event shall self-insurance coverage provided to the state, an agency or other covered entity exceed the limitations on the maximum dollar amount of liability specified by the Oklahoma Governmental Tort Claims Act, which limits are codified at the time of adoption of these rules at 51 O.S. Section 154. These limits shall be applicable in cases of liability incidents involving any other covered entity, without regard to whether the other covered entity is qualified for treatment as a political subdivision as that term is defined in the Oklahoma Governmental Tort Claims Act. Where the Risk Management Division has approved the acquisition of a policy or contract of liability insurance, the terms of which make it applicable to any liability incident, the applicable limits of liability shall govern the dollar amount of indemnity available to the state, any agency or ~~an~~ any other covered entity, and no self-insurance coverage shall be provided or paid.

(b) **Collection of liability claims owed to the state.** In the case of any incident where the state has incurred a loss through the wrongful or negligent acts of a private person or other entity, the following procedures will apply:

(1) Money damages collected by the Risk Management Division in any case of loss of property belonging to the state by a private person or other entity is liable for a wrongful act, will be paid to the Risk Management Division and subsequently disbursed through the agency

clearing account by the Accounting Division of the Department of Central Services to the injured agency having charge of such damaged or lost property pursuant to 74 O.S., Section 85.9A.

(2) In the event a private person or other entity, whether insured or uninsured, is liable for a wrongful act giving rise to damage or loss of property of the state and such person, entity, or its insurer declines or refuses to pay or settle a written demand by the Risk Management Division for damages within a reasonable time, the Administrator shall refer the matter to the Attorney General who may take whatever action he deems necessary and proper to collect all money damages owed to the state for its loss. All money damages collected pursuant to this provision by the Attorney General, less any amounts properly credited to the Attorney General's Evidence Fund, will be paid to the Risk Management Division and subsequently disbursed through the agency clearing account by the Finance Division of the Department of Central Services to the injured agency pursuant to 74 O.S., Section 85.9A.

[OAR Docket #09-1372; filed 11-13-09]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 11. COMMERCIAL DRIVER LICENSES**

[OAR Docket #09-1354]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:

- Subchapter 1. Commercial Driver Licensing
- Part 3. Commercial Driver License Renewal - in Person [AMENDED]
595:11-1-21. Procedure for obtaining a renewal commercial driver license in person [AMENDED]
- Part 5. Commercial Driver License Replacement - in Person [AMENDED]
595:11-1-31. Procedure for obtaining a replacement driver license in person [AMENDED]
- Part 8. Reduction of Commercial Driver License Class [NEW]
595:11-1-55. Voluntary reduction of license class or surrender of commercial driver license [NEW]
- Part 9. Commercial Driver License Card Content [AMENDED]
595:11-1-62. Driving restriction codes [AMENDED]
- Subchapter 5. Commercial Driver License Third-party Examiners
595:11-5-4. Requirements for certification as a certified school; display of certificate; certification renewal [AMENDED]
595:11-5-5. Requirements for certification as a third-party examiner, display of certificate, certification renewal
- Subchapter 7. Truck Driver Training
595:11-7-3. School licenses and instructor permits [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 6-101 et seq.

DATES:

Adoption:

October 5, 2009

Approved by Governor:

November 3, 2009

Effective:

Immediately upon Governor's approval.

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

These rules are of compelling public interest due to findings in the 2008 Motor Carrier Safety Assistance Program Review which place the state out of compliance with federal motor carrier regulations. A finding of non-compliance can result in the non-recoverable withholding of federal dollars to the state.

ANALYSIS:

Amendments to 595:11-1-21 and 11-1-31 require that an expired, expiring, or replaced commercial driver license be surrendered by the licensee. Amendments to 595:11-1-55 authorizes a commercial driver licensee to voluntarily reduce his or her commercial driving privileges to a lower class of commercial privileges or to Class D privileges; would authorize the licensee to reinstate commercial driving privileges within 3 years without a test, if the licensee is otherwise eligible for those privileges. Amendments to 595:11-1-62 corrects scrivener's errors relating to the explanation of two commercial driving restriction codes. Amendments to 595:11-5-4 authorizes representatives of the Department or of the Federal Motor Carrier Safety Administration to have access to commercial driver license schools for the purpose of monitoring examinations and examining records. Amendments to 595:11-5-5 increase from four to five years the time a third-party examiner certificate is valid. Amendments to 595:11-7-3 corrects a scrivener's error relating to the term of a school license (changes from three years to one year).

The proposed actions are amendments to existing rules.

The circumstance which created the need for this rule, other than corrections to scrivener errors, is non-compliance by the state of federal motor carrier regulations [see Impact Statement].

The intended effect of this rule is to allow the Department of Public Safety to perform its duties as required or authorized by law and to comply with federal regulations regarding motor carrier safety.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S. § 253(D):

SUBCHAPTER 1. COMMERCIAL DRIVER LICENSING

PART 3. COMMERCIAL DRIVER LICENSE RENEWAL - IN PERSON

595:11-1-21. Procedure for obtaining a renewal commercial driver license in person

(a) **General requirements.** During the month of expiration or as provided in (d) of this Section, each licensee shall present proper identification and pay the required fee to a Motor License Agent or to the Department of Public Safety for renewal of the commercial driver license of the licensee. Failure to renew a commercial driver license by the end of the month of expiration shall not relieve the person of the obligation to renew his or her commercial driver license under the provisions required by law and this Section if the person wishes to keep his or her commercial driver license in force.

(b) **Required identification.**

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- (1) **Renewal with expiring or expired commercial driver license.** The expiring or expired commercial driver license provided as the primary identification ~~may shall~~ not be retained by the licensee, ~~after and the license shall~~ be surrendered by the person to the Motor License Agent or the Department ~~has invalidated the document by punching holes through the license class and license type displayed.~~ The person shall provide secondary identification as prescribed in OAC 595:10-1-3(b)(2).
- (2) **Renewal without driver license.** Any person who does not have the expiring or expired commercial driver license shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).
- (c) **Vision screening.** Persons holding a commercial driver license shall, upon renewal, meet the vision standards established in OAC 595:10-5-7 and 49 C.F.R., §391.41. A valid and unexpired United States Department of Transportation medical examiner's certificate (USDOT physical) may be submitted in lieu of actual vision screening by the Department.
- (d) **Limitations to issuance of a renewal commercial driver license.**
- (1) A renewal commercial driver license shall be issued only to an individual whose driving privilege is not under suspension, revocation, disqualification, cancellation, or denial and who complies with this Chapter, state law, and federal law and regulation.
- (2) Any applicant who requests a renewal of his or her commercial driver license when the license has been expired in excess of three (3) years shall be required to appear before a driver license examiner, pursuant to OAC 595:11-1-11 as for an original license.
- (e) **Early renewal of a commercial driver license.** Any licensee may renew his or her commercial driver license no more than six (6) months prior to the expiration date. A renewal which occurs more than six (6) months prior to the expiration date shall be treated as a replacement under the provisions of OAC 595:10-1-18.
- (f) **Change of commercial driver license number.** A request by a licensee to change the commercial driver license number shall conform to the provisions of OAC 595:11-1-12(c).

PART 5. COMMERCIAL DRIVER LICENSE REPLACEMENT - IN PERSON

595:11-1-31. Procedure for obtaining a replacement driver license in person

- (a) **General requirements.** Any licensee requiring a replacement commercial driver license because the license was lost, stolen, or mutilated, or because information on the license needs to be changed, shall request a replacement, upon presentation of proper identification and payment of the required fee. The driver examiner or Motor License Agent shall retain the driver license to be replaced if it is available.
- (b) **Required identification to replace lost, stolen, or mutilated license.** Any person shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(c) Required identification to change information and replace a commercial driver license.

