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

[OAR Docket #10-226]

RULEMAKING ACTION:

Notice of proposed EMERGENCY rulemaking

PROPOSED RULES:

Subchapter 7. Environmental Permit Process

Part 5. Land Protection Division

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.

FINDING OF EMERGENCY:

The Hazardous Waste Management Advisory Council (HWMAC) was unable to hold its meeting originally scheduled for January 28, 2010, and then rescheduled for February 8, 2010, due to the two snow and ice storms that moved through the State on those dates. Because the proposed rules that were to be considered during the January - February 2010 timeframe contain some critical provisions that, once adopted, will allow the DEQ to award American Recovery and Reinvestment Act of 2009 (ARRA) funds for Brownfields projects, the DEQ finds it necessary to offer the proposed rules to the HWMAC as emergency rules at this time. Chapter 221, Subchapter 7, contains proposed rules dealing with the Brownfields Revolving Loan Fund (RLF) which provides low interest loans and subgrants to any private entities, political subdivisions, units of local governments (including municipal and county governments and school districts) and federally recognized Indian tribes for brownfield cleanup activities. The RLF funds may be used to clean up hazardous substances, pollutants,

contaminants, petroleum, mine-scarred land and controlled substances. The DEQ has received ARRA stimulus monies for the RLF and must make reasonable progress on making loans and/or subgrants with the funds by October 1, 2010. The new proposed RLF rules must be effective before DEQ can make loans and/or subgrants using the ARRA funds. The DEQ therefore finds that a compelling public interest exists, requiring an emergency rule adoption.

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 emergency rule revocation to the contact person from March 15, 2010, through April 16, 2010. Oral comments may be made at the Hazardous Waste Management Advisory Council meeting on April 22, 2010 or at the meeting of the Environmental Quality Board on June 15, 2010.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council at 10:00 a.m. on April 22, 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 June 15th, 2010, at the Redlands Community College Conference Center, Redlands Community College, 1300 S. Country Club Road, El Reno, OK, 73036.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by the proposed emergency 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 emergency rule revocation may be obtained from the contact person, viewed on the DEQ web site at www.deq.ok.gov or reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

RULE IMPACT STATEMENT:

The Rule Impact Statement may be obtained from the contact person, viewed on the DEQ web site at

Notices of Rulemaking Intent

www.deq.ok.gov or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

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 #10-226; filed 2-23-10]

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

[OAR Docket #10-227]

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 March 15, 2010, through April 16, 2010. Oral comments may be made at the Hazardous Waste Management Advisory Council meeting on April 22, 2010, or at the meeting of the Environmental Quality Board on June 15, 2010.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council at 10:00 a.m. on April 22, 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 June 15th, 2010, at the Redlands Community College Conference Center, Redlands Community College, 1300 S. Country Club Road, El Reno, OK, 73036.

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, viewed on the DEQ web site at www.deq.ok.us or reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

RULE IMPACT STATEMENT:

The Rule Impact Statement may be obtained from the contact person, viewed on the DEQ web site at www.deq.ok.us or reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

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 #10-227; filed 2-23-10]

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

[OAR Docket #10-228]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 17. Incinerators
- 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]

SUMMARY:

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 design and emission standards for biomedical waste incinerators and close the regulatory gap in Part 7 of Subchapter 17.

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 April 21, 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 April 21, 2010 hearing and at the June 15, 2010 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, April 21, 2010, at the Tulsa Campus of Oklahoma State University, 700 N. Greenwood, Tulsa, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on Tuesday, June 15, 2010, in El Reno, OK.

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 the contact person listed below.

RULE IMPACT STATEMENT:

The rule impact statement is 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 the contact person listed below.

CONTACT PERSON:

The contact person for this proposal is Cheryl E. Bradley, Environmental Programs Manager, at (405) 702-4100. Please send written comments on the proposed rule changes to Ms. 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 #10-228; filed 2-23-10]

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

[OAR Docket #10-229]

RULEMAKING ACTION:

Notice of proposed EMERGENCY 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,

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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.

FINDING OF EMERGENCY:

The Hazardous Waste Management Advisory Council (HWMAC) was unable to hold its meeting originally scheduled for January 28, 2010, and then rescheduled for February 8, 2010, due to the two snow and ice storms that moved through the State on those dates. Because the proposed rules that were to be considered during the January - February 2010 timeframe contain some critical provisions that, once adopted, will allow the DEQ to award American Recovery and Reinvestment Act (ARRA) funds for Brownfields projects, the DEQ finds it necessary to offer the proposed rules to the HWMAC as emergency rules at this time. Chapter 221, Subchapter 7, contains proposed rules dealing with the Brownfields Revolving Loan Fund (RLF) which provides low interest loans and subgrants to any private entities, political subdivisions, units of local governments (including municipal and county governments and school districts) and federally recognized Indian tribes for brownfield cleanup activities. The RLF funds may be used to clean up hazardous substances, pollutants, contaminants, petroleum, mine-scarred land and controlled substances. The DEQ has received ARRA stimulus monies for the RLF and must make reasonable progress on making loans and/or subgrants with the funds by October 1, 2010. The new proposed RLF rules must be effective before DEQ can make loans and/or subgrants using the ARRA funds. The DEQ therefore finds that a compelling public interest exists, requiring an emergency rule revocation adoption.

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 March 15, 2010, through April 16,

2010. Oral comments may be made at the Hazardous Waste Management Advisory Council meeting on April 22, 2010, or at the meeting of the Environmental Quality Board on June 15, 2010.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council at 10:00 a.m. on April 22, 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 June 15th, 2010, at the Redlands Community College Conference Center, Redlands Community College, 1300 S. Country Club Road, El Reno, OK, 73036.

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 be 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 73102.

RULE IMPACT STATEMENT:

A copy of the Rule Impact Statement may be obtained from the contact person, may be viewed on the DEQ web site at www.deq.ok.gov or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

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 #10-229; filed 2-23-10]

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

[OAR Docket #10-230]

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 March 15, 2010, through April 16, 2010. Oral comments may be made at the Hazardous Waste Management Advisory Council meeting on April 22, 2010, or at the meeting of the Environmental Quality Board on June 15, 2010.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council at 10:00 a.m. on April 22, 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 June 15th, 2010, at the Redlands Community College Conference Center, Redlands Community College, 1300 S. Country Club Road, El Reno, OK, 73036.

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, viewed on the DEQ web site at www.deq.ok.gov or reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

RULE IMPACT STATEMENT:

The Rule Impact Statement may be obtained from the contact person, viewed on the DEQ web site at www.deq.ok.gov or reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

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 #10-230; filed 2-23-10]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 221. BROWNFIELDS**

[OAR Docket #10-231]

RULEMAKING ACTION:

Notice of proposed EMERGENCY 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 Brownfields rules has been developed to be consistent with the Brownfields

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law as well as to be compliant with U.S.E.P.A. Brownfields 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.

FINDING OF EMERGENCY:

The Hazardous Waste Management Advisory Council (HWMAC) was unable to hold its meeting originally scheduled for January 28, 2010, and then rescheduled for February 8, 2010, due to the two snow and ice storms that moved through the State on those dates. Because the proposed rules that were to be considered during the January - February 2010 timeframe contain some critical provisions that, once adopted, will allow the DEQ to award ARRA funds for Brownfields projects, the DEQ finds it necessary to offer the proposed rules to the HWMAC as emergency rules at this time. Chapter 221, Subchapter 7, contains proposed rules dealing with the Brownfields Revolving Loan Fund (RLF) which provides low interest loans and subgrants to any private entities, political subdivisions, units of local governments (including municipal and county governments and school districts) and federally recognized Indian tribes for brownfield cleanup activities. The RLF funds may be used to clean up hazardous substances,

pollutants, contaminants, petroleum, mine-scarred land and controlled substances. The DEQ has received ARRA stimulus monies for the RLF and must make reasonable progress on making loans and/or subgrants with the funds by October 1, 2010. The new proposed RLF rules must be effective before DEQ can make loans and/or subgrants using the ARRA funds. The DEQ therefore finds that a compelling public interest exists, requiring an emergency rule adoption.

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 emergency rules to the contact person from March 15, 2010, through April 16, 2010. Oral comments may be made at the Hazardous Waste Management Advisory Council meeting on April 22, 2010, or at the meeting of the Environmental Quality Board on June 15, 2010.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council at 10:00 a.m. on April 22, 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 June 15th, 2010, at the Redlands Community College Conference Center, Redlands Community College, 1300 S. Country Club Road, El Reno, OK, 73036.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by these proposed emergency 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 permanent 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.ok.gov or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

RULE IMPACT STATEMENT:

The Rule Impact Statement for the proposed emergency rules may be obtained from the contact person, may viewed on the DEQ web site at www.deq.ok.gov or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

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 #10-231; filed 2-23-10]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 221. BROWNFIELDS**

[OAR Docket #10-232]

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 permanent rules to the contact person from March 15, 2010, through April 16, 2010. Oral comments may be made at the Hazardous Waste Management Advisory Council meeting on April 22, 2010, or at the meeting of the Environmental Quality Board on June 15, 2010.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council at 10:00 a.m. on April 22, 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 June 15th, 2010, at the Redlands Community College Conference Center, Redlands Community College, 1300 S. Country Club Road, El Reno, OK, 73036.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by these proposed permanent 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 permanent rules.

COPY OF PROPOSED RULE CHANGES:

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

RULE IMPACT STATEMENT:

The Rule Impact Statement may be obtained from the contact person, viewed on the DEQ web site at www.deq.ok.gov or reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

CONTACT PERSON:

Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City,

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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 #10-232; filed 2-23-10]

TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 10. FIRST MORTGAGE AGRICULTURAL LOAN [REVOKED]

[OAR Docket #10-221]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Chapter 10. First Mortgage Agricultural Loan
[REVOKED]

SUMMARY:

The proposed amendments revoke obsolete rules for functions no longer in use by this agency.

AUTHORITY:

The Commissioners of the Land Office; Article 6, Section 32, Constitution of the State of Oklahoma; 64 O.S. §§ 1, et seq.; Okla. Admin. Code 385:1-1-4

COMMENT PERIOD:

Persons wishing to make written or oral comments may do so by 4:30 p.m., April 16, 2010, at the Commissioners of the Land Office, Office of the General Counsel, Paragon Building, Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604- 8100.

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 Commissioners of the Land Office, Office of the General Counsel, Paragon Building, Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604-8100, no later than April 16, 2010 at 4:30 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the Commissioners of the Land Office, 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 the Commissioners of the Land

Office, Office of the General Counsel, at the above address, before the close of the comment period on April 16, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained by contacting the Commissioners of the Land Office, Office of the General Counsel, Paragon Building, Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604-8100.

RULE IMPACT STATEMENT:

A rule impact statement will be available on March 30, 2010, in accordance with 75 O.S. § 303(D). A copy of the statement may be obtained by contacting the Commissioners of the Land Office, Office of the General Counsel, Paragon Building, Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604-8100.

CONTACT PERSON:

Guy Hurst, General Counsel, (405) 604-8100.

[OAR Docket #10-221; filed 2-22-10]

TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 15. SALE AND OPERATION OF OIL AND GAS LEASES

[OAR Docket #10-222]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

385:15-1-16 [REVOKED]

385:15-1-17 [REVOKED]

SUMMARY:

The proposed amendments revoke obsolete rules for functions no longer in use by this agency.

AUTHORITY:

The Commissioners of the Land Office; Article 6, Section 32, Constitution of the State of Oklahoma; 64 O.S. §§ 1, et seq.; Okla. Admin. Code 385:1-1-4

COMMENT PERIOD:

Persons wishing to make written or oral comments may do so by 4:30 p.m., April 16, 2010, at the Commissioners of the Land Office, Office of the General Counsel, Paragon Building, Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604- 8100.

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 Commissioners of the Land Office, Office of the General Counsel, Paragon Building, Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604-8100, no later than April 16, 2010 at 4:30 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the Commissioners of the Land Office, 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 the Commissioners of the Land Office, Office of the General Counsel, at the above address, before the close of the comment period on April 16, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained by contacting the Commissioners of the Land Office, Office of the General Counsel, Paragon Building, Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604-8100.

RULE IMPACT STATEMENT:

A rule impact statement will be available on March 30, 2010, in accordance with 75 O.S. § 303(D). A copy of the statement may be obtained by contacting the Commissioners of the Land Office, Office of the General Counsel, Paragon Building, Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604-8100.

CONTACT PERSON:

Guy Hurst, General Counsel, (405) 604-8100.

[OAR Docket #10-222; filed 2-22-10]

**TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE
CHAPTER 25. SURFACE LEASING FOR AGRICULTURAL AND COMMERCIAL PURPOSES**

[OAR Docket #10-223]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

385:25-1-20 [AMENDED]

SUMMARY:

The proposed amendments make minor changes to the process allowing the agency to bring legal proceedings to remove holdover tenants on certain property and to recover attorneys fees in such proceedings.

AUTHORITY:

The Commissioners of the Land Office; Article 6, Section 32, Constitution of the State of Oklahoma; 64 O.S. §§ 1, et seq.; Okla. Admin. Code 385:1-1-4

COMMENT PERIOD:

Persons wishing to make written or oral comments may do so by 4:30 p.m., April 16, 2010, at the Commissioners of the Land Office, Office of the General Counsel, Paragon Building, Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604- 8100.

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 Commissioners of the Land Office, Office of the General Counsel, Paragon Building, Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604-8100, no later than April 16, 2010 at 4:30 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the Commissioners of the Land Office, 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 the Commissioners of the Land Office, Office of the General Counsel, at the above address, before the close of the comment period on April 16, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained by contacting the Commissioners of the Land Office, Office of the General Counsel, Paragon Building, Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604-8100.

RULE IMPACT STATEMENT:

A rule impact statement will be available on March 30, 2010, in accordance with 75 O.S. § 303(D). A copy of the statement may be obtained by contacting the Commissioners of the Land Office, Office of the General Counsel, Paragon Building, Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604-8100.

CONTACT PERSON:

Guy Hurst, General Counsel, (405) 604-8100.

[OAR Docket #10-223; filed 2-22-10]

**TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE
CHAPTER 30. SALE OF SCHOOL LAND**

[OAR Docket #10-224]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

385:30-1-9 [REVOKED]

SUMMARY:

The proposed amendments revoke obsolete rules for functions no longer in use by this agency.

AUTHORITY:

The Commissioners of the Land Office; Article 6, Section 32, Constitution of the State of Oklahoma; 64 O.S. §§ 1, et seq.; Okla. Admin. Code 385:1-1-4

COMMENT PERIOD:

Persons wishing to make written or oral comments may do so by 4:30 p.m., April 16, 2010, at the Commissioners of the Land Office, Office of the General Counsel, Paragon Building,

Notices of Rulemaking Intent

Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604- 8100.

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 Commissioners of the Land Office, Office of the General Counsel, Paragon Building, Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604-8100, no later than April 16, 2010 at 4:30 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the Commissioners of the Land Office, 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 the Commissioners of the Land Office, Office of the General Counsel, at the above address, before the close of the comment period on April 16, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained by contacting the Commissioners of the Land Office, Office of the General Counsel, Paragon Building, Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604-8100.

RULE IMPACT STATEMENT:

A rule impact statement will be available on March 30, 2010, in accordance with 75 O.S. § 303(D). A copy of the statement may be obtained by contacting the Commissioners of the Land Office, Office of the General Counsel, Paragon Building, Suite 200, 5801 N. Broadway Ext., Oklahoma City, OK 73118, Telephone 405-604-8100.

CONTACT PERSON:

Guy Hurst, General Counsel, (405) 604-8100.

[OAR Docket #10-224; filed 2-22-10]

TITLE 770. OKLAHOMA DEPARTMENT OF VETERANS AFFAIRS CHAPTER 10. CENTER DIVISION PROGRAM

[OAR Docket #10-225]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

Subchapter 1. General Provisions

770:10-1-4 [AMENDED]

SUMMARY:

The proposed revision to Chapter 10 will reflect that eligible World War II veterans will be placed at the top of the waiting list for admission to the seven facilities that the ODVA operates in the state of Oklahoma. The current version of the rule mandates that World War I veterans receive such priority and there are no longer World War I veterans who are seeking such admission. The proposed revision will further delete the language in the current version that places veterans who have been rated as having a service connected disability of 50% at the top of the waiting list for admission to the ODVA facilities and instead require that any veteran with any degree of service connected disability be placed at the top of the waiting list.

The proposed revisions will include the addresses and phone numbers of the Claremore and Lawton ODVA facilities and the new addresses for the Sulphur and Talihina ODVA facilities and will also change the wording in the current rule for the initials of the federal US Department of Veterans Affairs from the VA to the USDVA.

AUTHORITY:

Oklahoma Department of Veterans Affairs; 72 OS Section 63.3

COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so before 4:30 PM on April 20, 2010, at the following address: Martha Spear, Executive Director, Oklahoma Department of Veterans Affairs, 2311 N Central, Oklahoma City, OK 73105, 405.521.3684.

PUBLIC HEARING:

A public hearing is not currently scheduled, but a request for one could be made to the above listed individual by 4:30 PM on April 20, 2010.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

NA

COPIES OF PROPOSED RULE:

Copies of the proposed rule may be obtained from the Oklahoma Department of Veterans Affairs, 2311 N Central, Oklahoma City, OK 73105, 405.521.3684.

RULE IMPACT STATEMENT:

Pursuant to 75 OS Section 303 (D), a rule impact statement will be prepared and may be obtained from the Oklahoma Department of Veterans Affairs at the above address beginning March 30, 2010.

CONTACT PERSON:

Martha Spear or Jewell Coe, 405.521.3684

[OAR Docket #10-225; filed 2-23-10]

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 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 2. FEES

[OAR Docket #10-212]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 3. Fee Schedules
35:2-3-2 [AMENDED]
35:2-3-2.2 [AMENDED]
35:2-3-2.3 [AMENDED]
35:2-3-2.4 [AMENDED]
35:2-3-2.5 [AMENDED]
35:2-3-2.7 [AMENDED]

SUBMITTED TO GOVERNOR:

January 25, 2010

SUBMITTED TO HOUSE:

January 25, 2010

SUBMITTED TO SENATE:

January 25, 2010

[OAR Docket #10-212; filed 2-12-10]

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

[OAR Docket #10-219]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

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]

SUBMITTED TO GOVERNOR:

February 18, 2010

SUBMITTED TO HOUSE:

February 18, 2010

SUBMITTED TO SENATE:

February 18, 2010

[OAR Docket #10-219; filed 2-18-10]

TITLE 230. STATE ELECTION BOARD CHAPTER 10. THE COUNTY ELECTION BOARD

[OAR Docket #10-207]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 7. General Administration of the County Election Board
Part 5. Maintaining the Office
230:10-7-48. Correspondence [AMENDED]
230:10-7-48.1. County Election Board electronic mail addresses [NEW]
Part 7. Public Records
230:10-7-59. Public records [AMENDED]
Part 15. Polling Places
230:10-7-110. Board to provide polling places [AMENDED]

SUBMITTED TO GOVERNOR:

February 12, 2010

SUBMITTED TO HOUSE:

February 12, 2010

SUBMITTED TO SENATE:

February 12, 2010

[OAR Docket #10-207; filed 2-12-10]

TITLE 230. STATE ELECTION BOARD CHAPTER 15. VOTER REGISTRATION

[OAR Docket #10-208]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 9. Receiving and Processing Voter Registration Applications
Part 1. Responsibilities of the State Election Board for Voter Registration
230:15-9-5. Processing voter registration cancellation information at the State Election Board [NEW]
Part 3. County Election Board Responsibility for Processing Voter Registration Applications
230:15-9-12. Processing voter registration applications at the County Election Board [AMENDED]
Part 5. Processing Voter Registration Applications
230:15-9-18. Entering applications for voter registration in OEMS or MESA [AMENDED]

Submissions for Review

230:15-9-18.1. Assigning voter registration addresses in the Street Guide [AMENDED]
230:15-9-19. Applications for change of voter registration [AMENDED]
230:15-9-20. Processing applications for name change [AMENDED]
230:15-9-21. Processing applications for change of residence address or mailing address [AMENDED]
230:15-9-22. Processing applications for change of political affiliation [AMENDED]
230:15-9-22.1. Processing application for change of political affiliation during prohibited period [AMENDED]
230:15-9-23. Processing duplicate applications for voter registration [AMENDED]
230:15-9-25. Processing applications for restricted records status [AMENDED]
Subchapter 11. Voter Registration List Maintenance
Part 1. Cancellation of Voter Registration
230:15-11-2. Positive identification required [AMENDED]
230:15-11-5. Potential Deletion Report [AMENDED]
230:15-11-6. Cancellation of registration of deceased voter by next of kin [AMENDED]
230:15-11-6.1. Cancellation of registration of deceased voter upon notice of nursing home administrator [AMENDED]
230:15-11-8. Cancellation for felony conviction [AMENDED]
230:15-11-9. Potential Duplicate Registration Report [AMENDED]
230:15-11-10. Statewide cancellation of true duplicate registrations [AMENDED]

SUBMITTED TO GOVERNOR:

February 12, 2010

SUBMITTED TO HOUSE:

February 12, 2010

SUBMITTED TO SENATE:

February 12, 2010

[OAR Docket #10-208; filed 2-12-10]

TITLE 230. STATE ELECTION BOARD CHAPTER 30. ABSENTEE VOTING

[OAR Docket #10-209]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 1. General Provisions
230:30-1-2. Definitions [AMENDED]
Subchapter 3. Authorization for Absentee Voting
230:30-3-3. Voters eligible for absentee ballots [AMENDED]
Subchapter 5. Application for Absentee Ballots

