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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 #03-1014]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

RULES:

Subchapter 9. Administrative Proceedings [AMENDED]

SUMMARY:

The Department proposes to delete the option for the Air Quality Advisory Council to conduct individual proceedings on enforcement matters. This amendment is for conformity with statute, as legislated in HB 1019 and approved by the Governor April 22, 2003.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., §§ 2-2-101, 2-2-201; and Oklahoma Clean Air Act, §§ 2-5-101 *et seq.*

COMMENT PERIOD:

Written comments will be accepted prior to and at the hearing on July 16, 2003. To be thoroughly considered by staff prior to the hearing, written comments should be submitted to the contact person by July 9, 2003. Oral comments may be made at the July 16, 2003 hearing and the September 9, 2003 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Council at 9:00 a.m. on Wednesday, July 16, 2003, at the Department of Environmental Quality, Room 101, 707 North Robinson, Oklahoma City, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on September 9, 2003, Tulsa, Oklahoma (exact location to be announced).

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide the DEQ, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, 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.

COPIES OF PROPOSED RULES:

The proposed rules are available for review at the Air Quality Division of DEQ and on the DEQ website

(www.deq.state.ok.us), Air Quality Division, What's New, or copies may be obtained from the contact person by calling (405) 702-4100.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person.

CONTACT PERSON:

Please send written comments to Pat Sullivan, Department of Environmental Quality, Air Quality Division, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-4100, fax (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) 702-4100.

[OAR Docket #03-1014; filed 5-21-03]

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

[OAR Docket #03-1013]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

RULES:

Subchapter 5. Registration, Emission Inventory and Annual Operating Fees [AMENDED]

Subchapter 7. Permits for Minor Facilities [AMENDED]

Subchapter 13. Open Burning [AMENDED]

Subchapter 19. Control of Emission of Particulate Matter [AMENDED]

Subchapter 23. Control of Emissions from Cotton Gins [AMENDED]

Subchapter 24. Particulate Matter Emissions from Grain, Feed or Seed Operations [AMENDED]

Subchapter 33. Control of Emission of Nitrogen Oxides [AMENDED]

Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs) [AMENDED]

Appendix L. PM-10 Emission Factors for Permit by Rule for Grain Elevators [REVOKED]

SUMMARY:

The Department is proposing an increase in the annual operating fee for Part 70 sources in 252:100-5-2.2.

Notices of Rulemaking Intent

The Department proposes to replace the permit by rule with a new category to be called permit exempt facility. To do this, the Department is proposing revisions to sections in Subchapters 5, 7, 19, 23, 24, and 37 and proposes to revoke Appendix L. This will include the elimination of annual operating fees for permit exempt facilities.

The Department is proposing amendments to Subchapter 13, Open Burning, to clarify the scope of exemptions that allow open burning for purposes of fire training. Section 9 will also be amended to exempt hydrocarbon flares from the prohibition against burning between sunset and sunrise.

The Department proposes to replace an existing emergency rule with a permanent rule to exempt glass-melting furnaces that utilize BACT from the requirements of Subchapter 33 or otherwise set a new standard for glass-melting furnaces that is attainable. The Department also proposes to revise the definition of "new fuel-burning equipment" to reflect that direct-fired fuel-burning equipment did not become subject to Subchapter 33 until 1977.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., § 2-2-101, 2-2-201; and Oklahoma Clean Air Act, §§ 2-5-101 *et seq.*

COMMENT PERIOD:

Written comments will be accepted prior to and at the hearing on July 16, 2003. To be thoroughly considered by staff prior to the hearing, written comments should be submitted to the contact person by July 9, 2003. Oral comments may be made at the July 16, 2003 hearing and the September 9, 2003 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Council at 9:00 a.m. on Wednesday, July 16, 2003, at the Department of Environmental Quality, Room 101, 707 North Robinson, Oklahoma City, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on September 9, 2003, Tulsa, Oklahoma (exact location to be announced).

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide the DEQ, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, 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.

COPIES OF PROPOSED RULES:

The proposed rules are available for review at the Air Quality Division of DEQ and on the DEQ website (www.deq.state.ok.us), Air Quality Division, What's New, or copies may be obtained from the contact person by calling (405) 702-4100.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person.

CONTACT PERSON:

Please send written comments to Lisa Donovan (Subchapter 13) or Joyce Sheedy (Subchapters 5, 7, 19, 23, 24, 33, 37 and Appendix L). Department of Environmental Quality, Air Quality Division, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-4100, fax (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) 702-4100.

[OAR Docket #03-1013; filed 5-21-03]

Submissions for Review

Within 10 calendar days after adoption by an agency of a proposed PERMANENT rulemaking action, the agency must submit the proposed rules to the Governor and the Legislature for review. In addition, the agency must publish in the *Register* a "statement" that the rules have been submitted for gubernatorial/legislative review.

For additional information on submissions for gubernatorial/legislative review, see 75 O.S., Section 303.1, 303.2, and 308.

**TITLE 435. STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION
CHAPTER 20. PHYSICAL THERAPISTS
AND ASSISTANTS**

[OAR Docket #03-904]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

Subchapter 5. Regulation of Practice

435:20-5-9. Standards of Ethics and Professional Conduct
[NEW]

SUBMITTED TO GOVERNOR:

May 12, 2003

SUBMITTED TO HOUSE:

May 12, 2003

SUBMITTED TO SENATE:

May 12, 2003

[OAR Docket #03-904; filed 5-13-03]

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 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 10. BREATH-ALCOHOL ANALYSIS

[OAR Docket #03-952]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. Breath-Alcohol Analysts

40:10-3-1 [AMENDED]

40:10-3-2 [AMENDED]

40:10-3-3 [AMENDED]

40:10-3-4 [AMENDED]

40:10-3-5 [AMENDED]

40:10-3-8 [NEW]

40:10-3-9 [NEW]

40:10-3-10 [NEW]

40:10-3-11 [NEW]

40:10-3-12 [NEW]

Subchapter 5. Breath Sample Collection Personnel

40:10-5-1 [AMENDED]

GUBERNATORIAL APPROVAL:

April 24, 2003

[OAR Docket #03-952; filed 5-19-03]

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

[OAR Docket #03-953]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

40:20-1-4 [REVOKED]

GUBERNATORIAL APPROVAL:

April 24, 2003

[OAR Docket #03-953; filed 5-19-03]

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

[OAR Docket #03-954]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

40:30-1-2 [REVOKED]

40:30-1-3 [AMENDED]

40:30-1-3.1 [NEW]

40:30-1-4 [REVOKED]

GUBERNATORIAL APPROVAL:

April 24, 2003

[OAR Docket #03-954; filed 5-19-03]

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

[OAR Docket #03-955]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

40:35-1-2 [REVOKED]

GUBERNATORIAL APPROVAL:

April 24, 2003

[OAR Docket #03-955; filed 5-19-03]

TITLE 92. OKLAHOMA PROFESSIONAL BOXING COMMISSION CHAPTER 10. RULES FOR BOXING AND OTHER ACTIVITIES

[OAR Docket #03-925]

RULE MAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 1. General Provisions

92:10-1-1 through 92:10-1-2 [AMENDED]

92:10-1-4 through 92:10-1-6 [AMENDED]

Subchapter 3. Boxing and Kickboxing Participants

92:10-3-5 through 92:10-3-6 [AMENDED]