- (1) **Name change.** Any person who requests a replacement commercial driver license in order to make a name change shall comply with the primary and secondary identification requirements prescribed in OAC 595:10-1-3(b) in order to identify the person by his or her former name and with OAC 595:10-1-35 in order to identify the person by his or her new name. The former name shall be entered by the driver ~~examiner-examiner~~ or Motor License Agent into the "Alias" field in the driver license database to provide historical information to the Department. The person requesting the name change ~~may shall not~~ retain the old license, ~~if it is available, after and the license shall be~~ surrendered by the person to the Motor License Agent or the Department ~~has invalidated the document by punching holes through the license class and license type displayed.~~
- (2) **Address change.** A licensee shall request a replacement commercial driver license within ten (10) calendar days of any address change, shall provide the new address to the Department, and shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).
- (3) **Endorsement or restriction change.** Any licenses who requests a replacement commercial driver license in order to change endorsement or restriction information on the license shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b). The person requesting the information change may retain the old license, if it is available, after the Department has invalidated the document by punching holes through the license class and license type displayed.
- (4) **Sex change.** The licensee shall show an original or certified court order for name change, if applicable, and a notarized statement on letterhead from the physician who performed the sex change operation indicating the applicant or licensee has undergone a complete physical sex change. The letter shall state the sex change is "irreversible and permanent". The licensee shall also show proof of former legal name, if applicable. The new sex shall be entered by the driver examiner in the "Sex" field in the driver license database, and the former name shall be entered by the driver examiner into the "Alias" field in the driver license database to provide historical information to the Department.

(d) Limitations to issuance of a replacement driver license.

- (1) A commercial driver licensee shall appear before a driver examiner to request a replacement commercial driver license in order for the examiner to perform the federally required ten-year driving history check.
- (2) A replacement driver license shall be issued only to an individual whose driving privilege is not under suspension, revocation, disqualification, cancellation, or denial and who complies with this Chapter, state laws, and federal laws and regulations.
- (3) The commercial driver license number may be changed as provided in OAC 595:11-1-12(c).

PART 8. REDUCTION OF COMMERCIAL DRIVER LICENSE CLASS

595:11-1-55. Voluntary reduction of license class or surrender of commercial driver license

(a) Any person holding an Oklahoma Class A, B, or C commercial driver license may, for any reason, voluntarily reduce his or her commercial driver license privileges, including any affiliated endorsements and restrictions, to a lower class of commercial driver license or to a Class D driver license.

(b) Any commercial driver licensee who voluntarily reduces his or her commercial driver license privileges as provided in subsection (a) shall have the right to request that the Department of Public Safety restore his or her original commercial driving privileges to the same class and with same affiliated endorsements and restrictions from which the privileges were voluntarily reduced. The request for restoration of driving privileges shall be made to the Department within three (3) years of the voluntary reduction in license class, and shall be granted by the Department if the person is otherwise eligible for the restoration; provided:

(1) Fees paid for the restoration of commercial driving privileges shall include all application fees for the class of license and any affiliated endorsements and restrictions [see 47 O.S., § 6-101 regarding fees]. Fees shall not be prorated; and

(2) Any person wishing to restore a hazardous material endorsement shall be required to successfully complete the hazardous material examination and submit to a security threat assessment, as required by the Transportation Security Administration of the Department of Homeland Security as required by and pursuant to 49 C.F.R., Part 1572 [47 O.S., § 6-110].

PART 9. COMMERCIAL DRIVER LICENSE CARD CONTENT

595:11-1-62. Driving restriction codes

A restriction or restrictions shall be placed upon a person's commercial driving privilege as deemed necessary by the Department [47 O.S. §6-113]. Each restriction shall appear as a code on the commercial driver license of the person. Following are the possible driving restriction codes and their meanings:

- (1) 1. Corrective lenses
- (2) 6. Food, fruit, or candy within reach of driver
- (3) 7. Adequate artificial limbs
- (4) 8. Detailed restriction - Inquire against the commercial driver license file. (This restriction code is used when other restrictions are not applicable. A narrative explaining the restriction will appear on the person's commercial driver license file.)
- (5) A. Regardless of age, when operating a motorcycle must be in view of licensed driver at least 21 years old
- (6) E. When operating a Class A, B or C commercial motor vehicle, restricted to automatic transmission
- (7) K. CDL intrastate only

(8) L. When operating a commercial motor vehicle ~~with air brakes~~, restricted to a vehicle without air over hydraulic brakes

(9) M. When operating a passenger bus, restricted to Class ~~B or C~~ commercial motor vehicle

(10) N. When operating a passenger bus, restricted to Class ~~B or C~~ commercial motor vehicle

(11) O. Tractor-trailer

(12) Z. ~~Restricted to commercial motor vehicles without~~ When operating a commercial motor vehicle with air brakes, restricted to air over hydraulic

(13) V. Medical variance

SUBCHAPTER 5. COMMERCIAL DRIVER LICENSE THIRD-PARTY EXAMINERS

595:11-5-4. Requirements for certification as a certified school; display of certificate; certification renewal

(a) **Requirements and application for certification.** A school district or technology center school may apply for certification as a certified school. The applying school shall meet the following requirements:

(1) Be actively enrolling students and teaching a formal course of instruction for school bus drivers training as approved by the State Board of Education or truck driver training as approved by the Oklahoma Board of Career and Technology Education.

(2) Obtain and possess written approval to make application for and be, if approved, a certified school from:

(A) the State Board of Education, if the school is a school district, or

(B) the Oklahoma Board of Career and Technology Education, if the school is a technology center.

(3) Submit an application to the Department on a form prescribed by the Department [see 595:11-5-13].

(4) Have its on-site examination route or routes examined and approved by an employee of the Department. A route:

(A) shall start and end on the premises or property of the certified school, unless otherwise approved by the Department,

(B) shall meet all state and federal requirements,

(C) shall not be altered or changed in any manner without first being examined and approved by the Department, and

(D) shall not be replaced by an alternate route unless the alternate route is first examined and approved by the Department. If, during the course of the examination, it is determined that any of the approved routes could not be followed, the third-party examiner shall notify the Department in writing as soon as possible as to the reason for the change in route.

(5) Agree to:

(A) meet minimum examination standards required by the Department and by the Federal Motor Carrier Safety Regulations [49 C.F.R. § 383];

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- (B) allow access to school facilities by the Department and by the Federal Motor Carrier Safety Administration, or representatives, for the purpose of monitoring examinations and examining records;
- (C) comply with the Oklahoma Open Records Act [51 O.S., § 24a.1 et seq.] with regard to records kept pursuant to this Subchapter;
- (D) maintain security of examination documents and related material as deemed necessary by the Department;
- (E) ensure all examinations are administered by a third-party examiner;
- (F) ensure third-party examiners administer the examination only to driver license applicants who:
 - (i) have enrolled in and successfully completed a formal course of instruction, as submitted to and approved by the Department, at the institution where the third-party examiner is employed and certified, and
 - (ii) have an Oklahoma restricted commercial driver license and Oklahoma Class D driver license;
- (G) ensure no person acts as a third-party examiner without current certification from the Department;
- (H) provide immediate written notification to the Department of any impropriety or misconduct of any third-party examiner employed by the school;
- (I) acknowledge that the Department reserves the right to take prompt and appropriate remedial action against the certification of any school or of any third-party examiner in the event that the school or the third-party examiner fails to comply with:
 - (i) any state law, Department rule, or federal regulation regarding the examination of an applicant for a commercial driver license, or
 - (ii) any terms of the appropriate memorandum of understanding or of a subsequent contract or agreement entered into pursuant to the memorandum of understanding;
- (J) maintain records of all third-party examiners employed by the school and copies of all documents relating to examinations administered for a period of not less than three (3) years; provided, if a school discontinues doing business, the school shall send to the Department a roster of all students who were administered examinations by the school during the immediately preceding three (3) years;
- (K) immediately notify the Department by telephone, followed by written notification within five (5) days, of the termination of employment of any third-party examiner. The official seal of the Department, and the certificate and identification card issued by the Department to the third-party examiner shall be returned to the Department with the written notification;
- (L) immediately notify the CDL Coordinator within the Commercial Driver License Program Administration of the Department by telephone or

first-class mail of every fraudulent application made to obtain a commercial driver license; and

(M) acknowledge that the Department reserves the right to randomly reexamine applicants tested by third-party examiners for purposes of quality assurance.