230:30-5-1.1. Applications for absentee ballots [AMENDED]
230:30-5-8.1. Time for absentee ballot applications [AMENDED]
230:30-5-8.2. Validity of applications for absentee ballots for all elections [AMENDED]
230:30-5-9. Rejected applications [AMENDED]
Subchapter 7. Absentee Voting Boards
230:30-7-6. Scheduling Absentee Voting Boards for an election [AMENDED]
230:30-7-6.1. Training for Absentee Voting Board members [AMENDED]
230:30-7-8. Nursing home ballot box shall be locked [AMENDED]
230:30-7-9. Procedure for the nursing home Absentee Voting Board [AMENDED]
230:30-7-10. Secretary to indicate date of nursing home visit [AMENDED]
Subchapter 9. Processing Applications
230:30-9-1. Applications processed on day received [AMENDED]
230:30-9-2. Forms needed for processing [AMENDED]
230:30-9-3. Processing applications for absentee ballots [AMENDED]
230:30-9-5. Processing applications from uniformed services voters and overseas voters [AMENDED]
230:30-9-5.1. ~~Faxing~~ Transmitting absentee ballots to uniformed services and overseas voters by fax [AMENDED]
230:30-9-5.2. Transmitting absentee ballots to uniformed services voters and overseas voters by electronic mail [NEW]
Subchapter 11. Receiving and Processing Absentee Ballots
230:30-11-2. Opening outer envelopes and examining affidavits [AMENDED]
230:30-11-6. Transmitting absentee ballots [AMENDED]
230:30-11-6.1. Receiving voted absentee ballots by fax from uniformed services and overseas voters [AMENDED]
Subchapter 13. Federal Write-In Absentee Ballot
230:30-13-2. Receiving and processing federal write-in absentee ballots [AMENDED]
Subchapter 15. State Write-In Absentee Ballots
230:30-15-2. Applications for state write-in absentee ballot [AMENDED]
230:30-15-4. State write-in absentee ballot provided by State Election Board [AMENDED]
230:30-15-5. Processing applications for state write-in absentee ballots [AMENDED]
230:30-15-6. List of candidates [AMENDED]
230:30-15-7. Voters who request both regular and state write-in absentee ballots [AMENDED]
Subchapter 19. Counting the Ballots
Part 1. Counting Absentee Ballots on Election Day

230:30-19-6. Marking substitute ballot to count write-in or ballots, faxed ballots, and ballots transmitted to voters by electronic mail [AMENDED]

Subchapter 21. Recording Absentee Voting

230:30-21-4. Retaining absentee ballot materials [AMENDED]

SUBMITTED TO GOVERNOR:

February 12, 2010

SUBMITTED TO HOUSE:

February 12, 2010

SUBMITTED TO SENATE:

February 12, 2010

[OAR Docket #10-209; filed 2-12-10]

**TITLE 230. STATE ELECTION BOARD
CHAPTER 40. TYPES OF ELECTIONS**

[OAR Docket #10-210]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 3. Special Elections

Part 9. Substitute Nominees

230:40-3-30. Notification of State Election Board [AMENDED]

Subchapter 5. Municipal Elections

Part 19. Statistical Reports

230:40-5-85. Information on municipal candidate elections [NEW]

Subchapter 7. School Elections

Part 21. Filling Vacancies

230:40-7-91. Methods of filling vacancies [AMENDED]

230:40-7-92. Elections to fill vacancies [AMENDED]

Part 23. Multi-County School Districts

230:40-7-97.1. Elections for technology center districts serving 70 or more school districts [NEW]

SUBMITTED TO GOVERNOR:

February 12, 2010

SUBMITTED TO HOUSE:

February 12, 2010

SUBMITTED TO SENATE:

February 12, 2010

[OAR Docket #10-210; filed 2-12-10]

**TITLE 230. STATE ELECTION BOARD
CHAPTER 50. AUTOMATED SYSTEMS**

[OAR Docket #10-211]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 3. Voting Devices and Data Processing

Part 7. Oklahoma Election Management System

230:50-3-31.1. Modern Election Support Application [AMENDED]

230:50-3-32. Use of OEMS and MESA required [AMENDED]

230:50-3-33. Hardware—OEMS hardware, software use restricted [AMENDED]

230:50-3-33.1. MESA software use restricted [NEW]

230:50-3-34. County Election Board shall maintain data [AMENDED]

230:50-3-35. Training for County Election Board personnel [AMENDED]

230:50-3-35.1. Instructions for MESA software [NEW]

230:50-3-37. Password—Username and password security in OEMS and MESA [AMENDED]

230:50-3-38. Morning—OEMS morning routine [AMENDED]

230:50-3-39. System—OEMS system backups [AMENDED]

230:50-3-39.1. System backups for computers using MESA software and storing MESA reports [NEW]

230:50-3-40. Conducting daily OEMS backups [AMENDED]

230:50-3-41. Conducting weekly OEMS backups [AMENDED]

230:50-3-41.1. Election backups in OEMS [AMENDED]

SUBMITTED TO GOVERNOR:

February 12, 2010

SUBMITTED TO HOUSE:

February 12, 2010

SUBMITTED TO SENATE:

February 12, 2010

[OAR Docket #10-211; filed 2-12-10]

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

[OAR Docket #10-198]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

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]

Submissions for Review

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)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-198; filed 2-12-10]

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

[OAR Docket #10-192]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

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

SUBMITTED TO GOVERNOR:

February 12, 2010

SUBMITTED TO HOUSE:

February 12, 2010

SUBMITTED TO SENATE:

February 12, 2010

[OAR Docket #10-192; filed 2-12-10]

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

[OAR Docket #10-181]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 5. Individual Providers and Specialties
Part 85. ADvantage Program Waiver Services
317:30-5-761. [AMENDED]
317:30-5-763.1. [AMENDED]

Part 95. Agency Personal Care Services
317:30-5-952. [AMENDED]
(Reference APA WF # 09-02A)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-181; filed 2-12-10]

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

[OAR Docket #10-182]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-61. [NEW]
(Reference APA WF # 09-04)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-182; filed 2-12-10]

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

[OAR Docket #10-183]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

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)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-183; filed 2-12-10]

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

[OAR Docket #10-185]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

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)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-185; filed 2-12-10]

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

[OAR Docket #10-186]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 5. Individual Providers and Specialties

Part 5. Pharmacies

317:30-5-72.1. [AMENDED]

(Reference APA WF # 09-10)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-186; filed 2-12-10]

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

[OAR Docket #10-188]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

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)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-188; filed 2-12-10]

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

[OAR Docket #10-189]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 3. General Provider Policies

Part 1. General Scope and Administration

317:30-3-24. [AMENDED]

(Reference APA WF # 09-19A)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

Submissions for Review

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-189; filed 2-12-10]

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

[OAR Docket #10-193]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 3. General Provider Policies

Part 5. Eligibility

317:30-3-80. [REVOKED]

(Reference APA WF # 09-26)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-193; filed 2-12-10]

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

[OAR Docket #10-195]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 5. Individual Providers and Specialties

Part 6. Inpatient Psychiatric Hospitals

317:30-5-95. [AMENDED]

(Reference APA WF # 09-29)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-195; filed 2-12-10]

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

[OAR Docket #10-196]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals

317:30-5-42.11. [AMENDED]

(Reference APA WF # 09-34)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-196; filed 2-12-10]

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

[OAR Docket #10-197]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 5. Individual Providers and Specialties

Part 17. Medical Suppliers

317:30-5-211.18. [NEW]

(Reference APA WF # 09-35)

SUBMITTED TO GOVERNOR:

February 11, 2010

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February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-197; filed 2-12-10]

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

[OAR Docket #10-199]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

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

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-199; filed 2-12-10]

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

[OAR Docket #10-200]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

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

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-200; filed 2-12-10]

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

[OAR Docket #10-201]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

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)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-201; filed 2-12-10]

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

[OAR Docket #10-205]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

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)

SUBMITTED TO GOVERNOR:

February 12, 2010

SUBMITTED TO HOUSE:

February 12, 2010

SUBMITTED TO SENATE:

February 12, 2010

[OAR Docket #10-205; filed 2-12-10]

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

[OAR Docket #10-184]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 17. ADvantage Waiver Services
317:35-17-1. [AMENDED]
317:35-17-11. [AMENDED]
(Reference APA WF # 09-06B)

SUBMITTED TO GOVERNOR:

February 11, 2010

Submissions for Review

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-184; filed 2-12-10]

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

[OAR Docket #10-187]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
317:35-5-41.9. [AMENDED]

(Reference APA WF #09-15A)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-187; filed 2-12-10]

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

[OAR Docket #10-190]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 13. ~~Client~~ Member Rights and Responsibilities
Part 1. General Scope and Administration [NEW]
317:35-13-4. [AMENDED]

(Reference APA WF # 09-19B)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-190; filed 2-12-10]

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

[OAR Docket #10-202]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
317:35-5-41.2. [AMENDED]

(Reference APA WF # 09-43)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-202; filed 2-12-10]

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

[OAR Docket #10-203]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

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

(Reference APA WF # 09-45)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-203; filed 2-12-10]

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

[OAR Docket #10-206]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

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

SUBMITTED TO GOVERNOR:

February 12, 2010

SUBMITTED TO HOUSE:

February 12, 2010

SUBMITTED TO SENATE:

February 12, 2010

[OAR Docket #10-206; filed 2-12-10]

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

[OAR Docket #10-191]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

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

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-191; filed 2-12-10]

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

[OAR Docket #10-204]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

RULES:

Subchapter 9. Self-directed Services
317:40-9-1. [NEW]
(Reference APA WF # 09-48)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-204; filed 2-12-10]

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

[OAR Docket #10-194]

RULEMAKING ACTION:

Submission for gubernatorial/legislative review

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)

SUBMITTED TO GOVERNOR:

February 11, 2010

SUBMITTED TO HOUSE:

February 11, 2010

SUBMITTED TO SENATE:

February 11, 2010

[OAR Docket #10-194; filed 2-12-10]

**TITLE 405. OKLAHOMA DEPARTMENT OF
LIBRARIES
CHAPTER 35. FEES**

[OAR Docket #10-218]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

405:35-1-2 [AMENDED]

SUBMITTED TO GOVERNOR:

February 17, 2010

SUBMITTED TO HOUSE:

February 17, 2010

SUBMITTED TO SENATE:

February 17, 2010

[OAR Docket #10-218; filed 2-18-10]

Submissions for Review

TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 35. MAINTENANCE AND CONTROL OF STATE HIGHWAY SYSTEM

[OAR Docket #10-167]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 19. Oklahoma Traveler Information Logo
Signing Program

730:35-19-1 [AMENDED]

730:35-19-2 [AMENDED]

730:35-19-3 [AMENDED]

730:35-19-6 [AMENDED]

730:35-19-7 [AMENDED]

Appendix A. Urban Interstate Interchange [REVOKED]

Appendix A. Urban Interstate Interchange [NEW]

Appendix B. Rural Interstate Interchange [REVOKED]

Appendix B. Rural Interstate Interchange [NEW]

Appendix C. Rural and Urban Primary Interchange
[REVOKED]

Appendix C. Rural and Urban Primary Interchanges [NEW]

Appendix D. Preferred Guideline Criteria for Signing
Traffic Generators on Freeways or Expressways
[REVOKED]

Appendix D. Preferred Guideline Criteria for Signing
Traffic Generators on Freeways or Expressways [NEW]

Appendix E. Traffic Generators that Do Not Normally
Warrant Signing [REVOKED]

Appendix E. Traffic Generators that do not Normally
Warrant Signing [NEW]

Appendix F. Tourist Oriented Directional Signing
[REVOKED]

Appendix F. Tourist Oriented Directional Signing (TODS)
[NEW]

SUBMITTED TO GOVERNOR:

February 8, 2010

SUBMITTED TO HOUSE:

February 8, 2010

SUBMITTED TO SENATE:

February 8, 2010

[OAR Docket #10-167; filed 2-8-10]

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 2. FEES

[OAR Docket #10-213]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Fee Schedules

35:2-3-2 [AMENDED]

35:2-3-2.2 [AMENDED]

35:2-3-2.3 [AMENDED]

35:2-3-2.4 [AMENDED]

35:2-3-2.5 [AMENDED]

35:2-3-2.7 [AMENDED]

GUBERNATORIAL APPROVAL:

February 4, 2010

[OAR Docket #10-213; filed 2-12-10]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 65. ANESTHESIOLOGIST ASSISTANTS

[OAR Docket #10-215]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. Administration and Organization [NEW]

435:65-1-3. License required [RENUMBERED TO 435:64-3-1]

435:65-1-3.1. Definitions [NEW]

435:65-1-4. Application for initial licensure/renewal of license [RENUMBERED TO 435:65-3-2]

435:65-1-5. Supervision [RENUMBERED TO 435:65-7-1]

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]

435:65-3-5. 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]

GUBERNATORIAL APPROVAL:

February 4, 2010

[OAR Docket #10-215; filed 2-17-10]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 10. PUBLIC EMPLOYEES RETIREMENT SYSTEM

[OAR Docket #10-177]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 2. Definitions [NEW]

590:10-2-1. General Definitions [NEW]

Subchapter 5. Contributions and Compensation

590:10-5-1. Maximum level [AMENDED]

Subchapter 7. Retirement Benefits

590:10-7-16. Rollovers [AMENDED]

590:10-7-19. Required minimum distributions [NEW]

590:10-7-20. Actuarial assumptions [NEW]

590:10-7-21. USERRA [NEW]

590:10-7-22. Qualified military service rights [NEW]

590:10-7-23. Compliance with Section 415 Limitations on Contributions and Benefits [NEW]

GUBERNATORIAL APPROVAL:

February 4, 2010

[OAR Docket #10-177; filed 2-10-10]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 15. UNIFORM RETIREMENT SYSTEM FOR JUSTICES AND JUDGES

[OAR Docket #10-178]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions

590:15-1-1. Purpose; defined benefit plan [AMENDED]

590:15-1-4. Average monthly salary and maximum compensation [AMENDED]

Gubernatorial Approvals

- 590:15-1-11. Maximum benefits [AMENDED]
- 590:15-1-12. Rollovers [AMENDED]
- 590:15-1-18. Qualified military service rights [NEW]
- 590:15-1-19. Actuarial assumptions [NEW]
- 590:15-1-20. Employee contributions vested; forfeiture [NEW]
- 590:15-1-21. Required minimum distributions [NEW]

GUBERNATORIAL APPROVAL:

February 4, 2010

[OAR Docket #10-178; filed 2-10-10]

**TITLE 590. OKLAHOMA PUBLIC
EMPLOYEES RETIREMENT SYSTEM
CHAPTER 25. DEFERRED
COMPENSATION**

[OAR Docket #10-179]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

- Subchapter 3. Election to Defer Compensation
- 590:25-3-1. Election limits [AMENDED]
- Subchapter 9. Benefits
- 590:25-9-17. Rollovers to other plans [AMENDED]
- 590:25-9-20. Qualified military service [NEW]

GUBERNATORIAL APPROVAL:

February 4, 2010

[OAR Docket #10-179; filed 2-10-10]

**TITLE 590. OKLAHOMA PUBLIC
EMPLOYEES RETIREMENT SYSTEM
CHAPTER 35. DEFERRED SAVINGS
INCENTIVE PLAN**

[OAR Docket #10-180]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

- Subchapter 7. Contributions
- 590:35-7-1. Employer contributions [AMENDED]
- Subchapter 13. Benefits and Distributions
- 590:35-13-9. Rollovers to eligible retirement plan [AMENDED]
- Subchapter 15. Limitations on Annual Additions
- 590:35-15-2. Definitions [AMENDED]

GUBERNATORIAL APPROVAL:

February 4, 2010

[OAR Docket #10-180; filed 2-10-10]

Withdrawn Rules

An agency may withdraw proposed PERMANENT rules prior to final adoption (approval by Governor/Legislature) by notifying the Governor and the Legislature and by publishing a notice in the *Register* of such a withdrawal.

An agency may withdraw proposed EMERGENCY rules prior to approval/disapproval by the Governor by notifying the Governor, the Legislature, and the Office of Administrative Rules. The withdrawal notice is not published in the *Register*, however, unless the agency published a Notice of Rulemaking Intent in the *Register* before adopting the EMERGENCY rules.

For additional information on withdrawal of proposed rules, see 75 O.S., Section 308(F) and 253(K) and OAC 655:10-7-33.

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 15. ANIMAL INDUSTRY

[OAR Docket #10-220]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

WITHDRAWN RULES:

Subchapter 1. General Provisions

35:15-1-4 [NEW]

DATES:

Adoption:

January 20, 2010

Submitted to Governor:

January 26, 2010

Submitted to House:

January 26, 2010

Submitted to Senate:

January 26, 2010

Gubernatorial approval:

February 9, 2010

Withdrawn:

February 17, 2010

Additional Information:

A Withdrawal of PERMANENT Rulemaking was filed for this rule on February 2, 2010 with the Secretary of State. The Governor, Senate, and House were not notified in a timely manner. As a result, the Department filed this second Withdrawal of PERMANENT Rulemaking for the same rule on February 17, 2010 and provided notice to the Secretary of State, the Governor, the Senate, and the House.

[OAR Docket #10-220; filed 2-19-10]

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 277. FORENSIC REVIEW BOARD CHAPTER 1. FORENSIC REVIEW BOARD

[OAR Docket #10-216]

RULEMAKING ACTION:

Emergency adoption

RULES:

277:1-1-1. Applicability [NEW]

277:1-1-2. Definitions [NEW]

277:1-1-3. Composition, powers and duties [NEW]

AUTHORITY:

Forensic Review Board; 22 O.S. § 1161.

DATES:

Adoption:

January 21, 2010

Approved by Governor:

February 4, 2010

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:

22 O.S. § 1161(F) became effective on November 1, 2008 and requires the Board to promulgate rules concerning the granting and structure of therapeutic visits, conditional releases and discharge of individuals ordered to the Department of Mental Health and Substance Abuse Services through a "not guilty by reason of insanity" verdict.

ANALYSIS:

In accordance with the Administrative Procedures Act the proposed rules implement 22 O.S. § 1161, which authorizes the Forensic Review Board upon delegation by the Governor, to determine which individuals confined with the Department of Mental Health and Substance Abuse Services, pursuant to a finding of "not guilty by reason of insanity", are eligible for therapeutic visits, conditional release or discharge and whether the Board wishes to make such a recommendation to the court of the county where the individual was found not guilty by reason of insanity.

CONTACT PERSON

Stephanie Kennedy, FRB Administrative Rules Liaison, (405) 522-3871 or skennedy@odmhsas.org.

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):

277:1-1-1. Applicability

(a) This Subchapter is applicable to the Oklahoma Forensic Review Board pursuant to Title 22 O.S. § 1161.

(b) Each person ordered to the custody of the Oklahoma Department of Mental Health and Substance Abuse Services through a "not guilty by reason of insanity" verdict shall receive an annual review of his or her case and clinical status by the Forensic Review Board.

277:1-1-2. Definitions

The following words or terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Conditional Release" is a court approved release for those adjudicated not guilty by reason of insanity who are not believed to be presently dangerous to the public peace or safety, from the physical custody of the Oklahoma Department of Mental Health and Substance Abuse Services.

"Forensic Review Board" or "Review Board" is the board appointed by the Governor to review the cases of persons ordered to the custody of the Oklahoma Department of Mental Health and Substance Abuse Services through a "not guilty by reason of insanity" verdict.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"OFC" means the Oklahoma Forensic Center

"Therapeutic visits" mean any supervised time spent off the campus of the Oklahoma Forensic Center or any other ODMHSAS operated facility to which the individual may be committed. The degree and manner of supervision will be determined by the Review Board. Therapeutic visits include the following types of off-campus time:

(A) Day passes mean off-ground passes for a period of time not to exceed 8 hours between the hours of 8 a.m. and 8 p.m. Before being considered for day passes the consumer must have been successful in maintaining compliance with his/her treatment plan at the Oklahoma Forensic Center for a minimum of six (6) months and shall not have exhibited any episodes of aggressive/violent behavior during this time.

(B) Routine therapeutic visits mean off-ground visits to a specified residential care facility or to a family member who is approved by the Review Board for a designated period of time.

Emergency Adoptions

- (i) Consumers who are classified by OFC as a low to moderate risk and whose offenses are of a non-violent nature, as defined by 57 O.S. §571(2), may be considered for therapeutic visits to a community residential care facility or to a family member who is approved by the Review Board, with supervision by the appropriate community mental health center and family member.
 - (ii) Consumers who are classified by OFC as a high risk and whose offenses are of a violent nature toward others, as defined by 57 O.S. §571(2), may be considered for therapeutic visits to a community residential care facility, but will be supervised by both the community mental health center and a forensic case manager.
 - (iii) Before being eligible for consideration for routine therapeutic visits the consumer must have been successful in managing three months of weekly day passes and must have had no episodes of aggressive behavior in the twelve (12) months preceding the recommended passes, and must not be considered an elopement risk.
- (C) **Emergency visits** mean an unforeseen situation such as critical illness or death that arises in the consumer's family that may require them to leave the grounds of OFC under approved supervision.