Gubernatorial Approvals

92:10-3-8 [AMENDED]
92:10-3-11 through 92:10-3-13 [AMENDED]
Subchapter 5. Professional Boxing and Kickboxing Events
92:10-5-7 [AMENDED]
92:10-5-10 [AMENDED]
92:10-5-13 [AMENDED]
92:10-5-15 [AMENDED]
Subchapter 7. Elimination Tournaments
92:10-7-1 through 92:10-7-2 [AMENDED]
92:10-7-4 [AMENDED]
Subchapter 11. Mixed Martial Arts [NEW]
92:10-11-1 through 92:10-11-9 [NEW]

GUVERNATORIAL APPROVAL:

May 8, 2003

[OAR Docket #03-925; filed 5-16-03]

TITLE 135. COMMISSION ON CHILDREN AND YOUTH CHAPTER 1. GENERAL COURSE AND METHOD OF OPERATION

[OAR Docket #03-962]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 1. General Course and Method of Operation
[AMENDED]
135:1-1-3 [AMENDED]
135:1-1-4 [AMENDED]
135:1-1-6 [AMENDED]
135:1-1-7 [REVOKED]
Subchapter 3. Additional Powers and Duties [AMENDED]
135:1-3-3 [AMENDED]
135:1-3-4 [AMENDED]

GUVERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-962; filed 5-19-03]

TITLE 135. COMMISSION ON CHILDREN AND YOUTH CHAPTER 10. PROGRAMS, BOARDS, AND COUNCILS: OPERATION AND ADMINISTRATION

[OAR Docket #03-961]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 7. Oklahoma Planning and Coordinating
Council for Services to Children and Youth
[REVOKED]
Subchapter 9. Regional and District Planning and
Coordination Boards for Services to Children and Youth
[AMENDED]
135:10-9-1 [AMENDED]
135:10-9-2 [AMENDED]
Subchapter 13. Serious and Habitual Juvenile Offender
Implementation Task Force [REVOKED]
Subchapter 15. Juvenile Justice and Delinquency
Prevention Program [REVOKED]
Subchapter 19. Interagency Coordinating Council for
Special Services to Children and Youth [REVOKED]

GUVERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-961; filed 5-19-03]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 4. CERTIFICATE OF NEED HEARINGS

[OAR Docket #03-936]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

310:4-1-11 [AMENDED]

GUVERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-936; filed 5-19-03]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 105. VITAL STATISTICS

[OAR Docket #03-937]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 1. Purpose, Forms and Fees
310:105-1-3 [AMENDED]

GUVERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-937; filed 5-19-03]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 205. ALARM INDUSTRY**

[OAR Docket #03-938]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. License Requirements

310:205-3-2 [AMENDED]

310:205-3-3 [AMENDED]

310:205-3-4 [AMENDED]

310:205 Appendix A [REVOKED AND REENACTED]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-938; filed 5-19-03]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 400. LICENSED
MARITAL AND FAMILY THERAPIST
REGULATIONS THERAPISTS**

[OAR Docket #03-939]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 5. Rules of Professional Conduct

310:400-5-3 [AMENDED]

Subchapter 17. Enforcement

310:400-17-2.1 [AMENDED]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-939; filed 5-19-03]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 403. LICENSED BEHAVIORAL
PRACTITIONERS**

[OAR Docket #03-940]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 7. Rules of Professional Conduct

310:403-7-2 [AMENDED]

Subchapter 15. Supervised Experience Requirement

310:403-15-1 [AMENDED]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-940; filed 5-19-03]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 405. LICENSED
PROFESSIONAL COUNSELOR
REGULATIONS COUNSELORS**

[OAR Docket #03-941]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. Rules of Professional Conduct

310:405-3-2 [AMENDED]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-941; filed 5-19-03]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 515. COMMUNICABLE DISEASE
AND INJURY REPORTING**

[OAR Docket #03-942]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

310:515-1-3 [AMENDED]

310:515-1-4 [AMENDED]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-942; filed 5-19-03]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 641. EMERGENCY MEDICAL
SERVICES**

[OAR Docket #03-943]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. Ambulance Services

Part 1. General Provisions

310:641-3-2 [AMENDED]

Part 3. Ambulance Services

310:641-3-15 [AMENDED]

Gubernatorial Approvals

Part 5. Ground Transport Vehicles

310:641-3-20 [AMENDED]

310:641-3-23 [AMENDED]

Part 7. Air Ambulances

310:641-3-31 [AMENDED]

Part 9. Specialty Care

310:641-3-41 [AMENDED]

Part 23. Emergency Medical Services Regions

310:641-3-110 [AMENDED]

Subchapter 5. Personnel Licenses and Certification

Part 3. Emergency Medical Personnel Licenses

310:641-5-14 [AMENDED]

310:641-5-16 [REVOKED]

Subchapter 7. Training Programs

Part 3. Training Programs

310:641-7-10 [AMENDED]

310:641-7-11 [AMENDED]

310:641-7-12 [AMENDED]

310:641-7-13 [AMENDED]

310:641-7-14 [AMENDED]

310:641-7-15 [AMENDED]

Part 5. Instructor Qualifications

310:641-7-20 [AMENDED]

310:641-7-21 [AMENDED]

GUVERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-943; filed 5-19-03]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 655. HEALTH MAINTENANCE
ORGANIZATIONS AND PREPAID HEALTH
PLANS**

[OAR Docket #03-944]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 25. Protection Against Insolvency

310:655-25-1 [AMENDED]

310:655-25-11 [REVOKED]

310:655-25-12 [NEW]

Subchapter 29. Discontinuation of HMO

310:655-29-2 [AMENDED]

Subchapter 39. Powers of Health Maintenance
Organizations

310:655-39-1 [AMENDED]

310:655-39-2 [NEW]

Subchapter 47. Reimbursement of Claims

310:655-47-6 [NEW]

310:655-47-7 [NEW]

310:655-47-8 [NEW]

310:655-47-9 [NEW]

310:655-47-10 [NEW]

310:655-47-11 [NEW]

310:655-47-12 [NEW]

Subchapter 53. Examinations [NEW]

310:655-53-1 [NEW]

310:655-53-2 [NEW]

310:655-53-3 [NEW]

310:655-53-4 [NEW]

310:655-53-5 [NEW]

Subchapter 55. [RESERVED]

Subchapter 57. Risk Based Capital [NEW]

310:655-57-1 [NEW]

310:655-57-2 [NEW]

310:655-57-3 [NEW]

310:655-57-4 [RESERVED]

310:655-57-5 [NEW]

310:655-57-6 [NEW]

GUVERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-944; filed 5-19-03]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 664. HOME CARE
ADMINISTRATOR CERTIFICATION**

[OAR Docket #03-945]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. Initial Certificate Process

310:664-3-3 [AMENDED]

310:664-3-6 [AMENDED]

Subchapter 7. Requirements for Examination

310:664-7-1 [AMENDED]

310:664-7-2 [AMENDED]

Subchapter 9. Continuing Education Requirements

310:664-9-2 [AMENDED]

310:664-9-3 [AMENDED]

310:664-9-4 [AMENDED]

Subchapter 11. Renewal of Certification

310:664-11-1 [AMENDED]

310:664-11-2 [AMENDED]

Subchapter 13. Enforcement

310:664-13-4 [AMENDED]

GUVERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-945; filed 5-19-03]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 670. JAIL STANDARDS**