(b) **Certification.** Upon acceptance and approval by the Department of the application for certification from a school district or technology center school, or upon acceptance and approval by the Department of the application for renewal of certification from a certified school, and upon completion to the satisfaction of the Department by the school of all other requirements for certification, the Department shall provide the certified school with a certificate evidencing approval by the Department as a certified school. The certificate shall be posted at the examination location at the certified school and in full view of the public. The certificate shall be valid for five (5) years.

(c) **Renewal of certification.** A certified school may apply for renewal of certification as a certified school. The school shall meet the following requirements:

(1) Have evidence on file with the Department of a satisfactory on-site inspection conducted by an employee of the Department prior to renewal.

(2) Employ at least one third-party examiner.

(3) Submit an application for renewal on a form prescribed by the Department no later than December 1 of the year of expiration [See 595:11-5-13].

595:11-5-5. Requirements for certification as a third-party examiner, display of certificate, certification renewal

(a) **Requirements and application for certification.** A driver training instructor may apply for certification as a third-party examiner. The applicant shall meet the following requirements:

(1) Meet all the requirements for a Driver License Examiner of the Department [47 O.S., § 2-106(c) and (d)].

(2) Complete an application provided by the Department [see 595:11-5-13] and submit a certified criminal history report from the Oklahoma State Bureau of Investigation certified within the immediately preceding thirty (30) days and, if the applicant has not lived in Oklahoma for the immediately preceding five (5) years, a criminal background check from the agency responsible for keeping criminal history in the state or states of previous residence.

(3) Be employed by a certified school.

(4) Have and maintain throughout the time period to be covered by the certification:

(A) a valid Oklahoma commercial driver license for the class or classes of vehicle, including any endorsement or endorsements, for which the instructor desires to administer examinations; provided, the applicant shall not be required to have a hazardous materials endorsement (endorsement H),

- (B) in order to administer school bus examinations, a valid School Bus Workshop Instructor Certificate issued by the State Board of Education, and
 - (C) in order to administer truck examinations, a valid certificate issued by the Oklahoma Board of Career and Technology Education showing the applicant has met the current requirements.
 - (5) Successfully complete a course of instruction prescribed by the Department [see 595:11-5-6].
 - (6) Meet the same vision standards as for Driver License Examiners of the Department [see OAC 595:10-5-7 and 49 C.F.R., § 391.41 regarding vision standards].
 - (7) Have full use of both upper and lower extremities.
 - (8) Agree to submit monthly reports, by the tenth calendar day of the following month, to the Department detailing examining activity.
- (b) **Ineligibility based upon driving record or criminal record.** A driver training instructor shall be deemed to be ineligible for certification as a third-party examiner upon evidence of a record of any of the following convictions:
- (1) Two (2) or more convictions for a moving traffic offense within the twelve (12) months immediately preceding the application.
 - (2) Any alcohol- or drug-related conviction requiring the Department to revoke, suspend, or disqualify the instructor's driving privilege within the five (5) years immediately preceding the application.
 - (3) Any conviction for any offense which required or will require the Department to take any type of action against the instructor within the three (3) years immediately preceding the application, including, but not limited to:
 - (A) a warning letter, or
 - (B) a revocation, suspension, cancellation, denial or disqualification of the instructor's driving privileges.
 - (4) Any misdemeanor conviction, except for a misdemeanor conviction for a traffic offense, within the five (5) years immediately preceding the application.
 - (5) Any felony conviction in this state or any other state or country.
- (c) **Certification.** Upon acceptance and approval by the Department of the application for certification from a driver training instructor, or upon acceptance and approval by the Department of the application for renewal of certification from a third-party examiner, and upon completion to the satisfaction of the Department by the instructor or third-party examiner of all other requirements for certification, the Department shall provide the third-party examiner with:
- (1) a certificate evidencing approval by the Department as a third-party examiner, which shall be posted at the examination location at the certified school and in full view of the public. The certification will be valid for five (~~four~~) years.
 - (2) an identification card to be carried by the third-party examiner whenever the examiner is administering an examination.

- (3) an official seal to be used by the third-party examiner to be used as provided in 595:11-5-14.
- (d) **Renewal of certification.**
 - (1) A certified third-party examiner shall be eligible for renewal of certification if the examiner:
 - (A) submits an application for certification renewal upon a form provided by the Department no later than December 1 of each year [see 595:11-5-13],
 - (B) submits a certified criminal history report from the Oklahoma State Bureau of Investigation certified within the immediately preceding thirty (30) days and, if the applicant has not lived in Oklahoma for the immediately preceding five (5), a criminal background check from the agency responsible for keeping criminal history in the state or states of previous residence,
 - (C) submits a current copy of the State Department of Education instructor certificate,
 - (D) is currently employed by a certified school,
 - (E) currently meets the requirements and standards of the Department as prescribed by this Subchapter,
 - (F) administered fifteen (15) or more examinations within the twelve (12) months immediately preceding the application for renewal of certification, and
 - (2) Any driver training instructor who was previously certified as a third-party examiner and whose previous certification has been expired for not more than one (1) year may make application for renewal of certification as provided in paragraph (1) of this section.
 - (3) Any third-party examiner who does not qualify for renewal of certification may apply, after a period of at least one (1) year from the date the examiner was notified he or she was not qualified for renewal of certification, for certification as a third-party examiner and shall meet all requirements as for an initial application for certification as a third-party examiner.

SUBCHAPTER 7. TRUCK DRIVER TRAINING

- 595:11-7-3. School licenses and instructor permits**
- (a) **In general.** A school license shall be required for schools who offer instruction to entry-level truck driver trainees who do not possess a valid commercial driver license. An instructor permit shall be required for instructors who teach truck driver training. [47 O.S. §6-105.2 and 47 O.S. § 801]
- (1) **Schools - original application.**
 - (A) All applications for an original school license shall be made on a form provided by the Department. The term of each original school license shall be for a period of ~~three~~ one (1) year.
 - (B) Each application for an original school license shall be accompanied by:
 - (i) a fee of Twenty-five Dollars (\$25.00), which shall be paid to the Department by money order, cashier's check, or business/personal check,
 - (ii) a schedule of fees and charges,