277:1-1-3. Composition, powers and duties

- (a) **Meetings.** The Review Board shall meet at the Oklahoma Forensic Center or by videoconference at least quarterly.
- (1) A quorum shall consist of four (4) members who are present either physically or via teleconference.
 - (2) The agenda and materials for review shall be sent to all Board members in advance of the meeting. Review materials pertinent to each case may include, but are not limited to:
 - (A) Risk assessment of the consumer;
 - (B) Recommendation and other relevant information from the consumer's treatment team which includes input as to whether the consumer can safely engage in a therapeutic visit or conditional release program, and in the event a recommendation is made for a therapeutic visit, the team should include information regarding:
 - (i) The conditions under which each therapeutic visit should occur;
 - (ii) The structure needed in a community setting for a conditional release program.
 - (iii) Under what conditions the individual may be a danger to self or others if placed in a community setting.
 - (iv) If neither program is recommended, the treatment team should note the reasons why the consumer should remain at the Oklahoma Forensic Center.
- (C) Progress notes for the previous three (3) months relevant to any critical incident report or

any inappropriate behavior that occurred within the previous twelve (12) months;

- (D) Lab testing for medication compliance;
 - (E) Lab results for drug/alcohol screens upon return from previous visits, if any;
 - (F) Any critical incident forms involving the consumer during the previous twelve months;
 - (G) Input from family members or others involved in the plans for the Therapeutic Visit; and
 - (H) Other information the Review Board deems necessary.
- (3) The person whose case is under review shall be given an opportunity to provide input via written documentation and in person. If the person chooses, he or she may have a representative accompany him or her to the Review Board meeting.
- (4) These meetings shall not be considered open to the public. Other than the Forensic Review Board members, the following individuals shall be permitted to attend the meetings and ask questions of the consumer whose case is being reviewed, the treatment team or any other person appearing before the Forensic Review Board:
- (A) ODMHSAS Commissioner or designee;
 - (B) ODMHSAS Advocate General or designee;
 - (C) Oklahoma Forensic Center's Executive Director or designee;
 - (D) ODMHSAS General Counsel or designee;
 - (E) ODMHSAS Deputy Commissioner for Mental Health Services or designee; and
 - (F) ODMHSAS Medical Director.
 - (G) Any other persons wishing to attend the meeting must first obtain approval by the Forensic Review Board's Chairperson.
- (b) **Reviews.** Following the review of the information submitted the Review Board shall render a determination at the conclusion of each meeting based upon a majority vote of Review Board members present. The determination for each case is limited to the following:
- (1) Whether therapeutic visits will be recommended to the court;
 - (2) If a therapeutic visit is recommended, the location of the visit;
 - (3) The date and time the visit will begin and the duration of the visit;
 - (4) The entity or person to provide supervision of the consumer during the visit;
 - (5) Any other parameters to be recommended to the court reviewing the recommendation for a therapeutic visit;
 - (6) If a conditional release will be recommended to the court;
 - (7) If a conditional release is recommended to the court, the Forensic Review Board shall make recommendations regarding the plan for continued outpatient services and any other terms of the conditional release;
 - (8) If a discharge from a conditional release will be recommended to the court; and

- (9) Formal Risk Assessments completed by staff at the Oklahoma Forensic Center will be considered in the overall context of evaluating suitability for conditional release/therapeutic visit and recommended discharges.
- (c) All consumers returning from any therapeutic visit shall be searched for contraband and shall be subject to drug testing.
- (d) Suspension of Therapeutic Visit: In the event the Executive Director of OFC determines that the consumer is not compliant with the conditions of the therapeutic visit, the consumer will be notified the visit is suspended and instructed to report immediately to the Oklahoma Forensic Center. The Executive Director or Designee shall notify the chair of the Forensic Review Board of the suspension. The suspension will remain in effect until the facts surrounding the suspension are reviewed and a decision is reached by the Forensic Review Board at its next meeting.
- (e) In the case of a family emergency an emergency visit may be granted upon recommendation of the Executive Director of the Oklahoma Forensic Center with approval of the Forensic Review Board chair and the committing court.
- (f) The Review Board shall apprise the consumer whose case was reviewed, the ODMHSAS Commissioner or designee, the Oklahoma Forensic Center Executive Director, and the Consumer Advocate General of each determination made.
- (g) ODMHSAS shall provide support services to the Review Board and its Chair.

[OAR Docket #10-216; filed 2-17-10]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 642. EMERGENCY RESPONSE
SYSTEMS STABILIZATION AND
IMPROVEMENT REVOLVING FUND**

[OAR Docket #10-214]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 1. General Provisions [NEW]
 - 310:642-1-1 [NEW]
 - 310:642-1-2 [NEW]
 - 310:642-1-3 [NEW]
- Subchapter 3. Proposals [NEW]
 - 310:642-3-1 [NEW]
 - 310:642-3-2 [NEW]
- Subchapter 5. Scoring [NEW]
 - 310:642-5-1 [NEW]
- Subchapter 7. Disbursement [NEW]
 - 310:642-7-1 [NEW]
 - 310:642-7-2 [NEW]
- Subchapter 9. Evaluation [NEW]
 - 310:642-9-1 [NEW]

AUTHORITY:

Oklahoma State Board of Health; 63 O.S. Section 1-104; 63 O.S. Section 1-2512.1.

DATES:

Public Hearing:

January 12, 2010

Adoption:

January 12, 2010

Approved by Governor:

February 2, 2010

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 Board of Health finds a compelling public interest to adopt these rules on an emergency basis in order for the Board to expeditiously begin the distribution of emergency response system stabilization and improvement funds as required by the empowering legislation.

ANALYSIS:

This new chapter of rule is proposed in response to the statutory mandates established by SB 1918 of the 2nd Session of the 51st Oklahoma Legislature, effective November 1, 2008 and codified at Title 63 O.S., Section 1-2512.1. This law creates the Oklahoma Emergency Response Systems Stabilization and Improvement Revolving Fund (OERSSIRF) and requires the State Board of Health to promulgate rules establishing a formula and procedure for the distribution of funds accruing to the benefit of the fund. The monies in this fund shall be expended by the Department for the purpose of funding assessment activities, stabilization and/or reorganization of at-risk emergency medical services, development of regional emergency medical services, training for emergency medical directors, access to training front line emergency medical services personnel, and capital and equipment needs. This proposed rule is intended to establish a well defined, predictable and transparent mechanism to distribute monies accruing to OERSSIRF to support the availability of high quality, sustainable pre-hospital medical care across Oklahoma. The proposed rule establishes the following sections:

- a. Establish rules to distribute the OERSSIRF.
- b. Provide definitions for the OERSSIRF distribution rules.
- c. Create a process for the review and disposition of proposals to the OERSSIRF.
- d. Establish OERSSIRF proposal deadlines, eligible project costs and maximum awards.
- e. Establish a priority point system for comparing proposals.
- f. Establish a process for review and evaluation of the projects funded by the OERSSIRF.
- g. Establish a process for the disbursement of funds.

CONTACT PERSON:

Tom Welin, Chief, Medical Facilities, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-65767, facsimile: 405-271-1141, email: tomw@health.ok.gov.

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. GENERAL PROVISIONS

310:642-1-1. Purpose

The rules in this chapter are promulgated to:

- (1) Define the process for appropriate distribution of the Oklahoma Emergency Response Systems Stabilization and Improvement Revolving Fund (OERSSIRF) pursuant to 63 O.S. 2008, § 1-2512.1.
- (2) Provide standards for monitoring and enforcement of the provisions of the statute and these rules.

Emergency Adoptions

310:642-1-2. Program Description

The Oklahoma Emergency Response Systems Stabilization and Improvement Revolving Fund program is authorized by 63 O.S. 2008, § 1-2512.1. This law authorizes the Department to distribute funds for specified purposes. This Chapter interprets and implements the law authorizing the expenditure and distribution of funds by the Department. The Department's rules applicable to OERSSIRF expenditures shall be construed so as to consider only the OERSSIRF expenditures program administered by the Department.

310:642-1-3. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Applicant" means a qualified entity that submits a proposal for OERSSIRF funds.

"Department" means the Oklahoma State Department of Health.

"Emergency Medical Services System" means the network of emergency medical dispatchers (EMDs), certified emergency medical responders (EMRs), licensed emergency medical technicians (EMTs), certified emergency medical response agencies (EMRAs), licensed ambulance services, EMS medical directors, recognized training institutions, and communications centers that work together to deliver prompt, effective pre-hospital emergency medical care to the citizens of Oklahoma.

"Qualified entity" means any person or organization licensed, certified or approved by the Department as part of the EMS system, such as EMS personnel, certified emergency medical response agencies, licensed ambulance services, approved training institutions, approved emergency medical dispatch agencies, approved medical directors or any combination thereof, or their associations or sponsoring organizations, such as EMS districts, cities or counties that operate certified emergency response agencies or licensed ambulance services, or education systems operating EMS training institutions.

SUBCHAPTER 3. PROPOSALS

310:642-3-1. Proposal review and disposition

(a) **General procedures.** The general procedure to be followed in the funding proposal, review and consideration process for financial assistance under the OERSSIRF program shall be as follows:

(1) Pre-proposal conference.

(A) All potential applicants are encouraged to participate in a pre-proposal conference. The Department shall summarize available funding, areas of need identified by any state assessment, and the status of previous OERSSIRF-funded projects.

(B) At the pre-proposal conference, preliminary matters may be generally discussed to familiarize all concerned parties with the proposal period, requirements and procedures.

(2) **Proposal.** An applicant shall initiate proposal review and consideration by submission to the Department of applicant's proposal for financial assistance. A proposal shall be submitted by the qualified entity using forms described in 310:642-7-1 (relating to content of application), within the application period specified in OAC 310:642-3-2 (relating to deadlines for filing.)

(3) **Scoring and selection.** Eligible proposals shall be scored by the following process.

(A) A public meeting shall be scheduled for the purpose of scoring the eligible OERSSIRF proposals and awarding the funds that have been identified by the Department as the balance available for distribution on the last day of the preceding calendar year.

(i) A nine (9) person review panel shall be assembled each year from volunteers present at the awards meeting.

(ii) The name of each volunteer present at the meeting shall be written on a 3 x 5 inch card, and the card shall be folded so the name is not visible.

(iii) All cards shall be placed in an EMT cap.

(iv) A blindfolded volunteer EMT will draw nine cards from the cap. The persons named on the selected cards shall be the panel members.

(v) Each panel member so selected will sign an attestation stating the volunteer has no financial or other direct personal interest in any of the project proposals before the Department.

(vi) If a selected volunteer is determined by Department staff to have any such interest in the selection, the volunteer will be disqualified and another name shall be selected by the same method, until nine members are empanelled.

(B) The panel shall be seated and the reviews will begin under the direction of Department staff.

(i) Department staff will distribute proposals and scoring tools, collect the completed scoring tools for each proposal from the panelists, and tally the scores for each proposal at the end of the process.

(ii) The tallied scores shall be posted as soon as the totals are computed.

(C) The project with the highest score of total points shall be selected for funding, and the projected cost of the project deducted from the balance of the fund.

(D) The project with the next highest score of total points shall be selected for funding, and the cost deducted from the balance of the fund and continuing in like manner until insufficient funds remain to fund the next highest-scoring project.

(E) Any remaining funding shall be retained by the fund and distributed the next year.

(b) Criteria applicability.

(1) The criteria set forth in subsections (c) and (d) of this Section shall constitute guidelines and standards for proposal review and consideration by the Department.

(2) The criteria and standards set forth in subsections (c) and (d) of this Section shall be applied to each proposal without exception.

(c) **General approval standards and criteria.** The Department shall be under a continuing obligation to ensure the following standards and criteria are satisfied before any proposal is approved for funding and may determine compliance with these standards and criteria during preliminary review, scoring and selection or during a post selection review:

(1) **Compliance with applicable law.** The proposed project must be found to be in compliance with 63 O.S. § 1-2512.1, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(2) **Eligibility.** The applicant must be a qualified entity and the proposed project must be for a qualified purpose as defined in 63 O.S. § 1-2512.1.

(3) **Local need, support and priority.** The applicant shall demonstrate that the project is needed in the area to be served and is sufficient, as proposed, to serve such needs. Applicant shall demonstrate local support, interest and commitment in and to the proposed project.

(4) **Availability of other assistance.** Applicant shall demonstrate appropriate due diligence to ensure no alternative sources of revenue could be obtained and utilized for project financing.

(5) **Economic feasibility.** The applicant shall demonstrate the overall economic viability and feasibility of the project.

(6) **Project feasibility.** The applicant shall demonstrate that the project is feasible and cost effective.

(7) **Statewide needs and public interest.** The applicant shall demonstrate the relationship between the proposed project and the overall EMS development needs within the State of Oklahoma and show that proposed project will serve the public interest and welfare.

(d) **Criteria for denying a proposal.** The Department may deny a proposal for OERSSIRF funding for any of the following reasons:

(1) The applicant is not an eligible entity.

(2) The project does not serve the goals of 63 O.S. § 1-2512.1.

(3) Insufficient availability of funding.

(4) The proposal is received after the deadline.

(e) **Department action.**

(1) After reviewing and considering the submitted proposal, the Department may take one of the following actions:

(A) The Department may approve and fund the proposal as submitted.

(B) The Department may reject and deny the proposal based upon any applicable criteria described in subsection (d) of this Section.

(2) Upon approval of a proposal, the Department may authorize the execution of all necessary funding documents and instruments, and may accordingly authorize

and provide for disbursements and such further or additional action as may be necessary to complete and implement the approved transaction.

310:642-3-2. Applicable law, deadline for proposals, eligible project costs, maximum award

(a) The Department shall administer proposals for OERSSIRF funds in accordance with any provisions of law applicable to such proposals and OERSSIRF funds.

(b) To be considered for and receive funding from funds available for OERSSIRF in any given fiscal year, an application must be completed in accordance with this Chapter and filed by the applicant and received by the Department on or before the thirtieth (30) calendar day after the issuance of the Request for Proposals (RFP). Any application not properly completed and filed shall not be considered for or funded from funds that may become available during that fiscal year.

(c) The Department shall issue a Request for Proposals (RFP) for the OERSSIRF each year. The submission period, including time for questions, shall not be less than thirty (30) calendar days. The Department shall identify qualified staff to ensure questions received through the RFP process are answered and posted appropriately.

(d) An OERSSIRF proposal submitted for consideration in a prior fiscal year that was not approved for funding in that prior fiscal year may be submitted again in any year.

(e) For purposes of evaluating, approving and funding proposals for OERSSIRF funds, categories of project costs which are eligible for assistance shall include those project costs described in 63 O.S. § 1-2512.1:

(1) Funding assessment activities.

(2) Stabilization and/or reorganization of at-risk emergency medical services.

(3) Development of regional emergency medical services.

(4) Training for emergency medical directors.

(5) Access to training front line emergency medical services personnel.

(6) Capital and equipment needs.

(f) No qualified entity shall receive more than \$500,000 in OERSSIF funding assistance in any twelve (12) month period, or for any single project.

SUBCHAPTER 5. SCORING

310:642-5-1. OERSSIRF funding priority point system

Proposals shall be ranked based on the total number of points awarded by the Department consistent with this Chapter.

(1) The following formula shall be used to rank funding proposals: $T = S + M + D + H + E + AR + PM + PG + PE$, where:

(A) T = Total points

(B) S = Statutory purposes

(C) M = Multiple jurisdictions

(D) D = Population density

Emergency Adoptions

- (E) H = Distance to the nearest level I or II trauma center
- (F) E = Number of project-area EMTs
- (G) AR = Amount of funding requested
- (H) PM = Project matching
- (I) PG = Previous funding assistance
- (J) PE = Previous funding evaluation
- (2) Points may be awarded as described below:
- (A) **Statutory purposes (S):** Points shall be awarded for each of the relevant statutory purposes of the proposal as follows:
- (i) Funding assessment activities: 50 points
 - (ii) Stabilization and/or reorganization of at-risk emergency medical services: 100 points
 - (iii) Development of regional EMS: 50 points
 - (iv) Training for emergency medical directors: 50 points
 - (v) Access to training front line emergency medical services personnel: 100 points
 - (vi) Capital and equipment needs: 50 points
- (B) **Multiple jurisdictions (M):** Points shall be awarded for projects addressing the EMS needs of multiple jurisdictions, as follows:
- (i) Two cities or towns: 25 points
 - (ii) Three cities or towns: 50 points
 - (iii) County wide: 100 points
 - (iv) Multi-county: 150 points
 - (v) State wide: 200 points
- (C) **Population density (D):** Points shall be awarded for projects encompassing areas of lowest per-mile population density as recorded by the United States Census Bureau, as follows:
- (i) 5,000.0 to 8,968.1: 0 points
 - (ii) 1,000.0 to 4,999.9: 10 points
 - (iii) 200.0 to 999.9: 20 points
 - (iv) 79.6 to 199.9: 30 points
 - (v) 30.0 to 79.5: 40 points
 - (vi) 10.0 to 29.9: 50 points
 - (vii) Less than 10.0: 100 points
- (D) **Distance to trauma center (H):** Points shall be awarded for project areas where the average distance between the furthest and closest points within the project area to a trauma center classified by the State of Oklahoma or the American College of Surgeons as level I or II, as follows:
- (i) 0-25 miles: 0 points
 - (ii) 25-49 miles: 10 points
 - (iii) 50-74 miles: 20 points
 - (iv) 75-99 miles: 30 points
 - (v) 100-124 miles: 40 points
 - (vi) 125-149 miles: 50 points
 - (vii) 150 miles and over: 100 points
- (E) **EMTs (E):** Points shall be awarded for proposals encompassing project areas with fewer resident licensed EMTs at any level of licensure as recorded by the Department as follows:
- (i) 100 or more resident EMTs: 0 points
 - (ii) 50-99 resident EMTs: 20 points
 - (iii) 25-49 resident EMTs: 40 points
 - (iv) 0-24 resident EMTs: 60 points
- (F) **Amount of funding requested (AR):** Points under this category for amount of funding requested are determined as follows:
- (i) \$400,001 to \$500,000: -50 points
 - (ii) \$300,001 to \$400,000: -40 points
 - (iii) \$200,001 to \$300,000: -30 points
 - (iv) \$100,001 to \$200,000: -20 points
 - (v) \$80,000 to \$100,000: 10 points
 - (vi) \$60,000 to \$79,999: 20 points
 - (vii) \$40,000 to \$59,999: 30 points
 - (viii) \$20,000 to \$39,999: 50 points
 - (ix) Any AR greater than \$500,000 shall be denied
- (G) **Project matching (PM):** If the proposal proposes the use of matching funds, points shall be awarded consistent with the following formula:
- (i) 90% of the requested funds: 90 points
 - (ii) 80% of the requested funds: 80 points
 - (iii) 70% of the requested funds: 70 points
 - (iv) 60% of the requested funds: 60 points
 - (v) 50% of the requested funds: 50 points
 - (vi) 40% of the requested funds: 40 points
 - (vii) 30% of the requested funds: 30 points
 - (viii) 20% of the requested funds: 20 points
 - (ix) 10% of the requested funds: 10 points
- (H) **Previous funding assistance (PG):** If a qualified entity has been approved for one (1) or more OERSSIF proposals from the Department for projects awarded in the past, points shall be deducted from the proposal according to all of the following provisions that apply unless the previous proposal was for an assessment of the need for the establishment of EMS or stabilization of an at-risk EMS:
- (i) One (1) funded project in the preceding twelve (12) month period: -80 points.
 - (ii) More than one (1) OERSSIF project in the preceding twelve (12) month period: -100 points.
 - (iii) One (1) OERSSIF funded project more than twelve (12) months in the past: -50 points.
 - (iv) Two (2) OERSSIF funded projects more than twelve (12) months in the past: -80 points.
 - (v) Three (3) OERSSIF funded projects more than twelve (12) months in the past: -100 points.
 - (vi) Four (4) OERSSIF funded projects more than twelve (12) months in the past: -150 points.
 - (vii) Five (5) or more OERSSIF funded projects more than twelve (12) months in the past: -175 points.
 - (viii) If the qualified entity has received a previous OERSSIF funding for a project that remains un-evaluated or for which any refund has not been paid as of August 31st of the year following the approved completion date of the project.

the proposal will be given -50 points for each such funded project.

(I) Previous funding evaluation (PE). The project score established through the Department's evaluation required by OAC 642-9-1(a) for each previously completed OERSSIRF project shall earn the following points:

- (i) Significantly Improved: 100 points
- (ii) Improved: 50 points
- (iii) Not Improved: -50 points
- (iv) Worsened: -100 points

SUBCHAPTER 7. DISBURSEMENT

310:642-7-1. Content of proposal

(a) The proposal shall be submitted using the forms provided by the Department. The proposal form shall include the following sections:

- (1) Proposal Information, including the name of the contact person, mailing address, e-mail address, phone number and type of qualifying applicant entity.
- (2) Instructions, including an outline of the legal requirements and the priority point system.
- (3) A section requiring a narrative description of the proposed project.
- (4) A section enumerating the requirements of the OERSSIRF statute, requiring a description of the proposed project's compliance with each section.
- (5) A section requiring a narrative description of the proposed project's compliance with each of the priority point criteria.
- (6) A checklist allowing evaluation of compliance with solicitation requirements.

(b) Each proposal shall include a section setting forth the criteria that will be used to evaluate the success of the project. The criteria shall include:

- (1) Specific, objective metrics for evaluation of the project. For example: a percentage decline in response time or improvement in the number of available EMTs within a region, measured against the same metric at the start of the project.
- (2) A clear methodology and a description of data sources for computing the performance measures proposed in the project plan, for example, comparing responder response times or the total number of EMTs in a region against the same metric at the end of the project.
- (3) Benchmark measures for each of the following assessment levels:
 - (A) Significantly improved.
 - (B) Improved.
 - (C) Not Improved.
 - (D) Worsened.