[OAR Docket #03-946]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

- Subchapter 1. General Provisions
 - 310:670-1-2 [AMENDED]
 - 310:670-1-3 [AMENDED]
- Subchapter 3. Standards for Lockup Facilities
 - 310:670-3-1 [AMENDED]
- Subchapter 5. Standards for Jail Facilities
 - 310:670-5-1 [AMENDED]
 - 310:670-5-2 [AMENDED]
 - 310:670-5-3 [AMENDED]
 - 310:670-5-4 [AMENDED]
 - 310:670-5-5 [AMENDED]
 - 310:670-5-6 [AMENDED]
 - 310:670-5-7 [AMENDED]
 - 310:670-5-8 [AMENDED]
 - 310:670-5-9 [AMENDED]
 - 310:670-5-10 [AMENDED]
 - 310:670-5-11 [AMENDED]
- Subchapter 7. Standards for Jails Holding Juveniles
 - 310:670-7-1 [AMENDED]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-946; filed 5-19-03]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 675. REGULATIONS FOR
~~LICENSURE OF NURSING AND~~
SPECIALIZED FACILITIES**

[OAR Docket #03-947]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

- Subchapter 1. General Provisions
 - 310:675-1-2 [AMENDED]
 - 310:675-1-5 [NEW]
- Subchapter 3. Licenses
 - 310:675-3-2.1 [AMENDED]
 - 310:675-3-3.1 [AMENDED]
 - 310:675-3-4.1 [AMENDED]
 - 310:675-3-5 [AMENDED]
 - 310:675-3-5.1 [AMENDED]
 - 310:675-3-8 [NEW]
- Subchapter 7. Administration
 - 310:675-7-4 [AMENDED]

- 310:675-7-5.1 [AMENDED]
- 310:675-7-6.1 [AMENDED]
- 310:675-7-16.1 [AMENDED]
- 310:675-7-20 [NEW]
- Subchapter 9. Resident Care Services
 - 310:675-9-4.1 [AMENDED]
 - 310:675-9-5.1 [AMENDED]
- Subchapter 13. Staff Requirements
 - 310:675-13-12 [AMENDED]
- Subchapter 15. Temporary Manager or Receiver
 - [AMENDED]
 - 310:675-15-3 [AMENDED]
 - 310:675-15-8 [AMENDED]
 - 310:675-15-11 [AMENDED]
 - 310:675-15-12 [AMENDED]
 - 310:675-15-15 [AMENDED]
 - 310:675-15-16 [AMENDED]
 - 310:675-15-17 [NEW]
- Subchapter 17. Inspection Protocols
 - 310:675-17-3 [NEW]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-947; filed 5-19-03]

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

[OAR Docket #03-893]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

- 317:2-1-2. [AMENDED]
- (Reference APA WF # 02-28)

GUBERNATORIAL APPROVAL:

May 5, 2003

[OAR Docket #03-893; filed 5-12-03]

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

[OAR Docket #03-894]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

- Subchapter 5. Individual Providers and Specialties
 - Part 9. Long Term Care Facilities
 - 317:30-5-131.2. [AMENDED]

Gubernatorial Approvals

(APA WF # 02-35)

GUBERNATORIAL APPROVAL:

May 5, 2003

[OAR Docket #03-894; filed 5-12-03]

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

[OAR Docket #03-895]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 5. Individual Providers and Specialties
Part 95. Agency Personal Care Services
317:30-5-951. through 317:30-5-953. [AMENDED]
(Reference APA WF # 02-34B)

GUBERNATORIAL APPROVAL:

May 5, 2003

[OAR Docket #03-895; filed 5-12-03]

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

[OAR Docket #03-897]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacists
317:30-5-78.1. [AMENDED]
(Reference APA WF # 02-29)

GUBERNATORIAL APPROVAL:

May 5, 2003

[OAR Docket #03-897; filed 5-12-03]

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

[OAR Docket #03-898]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. General Provider Policies

Part 3. General Medical Program Information

317:30-3-59. [AMENDED]

Part 5. Eligibility

317:30-3-78. [AMENDED]

317:30-3-82. [AMENDED]

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-7. [AMENDED]

Part 4. Long Term Care Hospitals

317:30-5-65. [AMENDED]

Part 69. Certified Registered Nurse Anesthetists

317:30-5-607. [AMENDED]

Part 79. Dentists

317:30-5-696. [AMENDED]

(Reference APA WF # 02-27 and 02-32)

GUBERNATORIAL APPROVAL:

May 5, 2003

[OAR Docket #03-898; filed 5-12-03]

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

[OAR Docket #03-899]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-14. [AMENDED]

(Reference APA WF # 02-26)

GUBERNATORIAL APPROVAL:

May 5, 2003

[OAR Docket #03-899; filed 5-12-03]

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

[OAR Docket #03-901]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. General Provider Policies

Part 3. General Medical Program Information

317:30-3-5. [AMENDED]

Subchapter 5. Individual Providers and Specialties

Part 61. Home Health Agencies

317:30-5-547. [AMENDED]

Part 85. ADvantage Program Waiver Services
317:30-5-764. [AMENDED]
(Reference APA WF # 02-21A, 02-22, and 02-23A)

GUBERNATORIAL APPROVAL:
May 5, 2003

[OAR Docket #03-901; filed 5-12-03]

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

[OAR Docket #03-903]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 5. Individual Providers and Specialties
Part 3. Hospitals
317:30-5-47. [AMENDED]
(Reference APA WF #02-10 and 02-36)

GUBERNATORIAL APPROVAL:
May 5, 2003

[OAR Docket #03-903; filed 5-12-03]

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

[OAR Docket #03-896]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 15. Personal Care Services
317:35-15-1. through 317:35-15-3. [AMENDED]
317:35-15-6. [AMENDED]
317:35-15-10. [AMENDED]
317:35-15-14. through 317:35-15-15. [AMENDED]
Subchapter 17. ADvantage Waiver Services
317:35-17-3. through 317:35-17-5. [AMENDED]
317:35-17-10. [AMENDED]
317:35-17-14. [AMENDED]
317:35-17-16. through 317:35-17-19. [AMENDED]
317:35-17-24. [AMENDED]
Subchapter 19. Nursing Facility Services
317:35-19-2. [AMENDED]
317:35-19-18. through 317:35-19-22. [AMENDED]
(Reference APA WF # 02-34A)

GUBERNATORIAL APPROVAL:

May 5, 2003

[OAR Docket #03-896; filed 5-12-03]

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

[OAR Docket #03-900]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 17. ADvantage Waiver Services
317:35-17-1. [AMENDED]
317:35-17-22. [AMENDED]
(Reference APA WF # 02-21B and 02-23B)

GUBERNATORIAL APPROVAL:

May 5, 2003

[OAR Docket #03-900; filed 5-12-03]

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

[OAR Docket #03-902]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. Coverage and Exclusions
317:35-3-1. [AMENDED]
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]
Subchapter 7. Medical Services
Part 7. Certification, Redetermination and Notification
317:35-7-60. [AMENDED]
Subchapter 15. Personal Care Services
317:35-15-8. [AMENDED]
317:35-15-8.1. [NEW]
317:35-15-13. [REVOKED]
317:35-15-13.1. [NEW]
317:35-15-13.2. [NEW]
(Reference APA WF # 02-20 and 02-25)

Gubernatorial Approvals

GUBERNATORIAL APPROVAL:

May 5, 2003

[OAR Docket #03-902; filed 5-12-03]

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

[OAR Docket #03-972]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. Office of Client Advocacy

Part 1. Administration

340:2-3-1 through 340:2-3-2 [AMENDED]

340:2-3-12 [AMENDED]

Part 3. Investigations

340:2-3-32 through 340:2-3-38 [AMENDED]

Part 5. Grievances

340:2-3-45 through 340:2-3-46 [AMENDED]

340:2-3-50 through 340:2-3-53 [AMENDED]

340:2-3-55 [AMENDED]

Part 7. Grievance and Abuse Review Committee

340:2-3-61 [AMENDED]

340:2-3-63 through 340:2-3-64 [AMENDED]

Part 9. Ombudsman Programs

340:2-3-71 through 340:2-3-75 [AMENDED]