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- (iii) a certificate of insurance from a company licensed to conduct business in this State certifying proper commercial insurance coverage,
 - (iv) the make, model and vehicle identification number of each commercial motor vehicle used for training purposes, and
 - (v) a sample copy of each type of contract or agreement which the school may enter into with students.
- (C) No license fee shall be refunded in the event the license is rejected, suspended or revoked by the Commissioner of Public Safety.
- (D) All applications shall be approved by the Department before a school shall be permitted to open for business.
- (E) Every operator of a school shall be required to have an instructor permit.
- (F) Application for a school license may be obtained:
- (i) upon request by mail from the Department of Public Safety, CDL Program Administration, P.O. Box 11415, Oklahoma City, Oklahoma 73136-0415, or
 - (ii) on the world wide web at www.dps.state.ok.us/forms
- (G) All schools shall meet the requirements of OAC 595:11-7-13.
- (2) **Schools - renewal application.**
- (A) All applications for a renewal school license shall be made on a form provided by the Department of Public Safety. The term of each renewal school license shall be for a period of ~~three~~ one (1) year.
- (B) Each application for a renewal school license shall be accompanied by:
- (i) a fee of Twenty-five Dollars (\$25.00), which shall be paid to the Department by money order, cashier's check, or business/personal check,
 - (ii) a schedule of fees and charges, if any changes have been made since the last license issuance,
 - (iii) a certificate of insurance from a company licensed to conduct business in this State certifying proper commercial insurance coverage,
 - (iv) a current list of commercial motor vehicles used for training purposes, and
 - (v) a sample copy of each type of contract or agreement which the school may enter into with students.
- (C) All application forms for renewal school licenses shall be mailed by the Department to each school no later than October 1 of the expiration year. Each school desiring to renew shall submit an application to the Department no later than November 15 of the year of expiration. If application for renewal is not received by the required date and the Department is unable to process and approve the application by December 31 of the year of expiration, the commercial school shall cease operation on January 1 of the year following year of expiration and shall not resume operation until the application for renewal is processed and approved by the Department.
- (3) **Instructors - original applications.**
- (A) All applications for an original instructor permit shall be made on a form provided by the Department. The term of an original instructor permit shall be for a period of no more than ~~three~~ one (1) year. An instructor shall make application for each school location where he or she will be instructing. An instructor permit for a particular school shall become invalid upon termination of employment with that school. If an instructor accepts employment with another school or schools, an instructor permit shall not be transferable, and the instructor shall apply for an original license for each school where he or she is a new employee.
- (B) Each application for an original instructor permit shall be accompanied by:
- (i) documentation required by OAC 595:11-7-4, and
 - (ii) a fee of Five Dollars (\$5.00), which shall be paid to the Department by money order, cashier's check, or business/personal check. If the instructor is licensed at multiple schools with the same owner, only one fee of Five Dollars (\$5.00) shall be paid. If the instructor is licensed at multiple schools with different owners, a fee of Five Dollars (\$5.00) shall be paid for each school with a different owner.
- (4) **Instructors - renewal applications.**
- (A) All applications for a renewal instructor permit shall be made on a form provided by the Department. The term of each renewal instructor permit shall be for a period of ~~three~~ one (1) year. An instructor shall make application for each school location where he or she will be instructing. An instructor permit for a particular school shall become invalid upon termination of employment with that school. If an instructor accepts employment with another school or schools, an instructor permit shall not be transferable, and the instructor shall apply for an original license for each school where he or she is a new employee.
- (B) Each application for a renewal instructor permit shall be accompanied by:
- (i) documentation required by OAC 595:11-7-4, and
 - (ii) a fee of Five Dollars (\$5.00), which shall be paid to the Department by money order, cashier's check, or business/personal check. If the instructor is licensed at multiple schools with the same owner, only one fee of Five Dollars (\$5.00) shall be paid. If the instructor is licensed at multiple schools with different owners, a fee of Five Dollars (\$5.00) shall be paid for each school with a different owner.

(C) Any instructor who allows his or her instructor permit to lapse or expire without renewal may reapply as if for an original instructor permit.

[OAR Docket #09-1354; filed 11-10-09]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 30. SIZE AND WEIGHT PERMITS**

[OAR Docket #09-1352]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Size and Weight Permit Load

595:30-3-17. Requirements for escort vehicles and escort vehicle operators [AMENDED]

595:30-3-18. Oversize vehicles and loads [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. §§ 2-108(b), 14-116(A), 14-118(A), 14-118.1, 14-120(C), 14-120.1(D), and 14-121(B).

DATES:

Adoption:

August 12, 2009

Approved by Governor:

August 18, 2009

Effective:

Immediately upon Governor's approval.

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

These rules are of compelling public interest due to damage caused to state property by vehicles which are too tall to pass under some bridges and overpasses in the state (see Impact Statement) and due to the need to ensure the public interest and preserve the property of the state.

ANALYSIS:

Amendments to 595:30-3-17 would lower the height requirement of a load when a height measuring pole is required to be carried by an escort vehicle. Amendments to 595:30-3-18 would lower the height requirement at which escort vehicles are required.

The proposed actions are amendments to existing rules.

The circumstance which created the need for this rule is continuing damage to state property.

The intended effect of this rule is to allow the Department of Public Safety to perform its duties as required or authorized by law, to ensure the safety of the motoring public, and to preserve the property of the state.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S. § 253(D):

SUBCHAPTER 3. SIZE AND WEIGHT PERMIT LOAD

595:30-3-17. Requirements for escort vehicles and escort vehicle operators

(a) **General requirements for escort vehicles.** Any vehicle to be used as an escort vehicle must be either a pickup truck of not less than one-quarter (1/4) ton rated load capacity or an automobile of not less than 2,000 pounds. The escort vehicle must be properly licensed under the statutes of the State of Oklahoma [47 O.S. § 1101 et seq.] or properly licensed in another state. If commercially licensed, an escort for an intrastate move must obtain a temporary registration from the Oklahoma Tax Commission Motor Vehicle Registration Division.

(b) **Identification of escort vehicles.** The owner of an escort vehicle must have displayed on each side of the escort vehicle the name, city and state of the escort vehicle company or operator, or the owner of the escort vehicle, or both. Such identifying markings must be:

- (1) Plainly legible and visible to the motoring public.
- (2) Readily legible during daylight hours from a distance of fifty (50) feet while the vehicle is stationary.
- (3) Kept and maintained in a manner to preserve legibility.
- (4) In a color or colors which sharply contrast with the background on which they are placed.

(c) **Equipment of escort vehicles.** An escort vehicle must carry the following items of equipment at all times when escorting an oversize/overweight vehicle or load:

- (1) **Flags.** Red flags shall be at least twelve (12) inches square and shall be attached to standards angled upward to the left and right at forty-five (45) degrees and mounted on the top of the cab. No flags shall be displayed unless the escort vehicle is actually engaged in escorting.
- (2) **Mirrors.** The vehicle shall be equipped with an outside rear-view mirror on each side of the vehicle.
- (3) **Radio.** Escort and towing vehicles shall be equipped with a two-way radio which is capable of transmitting and receiving voice messages over a minimum distance of one-half (1/2) mile and which is compatible with radios in the escorted vehicle and any other escort vehicle(s).
- (4) **Fire extinguisher.** One (1) ten-pound or two (2) five-pound ABC fire extinguishers. Extinguishers shall be checked annually to ensure they are operational.
- (5) **Flares or reflectors.** Four (4) fifteen minute flares or three (3) portable triangle reflector units.
- (6) **Sign.** The regulation "Oversize Load" sign, as provided in 595:30-3-16, shall be mounted either on the front or the roof of front escort vehicles and on the rear of rear escort vehicles while escorting an oversize vehicle or load. The sign will be clearly visible without an obstruction. No signs shall be displayed unless the escort vehicle is actually engaged in escorting.
- (7) **Warning lights.** One AAMVA-approved rotating or flashing amber beacon or a flashing amber light bar system shall be mounted on top of the escort vehicle and shall be of sufficient intensity when illuminated to be visible from five hundred (500) feet in normal sunlight, and shall rotate, oscillate or flash through 360 degrees. Blue, red, or

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white rotating lights are not authorized under Oklahoma statutes. In addition:

- (A) Headlights of escort vehicles shall be lighted at all times during movement.
 - (B) Warning lights in conformance with 47 O.S. § 12-220(D) and § 12-227(C) may be used in conjunction with the headlights.
 - (C) No warning lights shall be displayed unless the escort vehicle is actually engaged in escorting.
- (8) **Measuring pole.** A current height measuring pole made of non-conductive, flexible, non-fragile material when escorting a load or vehicle which is ~~fifteen (15) feet and nine (9) inches~~ fourteen (14) feet and six (6) inches or more in height.
- (9) **Traffic control sign.** A standard eighteen (18) inch "STOP" and "SLOW" paddle sign.
- (10) **Safety clothing.** A hard hat and a jacket or vest, both in safety orange color, for each person who may be assigned to traffic control, setting reflectors or any other duties conducted on or near a roadway.
- (11) **Flashlight.** A flashlight equipped with and powered by at least two (2) D cell batteries.
- (12) **Spare tire.** A full-size spare tire for the escort vehicle, tire jack and lug wrench.
- (d) **Prohibitions when operating escort vehicles.** The escort vehicle shall not:
- (1) Carry any item, equipment or load in or upon the vehicle which:
 - (A) Exceeds the height, length or width of the vehicle, overhangs the escort vehicle; or otherwise impairs its immediate recognition as an escort vehicle by the motoring public.
 - (B) Impairs the view of the operator of the escort vehicle or the escorted vehicle.
 - (C) Obstructs the view of signs or flags used by the escort vehicle or causes safety risks to the motoring public.
 - (D) Impairs the performance of the escort vehicle.
 - (2) Tow any trailer or other vehicle, except that an escort vehicle operator not required to be certified by the Department *may tow a trailer when escorting a manufactured home. Such trailer shall not exceed eight and one-half (8 1/2) feet in width and twenty (20) feet in length with siding not to exceed four (4) feet in height measured from the bed of the trailer. The trailer may only be used to transport supplies and equipment necessary to carry out the mission of escort vehicle operators* [47 O.S. § 14-120.1(C)] and shall not be used to carry other supplies, equipment, or cargo.
 - (3) The operator of the escort vehicle shall not perform as a tillerman while performing escort operations. For purposes of this paragraph, "tillerman" means a person who operates by remote control any axle of the escorted vehicle.
- (e) **Duties of escort vehicle operators.**
- (1) **Traffic control.** In the performance of duties as the operator of an escort vehicle, the operator is authorized to direct traffic to stop, slow down or proceed in situations

where such direction is necessary to allow traffic or the escorted vehicle or load to continue moving safely.

- (A) The operator of the escort vehicle shall require the escorted vehicle or load to stop, and the escorted vehicle shall move as far off of the roadway as practicable and stop to allow other traffic to pass, under the following conditions:
 - (i) When the escorted vehicle or load becomes disabled.
 - (ii) When the movement of the escorted vehicle or load on a particular section of roadway presents a safety risk or unreasonable risk to or unreasonably interferes with the efficient movement of other traffic, based upon such factors as the widths of the escorted vehicle or load, roadway, volume of traffic, limited visibility or mountainous terrain.
 - (iii) When driving conditions for the escorted vehicle or load are hazardous for any reason including weather.
 - (B) When the escorted vehicle or load stops, the escort vehicle operator may direct other traffic past the escorted vehicle or load as necessary until such time as the escorted vehicle or load can reenter the roadway and continue moving without presenting a safety risk or unreasonably interfering with efficient movement of other traffic.
- (2) **Escort vehicle operation.**
- (A) The operator of an escort vehicle must comply with all applicable traffic laws of this state and with the requirements of this Chapter when escorting a vehicle on all routes of the state highway system, including but not limited to the Dwight D. Eisenhower National System for Interstate and Defense Highways, all turnpikes, and such other roads, streets, or public ways that the Commissioner of Public Safety and the Oklahoma Department of Transportation shall deem appropriate.
 - (B) On two-lane highways, the first escort vehicle will travel far enough to the front and the second escort vehicle, if required, will travel far enough to the rear of the escorted vehicle or load to timely warn approaching motorists. On multi-lane highways, the first escort vehicle will travel far enough to the rear of the escorted vehicle or load to timely warn motorists approaching from the rear.
- (f) **Insurance.**
- (1) Each certified escort vehicle operator who operates in interstate commerce, and on and after August 1, 2014, each certified escort vehicle operator, shall maintain a valid insurance policy issued by an insurance company currently authorized to issue policies of insurance covering risks in the State of Oklahoma, and proof of insurance shall be carried in the escort vehicle at all times. The insurance policy shall protect the public against loss of life, bodily injury to persons, and damage to property, and shall provide not less than One Million Dollars (\$1,000,000.00) combined single limit coverage for bodily injury and/or

property damage as a result of the operation of the escort vehicle, the escorted vehicle, or both causing the bodily injury and/or property damage.

(2) Until July 31, 2014, paragraph (1) of this subsection shall not apply to any operator who operates only in intrastate commerce or in interstate commerce into or through states which do not have escort vehicle certification requirements for the type of vehicle and/or load being escorted and who applies for and is granted restricted certification as provided for in OAC 595:30-3-17.1(c)(3); provided, the operator shall meet all minimum requirements for compulsory liability insurance in this state, and proof of insurance shall be carried in the escort vehicle at all times.

(3) On and after August 1, 2014, paragraph (1) of this subsection shall apply to all certified escort vehicles. operators.

595:30-3-18. Oversize vehicles and loads

(a) **General.** Permitted oversize vehicles and loads shall be subject to the following conditions and restrictions:

(1) The applicant for a permit must provide the length, height, and width of the vehicle or combination of vehicles and load requiring a permit.

(2) Date and time of travel shall be permitted as provided for in 47 O.S. §14-101 and in 595:30-3-4(1).

(3) Certain highways and areas may be designated for use or prohibited from use for a limited time, due to events which would impede traffic conditions.

(4) An escort vehicle or vehicles will be required as provided in (b) of this Section or as provided in 595:30-3-19 for manufactured homes.

(b) **Escorts for oversize loads.**

(1) Loads more than twelve (12) feet in width but not more than fourteen (14) feet in width are required to be accompanied by a front escort vehicle on two-lane highways and on super two-lane highways and by a rear escort on multi-lane highways with the required "Oversize Load" sign and flagging on the front of the towing vehicle and on the rear of the load or the towed vehicle, whichever extends the farthest.

(2) Loads more than fourteen (14) feet in width are required to be accompanied by two escort vehicles, one in the front and one in the rear, on two-lane highways or super two-lane highways. A rear escort is required on all multi-lane highways. All loads more than sixteen (16) feet in width are required to be accompanied by two escort vehicles, one in the front and one in the rear, on all roads and highways. The required "Oversize Load" sign and flagging is required on the front of the towing vehicle and on the rear of the load or the towed vehicle, whichever extends the farthest.

(3) Loads with an overall height of ~~fifteen (15) feet and nine (9) inches~~ fourteen (14) feet and six (6) inches or more are required to be accompanied by two escort vehicles, one in the front and one in the rear. The required "Oversize Load" sign and flagging is required on the front of the towing vehicle and on the rear of the load or the

towed vehicle, whichever extends the farthest. All public utilities and railroads along the route must be contacted in advance of the move by the permittee.

(4) A truck-tractor/semi-trailer combination which is more than eighty (80) feet in overall length is required to be accompanied by one front escort on two-lane highways. A combination other than a truck-tractor/semi-trailer which is more than eighty (80) feet in overall length is required to be accompanied by one front escort on two-lane highways or super two-lane highways.

(5) A truck-tractor/semi-trailer combination or any other combination of vehicles which is more than one hundred (100) feet in overall length is required to be accompanied by two escort vehicles, one in the front and one in the rear, on two-lane highways and super two-lane highways.

[OAR Docket #09-1352; filed 11-10-09]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 35. ENFORCEMENT OF OKLAHOMA MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS TRANSPORTATION ACT**

[OAR Docket #09-1353]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

595:35-1-6. Deletions, substitutions, and additions to federal rules adopted by reference [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S., §230.4(1) and (2); 75 O.S., §250.4(A)(8).

DATES:

Adoption:

September 22, 2009

Approved by Governor:

November 2, 2009

Effective:

Immediately upon Governor's approval.

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

These rules are of compelling public interest due to findings in the 2008 Motor Carrier Safety Assistance Program Review which place the state out of compliance with federal motor carrier regulations. A finding of non-compliance can result in the non-recoverable withholding of federal dollars to the state.

ANALYSIS:

Amendments to 595:35-1-6 would remove the exception of transportation of certain agricultural products which are hazardous materials, remove ability to seek permission to drive a transport vehicle in intrastate commerce containing a hazardous material in an emergency without the proper markings or placards, includes other government officials who may declare an emergency and grant relief from motor carrier regulations, and requires the end of an 8-day period upon completion of emergency restoration services to be 34 hours instead of 24 hours.