310:642-7-2. Disbursement of funds

(a) **Action following Department approval and prior to disbursement of funding.**

(1) **Notification of approval.** Upon approval of an OERSSIRF proposal, the Department shall furnish to the applicant a written notice of approval. The notice shall advise the applicant that the funds approved shall be made available to the applicant by the Department for such purposes and upon conditions as provided in paragraph (2) of this subsection (relating to additional conditions prior to disbursement of funds).

(2) **Additional conditions prior to disbursement of funds.**

(A) Applicant shall establish a special and separate federally insured fund or account within applicant's accounting system in and through which the proceeds shall be administered and accounted for by the applicant.

(B) Unless otherwise provided and approved by the Department, applicant shall submit to the Department all plans, specifications and benchmark completion reports for the project for Department approval, all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project. If not previously provided, applicant shall provide Department with a written and verified statement setting forth:

- (i) The amount of funds necessary for release and disbursement at closing needed for commencement of the project, and
- (ii) The reasonable availability of all other revenue or funding sources needed to finance and complete the project.

(C) Applicant and Department, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a vendor agreement.

(3) **Department action on request for withdrawal of funding.** If, prior to disbursement of the monies to the applicant, the project bids exceed the estimates or it otherwise develops that the OERSSIRF proposal amount approved by the Department, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request to decline funding and withdraw its proposal for the current fiscal year.

(b) **Disbursement of funding to applicant; action following disbursement.**

(1) **Disbursement contingent on completion of conditions; reduction from approved amount.** At the time of and upon compliance by the applicant with the applicable requirements in subsection (a) of this Section, the Department shall disburse the approved amount of OERSSIRF funds to the applicant for the approved project.

(2) **Disbursement in whole or part; timing.** Funds may be disbursed to the applicant in installments or in lump sum, and may be disbursed prior to, during, or upon, completion of the project, all as deemed appropriate by the Department under the project circumstances presented.

Emergency Adoptions

The Department shall conduct on-site inspections to confirm completion of benchmarks described in the project plan.

(3) **Post-disbursement requests for increases in funding amount.** If after disbursement of the monies to the applicant it develops that the applicant needs more money for the project than the OERSSIRF amount disbursed by the Department, the Department may evaluate remaining funds and at its discretion may increase funding no more than 10% over the original proposed amount.

(4) **Post-disbursement action regarding unexpended funding.** If following completion of the project the applicant needed less money for the project than disbursed by the Department, the applicant shall return the unexpended amount to the Department. Unused funding shall be returned to the fund and made available during the next funding year.

(5) **Reports.** The Department may require quarterly or biannual progress reports and may at any time perform on-site inspections.

(A) Applicants shall provide all requested documents at the time of the inspection, or as required by the Department.

(B) Department staff shall report any suspected misappropriation of funds to the appropriate law enforcement authority.

SUBCHAPTER 9. EVALUATION

310:642-9-1. Evaluation of Projects

The Department shall perform an evaluation of the project within six (6) months of its completion, summarizing its effectiveness using benchmark measures identified in the proposal as required by 310:642-7-1(b)(3)(relating to content of proposals).

[OAR Docket #10-214; filed 2-12-10]

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

[OAR Docket #10-173]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

317:2-1-2. [AMENDED]

(Reference APA WF # 09-56A)

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 435.902; 42 CFR 435.930

DATES:

Adoption:

January 14, 2010

Approved by Governor:

February 4, 2010

Effective:

March 1, 2010

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

317:2-1-2. [AMENDED]

Gubernatorial approval:

July 21, 2009

Register publication:

26 Ok Reg 3020

Docket number:

09-1214

(Reference APA WF # 09-24)

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 eliminate the barriers of providing effective and efficient services to potential SoonerCare members. The online enrollment process creates a single point-of-entry eligibility intake system that results in the applicant's SoonerCare eligibility determination. Initial applications and redeterminations of eligibility for SoonerCare will be processed in less time than the current method, allowing individuals to more rapidly access needed health care.

ANALYSIS:

In 2007, the OHCA received a Transformation Grant through the Centers for Medicare and Medicaid Services (CMS) to develop a web based online application and eligibility determination system in order to improve the ease and efficiency of enrollment. Originally known as No Wrong Door, the process allows potential members to apply for SoonerCare electronically. Effective in March 2010, the OHCA will assume responsibility for determining eligibility for certain groups of individuals under SoonerCare. The process will be phased in over a period of time, starting with the easiest groups who have no asset test and use income declaration: families with children, pregnant women, and individuals requesting only family planning services. As OHCA will now be determining eligibility for some of our population, parts of our eligibility rules and grievance rules are revised to incorporate these new responsibilities. In addition, eligibility for these three groups will no longer be retroactive to the first day of the month of application but will be effective the date of application or later.

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 MARCH 1, 2010:

317:2-1-2. Appeals

(a) Member Process Overview.

(1) The appeals process allows a member to appeal a decision which adversely affects their rights. Examples are decisions involving medical services, prior authorizations for medical services, or discrimination complaints.

(2) In order to file an appeal, the member files a LD-1 form within 20 days of the triggering event. The triggering event occurs at the time when the Appellant (Appellant is the person who files a grievance) knew or should have known of such condition or circumstance for appeal.

(3) If the LD-1 form is not received within 20 days of the triggering event, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.

In the case of tax warrant intercept appeals, if the LD-1 form is not received within 30 days of written notice sent by OHCA according to Title 68 O.S. ' 205.2, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.

(4) If the LD-1 form is not completely filled out and necessary documentation not included, then the appeal will not be heard.

(5) The staff advises the Appellant that if there is a need for assistance in reading or completing the grievance form that arrangements will be made.

(6) Upon receipt of the member's appeal, a fair hearing before the Administrative Law Judge (ALJ) will be scheduled. The member will be notified in writing of the date and time for this procedure. The member must appear at this hearing and it is conducted according to ~~Section~~ OAC 317:2-1-5. The ALJ's decision may be appealed to the ~~CEO~~ Chief Executive Officer of the OHCA, which is a record review at which the parties do not appear (Section OAC 317:2-1-13).

(7) Member appeals are ~~to be~~ ordinarily decided within 90 days from the date OHCA receives the member's timely request for a fair hearing unless the member waives this requirement. [Title 42 ~~U.S.C.~~ CFR Section 431.244(f)]

(8) Tax warrant intercept appeals will be heard directly by the ALJ. A decision ~~will be~~ is normally rendered by the ALJ within 20 days of the hearing before the ALJ.

(b) **Provider Process Overview.**

(1) The proceedings as described in this Section contain the hearing process for those appeals filed by providers. These appeals encompass all subject matter cases contained in OAC 317:2-1-2(c)(2).

(2) All provider appeals are initially heard by the OHCA Administrative Law Judge under OAC 317:2-1-2(c)(2).

(A) The Appellant (Appellant is the provider who files a grievance) files an LD form requesting a grievance hearing within 20 days of the triggering event. The triggering event occurs at the time when the Appellant knew or should have known of such condition or circumstance for appeal. (LD-2 forms are for provider grievances and LD-3 forms are for nursing home wage enhancement grievances.)

(B) If the LD form is not received within 20 days of the triggering event, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.

(C) The staff advises the Appellant that if there is a need for assistance in reading or completing the grievance form that arrangements will be made.

(D) A decision will be rendered by the ALJ ordinarily within 45 days of the close of all evidence in the case.

(E) The Administrative Law Judge's decision is appealable to OHCA's CEO under OAC 317:2-1-13.

(c) **ALJ jurisdiction.** The administrative law judge has jurisdiction of the following matters:

(1) Member Appeals:

(A) Discrimination complaints regarding the ~~Medicaid~~ SoonerCare program;

(B) Appeals which relate to the scope of services, covered services, complaints regarding service or care, enrollment, disenrollment, and reenrollment in the SoonerCare Program;

(C) Fee for Service appeals regarding the furnishing of services, including prior authorizations;

(D) Appeals which relate to the tax warrant intercept system through the Oklahoma Health Care Authority. Tax warrant intercept appeals will be heard directly by the ALJ. A decision will be rendered by the Administrative Law Judge within 20 days of the hearing before the ALJ;

(E) Complaints regarding the possible violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA); ~~and~~

(F) Proposed administrative sanction appeals pursuant to OAC 317:35-13-7. Proposed administrative sanction appeals will be heard directly by the ALJ. A decision by the ALJ will ordinarily be rendered within 20 days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions;

(G) Appeals which relate to eligibility determinations made by OHCA; and

(2) Provider Appeals:

(A) Whether Pre-admission Screening and Resident Review (PASRR) was completed as required by law;

(B) Denial of request to disenroll member from provider's SoonerCare Choice panel;

(C) Appeals by Long Term Care facilities for nonpayment of wage enhancements, determinations of overpayment or underpayment of wage enhancements, and administrative penalty determinations as a result of findings made under OAC 317:30-5-131.2(b)(5), (e)(8), and (e)(12);

(D) Petitions for Rulemaking;

(E) Appeals of insureds participating in Insure Oklahoma/O-EPIC which are authorized by OAC 317:45-9-8(a);

(F) Appeals to the decision made by the Business Contracts manager related to Purchasing as found at OAC 317:10-1-5 and other appeal rights granted by contract;

(G) Drug rebate appeals;

(H) Nursing home contracts which are terminated, denied, or non-renewed; and

(I) Proposed administrative sanction appeals pursuant to ~~OAC 317:35-13-7~~ 317:30-3-19. Proposed administrative sanction appeals will be heard directly by the ALJ. A decision will normally be rendered by the ALJ within 20 days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions.

[OAR Docket #10-173; filed 2-10-10]

Emergency Adoptions

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

[OAR Docket #10-171]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-20. [AMENDED]

Part 7. Certified Laboratories

317:30-5-100. [AMENDED]

(Reference APA WF # 09-52)

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:

January 14, 2010

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Expiration:

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-20. [AMENDED]

Gubernatorial approval:

November 3, 2009

Register Publication:

27 Ok Reg 246

Docket number:

09-1417

(Reference APA WF # 09-28)

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 laboratory services guidelines. Rules are revised to clarify the intent of coverage for medically necessary laboratory services and to 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 laboratory services coverage and requirements and ultimately reducing the amount of uncompensated care provided by healthcare providers.

ANALYSIS:

Agency rules are revised to clarify that reimbursement is only made for medically necessary laboratory services. Additional revisions include removing language which calls for OHCA to edit laboratory claims at the specialty/subspecialty level. CMS only allows edits for SoonerCare claims at the CLIA certificate level. Other revisions include 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 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

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 HCFCA CMS and have a current contract on file with the OHCA. ~~Payment is made only for those services which fall within the approved specialties/subspecialties.~~

(B) ~~Effective May 1, 1993, reimbursement~~ Reimbursement rate for laboratory procedures is the lesser of the HCFCA CMS 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. Medically necessary laboratory services are covered.~~

(2) **Compensable outpatient laboratory services.** Medically necessary laboratory services are covered. ~~Genetic counseling requires special medical review prior to approval.~~

(3) ~~Nonecompensable~~ Non-compensable 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.

(C) Laboratory services not considered medically necessary are not covered.

(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.

PART 7. CERTIFIED LABORATORIES

317:30-5-100. Eligible providers

~~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. Regulations specify that any and every facility which tests human specimens for the purpose of providing information for the diagnosis, prevention, or treatment of any disease, or impairment of, or the assessment of the health of human beings is subject to CLIA. All facilities which perform these tasks must make application for certification by ~~HCFA~~ CMS. Eligible ~~Medicaid~~ SoonerCare providers must be certified under the CLIA program and have obtained a ~~CLIAID~~ CLIA ID number from ~~HCFA~~ CMS and have a current contract on file with ~~this Authority~~ the OHCA. ~~Payment is made only for those services which fall within the approved specialties/subspecialties.~~

[OAR Docket #10-171; filed 2-10-10]

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

[OAR Docket #10-174]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 63. Ambulatory Surgical Centers (ASC)

317:30-5-566. [AMENDED]

317:30-5-567. [AMENDED]

(Reference APA WF # 09-59)

AUTHORITY:

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

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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 the agency's Ambulatory Surgical Center (ASC) guidelines. Rules are revised to add flexibility in offering services already covered by SoonerCare in an ASC setting. These emergency rule revisions will make rules consistent with current insurance market practices and clarify access to healthcare for Oklahomans, thereby reducing confusion among SoonerCare providers and ultimately reducing the amount of uncompensated care provided by Oklahoma healthcare providers.

ANALYSIS:

Ambulatory Surgery Center (ASC) rules are revised to allow reimbursement for services not covered as Medicare ASC procedures but otherwise covered under the SoonerCare program. Currently, policy restricts OHCA reimbursement to only those services on the Medicare approved list of covered services. This revision will give OHCA additional flexibility in determining services which are appropriate for the populations we serve.

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., SECTION 253(D):

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS
AND SPECIALTIES**

**PART 63. AMBULATORY SURGICAL CENTERS
(ASC)**

317:30-5-566. Ambulatory Surgery Center services

- (a) **Reimbursement.** Reimbursement is made for selected services based on the Medicare approved list of covered services that can be performed at an ASC. Services not covered as Medicare ASC procedures and otherwise covered under SoonerCare may be reimbursed as determined by the OHCA. Ambulatory surgery center services are paid on a rate-per-service basis that varies according to the Health Care Procedure Coding System (HCPCS) codes. Separate payments may be made to the ASC for covered ancillary services. To be considered a covered ancillary service for which separate payment is made, the items and services must be provided integral to covered surgical procedures, that is, immediately before, during, or immediately after the covered surgical procedure.
- (b) **Multiple surgeries.** Multiple procedures furnished during the same visit are discounted. The full amount is paid for the procedure with the highest payment rate. Fifty percent is paid for any other procedure(s) performed at the same time if the procedure is subject to discounting based on the discount indicator established by Medicare.
- (c) **Payment indicators.** Payment indicators identify whether the service described by a HCPCS code is paid under

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the ASC methodology and if so, whether payment is made separately or packaged. SoonerCare follows Medicare's guidelines for packaged/bundled service costs.

(d) **Minor procedures.** Minor procedures that are normally performed in a physician's office are not covered in an ambulatory surgery center unless medically necessary and they are on the Medicare list for procedures approved to be performed in an ASC. Services not covered as Medicare ASC procedures and otherwise covered under SoonerCare may be reimbursed as determined by the OHCA.

(e) **Dental Procedures.** For OHCA payment purposes, the ASC list has been expanded to cover dental services for adults in an ICF/MR and all children.

(1) Non-emergency routine dental that is provided in an ambulatory surgery center is covered for children under the following circumstances:

(A) The child has a medical history of uncontrolled bleeding or other medical condition renders in-office treatment impossible.

(B) The child has uncontrollable behavior in the dental office even with premedication.

(C) The child needs extensive dental procedures or oral surgery procedures.

(2) Non-emergency routine dental that is provided in an ambulatory surgical center is covered for children and/or adults who are residents in ICFs/MR only under the following circumstances:

(A) A concurrent hazardous medical condition exists;

(B) The nature of the procedure requires hospitalization; or

(C) Other factors (e.g. behavioral problems due to mental impairment) necessitate hospitalization.

317:30-5-567. Coverage by category

Payment is made for ambulatory surgical center services as set forth in this Section.

(1) **Children.** Payment is made for children for medically necessary surgical procedures which are included on the Medicare's list of covered ASC surgical procedures and dental procedures in certain circumstances. Services not covered as Medicare ASC procedures and otherwise covered under SoonerCare may be reimbursed as determined by the OHCA.

(A) Services, deemed medically necessary and allowable under federal regulations, may be covered by the EPSDT/OHCA Child Health program even though those services may not be part of the OHCA SoonerCare program. Such services must be prior authorized.

(B) Federal regulations also require the State to make the determination as to whether the service is medically necessary and do not require the provision of any items or services that the State determines are not safe and effective or which are considered experimental.

(2) **Adults.** Payment is made for adults for medically necessary surgical procedures which are included

on Medicare's list of covered ASC surgical procedures. Services not covered as Medicare ASC procedures and otherwise covered under SoonerCare may be reimbursed as determined by the OHCA.

(3) **Individuals eligible For Part B of Medicare.** Payment is made utilizing the OHCA allowable for comparable services.

[OAR Docket #10-174; filed 2-10-10]

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

[OAR Docket #10-170]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 103. Qualified Schools As Providers of Health Related Services

317:30-5-1023. [AMENDED]

317:30-5-1027. [AMENDED]

(Reference APA WF # 09-47)

AUTHORITY:

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

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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 add a new provider type "Behavior Health School Aide" and service description "Therapeutic Behavioral Services". Currently schools are being allowed to include behavior interventions as a personal care service. This rule change is needed to help better define and separate behavioral interventions that do not appropriately fall within the description of personal care services.

ANALYSIS:

Rules are being revised to add a new provider type and services description.

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 103. QUALIFIED SCHOOLS AS PROVIDERS OF HEALTH RELATED SERVICES

317:30-5-1023. Coverage by category

(a) **Adults.** There is no coverage for services rendered to adults.

(b) **Children.** Payment is made for compensable services rendered by local, regional, and state educational services agencies as defined by IDEA:

(1) **Child health screening examination.** An initial screening may be requested by an eligible individual at any time and must be provided without regard to whether the individual's age coincides with the established periodicity schedule. Coordination referral is made to the SoonerCare SoonerCare provider to assure at a minimum, that periodic screens are scheduled and provided in accordance with the periodicity schedule following the initial screening.

(2) **Child health encounter.** The child health encounter may include a diagnosis and treatment encounter, a follow-up health encounter, or a home visit. A Child Health Encounter may include a child health history, physical examination, developmental assessment, nutrition assessment and counseling, social assessment and counseling, genetic evaluation and counseling, indicated laboratory and screening tests, screening for appropriate immunizations, health counseling and treatment of childhood illness and conditions.

(3) **Hearing and Hearing Aid evaluation.** Hearing evaluation includes pure tone air, bone and speech audiometry provided by a state licensed audiologist who:

- (A) holds a certificate of clinical competence from the American Speech and Hearing Association; or
- (B) has completed the equivalent educational requirements and work experience necessary for the certificate; or
- (C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(4) **Audiometry test.** Audiometric test (Immittance [Impedance] audiometry or tympanometry) includes bilateral assessment of middle ear status and reflex studies (when appropriate) provided by a state licensed audiologist who:

- (A) holds a certificate of clinical competence from the American Speech and Hearing Association; or
- (B) has completed the equivalent educational requirements and work experience necessary for the certificate; or
- (C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(5) **Ear impression (for earmold).** Ear impression (for earmold) includes taking impression of a client's member's ear and providing a finished earmold which is used with the client's member's hearing aid provided by a state licensed audiologist who:

- (A) holds a certificate of clinical competence from the American Speech and Hearing Association; or
- (B) has completed the equivalent educational requirements and work experience necessary for the certificate; or
- (C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(6) **Vision Screening.** Vision screening examination must be provided by a state licensed Doctor of Optometry (O.D.) or licensed physician specializing in ophthalmology (M.D. or D.O.). At a minimum, vision services include diagnosis and treatment for defects in vision.

(7) **Speech Language evaluation.** Speech Language evaluation must be provided by state licensed speech language pathologist who:

- (A) holds a certificate of clinical competence from the American Speech and Hearing Association; or
- (B) has completed the equivalent educational requirements and work experience necessary for the certificate; or
- (C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(8) **Physical Therapy evaluation.** Physical Therapy evaluation must be provided by a state licensed physical therapist.

(9) **Occupational Therapy evaluation.** Occupational Therapy evaluation must be provided by a state licensed occupational therapist.

(10) **Psychological Evaluation and Testing.** Psychological Evaluation and Testing must be provided by state licensed, Board Certified, Psychologist or School Psychologist certified by State Department of Education (SDE).

(11) **Dental Screening Examination.** Screening for dental disease by a state licensed dentist. The child may be referred directly to a dentist for further screening and/or treatment.

(12) **Child guidance treatment encounter.** A child guidance treatment encounter may occur through the provision of individual, family, or group treatment services to children who are identified as having specific disorders or delays in development, emotional, or behavioral problems, or disorders of speech, language or hearing. These types of encounters are initiated following the completion of a diagnostic encounter and subsequent development of a treatment plan, or as a result of an IEP or IFSP and may include the following:

- (A) **Hearing and Vision Services.** Hearing and vision services may include provision of habilitation activities, such as auditory training, aural and visual habilitation training, including Braille, and communication management, orientation and mobility, counseling for vision and hearing losses and disorders. Services must be provided by:
 - (i) state licensed, Master's Degree Audiologist who:

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- (I) holds a certificate of clinical competence from the American Speech and Hearing Association; or
 - (II) has completed the equivalent educational requirements and work experience necessary for the certificate; or
 - (III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;
- (ii) state licensed, Master's Degree Speech Language Pathologist who:
- (I) holds a certificate of clinical competence from the American Speech and Hearing Association; or
 - (II) has completed the equivalent educational requirements and work experience necessary for the certificate; or
 - (III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;
- (iii) state certified Speech Therapist working under the direction of a state licensed Speech Language Pathologist;
- (iv) state certified deaf education teacher;
- (v) certified orientation and mobility specialists; and
- (vi) state certified vision impairment teachers.
- (B) **Speech Language Therapy Services.** Speech Language Therapy Services must be provided by a state licensed Speech Language Pathologist who:
- (i) holds a certificate of clinical competence from the American Speech and Hearing Association; or
 - (ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or
 - (iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate; or
 - (iv) a Speech Therapy Assistant who has been authorized by the Board of Examiners, working under the direction of a state licensed speech language pathologist. The licensed Speech Language Pathologist may not supervise more than two Speech Therapy assistants, and must be on site.
- (C) **Physical Therapy Services.** Physical Therapy Services must be provided by state licensed physical therapist or a Physical Therapy Assistant who has been authorized by the Board of Examiners working under the supervision of a licensed Physical Therapist. The licensed Physical Therapist may not supervise more than three Physical Therapy Assistants.
- (D) **Occupational Therapy Services.** Occupational therapy may include provision of services to improve, develop or who restore impaired ability to function independently and must be provided by a

state licensed Occupational Therapist or an Occupational Therapy Assistant who has been authorized by the Board of Examiners, working under the supervision of a licensed Occupational Therapist.