(Reference APA WF # 03-08)

GUBERNATORIAL APPROVAL:

May 9, 2003

[OAR Docket #03-972; filed 5-20-03]

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

[OAR Docket #03-974]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 1. Human Resources Management Division (HRMD)

Part 1. General Provisions

340:2-1-1 through 340:2-1-3 [AMENDED]

340:2-1-5 through 340:2-1-6 [AMENDED]

Part 3. Personnel Regulations Relative to Individual Employee

340:2-1-25 through 340:2-1-29 [AMENDED]

340:2-1-31 through 340:2-1-32 [AMENDED]

340:2-1-34 [AMENDED]

Part 5. Administrative Procedures

340:2-1-55 through 340:2-1-58 [AMENDED]

Part 7. Recruitment, Selection, and Placement Policy and Procedures

340:2-1-75 through 340:2-1-86 [AMENDED]

340:2-1-88 through 340:2-1-89 [AMENDED]

(Reference APA WF # 02-43 and 03-01)

GUBERNATORIAL APPROVAL:

May 9, 2003

[OAR Docket #03-974; filed 5-20-03]

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

[OAR Docket #03-976]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 28. ~~Child Support Administrative Hearings~~
Office of Administrative Hearings: Child Support
[AMENDED]

340:2-28-1 through 340:2-28-4 [AMENDED]

340:2-28-4.1 through 340:2-28-4.3 [NEW]

340:2-28-5 through 340:28-7 [REVOKED]

340:2-28-8 and 340:2-28-9 [AMENDED]

340:2-28-10 [REVOKED]

340:2-28-11 through 340:2-28-12 [AMENDED]

340:2-28-13 through 340:2-28-15 [AMENDED]
AND RENUMBERED TO 340:2-28-4.1 through
340:2-28-4.3]

340:2-28-16 [REVOKED]

340:2-28-16.1 through 340:2-28-16.2 [NEW]

340:2-28-17 [REVOKED]

340:2-28-17.1 and 340:2-28-17.2 [NEW]

340:2-28-18 through 340:2-28-26 [AMENDED]

340:2-28-27 [AMENDED AND RENUMBERED TO
340:2-28-17.2]

340:2-28-28 [REVOKED]

340:2-28-29 through 340:2-28-31 [AMENDED]

340:2-28-32 [REVOKED]

340:2-28-33 through 340:2-28-34 [AMENDED]

340:2-28-35 through 340:2-28-47 [REVOKED]

340:2-28-48 [AMENDED]

340:2-28-49 [REVOKED]

340:2-28-50 [AMENDED]

340:2-28-51 through 340:2-28-54 [REVOKED]

340:2-28-55 [AMENDED]

340:2-28-56 [REVOKED]

(Reference APA WF# 03-07)

GUBERNATORIAL APPROVAL:

May 9, 2003

[OAR Docket #03-976; filed 5-20-03]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 40. CHILD CARE SERVICES**

[OAR Docket #03-975]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

- Subchapter 7. Eligibility
340:40-7-9 through 340:40-7-13 [AMENDED]
- Subchapter 9. Procedures Relating to Case Changes
340:40-9-2 through 340:40-9-3 [AMENDED]
- 340:40-13-1 through 340:40-13-2 [AMENDED]
- Subchapter 13. Child Care Rates and Provider Issues
340:40-13-5 [AMENDED]

(Reference APA WF # 02-27 and 03-06)

GUBERNATORIAL APPROVAL:

May 9, 2003

[OAR Docket #03-975; filed 5-20-03]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 65. PUBLIC ASSISTANCE PROCEDURES**

[OAR Docket #03-973]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

- Subchapter 1. General Provisions
340:65-1-5 [AMENDED]
- Subchapter 3. Eligibility for Benefits
340:65-3-4 [AMENDED]
- Subchapter 5. Procedures Relating to Case Changes
Part. 5. Overpayments [REVOKED]
340:65-5-35 through 340:65-5-44 [REVOKED]
- Subchapter 9. Overpayments and Fraud in Temporary Assistance for Needy Families and State Supplemental Payment Benefits [NEW]
340:65-9-1 through 340:65-9-8 [NEW]

(Reference APA WF # 03-03)

GUBERNATORIAL APPROVAL:

May 9, 2003

[OAR Docket #03-973; filed 5-20-03]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 75. CHILD WELFARE**

[OAR Docket #03-910]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

- Subchapter 1. General Provisions
Part 1. Scope and Applicability
340:75-1-18.1 [AMENDED]
- 340:75-1-22 [AMENDED]
- Subchapter 6. Permanency Planning
Part 5. Permanency Planning Services
340:75-6-30 through 340:75-6-31 [AMENDED]
- Part 7. Case Plans
340:75-6-40.5 [AMENDED]

(Reference APA WF # 02-23 and 03-02)

GUBERNATORIAL APPROVAL:

May 9, 2003

[OAR Docket #03-910; filed 5-15-03]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 75. CHILD WELFARE**

[OAR Docket #03-911]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

- Subchapter 7. Foster Home Care
Part 5. Eligibility and Payments
340:75-7-54 [AMENDED]
- Part 6. Foster Home Care Support Services
340:75-7-65 [AMENDED]
- Subchapter 15. Adoptions
Part 14. Post Adoption Services
340:75-15-128.1 [AMENDED]
- 340:75-15-128.4 through 340:75-15-128.5 [AMENDED]

(Reference APA WF # 02-28, 02-48, and 02-49)

GUBERNATORIAL APPROVAL:

May 9, 2003

[OAR Docket #03-911; filed 5-15-03]

Gubernatorial Approvals

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 75. CHILD WELFARE

[OAR Docket #03-912]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 4. Family-Centered and Community Services
Part 1. Voluntary Family-Centered Services [AMENDED]

340:75-4-9 [AMENDED]

340:75-4-10 [REVOKED]

340:75-4-11 [AMENDED]

340:75-4-12 [REVOKED]

340:75-4-12.1 through 340:75-4-12.2 [NEW]

340:75-4-13 through 340:75-4-14 [AMENDED]

Subchapter 15. Adoptions

Part 2. Legal Base and Scope of the Adoption Program

340:75-15-5 through 340:75-15-9 [AMENDED]

Part 6. Adoption ~~Matching~~ Process [AMENDED]

340:75-15-41 through 340:75-15-43 [AMENDED]

340:75-15-45 [AMENDED]

340:75-15-47 [AMENDED]

Part 8. Adoptive Placement Process

340:75-15-59 [AMENDED]

340:75-15-61 [AMENDED]

Part 10. Adoptive Family Assessment and Preparation
Process

340:75-15-82 through 340:75-15-85 [AMENDED]

340:75-15-87 through 340:75-15-88 [AMENDED]

340:75-15-91 [AMENDED]

340:75-15-93 [AMENDED]

Part 12. Post Placement Services

340:75-15-103 [AMENDED]

340:75-15-104 [REVOKED]

340:75-15-106 [AMENDED]

340:75-15-108 [AMENDED]

Part 14. Post Adoption Services

340:75-15-124 [AMENDED]

(Reference APA WF # 03-04 and 03-05)

GUBERNATORIAL APPROVAL:

May 9, 2003

[OAR Docket #03-912; filed 5-15-03]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 10. PEACE OFFICER CERTIFICATION

[OAR Docket #03-963]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

390:10-1-5 [AMENDED]

390:10-1-6 [AMENDED]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-963; filed 5-20-03]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 15. BASIC PEACE OFFICER CERTIFICATION TRAINING

[OAR Docket #03-964]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 1. Basic Academy Programs

390:15-1-3 [AMENDED]

390:15-1-13 [AMENDED]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-964; filed 5-20-03]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 20. RESERVE PEACE OFFICER CERTIFICATION AND TRAINING

[OAR Docket #03-965]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

390:20-1-3 [AMENDED]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-965; filed 5-20-03]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 35. REGULATION OF PRIVATE SECURITY INDUSTRY

[OAR Docket #03-966]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 5. License Requirements
390:35-5-3 [AMENDED]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-966; filed 5-20-03]

**TITLE 390. COUNCIL ON LAW
ENFORCEMENT EDUCATION AND
TRAINING
CHAPTER 40. OKLAHOMA
SELF-DEFENSE ACT**

[OAR Docket #03-967]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 5. Instructor Approval
390:40-5-4 [AMENDED]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-967; filed 5-20-03]

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

[OAR Docket #03-958]

RULEMAKING ACTION:

Gubernatorial approval.