The proposed actions are amendments to existing rules.

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The circumstance which created the need for this rule is non-compliance by the state of federal motor carrier regulations [see Impact Statement].

The intended effect of this rule is to allow the Department of Public Safety to perform its duties as required or authorized by law, to ensure the safety of the motoring public, and to comply with federal regulations regarding motor carrier safety.

CONTACT PERSON:

David W. Beatty, Administrative Rules, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2024. Fax: (405) 425-2258. E-mail: dbeatty@dps.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S. § 253(D):

595:35-1-6. Deletions, substitutions, and additions to federal rules adopted by reference

(a) **Changes.** The changes in this Section to the federal rules adopted by reference in 595:35-1-4 apply only to intrastate commerce.

(b) **Terminology.** Unless otherwise specified, the following terminology shall apply:

(1) "Department," as defined in 595:35-1-2, shall be substituted wherever the term "Department of Transportation" or "Federal Motor Carrier Safety Administration" is used.

(2) "Commissioner," as defined in 595:35-1-2, shall be substituted wherever the term "Federal Motor Carrier Safety Administrator" or "Regional Director" is used.

(3) "Troop S," as defined in 595:35-1-2, shall be substituted wherever the term "Office of Motor Carriers" or "Motor Carrier Division" is used.

(c) **Scope of Definitions.** The definitions provided in (b) of this Section are limited in application to the Act and the rules adopted to carry out the Act. These definitions do not alter, replace or change any other definitions contained in Title 47 of the Oklahoma Statutes.

(d) **Exceptions in the transportation of hazardous materials.**

(1) Cargo Tank Specifications [49 CFR §173.33(a)], concerning the qualifications and maintenance of cargo tanks used to transport hazardous materials, shall include the following exemption: Intrastate movements of petroleum products in nonspecification cargo tanks of 3,500 gallons and less by motor carriers transporting petroleum products solely in intrastate commerce may continue, provided the cargo tanks meet the general packaging requirements of 49 CFR §173.24, except specification packages as stated in paragraph (c), and have been in actual operation transporting similar materials prior to October 1, 1987. This provision will expire on January 1, 1999. Any retrofitting of cargo tanks after October 1, 1987 shall be made to meet specification requirements for the type of hazardous material transported in them. This exemption does not apply if at any time after October 1, 1987 the cargo tank is sold or ownership of the cargo tank is otherwise transferred.

~~(2) The transportation of agricultural product other than a Class 2 material, over local roads between fields of the same farm, is excepted from the requirements of 49 CFR §§100 through 199 when transported by a farmer who is an intrastate private motor carrier.~~

~~(3) The transportation of an agricultural product to and from a farm, within 150 miles of the farm, is excepted from the requirements in subparts G and H of part 172 of 49 CFR §§100 through 199 when:~~

~~(A) It is transported by a farmer who is an intrastate private motor carrier.~~

~~(B) The packaging conforms to the requirements of 49 CFR §173.24 in so far as it does not leak, and the total amount of the agricultural product being transported on a single vehicle does not exceed:~~

~~(i) 16,094 pounds (7,300 kilograms) of ammonium nitrate fertilizer properly classed as Division 5.1, PG III, in a bulk packaging, or~~

~~(ii) 502 gallons (1,900 liters), for liquids or gases, or 5,070 pounds (2,300 kilograms), for solids, of any other agricultural product.~~

~~(C) Each person having any responsibility for transporting the agricultural product or preparing the product for shipment has been instructed in the applicable requirements of 49 CFR §§100 through 199.~~

~~(D) Formulated liquid agricultural products in specification packagings of 58 gallons (220 liters) or less capacity, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or transported for loading aboard an airplane for aerial application.~~

~~(E) Pertaining to nurse tanks of anhydrous ammonia [see 49 CFR §173.315(m)].~~

~~(4) Permission to drive a transport vehicle in intrastate commerce containing a hazardous material in an emergency without the proper markings or placards, as provided under Marking and Placarding Motor Vehicles [49 CFR §177.823(a)(2)] shall be obtained from the following: Department of Public Safety, Troop S, Commercial Vehicle Enforcement Division, P. O. Box 11415, Oklahoma City, OK 73136-0415, Phone: (405) 521-6104.~~

(e) **Motor Carrier Identification Report.**

(1) **Applicability.** All motor carriers conducting operations in intrastate commerce shall file a Motor Carrier Identification Report (Form MCS-150) before commencing operations, or if already operating, as soon as practical.

(2) **Availability.** The Motor Carrier Identification Report with complete instructions, is available from:

(A) Department of Public Safety:

(i) in person: Troop S Headquarters, 32 NE 23rd Street, Oklahoma City

(ii) by mail: Troop S, P.O. Box 11415, Oklahoma City, OK 73136-0415

(iii) by telephone: (405) 521-6103

(B) Corporation Commission:

- (i) in person: 2101 N. Lincoln Blvd., Oklahoma City
- (ii) by mail: P.O. Box 52000, Oklahoma City, OK 73152-2000
- (iii) by telephone: (405) 521-2251
- (C) Oklahoma Division Office of the Federal Motor Carrier Safety Administration:
 - (i) in person or by mail: 300 N. Meridian, Suite 106 S., Oklahoma City, OK 73107
 - (ii) by telephone: (800) 823-5660
 - (iii) from the internet: <http://www.fmcsa.dot.gov/>
- (3) **Filing.** The completed Motor Carrier Identification Report shall be filed:
 - (A) **Intrastate carriers.** For intrastate carriers, the Report must be filed with either:
 - (i) Department of Public Safety, Commercial Vehicle Enforcement Section, 32 NE 23rd Street, P.O. Box 11415, Oklahoma City, OK 73136-0415, or
 - (ii) Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000.
 - (B) **Interstate carriers.** For interstate carriers, the Report must be filed at the address as indicated on the Motor Carrier Identification Report.
- (4) **Motor carrier name.** Only the legal name or single trade name of the motor carrier may be used on the Motor Carrier Identification Report.
- (5) **Penalties.** A motor carrier who fails to file a Motor Carrier Identification Report or who, upon the report, furnishes misleading information or makes false statements is subject to the penalties prescribed in 47 O.S., § 230.9.
- (6) **Issuance and display of USDOT number.** Upon receipt and processing of the Motor Carrier Identification Report, an identification number (USDOT number) will be issued to the motor carrier. The motor carrier must display the number on each self-propelled commercial motor vehicle, as defined in 595:35-1-5, along with the additional information required by 49 C.F.R., Part 390.21. Intrastate USDOT numbers shall be displayed as follows:
 - (A) the letters "USDOT",
 - (B) the identification number itself, and
 - (C) the suffix letters "OK".
- (f) **Qualification of drivers.** The following addition is made to the federal requirement in Qualifications of Drivers [49 CFR §391.11(b)(1)] that a driver be twenty-one (21) years of age or older: A driver in solely intrastate commerce must be at least eighteen (18) years old and be at least twenty-one (21) years old for the transportation of hazardous materials which are required to be placarded or marked in accordance with 49 CFR §177.823 or for transporting more than eight (8) passengers for compensation or more than fifteen (15) passengers not for compensation.
- (g) **Maximum driving and on-duty time.** The following exception is added to the federal restrictions on Maximum