(E) **Nursing Services.** Nursing Services may include provision of services to protect the health status of children, correct health problems and assist in removing or modifying health related barriers and must be provided by a registered nurse or licensed practical nurse under supervision of a registered nurse. Services include medically necessary procedures rendered at the school site, such as catheterization, suctioning, administration and monitoring of medication.

(F) **Psychological Services.** Psychological services are planning and managing a program of psychological services, including the provision of counseling for children and parents, consulting on management of severe behavioral and emotional concerns in school and home. All services must be for the direct benefit of the child. Psychological services must be provided by a state licensed Psychologist, or School Psychologist certified by SDE.

(G) **Psychotherapy Counseling Services.** Psychotherapy counseling services are the provision of counseling for children and parents. All services must be for the direct benefit of the child. Psychotherapy counseling services must be provided by a state licensed Social Worker, a state Licensed Professional Counselor, a State licensed Psychologist or School Psychologist certified by the SDE, a State licensed Marriage and Family Therapist or a State licensed Behavioral Practitioner, or under Board supervision to be licensed in one of the above stated areas.

(H) **Assistive Technology.** Assistive technology are the provision of services that help to select a device and assist a student with disability(ies) to use an Assistive technology device including coordination with other therapies and training of child and caregiver. Services must be provided by a:

(i) state licensed, Speech Language Pathologist who:

(I) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(II) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

(ii) state licensed Physical Therapist; or

(iii) state licensed Occupational Therapist.

(13) **Personal Care.** Provision of personal care services allow students with disabilities to safely attend school; includes, but is not limited to assistance with toileting, feeding, positioning, hygiene, and riding school bus to handle medical or physical emergencies. Services must be

provided by registered paraprofessionals/assistants who have completed training approved or provided by SDE, or Personal Care Assistants, including Licensed Practical Nurses, who have completed on-the-job training specific to their duties.

(14) Therapeutic Behavioral Services. Therapeutic behavioral services is an intervention to modify the non-adaptive behavior necessary to improve the student's ability to function in the community as identified on the plan of care. Medical necessity must be identified and documented through assessment and evaluation. Services encompass behavioral management, redirection, and assistance in acquiring, retaining, improving, and generalizing socialization, communication and adaptive skills. This service must be provided by a Behavioral Health School Aide (BHSA) who has a high school diploma or equivalent and has successfully completed the paraprofessional training approved by The State Department of Education and a training curriculum in behavioral interventions for Pervasive Developmental Disorders as recognized by OHCA. BHSA must be supervised by a bachelor's level individual with a special education certification. BHSA must have CPR and First Aid certification. Six additional hours of related continuing education is required per year.

(14-15) Immunization. Immunizations must be coordinated with the Primary Care Physician for those Medicaid eligible children enrolled in ~~SoonerCare~~ SoonerCare. An administration fee, only, can be paid for immunizations provided by the schools.

(c) **Individuals eligible for Part B of Medicare.** EPSDT school health related services provided to Medicare eligible recipients are billed directly to the fiscal agent.

317:30-5-1027. Billing

The following units are billed on the appropriate claim form:

- (1) Service: Child Health Screening; Unit: Completed comprehensive screening.
- (2) Service: Interperiodic Child Health Screening; Unit: Completed interperiodic screening.
- (3) Service: Child Health Encounter; Unit: 5-10 minutes equals 1 unit; 11-20 minutes equals 2 units; over 21 minutes equals 3 units; limited to 30 units per year, additional units must be prior authorized.
- (4) Service: Individual Treatment Encounter for IEP School Based and School Based; Unit: 15 minutes, unless otherwise specified.
 - (A) Hearing and Vision Services, IEP School Based.
 - (B) Hearing and Vision Services, School Based.
 - (C) Speech Language Therapy, IEP School Based.
 - (D) Speech Language Therapy, School Based.
 - (E) Physical Therapy, IEP School Based.
 - (F) Physical Therapy, School Based.
 - (G) Occupational Therapy, IEP School Based.
 - (H) Occupational Therapy, School Based.

- (I) Nursing Services, IEP School Based; Unit: 5 minutes equals 1 unit; limited to 24 per day.
- (J) Nursing Services, School Based; Unit: 5 minutes equals 1 unit; limited to 24 per day.
- (K) Psychological Services, IEP School Based.
- (L) Psychological Services, School Based.
- (M) Psychotherapy Counseling Services, IEP School Based.
- (N) Psychotherapy Counseling Services, School Based.
- (O) Assistive Technology, IEP School Based.
- (P) Assistive Technology, School Based.
- (Q) Dental Screening, IEP School Based.
- (R) Dental Screening, School Based.
- (S) Therapeutic Behavioral Services, IEP School Based; limited to 12 units per day.
- (5) Service: Group Treatment Encounter for IEP School Based and School Based; No more than 5 recipients per group, Unit: 15 minutes, unless otherwise specified.
 - (A) Hearing and Vision Services, IEP School Based.
 - (B) Hearing and Vision Services, School Based.
 - (C) Speech Language Therapy, IEP School Based.
 - (D) Speech Language Therapy, School Based.
 - (E) Physical Therapy, IEP School Based.
 - (F) Physical Therapy, School Based.
 - (G) Occupational Therapy, IEP School Based.
 - (H) Occupational Therapy, School Based.
 - (I) Psychological Services, IEP School Based.
 - (J) Psychological Services, School Based.
 - (K) Psychotherapy Counseling Services, IEP School Based.
 - (L) Psychotherapy Counseling Services, School Based.
- (6) Service: Administration only, Immunization; Unit: one administration.
- (7) Service: Hearing Evaluation; Unit: Completed Evaluation.
- (8) Service: Hearing Aid Evaluation; Unit: Completed Evaluation.
- (9) Service: Audiometric Test (Impedance); Unit: Completed Test (Both Ears).
- (10) Service: Tympanometry and acoustic reflexes.
- (11) Service: Ear Impression Mold; Unit: 2 molds (one per ear).
- (12) Service: Vision Screening; Unit: one examination, by state licensed O.D., M.D., or D.O.
- (13) Service: Speech Language Evaluation; Unit: one evaluation.
- (14) Service: Physical Therapy Evaluation; Unit: one evaluation.
- (15) Service: Occupational Therapy Evaluation; Unit: one evaluation.
- (16) Service: Psychological Evaluation and Testing; Unit: one hour (with written report).

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(17) Service: Personal Care Services; Unit: 10 minutes.

[OAR Docket #10-170; filed 2-10-10]

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

[OAR Docket #10-175]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 6. Inpatient Psychiatric Hospitals

317:30-5-96.3. [AMENDED]

(Reference APA WF # 09-61)

AUTHORITY:

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

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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 modify Inpatient Behavioral Rules to clarify reimbursement for acute inpatient psychiatric services provided in free-standing psychiatric hospitals. The modification more clearly defines reimbursement for ancillary and professional services outside of the per diem rate paid to the facilities.

ANALYSIS:

Inpatient behavioral health rules are revised to more clearly define reimbursement methods for ancillary and professional services provided in inpatient psychiatric hospitals.

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 SPECIALITIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-96.3. Methods of payment

(a) **Reimbursement.** Covered inpatient psychiatric and/or substance abuse services rendered on or after October 1, 2005, will be reimbursed using one of the following methodologies:

- (1) Diagnosis Related Group (DRG);
- (2) cost based; or
- (3) a predetermined per diem payment.

(b) **Acute Level of Care.**

(1) Psychiatric units within general medical surgical hospitals and Critical Access hospitals. Payment will be made utilizing a DRG methodology. ~~[See OAC 317:30-5-41(1)(B)]. [See OAC 317:30-5-41(b)]. Psychiatric professional (physicians and psychologists) services provided in conjunction with the inpatient stay are separately payable from the DRG paid to the hospital;~~

(2) ~~Freestanding Psychiatric Hospitals and Psychiatric Units within Rehabilitation Hospitals.~~ A predetermined statewide per diem payment will be made for all facility services provided during the inpatient stay. Psychiatric professional (physicians and psychologists) services provided in conjunction with the inpatient stay are separately payable from the per diem paid to the hospital. Rates vary for public and private providers.

(c) **Psychiatric Residential Treatment Facility (PRTF).**

(1) **Instate Levels of Service.**

(A) Community-Based, extended. A pre-determined all-inclusive per diem payment will be made for routine, ancillary and professional services.

(B) Community-Based, transitional. A pre-determined per diem payment will be made for routine services. All other services are separately billable.

(C) Freestanding, Private. A predetermined all-inclusive per diem payment will be made for routine, ancillary and professional services.

(D) Freestanding, Public. Facilities will be reimbursed using either the statewide or facility specific interim rates and settled to total allowable costs as determined by analyses of the cost reports (Form CMS 2552) filed with the OHCA.

(E) Provider based. A predetermined all-inclusive per diem payment will be made for routine, ancillary and professional services.

(2) **Out-of-state services.**

(A) Border and "border status" placements. Facilities are reimbursed in the same manner as in-state PRTFs.

(B) Out-of-state placements. In the event comparable services cannot be purchased from an Oklahoma facility and the current payment levels are insufficient to obtain access for the member, the OHCA may negotiate a predetermined, all-inclusive per diem rate for specialty programs/units and/or subacute services. An incremental payment adjustment may be made for 1:1 staffing (if clinically appropriate and prior

authorized). Payment may be up to, but no greater, than usual and customary charges.

[OAR Docket #10-175; filed 2-10-10]

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

[OAR Docket #10-176]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 1. General Provisions
317:35-1-2. [AMENDED]
- Subchapter 5. Eligibility and Countable Income
Part 1. Determination of Qualifying Categorical Relationships
317:35-5-6. [AMENDED]
317:35-5-6.1. [AMENDED]
- Subchapter 6. ~~SoonerCare Health Benefits for Categorically Needy Pregnant Women and Families with Children~~
Part 3. Application Procedures
317:35-6-15. [AMENDED]
- Part 5. Determination of Eligibility for ~~SoonerCare Health Benefits for Pregnant Women and Families with Children~~
317:35-6-38. [AMENDED]
- Part 7. Certification, Redetermination and Notification
317:35-6-60. [AMENDED]
317:35-6-62. [AMENDED]
317:35-6-63. [AMENDED]
317:35-6-64. [AMENDED]
317:35-6-64.1. [AMENDED]
- Subchapter 7. Medical Services
Part 3. Application Procedures
317:35-7-15. [AMENDED]
- Part 7. Certification, Redetermination and Notification
317:35-7-60.1. [AMENDED]
317:35-7-63. [AMENDED]
317:35-7-64. [AMENDED]
317:35-7-65. [AMENDED]
- Subchapter 10. ~~Medical Aid to Families with Dependent Children~~
Eligibility Factors for Families with Children and Pregnant Women
Part 5. Income
317:35-10-26. [AMENDED]
- Subchapter 22. Pregnancy Related Benefits Covered Under Title XXI
317:35-22-9. [AMENDED]
317:35-22-11. [AMENDED]

(Reference APA WF # 09-56B)

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 435.902; 42 CFR 435.930

DATES:

Adoption:

January 14, 2010

Approved by Governor:

February 4, 2010

Effective:

March 1, 2010

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 1. General Provisions
317:35-1-2. [AMENDED]

Gubernatorial approval:

March 9, 2009

Register publication:

26 Ok Reg 758

Docket number:

09-758

(Reference APA WF # 09-02B)

Superseded rules:

Subchapter 6. SoonerCare Health Benefits for Categorically Needy Pregnant Women and Families with Children

Part 7. Certification, Redetermination and Notification

317:35-6-60. [AMENDED]

Gubernatorial approval:

January 14, 2010

Register publication:

27 Ok Reg 630

Docket number:

10-70

(Reference APA WF # 09-55)

Superseded rules:

Subchapter 10. Medical Aid to Families with Dependent Children

Part 5. Income

317:35-10-26. [AMENDED]

Gubernatorial approval:

October 2, 2009

Register publication:

27 Ok Reg 114

Docket number:

09-1278

(Reference APA WF # 09-22)

Superseded rules:

Subchapter 10. Medical Aid to Families with Dependent Children

Part 5. Income

317:35-10-26. [AMENDED]

Gubernatorial approval:

April 28, 2009

Register publication:

26 Ok Reg 1768

Docket number:

09-907

(Reference APA WF # 09-15A)

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 eliminate the barriers of providing effective and efficient services to potential SoonerCare members. The online enrollment process creates a single point-of-entry eligibility intake system that results in the applicant's SoonerCare eligibility determination. Initial applications and redeterminations of eligibility for SoonerCare will be processed in less time than the current method, allowing individuals to more rapidly access needed health care.

ANALYSIS:

In 2007, the OHCA received a Transformation Grant through the Centers for Medicare and Medicaid Services (CMS) to develop a web based online application and eligibility determination system in order to improve the ease and efficiency of enrollment. Originally known as No Wrong Door, the process allows potential members to apply for SoonerCare electronically. Effective in March 2010, the OHCA will assume responsibility for determining eligibility for certain groups of individuals under SoonerCare. The process will be phased in over a period of time, starting with the easiest groups who have no asset test and use income declaration: families with children, pregnant women, and individuals requesting only family planning services. As OHCA will now be determining eligibility for some of our population, parts of our eligibility rules and grievance rules are revised to incorporate these new responsibilities. In addition, eligibility for these three groups will no longer be retroactive to the first day of the month of application but will be effective the date of application or later.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING EMERGENCY RULES ARE
CONSIDERED PROMULGATED UPON APPROVAL BY**

Emergency Adoptions

THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE DATE MARCH 1, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

317:35-1-2. Definitions

The following words and terms, when used in this Chapter, have the following meaning, unless the context clearly indicates otherwise:

"**Acute Care Hospital**" means an institution that meets the requirements of 42 CFR, Section 440.10 and:

- (A) is maintained primarily for the care and treatment of patients with disorders other than mental diseases;
- (B) is formally licensed or formally approved as a hospital by an officially designated authority for state standard setting; and
- (C) meets the requirements for participation in Medicare as a hospital.

~~"Administrative agent ADvantage Administration (AA)" means the Long Term Care Authority who is under contract with the Oklahoma Department of Human Services (OKDHS) to perform which performs certain administrative functions related to the ADvantage Waiver.~~

"**AFDC**" means Aid to Families with Dependent Children.

"**Aged**" means an individual whose age is established as 65 years or older.

"**Agency partner**" means an agency or organization contracted with the OHCA that will assist those applying for services.

"**Aid to Families with Dependent Children**" means the group of low income families with children described in Section 1931 of the Social Security Act. The Personal Responsibility and Work Opportunity Act of 1996 established the new eligibility group of low income families with children and linked eligibility income and resource standards and methodologies and the requirement for deprivation for the new group to the State plan for Aid to Families with Dependent Children in effect on July 16, 1996. Oklahoma has elected to be less restrictive for all ~~Medicaid clients~~ SoonerCare members related to AFDC.

"**Area nurse**" means a registered nurse in the OKDHS Aging Services Division, designated according to geographic areas who evaluates the UCAT and determines medical eligibility for Personal Care, ADvantage Waiver, and Nursing Facility services. The area nurse also approves care plan and service plan implementation for Personal Care services.

"**Area nurse designee**" means a registered nurse selected by the area nurse who evaluates the UCAT and determines medical eligibility for Personal Care, ADvantage Waiver, and Nursing Facility services.

"**Authority**" means the Oklahoma Health Care Authority (OHCA).

"**Blind**" means an individual who has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens.

"**Board**" means the Oklahoma Health Care Authority Board.

"**Buy-in**" means the procedure whereby the ~~Authority~~ OHCA pays the ~~client's member's~~ Medicare premium.

(A) "**Part A Buy-in**" means the procedure whereby the ~~Authority~~ OHCA pays the Medicare Part A premium for individuals determined eligible as Qualified Medicare Beneficiaries Plus (QMBP) who are enrolled in Part A and are not eligible for premium free enrollment as explained under Medicare Part A. This also includes individuals determined to be eligible as Qualified Disabled and Working Individuals (QDWI).

(B) "**Part B Buy-in**" means the procedure whereby the ~~Authority~~ OHCA pays the Medicare Part B premium for categorically needy individuals who are eligible for Part B Medicare. This includes individuals who receive TANF or the State Supplemental Payment to the Aged, Blind or Disabled, and those determined to be Qualified Medicare Beneficiary Plus (QMBP), Specified Low Income Medicare Beneficiaries (SLMB) or Qualifying Individual-1 (QI-1). Also included are individuals who continue to be categorically needy under the PICKLE amendment and those who retain eligibility after becoming employed.

"**Caretaker relative**" means a person other than the biological or adoptive parent with whom the child resides who meets the specified degree of relationship within the fifth degree of kinship.

"**Case management**" means the activities performed for ~~client's members~~ to assist them in accessing services, advocacy and problem solving related to service delivery.

"**Categorically needy**" means that income and when applicable, resources are within the standards for the category to which the ~~client~~ individual is related.

"**Categorically related**" or "**related**" means the individual is:

- (A) aged, blind, or disabled;
- (B) pregnant;
- (C) an adult individual who has a minor child under the age of 18 and who is deprived of parental support due to absence, death, incapacity, unemployment; or
- (D) a child under 19 years of age.

"**Certification period**" means the period of eligibility extending from the effective date of certification to the date of termination of eligibility or the date of the next periodic redetermination of eligibility.

"**County**" means the Oklahoma Department of Human Services' office or offices located in each county within the State.

~~"CSED" means the Oklahoma Department of Human Services' Child Support Enforcement Division.~~

"**Custody**" means the custodial status, as reported by the Oklahoma Department of Human Services.

"**Deductible/Coinsurance**" means the payment that must be made by or on behalf of an individual eligible for Medicare before Medicare payment is made. The coinsurance is that

part of the allowable medical expense not met by Medicare, which must be paid by or on behalf of an individual after the deductible has been met.

(A) For Medicare Part A (Hospital Insurance), the deductible relates to benefits for in-patient services while the patient is in a hospital or nursing facility. After the deductible is met, Medicare pays the remainder of the allowable cost.

(B) For Medicare Part B (~~Supplemental~~ Medical Insurance), the deductible is an annual payment that must be made before Medicare payment for medical services. After the deductible is met, Medicare pays 80% of the allowable charge. The remaining 20% is the coinsurance.

"Disabled" means an individual who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted (or can be expected to last) for a continuous period of not less than 12 months.

"Disabled child" means for purposes of Medicaid Recovery a child of any age who is blind, or permanently and totally disabled according to standards set by the Social Security Administration.

"Estate" means all real and personal property and other assets included in the ~~recipient's~~ member's estate as defined in Title 58 of the Oklahoma Statutes.

"Gatekeeping" means the performance of a comprehensive assessment by the ~~LTC~~ OKDHS nurse utilizing the Uniform Comprehensive Assessment Tool (UCAT) for the determination of Medical eligibility, care plan development, and the determination of Level of Care for Personal Care, ADvantage Waiver and Nursing Facility services.

"Local office" means the Oklahoma Department of Human Services' office or offices located in each county within the State.

"LOCEU" means the Oklahoma Health Care Authority's Level of Care Evaluation Unit.

"LTC nurse" ~~means a registered nurse in the OKDHS Aging Services Division who meets the certification requirements for UCAT Assessor and case manager, and who conducts the uniform assessment of individuals utilizing the Uniform Comprehensive Assessment Tool (UCAT) for the purpose of medical eligibility determination. The LTC nurse also develops care plans and service plans for Personal Care services based on the UCAT.~~

"Medicare" means the federally funded health insurance program also known as Title XVIII of the Social Security Act. It consists of ~~two~~ four separate programs. Part A is Hospital Insurance, ~~(HI)~~ and Part B is ~~Supplemental~~ Medical Insurance, ~~(SMI)~~ Part C is Medicare Advantage Plans, and Part D is Prescription Drug Coverage.

(A) **"Part A Medicare ~~(HI)~~"** means Hospital Insurance that covers services for inpatient services while the patient is in a hospital or nursing facility. Premium free enrollment is provided for all persons receiving OASDI or Railroad Retirement income who are age 65 or older and for those under age 65 who

have been receiving disability benefits under these programs for at least 24 months.

(i) Persons with end stage renal disease who require dialysis treatment or a kidney transplant may also be covered.

(ii) Those who do not receive OASDI or Railroad Retirement income must be age 65 or over and pay a large premium for this coverage. Under Authority rules, these individuals are not required to enroll for Part A to be eligible for ~~Medicaid~~ SoonerCare benefits as categorically needy. They must however, enroll for Medicare Part B. Individuals eligible as a QMBP or as a Qualified Disabled and Working Individual (QDWI) under Medicaid are required to enroll for Medicare Part A. The Authority will pay Part A premiums for QMBP individuals who do not qualify for premium free Part A and for all QDWI's.