RULES:

Subchapter 11. Prescriptive Guidelines and Drug
Formulary
435:15-11-2. Drug Formulary [AMENDED]

GUBERNATORIAL APPROVAL:

May 13, 2003

[OAR Docket #03-958; filed 5-19-03]

**TITLE 435. STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION
CHAPTER 20. PHYSICAL THERAPISTS
AND ASSISTANTS**

[OAR Docket #03-959]

RULEMAKING ACTION:

Gubernatorial approval.

RULES:

Subchapter 5. Regulation of Practice

435:20-5-8. Unprofessional conduct - Grounds for
disciplinary action [NEW]

GUBERNATORIAL APPROVAL:

May 13, 2003

[OAR Docket #03-959; filed 5-19-03]

**TITLE 435. STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION
CHAPTER 50. LICENSED PEDORTHISTS**

[OAR Docket #03-960]

RULEMAKING ACTION:

Gubernatorial approval.

RULES:

Subchapter 1. General Provisions
435:50-1-4. Definitions [AMENDED]

GUBERNATORIAL APPROVAL:

May 13, 2003

[OAR Docket #03-960; filed 5-19-03]

**TITLE 450. DEPARTMENT OF MENTAL
HEALTH AND SUBSTANCE ABUSE
SERVICES
CHAPTER 1. ADMINISTRATION**

[OAR Docket #03-889]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 1. General Information
450:1-1-1.1 [AMENDED]
450:1-1-2 [AMENDED]
450:1-1-5 [AMENDED]
450:1-1-10 [AMENDED]

Subchapter 3. Contracts for Mental Health, Substance
Abuse, Domestic Violence and Sexual Assault and
Residential Care Services

Part 1. Eligibility to Contract

450:1-3-3 [AMENDED]

Part 3. Contracts and Contracting Processes

450:1-3-22 [NEW]

Subchapter 5. Procedure in Individual Administrative
Proceedings

450:1-5-5 [AMENDED]

450:1-5-11 [AMENDED]

Subchapter 7. Charges and ~~Reimbursement~~ Rates
Eligibility for ODMHSAS Services[AMENDED]

450:1-7-4 [AMENDED]

450:1-7-5 [REVOKED]

450:1-7-6 [NEW]

Gubernatorial Approvals

Subchapter 9. Certification and Designation of
~~Facilities/Services~~ Facilities and Services [AMENDED]

450:1-9-1 [AMENDED]

450:1-9-4 [AMENDED]

450:1-9-5 [AMENDED]

450:1-9-6 [AMENDED]

450:1-9-7 [AMENDED]

450:1-9-8 [AMENDED]

450:1-9-8.1 [NEW]

450:1-9-11 [REVOKED]

450:1-9-12 [AMENDED]

450:1-9-13 [AMENDED]

450:1-9-14 [AMENDED]

Subchapter 11. Research

450:1-11-2 [AMENDED]

GUBERNATORIAL APPROVAL:

May 1, 2003

[OAR Docket #03-889; filed 5-9-03]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 15. CONSUMERS RIGHTS

[OAR Docket #03-890]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 1. General Provisions

450:15-1-1 [AMENDED]

450:15-1-2 [AMENDED]

Subchapter 3. Consumer Rights

Part 1. Inpatient Mental Health Bill of Rights [AMENDED]

450:15-3-1 [AMENDED]

450:15-3-2 [AMENDED]

450:15-3-3 [AMENDED]

450:15-3-4 [AMENDED]

450:15-3-5 [AMENDED]

450:15-3-6 [AMENDED]

450:15-3-8 [AMENDED]

450:15-3-9 [AMENDED]

450:15-3-10 [AMENDED]

450:15-3-11 [AMENDED]

450:15-3-13 [AMENDED]

450:15-3-14 [AMENDED]

450:15-3-16 [AMENDED]

450:15-3-17 [AMENDED]

450:15-3-18 [AMENDED]

450:15-3-20 [REVOKED]

450:15-3-20.1 [NEW]

450:15-3-21 [AMENDED]

450:15-3-23 [REVOKED]

450:15-3-24 [REVOKED]

450:15-3-25 [AMENDED]

450:15-3-26 [REVOKED]

Part 3. Inpatient Mental Health Grievance Procedure
[AMENDED]

450:15-3-35 [AMENDED]

450:15-3-36 [REVOKED]

450:15-3-43 [REVOKED]

450:15-3-44 [REVOKED]

450:15-3-45 [AMENDED]

Part 7. Consumer Access to Health Information [NEW]

450:15-3-60 [NEW]

450:15-3-61 [NEW]

450:15-3-62 [NEW]

450:15-3-63 [NEW]

450:15-3-64 [NEW]

450:15-3-65 [NEW]

450:15-3-66 [NEW]

Subchapter 7. Office of Consumer Advocacy
~~Division~~ [AMENDED]

Part 1. Duties

450:15-7-2 [AMENDED]

450:15-7-3 [AMENDED]

450:15-7-4 [AMENDED]

Part 2. Investigations

450:15-7-5 [REVOKED]

450:15-7-6 [AMENDED]

450:15-7-7 [AMENDED]

450:15-7-8 [AMENDED]

450:15-7-9 [AMENDED]

450:15-7-10 [AMENDED]

450:15-7-11 [AMENDED]

450:15-7-12 [AMENDED]

450:15-7-14 [AMENDED]

450:15-7-15 [AMENDED]

Subchapter 9. Consumer Rights, Non-Inpatient Services

450:15-9-1 [AMENDED]

450:15-9-6 [REVOKED]

450:15-9-7 [AMENDED]

GUBERNATORIAL APPROVAL:

May 1, 2003

[OAR Docket #03-890; filed 5-9-03]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 19. STANDARDS AND CRITERIA FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

[OAR Docket #03-891]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 1. General Provisions

450:19-1-1 [AMENDED]