- Driving and On-Duty Time [49 CFR §395.3(a)(1)] as required by the Act [47 O.S. §230.15(d)]: More than eleven (11) hours following ten (10) consecutive hours off duty, except the maximum driving time within a work period is twelve (12) hours and the maximum on-duty time is fifteen (15) hours following eight (8) consecutive hours off duty if the vehicle:
 - (1) is engaged solely in intrastate commerce, and
 - (2) is not:
 - (A) transporting hazardous materials which are required to be placarded or marked in accordance with 49 CFR §177.823, or
 - (B) a vehicle designed to transport 15 passengers.
- (h) **Relief from regulations.**
 - (1) Anyone requesting relief from the hours of service regulations must contact the Troop Commander or, if declared to be unavailable by personnel at the Troop headquarters, the duty supervisor at the Troop headquarters for the region in which the emergency exists. This contact must be made and the prior approval obtained before the requesting party may claim relief from the regulations. The requesting party must provide the following information:
 - (A) the type of emergency,
 - (B) if applicable, the company on whose behalf the requesting party is seeking the exception,
 - (C) the region the emergency covers,
 - (D) the type of work required to restore services in the area, and
 - (E) the approximate time to restore those services.
 - (2) The decision to declare an emergency and grant relief from the regulations rests in the sound discretion of the Troop Commander or duty supervisor, the Commissioner of Public Safety or the Commissioner's designee, the Governor, the appropriate FMCSA Field Administrator, or the President of the United States.
 - (3) Upon completion of the emergency restoration services, any on duty hours accumulated during the emergency will be counted against the driver's allowable on duty hours and the driver may not drive as long as the amount of accumulated on duty hours exceeds those allowed by 49 CFR §395.3. However, any period of eight (8) consecutive days may end with the beginning of an off-duty period of ~~twenty-four (24)~~ thirty-four (34) or more successive hours when taken at the end of any emergency restoration service.
 - (4) Within thirty (30) days after completion of the emergency restoration services, the individual who had been granted relief from the hours of service regulations must submit a report detailing the following:
 - (A) Nature and extent of the emergency,
 - (B) Type of services restored during the emergency,
 - (C) Names and driver license numbers of those drivers for which the exemption was granted, and
 - (D) Total hours on duty during the declared emergency for each driver.

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(5) Said report must be sent to the following address:
Department of Public Safety, Troop S, P. O. Box 11415,
Oklahoma City, OK 73136-0415.

[OAR Docket #09-1353; filed 11-10-09]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #09-1383]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 23. Oklahoma Higher Learning Access Program

610:25-23-1. Purpose [AMENDED]

610:25-23-2. Eligibility of participants [AMENDED]

610:25-23-5. Securing Program Benefits [AMENDED]

610:25-23-7. Payment of awards; policies and limitations [AMENDED]

AUTHORITY:

State Regents for Higher Education; 70 O.S. §§ 2601, 2602, 2603, 2604 and 2605

DATES:

Adoption:

October 22, 2009

Approved by Governor:

November 10, 2009

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The State Regents for Higher Education find that a compelling public interest requires the passage of this emergency rule. The proposed amendments to the Oklahoma's Promise rules must be addressed as soon as possible to provide appropriate formal guidance to students in the program (and their parents) and those that will graduate high school in 2010 and 2011. There are approximately 6,000 students in the 2010 graduating class and 3,000 students graduating in 2011 that will benefit from these changes.

ANALYSIS:

The proposed emergency rule changes address the following issues:

1. SB 982 of the 2009 legislative session delayed the implementation of a second income limit for participants in the Oklahoma's Promise - Oklahoma Higher Learning Access Program from the 2010-2011 academic year until the 2012-2013 academic year. The proposed rule changes implement this delay and likewise delay mandatory use of the Free Application for Federal Student Aid (FAFSA) until 2012-2013.

2. SB 982 also requires the Oklahoma's Promise award amount to be based on the nonguaranteed tuition rate at applicable state system institutions. In Fall 2008 when the new guaranteed tuition rate option became available to incoming freshmen at the state four-year universities, the Oklahoma's Promise law did not restrict the award to the nonguaranteed tuition rate.

3. For students that are subject to court-ordered joint legal custody arrangements, the proposed changes clarify that appropriate federal regulations that are used for the FAFSA will be used to determine which parent's income to consider toward meeting the program's income limit.

4. The proposed changes also include language that would provide discretion to the State Regents to allow the option of using an approved application for free/reduced school meals (and possibly other means-tested programs) to document a family's income for purposes of enrolling a student in the program. The amendment would allow the Regents to limit this option to approved pilot projects.

The amendments are sought on an emergency basis so that formal guidance can be provided to the program participants graduating in 2010 and the public as soon as possible. Similar permanent rule amendments are being presented simultaneously but would not become effective until after review by the Legislature during the regular 2010 legislative session.

CONTACT PERSON:

David B. Harting, Associate General Counsel, OSRHE, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104-3506, 405-225-9289.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253 (D):

SUBCHAPTER 23. OKLAHOMA HIGHER LEARNING ACCESS PROGRAM

610:25-23-1. Purpose

The Oklahoma Higher Learning Access Program, created by the Oklahoma Higher Learning Access Act passed in 1992 (70 O.S. § 2601 et seq.), is designed to help provide access to postsecondary education opportunities for students with financial need who have demonstrated a commitment to academic success in high school. The program shall also be known as "Oklahoma's Promise". The Act identifies two primary purposes:

(1) The first is to ensure that students who satisfy the requirements of the program, and who pursue an associate or baccalaureate degree in Oklahoma at an accredited public or private institution, or pursue studies in a postsecondary program or course offered through a cooperative agreement between a public technology center and an institution of The Oklahoma State System for Higher Education, are relieved of the burden of paying:

(A) undergraduate resident nonguaranteed tuition at institutions of The Oklahoma State System for Higher Education;

(B) tuition for enrollment in postsecondary programs or courses of a public technology center, not to exceed the amount the student would have received for comparable enrollment at a two-year institution within The Oklahoma State System of Higher Education; or

(C) some portion of fees or tuition at a private institution of higher education in Oklahoma accredited pursuant to 70 O.S. § 4103.

(2) The further purpose of the program is to establish and maintain a variety of support services whereby a broader range of the general student population of this state will be prepared for success in postsecondary endeavors. [70 O.S. § 2602]

610:25-23-2. Eligibility of participants

Eligibility to participate in the program must be established by both the student and his/her parent(s), custodial parent(s), or guardian(s). Students enrolled in the eighth, ninth

or tenth grade at a public or private school and whose parents' income meets the financial need criteria are eligible to apply to become a program participant. Students educated by other means who are between the ages of thirteen (13) and fifteen (15) are eligible to apply to become a program participant. Eligibility requirements to participate in the program include the following:

- (1) The student must be a resident of the state of Oklahoma or be enrolled in a school district located in this state that serves students who reside in both this state and an adjacent state pursuant to a contract as authorized in Section 5-117.1 of Title 70 of the Oklahoma Statutes; and
- (2) The student's parent(s), custodial parent(s), or guardian(s) must establish financial need.

(A) To meet the program's financial need criteria, the income of the student's parent(s) from taxable and nontaxable sources shall not exceed \$50,000 per year at the time the student applies for participation in the program. A student who was adopted while in the permanent custody of the Department of Human Services, in the court-ordered custody of a licensed private nonprofit child-placing agency, or federally recognized Indian tribe, as defined by the federal Indian Child Welfare Act, shall not be subject to the determination of financial qualification at the time the student applies for participation in the program.

(B) Parents of students making application to the program must use one of the following options to establish financial need eligibility:

(i) Documentation of their most recent calendar (tax) year income to establish financial need eligibility. Parents of tenth-grade applicants may use the calendar (tax) year income that coincides with the spring semester of the tenth-grade if the parents' income is expected to be significantly less than the previous year; or

(ii) Documentation of current yearly income from an officially approved application for free or reduced price school meals or other state or federal means-tested programs as determined by the State Regents. The State Regents may limit use of this option to pilot projects as determined by the State Regents. If requested by the State Regents, parents may be required to provide additional documentation of income.

(C) The For students that are subject to court-ordered joint custody arrangements, the OSRHE shall use guidelines consistent with regulations for federal Title IV student financial aid programs to determine a student's custodial which parent(s) shall meet the financial need criteria.