(B) **"Part B Medicare ~~(SMI)~~"** means Supplemental Medical Insurance that covers physician and related medical services other than inpatient or nursing facility care. Individuals eligible to enroll in Medicare Part B are required to do so under ~~Authority~~ OHCA policy. A monthly premium is required to keep this coverage in effect.

"Minor child" means a child under the age of 18.

"Nursing Care" for the purpose of Medicaid Recovery is care received in a nursing facility, an intermediate care facility for the mentally retarded or other medical institution providing nursing and convalescent care, on a continuing basis, by professional personnel who are responsible to the institution for professional medical services.

"OCSS" means the Oklahoma Department of Human Services' Oklahoma Child Support Services (formerly Child Support Enforcement Division).

"OHCA" means the Oklahoma Health Care Authority.

"OHCA Eligibility Unit" means the group within the Oklahoma Health Care Authority that assists with the eligibility determination process.

"OKDHS" means the Oklahoma Department of Human Services.

"OKDHS nurse" means a registered nurse in the OKDHS Aging Services Division who meets the certification requirements for UCAT Assessor and case manager, and who conducts the uniform assessment of individuals utilizing the Uniform Comprehensive Assessment Tool (UCAT) for the purpose of medical eligibility determination. The OKDHS nurse also develops care plans and service plans for Personal Care services based on the UCAT.

"Qualified Disabled and Working Individual (QDWI)" means individuals who have lost their Title II OASDI benefits due to excess earnings, but have been allowed to retain Medicare coverage.

"Qualified Medicare Beneficiary Plus (QMBP)" means certain aged, blind or disabled individuals who may or may not be enrolled in Medicare Part A, meet the Medicaid QMBP income and resource standards and meet all other Medicaid eligibility requirements.

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"Qualifying Individual" means certain aged, blind or disabled individuals who are enrolled in Medicare Part A, meet the Medicaid Qualifying Individual income and resource standards and meet all other Medicaid eligibility requirements.

"Qualifying Individual-1" means a Qualified Individual who meets the Qualifying Individual-1 income and resource standards.

"Recipient lock-in" means when a recipient member is restricted to one primary physician and/or one pharmacy. It occurs when the OHCA determines that a Medicaid recipient SoonerCare member has used multiple physicians and/or pharmacies in an excessive manner over a 12-month period.

"Scope" means the covered medical services for which payment is made to providers on behalf of eligible individuals. The Oklahoma Health Care Authority Provider Manual (OAC 317:30) contains information on covered medical services.

"Specified Low Income Medicare Beneficiaries (SLMB)" means individuals who, except for income, meet all of the eligibility requirements for QMBP eligibility and are enrolled in Medicare Part A.

"TEFRA" means the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248). TEFRA provides coverage to certain disabled children living in the home who would qualify for Medicaid SoonerCare if residents of nursing facilities, ICF/MRs, or inpatient acute care hospital stays are expected to last not less than 60 days.

"Worker" means the OHCA or OKDHS worker responsible for Medicaid assisting in eligibility determinations.

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 1. DETERMINATION OF QUALIFYING CATEGORICAL RELATIONSHIPS

317:35-5-6. Determining categorical relationship to pregnancy-related services

Categorical relationship to pregnancy-related services can be established by determining through medical evidence that the individual is currently or has been pregnant. Pregnancy must be verified by providing medical proof of pregnancy within 10 days of application submission. Form MS-MA-5 OKDHS form 08MA005E, Notification of Needed Medical Services, is not required but will be accepted as medical verification. Pregnancy may also be verified by submission of a copy of a laboratory report indicating the individual is or has been pregnant. If proof of pregnancy is not provided within 10 days of application submission, SoonerCare benefits will be closed for the pregnant woman at the end of the ten day period. The expected date of delivery must be established either by information from the applicant's physician or certified nurse midwife or the client's member's statement.

317:35-5-6.1. Determining categorical relationship for pregnancy related services covered under Title XXI

Categorical relationship for pregnancy related benefits covered under Title XXI are determined in accordance with OAC 317:35-22-1 and through medical evidence that the individual is currently or has recently been pregnant and may qualify for pregnancy related services. Pregnancy must be verified by providing medical proof of pregnancy within 10 days of application submission. Form MS-MA-5 OKDHS form 08MA005E, Notification of Needed Medical Services, is not required but will be accepted as medical verification. Pregnancy may also be verified by submission of a copy of a laboratory report indicating the individual is or has been pregnant. If proof of pregnancy is not provided within 10 days of application submission, SoonerCare benefits will be closed for the pregnant woman at the end of the ten day period. The applicant must be residing in the State of Oklahoma with the intent to remain at the time the medical service is received. The expected date of delivery must be established either by information from the applicant's physician or other qualified practitioner.

SUBCHAPTER 6. SOONERCARE HEALTH BENEFITS FOR CATEGORICALLY NEEDY PREGNANT WOMEN AND FAMILIES WITH CHILDREN

PART 3. APPLICATION PROCEDURES

317:35-6-15. Application for SoonerCare Health Benefits for Pregnant Women and Families with Children; forms

(a) **Application.** An application for categorically needy pregnant women and families with children consists of the ~~Health Benefits Application SoonerCare application.~~ The application form is signed by the individual, parent, spouse, guardian, or someone else acting on the individual's behalf. A categorically needy individual does not have to have received a medical service nor expect to receive one to be certified for ~~Health Benefits for Pregnant Women and Families with Children SoonerCare.~~

(1) An application may be made in a variety of locations, for example, a physician's office, a hospital or other medical facility, Health Department, ~~or~~ in the county OKDHS office, or online. A face to face interview is not required. Applications ~~may be~~ are mailed ~~or faxed~~ to the ~~local county OKDHS office~~ OHCA Eligibility Unit. ~~If faxed, it is not necessary to send the original application.~~ When an individual indicates a need for ~~health benefits SoonerCare,~~ the physician or facility may forward an application to the ~~OKDHS county office of the patient's residence~~ OHCA Eligibility Unit for processing. If the applicant is unable to sign the application, someone acting on his/her behalf may sign the application.

(2) ~~Form OKDHS form 08MA005E~~, Notification of Needed Medical Services, is required only for preauthorization of medical services. Although not required, the form may be submitted by the physician or facility as notification for a need for medical service. The form also may be accepted as medical verification of pregnancy.

(3) Receipt of the ~~Health Benefits SoonerCare~~ Application form or ~~Form OKDHS form 08MA005E~~ constitutes an application for SoonerCare.

(4) If ~~Form OKDHS form 08MA005E~~ is received and ~~an a~~ SoonerCare application cannot be completed, receipt of ~~Form OKDHS form 08MA005E~~ constitutes an application which must be registered and subsequently denied. The ~~member applicant~~ and provider are notified by computer-generated notice.

(b) **Date of application.** ~~When an application is made online, the date of application is the date the application is submitted online.~~ When application is made in the county office, the date of application is the date the applicant or someone acting on his/her behalf signs the application form. When the application is initiated outside the county office, the date of application is the date the application or ~~Form OKDHS form 08MA005E~~ is stamped with the date the application was received into the county office OHCA Eligibility Unit. ~~When an application is faxed, the application date is the date the fax is received.~~ When a request for ~~Health Benefits SoonerCare~~ is first made by an oral request to the county office, and the application form is signed later, the date of the oral request is entered in "red" on the application form above the date the form is signed. The date of the oral request is the date of application ~~to be shown on the computer form to be used.~~ When ~~Form OKDHS form 08MA005E~~ is received in the ~~county office OHCA Eligibility Unit~~ prior to the completion of the application form, the date that ~~Form OKDHS form 08MA005E~~ is received is considered as the date of application and must be registered as an application. Certain providers may take applications and then forward them to the ~~OKDHS county office OHCA Eligibility Unit~~ for ~~Health Benefits SoonerCare~~ eligibility determination. Under this circumstance, the application date is the date the ~~member applicant~~ signed the application form for the provider.

PART 5. DETERMINATION OF ELIGIBILITY FOR SOONERCARE ~~HEALTH BENEFITS FOR~~ PREGNANT WOMEN AND FAMILIES WITH CHILDREN

317:35-6-38. Presumptive eligibility for pregnant women

(a) Presumptive Eligibility (PE) is a limited period of ~~Medicaid~~ ~~SoonerCare~~ eligibility for categorically needy pregnant women that is determined by a qualified provider. Its purpose is to encourage pregnant women to receive adequate prenatal care in the earlier months of their pregnancy, and to ensure qualified providers of payment for the prenatal care. The PE period precedes the ~~Health Benefits SoonerCare~~ eligibility determination ~~made by the county office~~, and begins on the

date a qualified provider makes a determination of presumptive eligibility. The basis for the determination is preliminary information that the net family income of the pregnant woman does not exceed the standards on the ~~OHCA website or the DHS Appendix C-1 OKDHS form 08AX001E~~, Schedule I, which are 185% of the Federal Poverty Level.

(b) Pregnant women are excluded from a resource test. When a qualified provider has made this determination, the provider is required to notify the county office in the ~~pregnant woman's residence county OHCA Eligibility Unit~~ within five working days after the date of PE determination. The ~~county office OHCA Eligibility Unit~~ does not make PE determinations. When a PE determination is received, the worker determines ~~Health Benefits SoonerCare~~ eligibility using normal procedures.

(1) **Qualified providers.** The determination that a provider is qualified to make a PE determination is made by the OHCA. A listing of approved qualified providers is found in ~~DHS Appendix M-10, Certified Medicaid Presumptive Eligibility Providers~~ which is available ~~only on-line on the computer terminal on the OHCA website.~~ The ~~county office OHCA Eligibility Unit~~ must be sure a PE determination is made only by a qualified provider who is included in this Appendix.

(2) **Application and eligibility determination process for presumptive eligibility.** The ~~county offices supply OHCA Eligibility Unit~~ supplies the qualified providers with the necessary forms and instructions to complete and correctly determine PE for pregnant women.

(A) The forms include the following:

(i) The ~~Health Benefits SoonerCare~~ Application. This form must be completed at the PE determination and serves to gather information to complete PE determination and also to use for ~~Health Benefits SoonerCare~~ eligibility determination ~~by the worker~~;

(ii) ~~OHCA~~ Form MA-PE-1, Presumptive Eligibility Budget Sheet, which is completed by the qualified provider to verify pregnancy and provide income screening necessary to determine PE. Instructions for completing the form and eligibility rules are included on the back of the form; and

(iii) ~~OHCA~~ Form MA-PE-2, Notice to Pregnant Women Regarding Presumptive Eligibility for ~~Medicaid~~ ~~SoonerCare~~, which is completed and given to the pregnant woman by the qualified provider. It informs her whether she has been determined to be presumptively eligible or ineligible by the qualified provider. It also contains information regarding the application process as well as a detailed list of what ~~the DHS county office needs is needed~~ to complete the ~~Health Benefits SoonerCare~~ application.

(B) After determining the pregnancy of the individual, the qualified provider determines financial eligibility. ~~OHCA~~ Form MA-PE-1 is completed to document the pregnancy and the financial eligibility. If the qualified provider determines the individual

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meets PE requirements, OHCA Form MA-PE-2 is completed and given to the individual. The originals of the ~~Health Benefits SoonerCare~~ Application form and OHCA Form MA-PE-1 are sent to the ~~DHS county office of the woman's residence~~ OHCA Eligibility Unit. They must be received within five working days after the date of the PE determination.

(C) If the individual is determined by the qualified provider to not meet PE requirements, the qualified provider completes OHCA Form MA-PE-2 and gives it to the individual. The qualified provider also advises the individual she may be eligible for ~~Medicaid~~ SoonerCare and refers her to the on line application or the OKDHS county office for Medicaid SoonerCare eligibility determination.

(D) A PE determination may be made at any time during a pregnancy, even if there is an application pending ~~at the county office~~. Only one PE period will be granted during a pregnancy.

(E) Only a pregnant woman may be determined as PE. No other household member may be certified as presumptively eligible.

(3) **Household definition.** For purposes of this Section, the household is defined as the pregnant woman, her spouse or male acting in the role of the spouse, and her minor dependent children. The unborn child(ren) is also included as a member(s) of the household. If the pregnant woman is under age 18 and lives with her parent(s), the parent(s) is considered a household member(s). Other minor siblings may be included as household members.

(4) **Income computation.** The PE determination of the pregnant woman requires the provider to compute the total monthly income of the household as shown on the ~~Health Benefits SoonerCare~~ Application. The total monthly income includes the earned and unearned income of all household members. If the pregnant woman is a minor (under age 18) and lives with her parents, her parents' income must be included, regardless of the minor pregnant woman's marital status. The income included in the PE determination is the total income received in the month that PE is determined by the qualified provider. The household's total net income must be equal to or less than the ~~applicable maintenance standard standards on the OHCA website or the DHS Appendix C-1 OKDHS Form 08AX001E, Schedule I, which are 185% of the Federal Poverty Level.~~

(A) Countable earned income is the gross earnings of each household member minus the AFDC work related expenses and paid dependent care expenses not to exceed the AFDC dependent care limits (see OAC 317:35-10). Countable unearned income is the total unearned income of all household members. The AFDC rule on unearned income exclusions is followed.

(B) The total countable net earned income plus the total countable unearned income is the total countable

net income. This total and the household size is compared to the standards on OHCA Form MA-PE-1 to determine financial eligibility.

(5) **Presumptive eligibility period.** Presumptive eligibility begins on the date a qualified provider determines the total countable monthly net income of a pregnant woman's household does not exceed the eligibility standard on ~~the OHCA website DHS Appendix C-1 or OKDHS Form 08AX001E~~, Schedule I. Presumptive eligibility ends with (and includes) the earlier of:

(A) The day an eligibility or ineligibility determination is made ~~by the worker~~; or

(B) The 45th day after the date on which the qualified provider made the PE determination (the 45 day count begins on the day following the eligibility determination date).

(6) **Approval of presumptive eligibility.** When the ~~county~~ OHCA Eligibility Unit receives timely a completed PE certification, a case number, if needed, is assigned. The PE certification is processed within five working days. The ~~client applicant and the qualified provider~~ is notified of the PE determination by computer generated notice. The notice also advises that the PE period expires 45 days from the date of the qualified provider's approval. The case is automatically closed at the end of the 45 day period if a ~~Health Benefits~~ decision has not been made ~~by the worker on the SoonerCare application. Although not reflected on the computer, the Health Benefits case remains pending until appropriate action is taken by the worker.~~

(7) **Incomplete/incorrect presumptive eligibility forms.** Upon receipt of the ~~Health Benefits SoonerCare~~ Application and OHCA Form MA-PE-1 ~~MA-PE-1~~ from the qualified provider, the ~~county office~~ OHCA Eligibility Unit immediately screens them for completeness and correct determination.

(A) The ~~Health Benefits SoonerCare~~ Application for PE is considered incomplete if it is not filled out in its entirety, properly signed and dated. OHCA Form MA-PE-1 is considered incomplete if any response is omitted or if the form is not properly signed and dated.

(B) The presumptive eligibility determination is considered to be incorrect if the provider submitting the certification ~~is not shown on Appendix M-10, Certified Medicaid Presumptive Eligibility Providers, as has not been determined to be~~ a qualified provider by the OHCA. The presumptive eligibility decision is also incorrect if the income computed by the qualified provider exceeds the allowable standard.

(C) When it is determined the PE certification is incomplete or incorrect, the original OHCA Form MA-PE-1 and a copy of the ~~Health Benefits SoonerCare~~ application, are returned to the qualified provider. The worker proceeds with the ~~Health Benefits SoonerCare~~ eligibility determination. To maintain the original PE certification period, the qualified provider must correct and/or complete the forms

and return them to the ~~county office~~ OHCA Eligibility Unit within the original five working days. If this requirement is not met, an amended PE determination and PE determination date must be completed by the provider.

(8) **Presumptive eligibility forms not received within five working days.** A qualified provider is required to provide the PE determination to the ~~DHS county office of the pregnant woman's residence~~ OHCA Eligibility Unit within five working days after the date of the PE determination. The forms must be complete and correct as explained in paragraph (7) of this subsection. Forms received on the sixth day (or later) after the PE determination date are returned to the qualified provider with a request for an amended PE determination and PE determination date.

(9) **Erroneous payments and appeal rights.** When an individual is certified as presumptively eligible and a determination is made later that the individual is not eligible for ~~Health Benefits~~ SoonerCare, the PE period ends with the effective date of the ~~Health Benefit~~ SoonerCare application denial. In this instance, the effective date of denial is the day following the date the ineligibility decision is made.

(A) If the ineligibility is not due to a misrepresentation by the ~~client~~ applicant, any payments made are not considered to be erroneous. If the ineligibility is due to the ~~client~~ applicant withholding or misrepresenting information, any payments made are considered to be erroneous and a recipient overpayment is submitted to ~~DHS~~ OKDHS State Office, FSS Overpayment Section.

(B) The ~~client~~ applicant cannot appeal a PE determination made by a qualified provider or the expiration of the PE period (45 days).

PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION

317:35-6-60. Certification for SoonerCare Health Benefits for pregnant women and families with children

An individual determined eligible for SoonerCare ~~Health Benefits~~ may be certified for a medical service provided on or after the ~~first day of the month of application~~ date of certification. The period of certification may not be for a retroactive ~~months period~~. ~~The certification period in family cases is assigned for the shortest period of eligibility determined for any individual in the case. However, the~~ The individual who is categorically needy and ~~categorically~~ related to pregnancy-related services retains eligibility for the period covering prenatal, delivery and postpartum periods without regard to eligibility for other certification periods household members in the case.

(1) **Certification as a TANF (cash assistance) recipient.** A categorically needy individual who is determined eligible for TANF is certified effective the first day of the month of TANF eligibility.

(2) **Certification of non-cash assistance individuals categorically needy and categorically related to AFDC.** The certification period for the individual ~~categorically~~ related to AFDC is 12 months. The certification period can be less than 12 months if the individual:

- (A) is certified as eligible in a money payment case during the 12-month period;
- (B) is certified for long-term care during the 12-month period;
- (C) becomes ineligible for ~~medical assistance~~ SoonerCare after the initial month; or
- (D) becomes ineligible as categorically needy.

- (i) If an income change after certification causes the case to exceed the categorically needy maximums, the case is closed.
- (ii) Individuals, however, who are determined pregnant and eligible as categorically needy continue to be eligible for pregnancy-related services through the prenatal, delivery and postpartum period, regardless of income changes. A pregnant individual included in a TANF case which closes continues to be eligible for pregnancy related services through the postpartum period.

(3) **Certification of individuals categorically needy and categorically related to pregnancy-related services.** The certification period for the individual ~~categorically~~ related to pregnancy-related services will cover the prenatal, delivery and postpartum periods. The postpartum period is defined as the two months following the month the pregnancy ends. Eligibility as categorically needy is based on the income received in the first month of the certification period. No consideration is given to changes in income after certification.

(4) **Certification of newborn child deemed eligible.**

(A) ~~A~~ Every newborn child is deemed eligible on the date of birth for ~~Medicaid benefits~~ SoonerCare when the child is born to a woman who is eligible for pregnancy-related services as categorically needy. ~~(For purposes of this subparagraph, a newborn child is defined as any child under the age of one year.)~~ The newborn child is deemed eligible through the last day of the month the newborn child attains the age of one year. The newborn child's eligibility is not dependent on the mother's continued eligibility. The mother's coverage may expire at the end of the postpartum period; however, the newborn child is deemed eligible until age one. The newborn child's eligibility is based on the original eligibility determination of the mother for pregnancy-related services, and consideration is not given to any income or resource changes that occur during the deemed eligibility period.

(B) The newborn child is deemed eligible for ~~Medicaid only~~ SoonerCare as long as he/she continues to live in Oklahoma ~~with the mother~~. No other conditions of eligibility are applicable, including social security number enumeration, ~~and~~ child support referral, ~~and~~ citizenship and identity verification. However, it is recommended that social security number

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enumeration be completed as soon as possible after the newborn child's birth. It is also recommended that a child support referral be completed, if needed, as soon as possible and sent to ~~DHS Child Support Enforcement Division (CSED)~~ the Oklahoma Child Support Services (OCSS) division at OKDHS. The referral enables ~~Child Support Services~~ child support services to be initiated.

~~(C) During the original eligibility determination process for pregnancy related services, the worker informs the mother that the newborn child will be deemed eligible on the date of birth. The mother is also advised of the importance of her reporting the newborn child's birth immediately so deeming can be done timely.~~

~~(D) When a categorically needy newborn child is deemed eligible for Medicaid SoonerCare, he/she is added for a certification period of 13 months. The certification period expires at~~ remains eligible through the end of the month that the newborn child reaches age one. If the child's eligibility is moved from the case where initial eligibility was established, it is required that the newborn receive the full deeming period. The certification period is shortened only in the event the child:

- ~~(i) leaves the mother's home;~~
- ~~(ii) loses Oklahoma residence;~~
- ~~(iii) has medical needs included in another assistance case; or~~
- ~~(iv) expires.~~

~~(E) A newborn child cannot be deemed eligible when the mother's only coverage was presumptive eligibility, and continued eligibility was not established.~~

317:35-6-62. Notification of eligibility

When eligibility for ~~Health Benefits~~ SoonerCare is established, the ~~county office updates the computer form and the appropriate notice is computer generated to the client and provider applicant.~~ When the computer file is updated for changes, notices are generated only if there is a change in the client's financial responsibility eligibility of any household member.