- 450:19-1-2 [AMENDED]
- 450:19-1-5 [REVOKED]
- 450:19-1-6 [AMENDED]
- Subchapter 3. Services
 - Part 1. Required Service Components
 - 450:19-3-1 [AMENDED]
 - 450:19-3-2 [AMENDED]
 - 450:19-3-3 [AMENDED]
 - 450:19-3-4 [AMENDED]
 - 450:19-3-5 [REVOKED]
 - Part 2. ~~Optional~~ Other Service Components [AMENDED]
 - 450:19-3-7 [AMENDED]
 - 450:19-3-8 [AMENDED]
 - 450:19-3-9 [AMENDED]
 - 450:19-3-10 [NEW]
- Subchapter 5. Client Records and Confidentiality
 - 450:19-5-1 [AMENDED]
 - 450:19-5-2 [AMENDED]
 - 450:19-5-3 [AMENDED]
 - 450:19-5-3.1 [AMENDED]
 - 450:19-5-4 [AMENDED]
 - 450:19-5-7 [REVOKED]
 - 450:19-5-8 [REVOKED]
 - 450:19-5-9 [REVOKED]
 - 450:19-5-10 [NEW]
- Subchapter 7. Program Physical Environments
 - 450:19-7-6 [AMENDED]
- Subchapter 9. Program Management and Performance Improvement
 - 450:19-9-10 [AMENDED]
- Subchapter 11. Client Rights
 - 450:19-11-1 [AMENDED]
 - 450:19-11-2 [AMENDED]
 - 450:19-11-3 [AMENDED]
- Subchapter 13. Personnel and Volunteers
 - Part 1. General
 - 450:19-13-9 [AMENDED]
 - Part 3. Training
 - 450:19-13-20.1 [AMENDED]
 - 450:19-13-20.2 [AMENDED]
 - 450:19-13-25 [AMENDED]
 - 450:19-13-29 [AMENDED]
 - 450:19-13-30 [AMENDED]

GUBERNATORIAL APPROVAL:

May 1, 2003

[OAR Docket #03-891; filed 5-9-03]

**TITLE 450. DEPARTMENT OF MENTAL
HEALTH AND SUBSTANCE ABUSE
SERVICES
CHAPTER 30. CLINICAL CARE**

[OAR Docket #03-892]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 9. Role of State-Operated Inpatient Psychiatric ~~Hospitals~~ Units [AMENDED]

450:30-9-1 [AMENDED]

450:30-9-2 [AMENDED]

450:30-9-3 [AMENDED]

450:30-9-3.1 [NEW]

450:30-9-4 [AMENDED]

450:30-9-5 [AMENDED]

450:30-9-6 [AMENDED]

450:30-9-7 [AMENDED]

450:30-9-8 [AMENDED]

GUBERNATORIAL APPROVAL:

May 1, 2003

[OAR Docket #03-892; filed 5-9-03]

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

[OAR Docket #03-913]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 11. Fees

535:1-11-1. Annual licenses, permits and renewals [AMENDED]

535:1-11-2. Pharmacist initial registration [AMENDED]

535:1-11-3. ~~Practical~~ Training experience licenses and certificates [AMENDED]

535:1-11-5. Miscellaneous [AMENDED]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-913; filed 5-15-03]

Gubernatorial Approvals

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 10. PHARMACISTS; INTERNS, PRECEPTORS AND TRAINING AREAS

[OAR Docket #03-914]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. Pharmacist

535:10-3-1.2. [AMENDED]

535:10-3-4. [AMENDED]

Subchapter 5. Interns, Preceptors and Training Areas

535:10-5-2. [AMENDED]

535:10-5-2.1. [NEW]

Subchapter 11. Pharmacist Administration of Immunization [NEW]

535:10-11-1 through 535:10-11-6 [NEW]

GOVERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-914; filed 5-15-03]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 10. PHARMACISTS; INTERNS, PRECEPTORS AND TRAINING AREAS

[OAR Docket #03-915]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 9. Pharmaceutical Care

535:10-9-5 [NEW]

GOVERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-915; filed 5-15-03]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 15. PHARMACIES

[OAR Docket #03-916]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 5. Hospital Pharmacies

535:15-5-1. Purpose [AMENDED]

535:15-5-2. Definitions [AMENDED]

535:15-5-7.2. Supervision of pharmacy technicians [AMENDED]

535:15-5-10. Director of Pharmacy responsibilities [AMENDED]

535:15-5-18. Drug rooms [AMENDED]

Subchapter 6. Hospital Drug Room [NEW]

535:15-6-1. Purpose [NEW]

535:15-6-2. Definitions [NEW]

535:15-6-3. Registration [NEW]

535:15-6-4. Staffing requirements [NEW]

535:15-6-5. Drug room and PIC responsibilities and duties [NEW]

535:15-6-6. Physical and library requirements [NEW]

535:15-6-7. Drug distribution and control [NEW]

535:15-6-8. Emergency dispensing and pre-packaged medications [NEW]

535:15-6-9. Emergency room pre-packaged medications formulary [NEW]

535:15-6-10. Access to drug room in absence of PIC or drug room supervisor [NEW]

535:15-6-11. Administration of drugs to patients [NEW]

535:15-6-12. Medications from other sources [NEW]

535:15-6-13. Investigational drugs [NEW]

535:15-6-14. Drug storage stock inspections [NEW]

535:15-6-15. Non-distributive roles of pharmacists [NEW]

535:15-6-16. Performance improvement [NEW]

535:15-6-17. Board of Pharmacy inspections [NEW]

535:15-6-18. Drug room training area [NEW]

535:15-6-19. Violations [NEW]

GOVERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-916; filed 5-15-03]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 15. PHARMACIES

[OAR Docket #03-917]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. Pharmacies

535:15-3-2. [AMENDED]

535:15-3-6. [AMENDED]

535:15-3-12. [AMENDED]

535:15-3-12.1. [AMENDED]

535:15-3-21. [AMENDED]

Subchapter 7. Drug Supplier Permits

535:15-7-2. [AMENDED]

Subchapter 13. Pharmacy Technicians and Supportive Personnel

535:15-13-4. [AMENDED]

535:15-13-5. [AMENDED]

535:15-13-8. [AMENDED]

535:15-13-10. [AMENDED]

535:15-13-12. [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2003

[OAR Docket #03-917; filed 5-15-03]

**TITLE 535. OKLAHOMA STATE BOARD OF
PHARMACY
CHAPTER 20. MANUFACTURERS,
PACKAGERS, AND WHOLESALERS**

[OAR Docket #03-918]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 3. Manufacturers
535:20-3-1 [AMENDED]

GUBERNATORIAL APPROVAL:
May 12, 2003

[OAR Docket #03-918; filed 5-15-03]

**TITLE 535. OKLAHOMA STATE BOARD OF
PHARMACY
CHAPTER 25. RULES AFFECTING
VARIOUS REGISTRANTS**

[OAR Docket #03-919]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 3. Applicants, Registrants, and Applications
535:25-3-3. [AMENDED]
Subchapter 7. Rules of Registrant Conduct
535:25-7-6 [AMENDED]

GUBERNATORIAL APPROVAL:
May 12, 2003

[OAR Docket #03-919; filed 5-15-03]

**TITLE 570. STATE BOARD FOR PROPERTY
AND CASUALTY RATES
CHAPTER 10. FILING PROCEDURES,
INTERPRETATIONS AND ADDITIONAL
BOARD RULES**

[OAR Docket #03-996]

RULEMAKING ACTION:
Gubernatorial approval

RULES:

570:10-1-36. Use of lack of prior insurance in underwriting or rating [NEW]
570:10-1-37. Use of auto accidents in underwriting or rating [NEW]

GUBERNATORIAL APPROVAL:
May 15, 2003

[OAR Docket #03-996; filed 5-20-03]

**TITLE 600. REAL ESTATE APPRAISER
BOARD
CHAPTER 15. DISCIPLINARY
PROCEDURES**

[OAR Docket #03-995]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
600:15-1-2. Definitions [AMENDED]
600:15-1-3. Screening officers and hearing officers [REVOKED]
600:15-1-4. complaint process procedure [AMENDED]
600:15-1-5. ~~Screening officers to respond~~ Issuance of formal complaint: setting date for formal hearing [AMENDED]
600:15-1-6. Notice of disciplinary proceedings [AMENDED]

GUBERNATORIAL APPROVAL:
May 15, 2003

[OAR Docket #03-995; filed 5-20-03]