610:25-23-5. Securing Program benefits

(a) To qualify for the program benefits for the first semester or other academic unit of postsecondary enrollment, the participant must:

- (1) Be a resident of this state both at the time of application to the program and at the time the student graduates

from high school, or have been enrolled in a school district located in this state that serves students who reside in both this state and an adjacent state pursuant to a contract as authorized in Section 5-117.1 of Title 70 of the Oklahoma Statutes.

(2) Have graduated within the previous three years from a high school or other educational program if home-schooled. The Oklahoma State Regents for Higher Education may award benefits for a student's first semester or other academic unit of postsecondary enrollment taken more than three (3) years after the student graduates from high school, or other educational program if home-schooled, if the student is a member of the Armed Forces of the United States, the Reserve Corps of the Armed Forces of the United States, or the Oklahoma National Guard, and is ordered to active duty or active duty for special work or training and due to the duty commitment the student is unable to enroll prior to the end of the three-year period. Such three-year period shall be extended by the length of the term of duty.

(3) Have a record of satisfactory compliance with the agreements and program requirements described in 610:25-23-4. Students failing to comply with the agreement and program requirements shall not be eligible for awards. Compliance shall be verified by the local contact person upon a form provided by the OSRHE. Final verification of compliance shall be determined by the OSRHE. A copy of the student's final high school transcript shall be submitted by the local contact person with the student's verification form.

(4) Have satisfied admission standards as established by the Oklahoma State Regents for Higher Education for first-time-entering students for the appropriate type of institution (OSRHE Policy Statement on Admission to, Retention in and Transfer Among Colleges and Universities of the State System) or, if attending a private institution, satisfy the admission standards determined by the private institution; provided, that no student participating in the program shall be admitted into an institution of higher education by special admission standards.

(5) Have secured admission to, and enrolled in, an institution which is a member of The Oklahoma State System of Higher Education, a postsecondary program offered pursuant to a duly approved cooperative agreement between a public technology center and an institution of The Oklahoma State System of Higher Education, or a private institution of higher learning located within this state and accredited pursuant to Section 4103 of Title 70 of the Oklahoma Statutes.

(6) Be a United States citizen or lawfully present in the United States. This provision shall not apply to any student that was enrolled in the program prior to the end of 2006-07 school year.

(b) For students receiving the program benefit award for the first time in ~~2010-11~~ 2012-13 and thereafter, at the time the student begins postsecondary education and prior to receiving any program benefit award, the income from taxable and nontaxable sources of the student's parent(s) shall not exceed

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\$100,000 per year. The determination of financial qualification as set forth in this paragraph shall be based on the income of the student, not the income of the parent(s), if the student:

- (1) is determined to be independent of the student's parents for federal financial aid purposes,
 - (2) was in the permanent custody of the Department of Human Services at the time the student enrolled in the program, or
 - (3) was in the court-ordered custody of a federally-recognized Indian tribe, as defined by the federal Indian Child Welfare Act, at the time the student enrolled in the program.
- (c) A student who was adopted while in the permanent custody of the Department of Human Services, in the court-ordered custody of a licensed private nonprofit child-placing agency, or federally recognized Indian tribe, as defined by the federal Indian Child Welfare Act, shall be subject to the following financial qualification at the time the student begins postsecondary education and prior to receiving any program benefit award:
- (1) For a student adopted between birth and twelve (12) years of age, the income from taxable and nontaxable sources of the student's parent(s) may not exceed \$150,000 per year.
 - (2) For a student adopted between thirteen (13) and seventeen (17) years of age, the income from taxable and nontaxable sources of the student's parent(s) may not exceed \$200,000 per year.
 - (3) If the student is determined to be independent of the student's parents for federal financial aid purposes, the determination of financial qualification shall be based on the income of the student, not the income of the parent(s).
- (d) Award recipients shall apply for financial aid at the institution in which they enroll.
- (e) All students eligible to receive the program benefit award for the first time in ~~2010-11~~ 2012-13 and thereafter must complete an application for federal financial aid (Free Application for Federal Student Aid or FAFSA) or its equivalent. Students not eligible to complete the FAFSA will be provided an alternate method by the OSRHE.
- (f) Any person incarcerated in a state, federal, or private correctional facility shall not be eligible to receive program benefits.

610:25-23-7. Payment of awards; policies and limitations

- (a) Eligible students enrolled at an institution in The Oklahoma State System of Higher Education shall have an award equivalent to their undergraduate resident nonguaranteed tuition paid to the institution on the student's behalf by an allocation from the Oklahoma Higher Learning Trust Fund [70 O.S. § 3953.1];
- (b) Eligible students enrolled in a duly accredited private Oklahoma institution of higher education [70 O.S. § 4103] shall have awards paid to the institution on the student's behalf by an allocation from the Oklahoma Higher Learning Access

Trust Fund in an amount equivalent to the average undergraduate resident nonguaranteed tuition if the student were enrolled in a comparable institution of The Oklahoma State System of Higher Education. Comparability of institutions shall be determined by the OSRHE;

(c) Eligible students enrolled in a postsecondary program offered through a cooperative agreement between a public technology center and an institution of The Oklahoma State System of Higher Education shall have an award equivalent to tuition paid, not exceeding the average amount the student would have received for comparable enrollment at a two-year institution within The Oklahoma State System of Higher Education, to the school or institution on the student's behalf by an allocation from the Oklahoma Higher Learning Access Trust Fund;

(d) Funds shall be transferred by the OSRHE from the Oklahoma Higher Learning Access Trust Fund to the institution in which the student is enrolled. No funds shall be paid directly to the student;

(e) Payment will not be allowed for courses taken in excess of those required for a baccalaureate degree;

(f) Students will be eligible for the benefits outlined in this policy for five (5) years from the first date of postsecondary enrollment. The Oklahoma State Regents for Higher Education may award the Oklahoma Higher Learning Access Program benefits for courses of postsecondary units taken more than five (5) years after the student's first semester of postsecondary enrollment only in hardship circumstances; provided, however, no Oklahoma Higher Learning Access Program participant may receive benefits beyond a cumulative time period of five (5) years [70 O.S. § 2604]. Hardship circumstances may include, but are not limited to, sickness, injury, required military service, or service required by the student's religious or cultural traditions;

(g) There will be no limit to the number of awards other than the amount of funds available or the number of eligible students. If sufficient funds are not available to provide awards for all eligible applicants, the OSRHE shall make awards on the basis of need;

(h) Students who have previously received awards shall have priority over students applying for initial awards;

(i) The Oklahoma State Regents for Higher Education shall take into consideration other grants and scholarships received by an eligible applicant when making awards [70 O.S. § 2604]. Award recipients may not receive financial aid in excess of his/her cost of attendance as determined by the institution in which the student is enrolled. The cost of attendance determined by the institution shall be consistent with regulations for federal Title IV student financial aid programs. If necessary, an award shall be reduced by an amount which makes the student's total financial aid equivalent to the student's identified cost of attendance.

[OAR Docket #09-1383; filed 11-24-09]

Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code*.

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

TITLE 1. EXECUTIVE ORDERS

1:2009-36.

EXECUTIVE ORDER 2009-36

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Wednesday, October 21, 2009, to honor Staff Sergeant Jack M. Martin III, an Oklahoma resident, who died on September 29, 2009, at age 26 while serving in Jolo Island, the Philippines.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 19th day of October, 2009.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:

M. Susan Savage
Secretary of State

[OAR Docket #09-1376; filed 11-19-09]

1:2009-39.

EXECUTIVE ORDER 2009-39

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Saturday, November 14, 2009, to honor Specialist Jason Dean Hunt, an Oklahoma resident, who died on Thursday, November 5, 2009, at age 22 while stationed in Fort Hood, Texas.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 13th day of November, 2009.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:

Vickie L. McAfee
Acting Assistant Secretary of State

[OAR Docket #09-1373; filed 11-17-09]