317:35-6-63. Denials

If the denial of ~~Health Benefits~~ SoonerCare is for ~~an the entire family case household, the computer input form is updated and the appropriate notice is computer generated to the client and provider applicant.~~ If an individual(s) is being denied but other family members are eligible, the ~~county provides the denied individual(s) is provided with a notice using the Notification of Eligibility Status for Medical Assistance form.~~

317:35-6-64. Closures

~~Health benefit SoonerCare cases are closed by the county at any time during the certification period that the case becomes~~

~~ineligible. A computer-generated notice is sent to the client head of the household and the provider.~~

317:35-6-64.1. Transitional Medical Assistance (TMA)

(a) Conditions for TMA.

(1) **Transitional Medical Assistance.** Health benefits are continued when the benefit group loses eligibility due to new or increased earnings of the parent(s)/caretaker relative or the receipt of child or spousal support. The health benefit coverage is of the same amount, duration, and scope as if the benefit group continued receiving ~~health benefits SoonerCare.~~ Eligibility for TMA begins with the effective date of case closure or the effective date of closure had the income been reported timely. An individual is included for TMA only if that individual was eligible for ~~Medicaid SoonerCare~~ and included in the benefit group at the time of the closure. To be eligible for TMA the benefit group must meet all of the requirements listed in (A) - (C) of this paragraph.

(A) At least one member of the benefit group was included in at least three of the six months immediately preceding the month of ineligibility.

(B) The health benefit cannot have been received fraudulently in any of the six months immediately preceding the month of ineligibility.

(C) The benefit group must have included a dependent child who met the age and relationship requirements for ~~Medicaid SoonerCare~~ and whose needs were included in the benefit group at the time of closure, unless the only eligible child is a Supplemental Security Income (SSI) recipient.

(2) **Closure due to child support or spousal support.** Health benefits are continued if the case closure is due to the receipt of new or increased child support or payments for spousal support in the form of alimony. The needs of the parent(s) or caretaker relative must be included in the benefit group at the time of closure. The health benefits are continued for four months.

(3) **Closure due to new or increased earnings of parent(s) or caretaker relative.** Health benefits are continued if the closure is due to the new or increased earnings of the parent(s) or caretaker relative. The needs of the parent(s) or caretaker relative must be included in the benefit group at the time of closure. The parent(s) or caretaker relative is required to cooperate with ~~Child Support Enforcement Division OKDHS Oklahoma Child Support Services~~ during the period of time the family is receiving TMA.

(4) **Eligibility period.** Health benefits may be continued for a period up to 12 months if the reason for closure is new or increased earnings of the parent(s) or caretaker relative. This period is divided into two six-month periods with eligibility requirements and procedures for each period.

(A) Initial six-month period.

(i) The benefit group is eligible for an initial six-month period of TMA without regard to income or resources if:

- (I) an eligible child remains in the home;
- (II) the parent(s) or caretaker relative remains the same; and
- (III) the benefit group remains in the state.
- (ii) An individual benefit group family member remains eligible for the initial six-month period of TMA unless the individual:
 - (I) moves out of the state,
 - (II) dies,
 - (III) becomes an inmate of a public institution,
 - (IV) leaves the household,
 - (V) does not cooperate, without good cause, with the ~~Child Support Enforcement Division~~ OKDHS Oklahoma Child Support Services or third party liability requirements.
- (B) **Additional Six-month period.**
 - (i) Health benefits are continued for the additional six-month period if:
 - (I) an eligible child remains in the home;
 - (II) the parent(s) or caretaker relative remains the same;
 - (III) the benefit group remains in the state;
 - (IV) the benefit group was eligible for and received TMA for each month of the initial six-month period;
 - (V) the benefit group has complied with reporting requirements in subsection (g) of this Section;
 - (VI) the benefit group has average monthly earned income (less child care costs that are necessary for the employment of the parent or caretaker relative) that does not exceed the 185% of the Federal Poverty Level (see OKDHS Appendix C-1, Schedule I.A); and
 - (VII) the parent(s) or caretaker relative had earnings in each month of the required three-month reporting period described in (g)(2) of this Section, unless the lack of earnings was due to an involuntary loss of employment, illness, or other good cause.
 - (ii) An individual benefit group family member remains eligible for the additional six-month period unless the individual meets any of the items listed in (4)(A)(ii) of this paragraph.
- (b) **Income and resource eligibility.**
 - (1) The unearned income and resources of the benefit group are disregarded in determining eligibility for TMA. There is no earned income test for the initial six-month period.
 - (2) Health benefits are continued for the additional six-month period if the benefit group's countable earnings less child care costs that are necessary for the employment of the parent(s) or caretaker relative are below 185% of the Federal Poverty Level (see the standards on the OHCA website or the OKDHS Appendix C-1 Form 08AX001E, Schedule I.A) and the benefit group meets the requirements listed in (a)(4)(B).
 - (A) The earnings of all benefit group members are used in determining the earned income test. The only exception is that earnings of full time students included in the benefit group are disregarded.
 - (B) Income is determined by averaging the benefit group's gross monthly earnings (except full time student earnings) for the required three-month reporting period.
 - (C) A deduction from the benefit group's earned income is allowed for the cost of approved child care necessary for the employment of the parent(S) or caretaker relative. The child care deduction is averaged for the same three-month reporting period. There is no maximum amount for this deduction.
 - (D) All individuals whose earnings are considered are included in the benefit group. The family size remains the same during both reporting periods.
- (c) **Eligible child.** When the ~~regular health~~ SoonerCare benefit is closed and TMA begins, the benefit group must include an eligible child whose needs were included in the ~~health~~ SoonerCare benefit at the time of closure, unless the only eligible child is a SSI recipient. After the TMA begins, the benefit group must continue to include an eligible child. Age is the only requirement an eligible child must meet.
- (d) **Additional members.** After the TMA begins, family members who move into the home cannot be added to the TMA coverage. This includes siblings and a natural or adoptive parent(s) or caretaker relative. If the additional member is in need of health benefits, an application for services under the ~~regular Medicaid~~ SoonerCare program is completed. If a benefit group member included in TMA leaves the home and then returns, that member may be added back to TMA coverage if all conditions of eligibility are met.
- (e) **Third party liability.** The benefit group's eligibility for TMA is not affected by a third party liability. However, the benefit group is responsible for reporting all insurance coverage and any changes in the coverage. The ~~social services specialist~~ worker must explain the necessity for applying benefits from private insurance to the cost of medical care.
- (f) **Notification.**
 - (1) **Notices.** Notices are sent to the benefit group, both at the onset of and throughout the TMA period. These notices, which are sent at specific times, inform the benefit group of its rights and responsibilities. When a ~~health benefit~~ SoonerCare is closed and the benefit group is eligible for TMA, the computer generated closure notice includes notification of the continuation of health benefits. Another computer generated notice is sent at the same time to advise the benefit group of the reporting requirements and under what circumstances the health benefits may be discontinued. Each notice listed in (A)-(C) of this paragraph includes specific information about what the benefit group must report. The notices serve as the required advance notification in the event benefits are discontinued as a result of the information furnished in response to these notices.
 - (A) **Notice #1.** Notice #1 is issued in the third month of the initial TMA period. This notice advises

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the benefit group of the additional six-month period of TMA, the eligibility conditions, reporting requirements, and appeal rights.

(B) **Notice #2.** Notice #2 is issued in the sixth month of the TMA period, but only if the benefit group is eligible for the additional six-month period. This notice advises the benefit group of the eligibility conditions, reporting requirements, and appeal rights.

(C) **Notice #3.** Notice #3 is issued in the ninth month of the TMA period, or the third month of the additional six-month period. This notice advises the benefit group of the eligibility conditions, the reporting requirements, appeal rights, and the expiration of TMA coverage.

(2) **Notices not received.** In some instances the benefit group does not receive all of the notices listed in (1) of this subsection. The notices and report forms are not issued retroactively.

(g) **Reporting.** The benefit group is required to periodically report specific information. The information may be reported by telephone, ~~in an office interview,~~ or by letter.

(1) The benefit group must report:

(A) gross earned income of the entire benefit group for the appropriate three-month period;

(B) child care expenses, for the appropriate three-month period, necessary for the continued employment of the parent(s) or caretaker relative;

(C) changes in members of the benefit group;

(D) residency; and

(E) third party liability.

(2) The reporting requirement time frames are explained in this subparagraph.

(A) The information requested in the third month must be received by the 21st day of the fourth month and is used to determine the benefit group's eligibility for the additional six-month period. While this report is due in the fourth month, negative action cannot be taken during the initial period for failure to report. If the benefit group fails to submit the requested information, benefits are automatically suspended effective the seventh month. If action to reinstate is not taken by deadline of the suspension month, the computer automatically closes the case effective the next month.

(B) The information requested in the sixth month must be furnished by the 21st day of the seventh month. The decision to continue benefits into the eighth month is determined by the information reported.

(C) The information requested in the ninth month must be furnished by the 21st day of the tenth month. The decision to continue health benefits into the 11th month is determined by the information reported. When the information is not reported timely, the TMA is automatically suspended by the computer for the appropriate effective date. If the benefit group subsequently reports the necessary information, the

~~social services specialist worker~~ determines eligibility. If all eligibility factors are met during and after the suspension period, the health benefits are reinstated. The effective date of the reinstatement is the same as the effective date of the suspension so the benefit group has continuous medical coverage.

(h) **Termination of TMA.** The TMA coverage is discontinued any time the benefit group fails to meet the eligibility requirements as shown in this Section. If it becomes necessary to discontinue the TMA coverage for the benefit group or any member of the benefit group, the individual(s) must be advised that he or she may be eligible for health benefits under the ~~regular Medicaid~~ SoonerCare program and how to obtain these benefits.

(i) **Receipt of health benefits after TMA ends.** To ensure continued medical coverage a computer generated recertification form is mailed to the benefit group during the third month of TMA for benefits closed due to the receipt of child or spousal support or the 11th month of TMA for benefits closed due to increased earnings. The benefit group must return the form prior to the termination of the TMA benefits. When determined eligible, health benefits continue as ~~health benefits~~ SoonerCare, not TMA. If the benefit group fails to return the recertification form, TMA benefits are terminated.

SUBCHAPTER 7. MEDICAL SERVICES

PART 3. APPLICATION PROCEDURES

317:35-7-15. Application for Medical Services; forms

(a) **Application.** An application for Medical Services consists of the Medical Assistance Application. The application form is signed by the individual, parent, spouse, guardian or someone else acting on the individual's behalf. A ~~categorically needy~~ individual does not have to have received a medical service nor expect to receive one to be certified for SoonerCare.

(1) An application may be made in a variety of locations, for example, a physician's office, a hospital or other medical facility or in the county OKDHS office. An application may be made online by individuals who are pregnant, have children or are applying for family planning services only. A face to face interview is not required. SoonerCare applications for women who are pregnant, families with children and for family planning services only are mailed to the OHCA Eligibility Unit. Applications for other medical services may be mailed or faxed to the local county OKDHS office. If faxed, it is not necessary to send the original application. When an individual indicates a need for health benefits, the physician or facility may forward an application or 08MA005E to the OKDHS county office of the patient's residence for processing. The physician or facility may forward an application or 08MA005E for individuals who are pregnant, have children or are applying for family planning services only to the OHCA Eligibility Unit for processing. If the

applicant is unable to sign the application, someone acting on his/her behalf may sign the application.

(2) ~~Form OKDHS form~~ 08MA005E, Notification of Needed Medical Services, is required only for preauthorization of medical services. Although not required, the form may be submitted by the physician or facility as notification for a need for medical service. The form also may be accepted as medical verification of pregnancy.

(3) Receipt of the ~~Medical Assistance~~ SoonerCare Application form or ~~Form OKDHS form~~ 08MA005E constitutes an application for SoonerCare.

(4) If ~~Form OKDHS form~~ 08MA005E is received and an application cannot be completed, receipt of ~~Form OKDHS form~~ 08MA005E constitutes an application which must be registered and subsequently denied. The ~~member applicant~~ and provider are notified by computer-generated notice.

(5) If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the Medical Assistance Application form.

(b) **Date of application.** When an application is made online, the date of application is the date the application is submitted online. When application is made in the county office, the date of application is the date the applicant or someone acting on his/her behalf signs the application form. When the application is initiated outside the county office, the date of application is the date the application or ~~Form OKDHS form~~ 08MA005E is stamped into the ~~county office~~ OHCA Eligibility Unit. When an application is faxed, the application date is the date the fax is received. When a request for SoonerCare is first made by an oral request to the county office, and the application form is signed later, the date of the oral request is entered in "red" on the application form above the date the form is signed. The date of the oral request is the date of application to be ~~shown on the computer form used.~~ When ~~Form OKDHS form~~ 08MA005E is received in the county office or the OHCA Eligibility Unit prior to the completion of the application form, the date that ~~Form OKDHS form~~ 08MA005E is received is considered as the date of application and must be registered as an application. Certain providers may take applications and then forward them to the OKDHS county office or the OHCA Eligibility Unit for SoonerCare eligibility determination. Under this circumstance, the application date is the date the member signed the application form for the provider.

PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION

317:35-7-60.1. Certification for the Family Planning Waiver Program.

The effective date of certification for the Family Planning Waiver Program is the ~~first day of the month~~ date of application or later. The period of certification may not be for a retroactive period. An individual determined eligible for the Family Planning Waiver Program is assigned a certification period of 12 months. At any time during the certification period the

individual becomes ineligible, the case is closed using standard negative action procedures. At the end of the certification period, a redetermination of eligibility is required.

317:35-7-63. Notification of eligibility

When eligibility for ~~short term medical care~~ SoonerCare is established, the ~~county office updates the computer form~~ and the appropriate notice is computer generated to the ~~client and provider applicant.~~ When the computer file is updated for changes, notices are generated only if there is a change in the ~~client's financial responsibility~~ SoonerCare eligibility of a household member.

317:35-7-64. Denials

If denial of ~~medical care~~ SoonerCare is for ~~an entire family ease the entire household,~~ the ~~computer input form~~ application is ~~updated~~ denied and the appropriate notice is computer generated to the ~~client and provider applicant.~~ If an individual(s) is being denied but other family members are eligible, the ~~county provides the denied individual(s) is provided~~ with a notice ~~using the Notification of Eligibility Status for Medical Assistance form.~~

317:35-7-65. Closures

~~Short term medical care~~ SoonerCare cases are closed by the ~~county~~ at any time during the certification period that the case becomes ineligible. A computer-generated notice is sent to the ~~client and the provider head of the household.~~ Otherwise, a case automatically closes at the end of the certification period if eligibility is not redetermined with the exception of except for children in the custody of DHS OKDHS who are placed outside their own home.

SUBCHAPTER 10. MEDICAL AID TO FAMILIES WITH DEPENDENT CHILDREN OTHER ELIGIBILITY FACTORS FOR FAMILIES WITH CHILDREN AND PREGNANT WOMEN

PART 5. INCOME

317:35-10-26. Income

(a) **General provisions regarding income.**

(1) The income of categorically needy individuals who are related to AFDC or Pregnancy does not require verification, unless questionable. If the income information is questionable, the worker must verify the income it must be verified. ~~The worker views all data exchange screens on all individuals included in the household size. If the data exchange screen reveals conflicting information, the worker must resolve the conflicting information and if necessary, request verification there appears to be a conflict in the information provided, the worker must investigate the situation to determine if income verification is necessary.~~

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(2) All available income, except that required to be disregarded by law or OHCA's policy, is taken into consideration in determining need. Income is considered available both when actually available and when the applicant or member has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is counted as income. The member is responsible for reporting all income, the source, amount and how often received.

(A) Income received on behalf of a member of the benefit group by another individual such as, but not limited to, a guardian or conservator, is considered available to the benefit group.

(B) Money received and used for the care and maintenance of a third party who is not included in the benefit group is not counted as income if it can be identified and verified as intended for third party use.

(C) If it appears any member of the benefit group or an individual whose income is considered when determining eligibility is eligible for any type of income or benefits, the benefit group must be notified in writing by the Oklahoma Department of Human Services (OKDHS). The notice must contain the information that failure to apply for and take all appropriate steps to obtain such benefits within 30 days from the date of the notice will result in a determination of ineligibility. An application for Supplemental Security Income (SSI) is not required.

(D) If the member and spouse are living together or they are living apart but there has not been a clear break in the family relationship, income received by either spouse and income received jointly is considered as family income. Income cannot be diverted to a household member who is not included in the household size for health benefits. Consideration is not given to a SSI recipient's income in computing eligibility for the AFDC or Pregnancy related unit.

(E) Income which can reasonably be anticipated to be received is considered to be available for the month its receipt is anticipated.

(F) Income produced from resources must be considered as unearned income.

(3) Income that must be verified is verified by the best available information such as pay stubs presented by the member or an interview with the employer. Pay stubs may only be used for verification if they have the member's name and/or social security number indicating that the pay stubs are in fact the member's wages. The stubs should also include the date(s) of the pay period and the amount of income before deductions. If this information is not included, employer verification is required. The worker verifies medical insurance which may be available at the same time that income is verified. When a member of the benefit group accepts employment and has not received any wages, verification (if necessary) of the amount of

income to be considered and the anticipated date of receipt must be obtained from the employer. Income which is expected to be received during a month is considered available to the benefit group and is counted in determining eligibility for the month of receipt.

(4) Monies received in a lump sum from any source are considered income in the month received. Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment. Exception: lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for disabled/blind children under age 18 are excluded as income. The interest income generated from dedicated bank accounts is also excluded.

(A) A nonrecurring lump sum payment considered as income includes payments based on accumulation of income and payments which may be considered windfall in nature and may include but are not limited to TANF grant diversion, VA or Social Security lump sum payments, inheritance, gifts, worker's compensation payments, cash winnings, personal injury awards, etc. Retirement benefits received in a lump-sum are considered as unearned income. A non-recurring lump sum SSI retroactive payment, made to an AFDC or pregnancy related recipient who is not currently eligible for SSI, is not counted as income.

~~(B) The worker must ask applicants if they have received a lump sum payment during the month of application, any month during the application process or anticipate to receive a lump sum in the future. Members are asked at the time of periodic redetermination if the benefit group has received or is expecting to receive a lump sum. The worker provides an oral explanation, including examples of lump sum payments, how the rule affects other benefits and the importance of reporting anticipated receipt of a lump sum payment. The worker also offers counseling when there is indication of anticipated receipt, including voluntary withdrawal of the application or case closure and availability of free legal advice.~~

~~(C)~~ Lump sum payments (minus allowable deductions related to establishing the lump sum payment) which are received by AFDC/Pregnancy related individuals or applicants are considered as income. Allowable deductions are expenses earmarked in the settlement or award to be used for a specific purpose which may include, but are not limited to, attorney's fees and court costs that are identified in the lump sum settlement, medical or funeral expenses for the immediate family, etc. "Earmarked" means that such expense is specifically set forth in the settlement or award.

~~(D)~~ When a lump sum is received by a stepparent not included in the household size, only the stepparent's contribution is considered in accordance with the stepparent's liability policy.

(~~E~~D) When a third party reveals that a lump sum payment has been received or is expected to be received by the applicant or member, adverse action notification is given or mailed to the applicant/member and appropriate action taken.

(~~F~~E) Recurring lump sum income received from any source for a period covering more than one month, that is received in a lump sum recurrently (such as annual rentals from surface or minerals, Windfall Profits tax refund, etc.) is prorated over a period of time it is intended to cover, beginning with the month of receipt of a lump sum payment.

(~~G~~F) Net income from oil and gas production (gross minus production taxes withheld), received in varying amounts on a regular or irregular basis for the past six months, will be averaged and considered as income for the next six months. In instances where an applicant or a member receives new income from oil and gas production and verification for the past six months is not available, the worker accepts the available verification and averages over the period of time intended to cover. Net income may be verified by seeing the individual's production check stub, or by contacting the oil and gas company.

(5) Income that is based on the number of hours worked, as opposed to income based on regular monthly wages, must be computed as irregular income. The income received irregularly or in varying amounts will be averaged using the past two months to establish the amount to be anticipated and considered for prospective budgeting.

(6) A caretaker relative can only be included in the benefit group when the ~~natural or biological or adoptive~~ parent is not in the home. A stepparent can be included when the biological or adoptive parent is either incapacitated or not in the home.

(A) Consideration is not given to the income of the caretaker relative or the income of his or her spouse in determining the eligibility of the children regardless of whether the caretaker relative's needs are or are not included. However, if that person is the stepparent, the policy on stepparent liability is applicable.

(B) If a caretaker relative is married and living with the spouse who is an SSI or SSP recipient, the spouse or spouse's income is not considered in determining the eligibility of the ~~relative~~ caretaker relative. The income of the caretaker relative and the spouse who is not an SSI or SSP recipient must be considered. Only one caretaker relative is eligible to be included in any one month.

(7) A stepparent can be included when the ~~natural or biological or adoptive~~ parent is either incapacitated or not in the home. The income of the stepparent is counted if the stepparent's needs are being included.

(8) When there is a stepparent or person living in the home with the ~~natural~~ biological or adoptive parent who is not a spouse by legal marriage or common-law relationship with the own parent ~~but who is acting in the role of a~~

~~spouse~~, the worker determines the amount of income that will be made available to meet the needs of the child(ren) and the parent. Only contributions made in cash directly to the benefit group can be counted as income. In-kind contributions are disregarded as income. When the individual and the member state the individual does not make a cash contribution, further exploration is necessary. This statement can only be accepted after clarifying that the individual's contributions are only in-kind.