**TITLE 605. OKLAHOMA REAL ESTATE
COMMISSION
CHAPTER 1. ADMINISTRATIVE
OPERATIONS**

[OAR Docket #03-885]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
605:1-1-4. [AMENDED]

GUBERNATORIAL APPROVAL:
April 29, 2003

[OAR Docket #03-885; filed 5-8-03]

Gubernatorial Approvals

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION CHAPTER 10. REQUIREMENTS, STANDARDS AND PROCEDURES

[OAR Docket #03-886]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions
605:10-1-2 [AMENDED]
605:10-1-4 [AMENDED]
Subchapter 7. Licensing Procedures and Options
605:10-7-1 [AMENDED]
605:10-7-8.2 [AMENDED]
Subchapter 9. Broker's Operational Procedures
605:10-9-1 [AMENDED]
605:10-9-4 [AMENDED]
Subchapter 11. Associate's Licensing Procedures
605:10-11-2 [AMENDED]
Subchapter 15. Disclosures
605:10-15-4 [AMENDED]
Subchapter 17. Causes for Investigation; Hearing Process;
Prohibited Acts; Discipline
605:10-17-1 [AMENDED]
605:10-17-4 [AMENDED]
Appendix B [AMENDED]

GUBERNATORIAL APPROVAL:

April 29, 2003

[OAR Docket #03-886; filed 5-8-03]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #03-977]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Chapter 1. Administrative Operations [AMENDED]

GUBERNATORIAL APPROVAL:

May 15, 2003

[OAR Docket #03-977; filed 5-20-03]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 10. AD VALOREM

[OAR Docket #03-978]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Chapter 10. Ad Valorem [AMENDED]

GUBERNATORIAL APPROVAL:

May 1, 2003

[OAR Docket #03-978; filed 5-20-03]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 20. ALCOHOL, MIXED BEVERAGES, AND LOW-POINT BEER

[OAR Docket #03-979]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 1. General Provisions [AMENDED]
Subchapter 3. Alcoholic Beverages [AMENDED]
Subchapter 5. Mixed Beverages [AMENDED]

GUBERNATORIAL APPROVAL:

May 15, 2003

[OAR Docket #03-979; filed 5-20-03]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 40. FRANCHISE TAX

[OAR Docket #03-980]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

710:40-1-2. Definitions [AMENDED]
710:40-1-2.1. Examples of current liabilities for Franchise
Tax purposes [NEW]
710:40-1-6. Accounting and reporting; suspension and
reinstatement [AMENDED]
710:40-1-10. Inter-company balances [AMENDED]

GUBERNATORIAL APPROVAL:

May 1, 2003

[OAR Docket #03-980; filed 5-20-03]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 45. GROSS PRODUCTION, PETROLEUM EXCISE, AND CONSERVATION EXCISE**

[OAR Docket #03-981]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Chapter 45. Gross Production, Petroleum Excise, and Conservation Excise [AMENDED]

GUBERNATORIAL APPROVAL:

April 24, 2003

[OAR Docket #03-981; filed 5-20-03]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME**

[OAR Docket #03-982]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Chapter 50. Income [AMENDED]

GUBERNATORIAL APPROVAL:

May 8, 2003

[OAR Docket #03-982; filed 5-20-03]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES**

[OAR Docket #03-983]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 1. General Provisions
710:60-1-3. Confidentiality of motor vehicle information [AMENDED]
Subchapter 3. Registration and Licensing
Part 1. General Provisions
710:60-3-23. October 9, 2001, tornado registration fee credit [NEW]
Part 13. Manufactured Homes
710:60-3-133. Cancellation of manufactured home title [NEW]
Subchapter 5. Motor Vehicle Titles

Part 5. Certificates of Title
710:60-5-53. Salvage titles [AMENDED]
Subchapter 7. Motor Vehicle Excise Tax
710:60-7-8. October 9, 2001, tornado excise tax credit [NEW]

GUBERNATORIAL APPROVAL:

May 1, 2003

[OAR Docket #03-983; filed 5-20-03]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES**

[OAR Docket #03-984]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 4. Registration Pursuant to the International Registration Plan
710:60-4-15. Mileage [AMENDED]
Appendix A. Estimated Mileage Chart for New IRP Registrants [REVOKED]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-984; filed 5-20-03]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES**

[OAR Docket #03-985]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 4. Registration Pursuant to the International Registration Plan
710:60-4-3. Registration [AMENDED]
710:60-4-6. ~~Owner operator vehicles~~ Registration as an owner-operator [AMENDED]
710:60-4-10. Renewal applications [AMENDED]
710:60-4-11. Enforcement [AMENDED]
710:60-4-13. Amended mileage/adding states [AMENDED]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-985; filed 5-20-03]

Gubernatorial Approvals

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 60. MOTOR VEHICLES

[OAR Docket #03-986]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 4. Registration Pursuant to the International
Registration Plan

710:60-4-5. Established place of business requirements
[AMENDED]

GUBERNATORIAL APPROVAL:

May 12, 2003

[OAR Docket #03-986; filed 5-20-03]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 65. SALES AND USE TAX

[OAR Docket #03-987]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Chapter 65. Sales and Use Tax [AMENDED]

GUBERNATORIAL APPROVAL:

May 8, 2003

[OAR Docket #03-987; filed 5-20-03]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 85. VARIOUS TAX INCENTIVES

[OAR Docket #03-988]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Chapter 85. Various Tax Incentives [AMENDED]

GUBERNATORIAL APPROVAL:

May 15, 2003

[OAR Docket #03-988; filed 5-20-03]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 95. MISCELLANEOUS AREAS OF REGULATORY AND ADMINISTRATIVE AUTHORITY

[OAR Docket #03-989]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 5. Waste Tire Recycling [AMENDED]

Subchapter 6. Oklahoma Safe Playground Surfaces
Program [AMENDED]

GUBERNATORIAL APPROVAL:

May 8, 2003

[OAR Docket #03-989; filed 5-20-03]

TITLE 712. OKLAHOMA COMMISSION FOR TEACHER PREPARATION CHAPTER 10. TEACHER PREPARATION PROGRAM ACCREDITATION

[OAR Docket #03-887]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 5. Teacher Preparation Program Accreditation

712:10-5-1 [AMENDED]

712:10-5-2 [AMENDED]

712:10-5-3 [AMENDED]

Subchapter 7. Teacher Preparation Teacher Assessment

712:10-7-1 [AMENDED]

Appendix A [New]

GUBERNATORIAL APPROVAL:

April 28, 2003

[OAR Docket #03-887; filed 5-9-03]

Gubernatorial Disapprovals

Upon notification of disapproval by the Governor of an agency's proposed PERMANENT rulemaking action, the agency must submit a notice of such gubernatorial disapproval for publication in the *Register*.