(b) **Earned income.** The term "earned income" refers to monies earned by an individual through the receipt of wages, salary, commission or profit from activities in which the individual is engaged as self-employed or as an employee. Payments made for accumulated annual leave/vacation leave, sick leave or as severance pay are considered as earned income whether paid during employment or at termination of employment. Temporary disability insurance payment(s) and temporary worker's compensation payments are considered as earned income if payments are employer funded and the individual remains employed. Income received as a one-time nonrecurring payment is considered as a lump sum payment. Earned income includes in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages. An exchange of labor or services, e.g., barter, is considered as an in-kind benefit. Such benefits received in-kind are considered as earned income only when the employee/employer relationship has been established. Income from self-employment also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in the business enterprise. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind income. Gross earned income is used to determine eligibility. Gross earned income is defined as the wage prior to payroll deductions and/or withholdings.

(1) **Earned income from self-employment.** If the income results from the ~~individual's~~ individual's activities primarily as a result of the ~~individual's~~ individual's own labor from the operation of a business enterprise, the "earned income" is the total profit after deducting the business expenses (cost of the production). Money from the sale of whole blood or blood plasma is also considered as self-employment income subject to necessary business expense and appropriate earned income exemptions.

(A) Allowable costs of producing self-employment income include, but are not limited to, the identifiable cost of labor, stock, raw material, seed and fertilizer, interest payments to purchase income-producing property, insurance premiums, and taxes paid on income-producing property.

(i) The federal or state income tax form for the most recent year is used for calculating the income, ~~if necessary~~, only if it is representative of the individual's current situation. The individual's business records beginning the month income became representative of the individual's current situation is used if the income tax information does not represent the individual's current situation.

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(ii) If the self-employment enterprise has been in existence for less than a year, the income is averaged over the period of time the business has been in operation to establish the monthly income amount.

(iii) Self-employment income which represents an annual support is prorated over a 12-month period, even if the income is received in a short period of time. For example, self-employment income received by crop farmers is averaged over a 12-month period if the income represents the farmer's annual support.

(B) **Items not considered.** The following items are not considered as a cost of producing self-employed income:

(i) The purchase price and/or payments on the principal of loans for capital assets, equipment, machinery, and other durable goods;

(ii) Net losses from previous periods;

(iii) Depreciation of capital assets, equipment, machinery, and other durable goods; and

(iv) Federal, state and local income taxes, FICA, money set aside for retirement purposes, and other work related personal expenses, such as meals and necessary transportation. These expenses are accounted for by the work related expense deduction.

(C) **Room and/or board.** Earned income from a room rented in the home is determined by considering 25% of the gross amount received as a business expense. If the earned income includes payment for room and board, 50% of the gross amount received is considered as a business expense.

(D) **Rental property.** Income from rental property is to be considered income from self employment if none of the activities associated with renting the property is conducted by an outside-person or agency.

(2) **Earned income from wages, salary or commission.** If the income is from wages, salary or commission, the "earned income" is the gross income prior to payroll deductions and/or withholdings. Income from the Older American Community Service Employment Act (Title V), including AARP and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as any other earned income.

(3) **Earned income from work and training programs.** Earned income from work and training programs such as the Job Training Partnership Act (JTPA) received by an adult as wages is considered as any other earned income. Also, JTPA earned income of a dependent child is considered when received in excess of six months in any calendar year.

(4) **Individual earned income exemptions.** Exemptions from each individual's earned income include a monthly standard work related expense and child care expenses the individual is responsible for paying. Expenses cannot be exempt if paid through state or federal funds

or the care is not in a licensed facility or home. Exempt income is that income which by law may not be considered in determining need.

(A) **Work related expenses.** The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is \$240 per each full-time or part-time employed member of the benefit group.

(B) **Child care expenses.** Disregard of child care expense is applied after all other income disregards.

(i) Child care expense may be deducted when:

(I) suitable care for a child included in the benefit group is not available from responsible persons living in the home or through other alternate sources; and

(II) the employed member whose income is considered must purchase care.

(ii) ~~Child care expenses must be verified and the~~ The actual amount paid for child care per month, ~~as paid,~~ up to a maximum of \$200 for a child under the age of two or \$175 for a child age two or older may be deducted. ~~In considering the care expense, only actual work hours and travel time between work and the child care facility or child care home will be allowed.~~

(iii) ~~In explaining child care expenses, the worker informs the individual that payment for care is the responsibility of the member and any changes in the plan for care must be reported immediately.~~

~~(iv iii)~~ Oklahoma law requires all child care centers and homes be properly approved or licensed; therefore, child care expenses can only be deducted if the child is in a properly licensed facility or receiving care from an approved in-home provider. ~~However, in cases where licensed dependent care facilities and/or approved in-home providers are not available (e.g., night employment), and the member arranges for care outside the home, an immediate referral is made by OKDHS Form K-13 to the licensing worker for a licensing decision. The cost of child care can be considered until the worker receives notification from the licensing worker that the home does not meet licensing standards or registration. If licensing or registration is denied, the member will be allowed 30 days after notification to make other child care arrangements, during which time the child care exemption will continue to be allowed.~~

~~(v iv)~~ Child care provided by another person in the household who is not a member of the benefit group may be considered as child care expenses as long as the home meets applicable standards of State, local or Tribal law.

~~(vi v)~~ Documentation is made of the child care arrangement indicating the name of the child care facility or the name of the in-home provider, and

the documentation used to verify the actual payment of child care per month.

(5) **Formula for determining the individual's net earned income.** Formulas used to determine net earned income to be considered are:

(A) **Net earned income from employment other than self-employment.** Gross Income minus work related expense minus child care expense equals net income.

(B) **Net earned income from self-employment.** Gross income minus allowable business expenses minus work related expense and child care expense equals net income.

(c) **Unearned income.**

(1) **Capital investments.** Proceeds, i.e., interest or dividends from capital investments, such as savings accounts, bonds (other than U.S. Savings Bonds, Series A through EE), notes, mortgages, etc., received constitute income.

(2) **Life estate and homestead rights.** Income from life estate or homestead rights, constitute income after deducting actual business expenses.

(3) **Minerals.** If the member owns mineral rights, only actual income from minerals, delayed rentals, or production is considered. Evidence is obtained from documents which the member has in hand. When the member has no documentary evidence of the amount of income, the evidence, if necessary, is secured from the firm or person who is making the payment.

(4) **Contributions.** Monetary contributions are considered as income except in instances where the contribution is not made directly to the member.

(5) **Retirement and disability benefits.** Income received monthly from retirement and disability benefits are considered as unearned income. Information as to receipt and amount of OASDI benefits is obtained, if necessary, from BENDEX, the member's award letter, or verification from SSA. ~~If the individual states that he/she does not receive OASDI, has a pending application or has been denied OASDI, this can be verified, if necessary, by use of TPQYC computer transaction.~~ Retirement benefits received as a lump sum payment at termination of employment are considered as income. Supplemental Security Income (SSI) does not fall under these types of benefits.

(6) **Unemployment benefits.** Unemployment benefits are considered as unearned income.

(7) **Military benefits.** Life insurance, pensions, compensation, servicemen dependents' allowances and the like, are all sources of income which the member and/or dependents may be eligible to receive. In each case under consideration, information is obtained as to whether the member's son, daughter, husband or parent, has been in any military service. Clearance is made with the proper veterans' agency, both state and federal, to determine whether the benefits are available.

(8) **Casual and inconsequential gifts.** Monetary gifts which do not realistically represent income to meet living expenses, e.g., Christmas, graduation and birthday gifts,

not to exceed \$30 per calendar quarter for each individual, are disregarded as income. The amount of the gifts are disregarded as received during the quarter until the aggregate amount has reached \$30. At that time the portion exceeding \$30 is counted as lump sum income. If the amount of a single gift exceeds \$30, it is not inconsequential and the total amount is therefore counted. If the member claims that the gift is intended for more than one person in the family unit, it is allowed to be divided. Gifts between members of the family unit are not counted.

(9) **Grants.** Grants which are not based on financial need are considered income.

(10) **Funds held in trust by Bureau of Indian Affairs (BIA).** The BIA frequently puts an individual's trust funds in an Individual Indian Money (IIM) account. To determine the availability of funds held in trust in an IIM account, the social worker must contact the BIA in writing and ascertain if the funds, in total or any portion, are available to the individual. If any portion of the funds is disbursed to the individual member, guardian or conservator, such funds are considered as available income. If the BIA determines the funds are not available, they are not considered. Funds held in trust by the BIA and not disbursed are considered unavailable.

(A) In some instances, BIA may determine the account is unavailable; however, they release a certain amount of funds each month to the individual. In this instance the monthly disbursement is considered as income.

(B) When the BIA has stated the account is unavailable and the account does not have a monthly disbursement plan, but a review reveals a recent history of disbursements to the individual member, guardian or conservator, these disbursements must be resolved with the BIA. These disbursements indicate all or a portion of the account may be available to the individual member, guardian or conservator.

(C) When disbursements have been made, the worker verifies whether such disbursements were made to the member or to a third party vendor in payment for goods or services. Payments made directly from the BIA to vendors are not considered as income to the member. Workers obtain documentation to verify services rendered and payment made by BIA.

(D) Amounts disbursed directly to the members are counted as non-recurring lump sum payments in the month received. Some trusts generate income on a regular basis and the income is sent to the beneficiary. In those instances, the income is counted in the month received.

(d) **Income disregards.** Income that is disregarded in determining eligibility includes:

(1) Food Stamp benefits;

(2) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(3) Education Grants (including work study), scholarships, etc., that are contingent upon the student regularly

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attending school. The student's classification (graduate or undergraduate) is not a factor;

(4) Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) is required to indicate that the loan is bona fide. If the loan agreement is not written, OKDHS Form ~~Adm 103~~ 08AD103E, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Form ~~Adm 103~~ 08AD103E are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified;

(5) Indian payments (including judgement funds or funds held in trust) which are distributed per capita by the Secretary of the Interior (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with judgement funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from tribal business investments, etc., as long as the payments are paid per capita. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount. However, any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

(6) Special allowance for school expenses made available upon petition in writing from trust funds of the student;

(7) Benefits from State and Community Programs on Aging under Title III of the Older Americans Act of 1965 amended by PL 100-175 to become the Older Americans Act amendments of 1987;

(8) Unearned income received by a child, such as a needs based payment, cash assistance, compensation in lieu of wages, allowance, etc., from a program funded by the Job Training and Partnership Act (JTPA) including Job Corps income. Also, JTPA earned income received as wages, not to exceed six months in any calendar year;

(9) Payments for supportive services or reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aids, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);

(10) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;

(11) The value of supplemental food assistance received under the Child Nutrition Act or the special food service

program for children under the National School Lunch Act;

(12) Any portion of payments, made under the Alaska Native Claims Settlement Act to an Alaska Native, which are exempt from taxation under the Settlement Act;

(13) If an adult or child from the family group is living in the home and is receiving SSI, his/her individual income is considered by the Social Security Administration in determining eligibility for SSI. Therefore, that income cannot be considered as available to the benefit group;

(14) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;

(15) Earnings of a child who is a full-time student are disregarded;

(16) The first \$50 of the current monthly child support paid by an absent parent. Only one disregard is allowed regardless of the number of parents paying or amounts paid. An additional disregard is allowed if payments for previous months were paid when due but not received until the current month;

(17) Government rental or housing subsidies by governmental agencies, e.g., HUD (received in-kind or in cash) for rent, mortgage payments or utilities;

(18) Reimbursements from an employer for out-of-pocket expenditures and allowances for travel or training to the extent the funds are used for expenses directly related to such travel or training, and uniform allowances if the uniform is uniquely identified with company name or logo;

(19) Low Income Home and Energy Assistance Program (LIHEAP) and Energy Crisis Assistance Program (ECAP) payments;

(20) Advance payments of Earned Income Tax Credit (EITC) or refunds of EITC as a result of filing a federal income tax return;

(21) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(22) Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(23) Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by states, local governments and disaster assistance organizations;

(24) Interests of individual Indians in trust or restricted lands;

(25) Income up to \$2,000 per year received by individual Indians, which is derived from leases or other uses of individually-owned trust or restricted lands;

(26) Any home produce from garden, livestock and poultry utilized by the member and his/her household for their consumption (as distinguished from such produce sold or exchanged);

- (27) Any payments made directly to a third party for the benefit of a member of the benefit group;
- (28) Financial aid provided to individuals by agencies or organizations which base their payment on financial need;
- (29) Assistance or services received from the Vocational Rehabilitation Program, such as transportation expenses to a rehabilitation center, extra clothing, lunches, grooming needed for a training program and an other such complimentary payments; ~~and~~
- (30) Payments made by a public or private non-profit child care agency for a child placed in foster care or subsidized adoption;
- (31) Payments made to certain Vietnam veterans' children with spina bifida (PL 104-214);
- (32) Payments made to certain Korea service veterans' children with spina bifida (PL 108-183);
- (33) Payments made to the children of women Vietnam veterans who suffer from certain birth defects (PL 106-419);
- (34) Additional payments of regular unemployment compensation in the amount of \$25 per week ending June 30, 2010 and any amount of emergency unemployment compensation paid through May 31, 2010, as authorized under the American Recovery and Reinvestment Tax Act of 2009; and
- (35) Wages paid by the Census Bureau for temporary employment related to Census activities.

(e) In computing monthly income, cents will be carried at all steps until the monthly amount is determined and then will be rounded to the nearest dollar. These rounding procedures apply to each individual and each type of income. Income which is received monthly but in irregular amounts is averaged using two month's income, if possible, to determine income eligibility. Less than two month's income may be used when circumstances (e.g., new employment, unpaid sick leave, etc.) would indicate that previous income amounts would not be appropriate to use in determining future income amounts. Income received more often than monthly is converted to monthly amounts as follows:

- (1) **Daily.** Income received on a daily basis is converted to a weekly amount then multiplies by 4.3.
- (2) **Weekly.** Income received weekly is multiplied by 4.3.
- (3) **Twice a month.** Income received twice a month is multiplied by 2.
- (4) **Biweekly.** Income received every two weeks is multiplied by 2.15.

SUBCHAPTER 22. PREGNANCY RELATED BENEFITS COVERED UNDER TITLE XXI

317:35-22-9. Notification of eligibility

When eligibility for the pregnancy benefits covered under Title XXI is established, the ~~OKDHS county office updates the computer form and the~~ appropriate notice is computer generated to the member.

317:35-22-11. Closures

~~Health benefit SoonerCare cases are closed by the OKDHS county office at any time during the certification period that the ease member becomes ineligible. A computer-generated notice is sent to the member.~~

[OAR Docket #10-176; filed 2-10-10]

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

[OAR Docket #10-172]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 11. Insure Oklahoma/O-EPIC IP
Part 5. Insure Oklahoma/O-EPIC IP Member Eligibility
317:45-11-20. [AMENDED]
317:45-11-27. [AMENDED]
(Reference APA WF # 09-53)

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:
January 14, 2010

Approved by Governor:
February 4, 2010

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:

Superseded rules:
Subchapter 11. Insure Oklahoma/O-EPIC IP
Part 5. Insure Oklahoma/O-EPIC IP Member Eligibility
317:45-11-20. [AMENDED]

Gubernatorial approval:
April 28, 2009

Register Publication:
26 Ok Reg 1784

Docket number:
09-904
(Reference APA WF # 09-15B)

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 Insure Oklahoma program. Rules are revised to clarify the intent of offering coverage under the Individual Plan and to provide consistency throughout policy. These emergency rule revisions will make rules consistent with federal approval and waiver guidelines and clarify coverage and access to the Insure Oklahoma Individual Plan program.

ANALYSIS:
Insure Oklahoma/O-EPIC rules are revised to clarify the intent of offering coverage under the Individual Plan (IP) program. Applicants applying for coverage under the IP program should be uninsured individuals without access to Employer Sponsored Insurance (ESI) or other private health insurance. It has never been the intent of Insure Oklahoma IP to be a secondary payer for services rendered under ESI or any other private health insurance policy or plan. Rules clarify IP eligibility requirements and closure criteria.

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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 11. INSURE OKLAHOMA/O-EPIC IP

PART 5. INSURE OKLAHOMA/O-EPIC IP MEMBER ELIGIBILITY

317:45-11-20. Insure Oklahoma/O-EPIC IP eligibility requirements

- (a) Employees not eligible to participate in an employer's QHP, employees of non-participating employers, self-employed, unemployed seeking work, and workers with a disability may apply for the Individual Plan. Applicants cannot obtain IP coverage if they are eligible for ESI.
- (b) The eligibility determination is processed within 30 days from the date the complete application is received by the TPA. The applicant is notified in writing of the eligibility decision.
- (c) In order to be eligible for the IP, the applicant must:
- (1) choose a valid PCP according to the guidelines listed in OAC 317:45-11-22, at the time they make application;
 - (2) be a US citizen or alien as described in OAC 317:35-5-25;
 - (3) be an Oklahoma resident;
 - (4) provide social security numbers for all household members;
 - (5) be not currently enrolled in, or have an open application for, SoonerCare/Medicare;
 - (6) be age 19 through 64 or an emancipated minor;
 - (7) make premium payments by the due date on the invoice; ~~and~~
 - (8) not have full-time employment with any employer who does not meet the eligible employer guidelines listed in OAC 317:45-7-1(a)(1)-(2); ~~and~~
 - (9) be not currently covered by a private health insurance policy or plan.
- (d) If employed and working for an approved Insure Oklahoma/O-EPIC employer who offers a QHP, the applicant must meet the requirements in subsection (c) of this Section and:
- (1) have household income at or below 200% of the Federal Poverty Level.
 - (2) be ineligible for participation in their employer's QHP due to number of hours worked.
 - (3) have received notification from Insure Oklahoma/O-EPIC indicating their employer has applied for Insure Oklahoma/O-EPIC and has been approved.
- (e) If employed and working for an employer who doesn't offer a QHP, the applicant must meet the requirements in

subsection (c) of this Section and have a countable household income at or below 200% of the Federal Poverty Level. The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is \$240 per each full-time or part-time employed member.

(f) If self-employed, the applicant must meet the requirements in subsection (c) of this Section and:

- (1) must have household income at or below 200% of the Federal Poverty Level;
- (2) verify self-employment by providing the most recent federal tax return with all supporting schedules and copies of all 1099 forms;
- (3) verify current income by providing appropriate supporting documentation; and
- (4) must not be employed by any full-time employer who meets the eligibility requirements in OAC 317:45-7-1(a)(1)-(2).

(g) If unemployed seeking work, the applicant must meet the requirements in subsection (c) of this Section and the following:

- (1) Applicant must have household income at or below 200% of the Federal Poverty Level; ~~and~~. In determining income, payments of regular unemployment compensation in the amount of \$25 per week ending June 30, 2010 and any amount of emergency unemployment compensation paid through May 31, 2010, will not be counted, as authorized under the American Recovery and Reinvestment Tax Act of 2009.
- (2) Applicant must verify eligibility by providing a most recent copy of their monetary OESC determination letter and a most recent copy of at least one of the following:
 - (A) OESC eligibility letter,
 - (B) OESC weekly unemployment payment statement, or
 - (C) bank statement showing state treasurer deposit.

(h) If working with a disability, the applicant must meet the requirements in subsection (c) of this Section and:

- (1) must have household income at or below 200% of the Federal Poverty Level based on a family size of one; and
- (2) verify eligibility by providing a copy of their:
 - (A) ticket to work, or
 - (B) ticket to work offer letter.

317:45-11-27. Closure

- (a) Members are mailed a notice 10 days prior to closure of eligibility.
- (b) The employer and employees' eligibility are tied together. If the employer no longer meets the requirements for Insure Oklahoma/O-EPIC then eligibility for the associated employees enrolled under that employer are also ineligible.
- (c) The employee's certification period may be terminated when:
- (1) the member requests closure;
 - (2) the member moves out-of-state;
 - (3) the covered member dies;

- (4) the employer's eligibility ends;
 - (5) an audit indicates a discrepancy that makes the member or employer ineligible;
 - (6) the employer is terminated from Insure Oklahoma/O-EPIC;
 - (7) the member fails to pay the amount due within 60 days of the date on the bill;
 - (8) the QHP or carrier is no longer qualified;
 - (9) the member begins receiving SoonerCare/Medicare benefits; ~~or~~
 - (10) the member begins receiving coverage by a private health insurance policy or plan; or
 - (~~11~~) the member or employer reports to the OHCA or the TPA any change affecting eligibility.
- (d) This subsection applies to applicants eligible according to OAC 317:45-11-20(a) through (c) and 317:45-11-20(f) through (h). The member's certification period may be terminated when:

- (1) the member requests closure;
- (2) the member moves out-of-state;
- (3) the covered member dies;
- (4) the employer's eligibility ends;
- (5) an audit indicates a discrepancy that makes the member or employer ineligible;
- (6) the member fails to pay the amount due within 60 days of the date on the bill;
- (7) the member becomes eligible for SoonerCare/Medicare; ~~or~~
- (8) the member begins receiving coverage by a private health insurance policy or plan; or
- (~~9~~) the member or employer reports to the OHCA or the TPA any change affecting eligibility.

[OAR Docket #10-172; filed 2-10-10]

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

1:2010-10.

EXECUTIVE ORDER 2010-10

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. to 5:00 p.m. on Monday, February 22, 2010, to honor Tim Pope, an Oklahoma resident, who died on Sunday, February 14, 2010, at age 52.

Tim Pope was a member of the Oklahoma State House of Representatives from 1989 to 2002.

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 16th day of February, 2010.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:

M. Susan Savage
Secretary of State

[OAR Docket #10-217; filed 2-17-10]