For additional information on gubernatorial disapprovals, see 75 O.S., Section 303.2

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

[OAR Docket #03-948]

RULEMAKING ACTION:

Gubernatorial disapproval

RULES:

40:1-1-6 [NEW]

GUBERNATORIAL DISAPPROVAL:

Written disapproval received April 27, 2003

[OAR Docket #03-948; filed 5-19-03]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 10. BREATH-ALCOHOL ANALYSIS

[OAR Docket #03-949]

RULEMAKING ACTION:

Gubernatorial disapproval

RULES:

SubChapter 3. Breath-Alcohol Analysts

40:10-3-6 [REVOKED]

40:10-3-7 [REVOKED]

GUBERNATORIAL DISAPPROVAL:

Written disapproval received April 27, 2003

[OAR Docket #03-949; filed 5-19-03]

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

[OAR Docket #03-950]

RULEMAKING ACTION:

Gubernatorial disapproval

RULES:

40:20-1-1 [REVOKED]

40:20-1-2 [REVOKED]

40:20-1-3 [REVOKED]

GUBERNATORIAL DISAPPROVAL:

Written disapproval received April 27, 2003

[OAR Docket #03-950; filed 5-19-03]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 25. APPARATUS, DEVICES, EQUIPMENT AND MATERIALS

[OAR Docket #03-951]

RULEMAKING ACTION:

Gubernatorial disapproval

RULES:

40:25-1-1. [AMENDED]

40:25-1-2. [AMENDED]

40:25-1-3. [REVOKED]

40:25-1-4. [REVOKED]

40:25-1-5. [AMENDED]

GUBERNATORIAL DISAPPROVAL:

Written disapproval received April 27, 2003

[OAR Docket #03-951; filed 5-19-03]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 641. EMERGENCY MEDICAL SERVICES

[OAR Docket #03-935]

RULEMAKING ACTION:

Gubernatorial disapproval

RULES:

Subchapter 3. Ambulance Services

Part 7. Air Ambulances

310:641-3-30

GUBERNATORIAL DISAPPROVAL:

Written disapproval received May 12, 2003

[OAR Docket #03-935; filed 5-19-03]

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

[OAR Docket #03-920]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

RULES:

Subchapter 11. Fees

535:1-11-1. Annual licenses, permits and renewals
[AMENDED]

535:1-11-2. Pharmacist initial registration [AMENDED]

535:1-11-3. Practical Training experience licenses and
certificates [AMENDED]

535:1-11-5. Miscellaneous [AMENDED]

DATES:

Adopted:

March 20, 2003

Submitted to Governor:

March 28, 2003

Submitted to House:

March 28, 2003

Submitted to Senate:

March 28, 2003

Gubernatorial approval:

May 12, 2003

Withdrawn:

May 13, 2003

[OAR Docket #03-920; filed 5-15-03]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 10. PHARMACISTS; INTERNS, PRECEPTORS AND TRAINING AREAS

[OAR Docket #03-921]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

RULES:

Subchapter 5. Interns, Preceptors and Training Areas

535:10-5-2.1 [NEW]

DATES:

Adopted:

March 20, 2003

Submitted to Governor:

March 28, 2003

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Gubernatorial approval:

May 12, 2003

Withdrawn:

May 13, 2003

[OAR Docket #03-921; filed 5-15-03]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 15. PHARMACIES

[OAR Docket #03-922]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

RULES:

Subchapter 7. Drug Supplier Permits

535:15-7-2. [AMENDED]

Subchapter 13. Pharmacy Technicians and Supportive
Personnel

535:15-13-4. [AMENDED]

535:15-13-5. [AMENDED]

535:15-13-8. [AMENDED]

535:15-13-10. [AMENDED]

535:15-13-12. [AMENDED]

DATES:

Adopted:

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Withdrawn:

May 13, 2003

[OAR Docket #03-922; filed 5-15-03]

Withdrawn Rules

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 15. PHARMACIES

[OAR Docket #03-923]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

RULES:

Subchapter 5. Hospital Pharmacies
535:15-5-7.2 [AMENDED]

DATES:

Adopted:

March 19, 2003

Submitted to Governor:

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Submitted to Senate:

March 28, 2003

Gubernatorial approval:

May 12, 2003

Withdrawn:

May 13, 2003

[OAR Docket #03-923; filed 5-15-03]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 25. RULES AFFECTING VARIOUS REGISTRANTS

[OAR Docket #03-924]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

RULES:

Subchapter 3. Applicants, Registrants, and Applications
535:25-3-3. [AMENDED]

DATES:

Adoption:

March 20, 2003

Submitted to Governor:

March 28, 2003

Submitted to House:

March 28, 2003

Submitted to Senate:

March 28, 2003

Gubernatorial approval:

March 12, 2003

Withdrawn:

March 13, 2003

[OAR Docket #03-924; filed 5-15-03]

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 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 535. IMMUNIZATIONS

[OAR Docket #03-934]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Adult Immunizations

310:535-3-1 [AMENDED]

310:535-3-2 [AMENDED]

AUTHORITY:

Oklahoma State Board of Health; 70 O.S. §§ 1210.191 et seq., 63 O.S. § 1-106.1

DATES:

Public Hearing:

March 20, 2003

Adoption:

March 20, 2003

Approved by Governor:

May 8, 2003

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2004, 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 that a compelling extraordinary circumstance necessitates the seeking of emergency certification of the rules and regulations adopted today. Due to increased purchase costs for Influenza and Pneumococcal vaccines, and anticipated reduction in the state's general revenue available for the purchase of these vaccines, these fee rules are necessary for the Department to continue to provide these vaccinations for adult citizens of Oklahoma.

ANALYSIS:

This rule change allows for the collection of fees from adults who receive influenza and/or pneumococcal vaccinations in county health department facilities and who are not otherwise eligible for reimbursement through Medicare or Medicaid resources.

CONTACT PERSON:

Don Blose, MA, Immunization Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-4073; facsimile: (405) 271-6133; electronic mail: donb@health.state.ok.us

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING EMERGENCY RULES ARE
CONSIDERED PROMULGATED AND EFFECTIVE**

**UPON APPROVAL BY THE GOVERNOR AS SET
FORTH IN 75 O.S., SECTION 253(D):**

SUBCHAPTER 3. ADULT IMMUNIZATIONS

310:535-3-1. Types of vaccines

County health departments may collect fees for the following adult immunizations: Hepatitis A; Hepatitis B; Hepatitis A/Hepatitis B combined; Meningococcal; Typhoid; Varicella; Influenza; Pneumococcal; and Yellow fever.

310:535-3-2. Fees and charges

(a) The county health departments may collect for the cost of the vaccine, and an administration fee of up to \$10.00 per vaccine administered. The cost for each immunization referenced in section 310:535-3-1 shall be posted in plain view in the county health departments that offer adult immunizations. Any adult who requests immunizations shall be informed of the specific fee prior to receiving the immunization.

(b) ~~The minimum fee that the county health department may collect shall be \$25.00.~~

(c) Documentation confirming the cost of an adult immunization shall be available upon request.

[OAR Docket #03-934; filed 5-19-03]

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

[OAR Docket #03-957]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals

317:30-5-47.1. [NEW]

(Reference APA WF # 03-06)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 63 O.S. 1991, Section 1-533

Emergency Adoptions

DATES:**Adoption:**

March 13, 2003

Approved by Governor:

April 30, 2003

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2004, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that an imminent peril to the preservation of the health, safety and welfare of the public exists which necessitates promulgation of emergency rules and requests emergency approval of rules to provide Medicaid funding to the Oklahoma State Department of Health (OSDH) to assist in screening for genetic and biochemical disorders in newborns. OSDH's Newborn Metabolic Disorder Screening Program is an important public health activity aimed at the early identification of conditions for which early and timely interventions can lead to the elimination or reduction of associated morbidity, mortality and disabilities.

ANALYSIS:

Medical Provider-Fee for Service, Hospital specific, rules are revised to establish Medicaid coverage of a Newborn Metabolic Disorder Screening Program through the Oklahoma State Department of Health. Senate Bill 1608 of the 2nd Session of the 48th Legislature amending Section 1-533 of 63 O.S. 1991 provided a basis to expand the program. The program currently screens each newborn for phenylketonuria (PKU), congenital hypothyroidism, galactosemia, and sick cell disease. Over the next three years, the Oklahoma State Department of Health would phase in screening for Cystic Fibrosis, Congenital Adrenal Hyperplasia, and Medium Chain Acyl-CoA Dehydrogenase Deficiency. Without newborn screening and follow-up services, affected infants can suffer profound mental retardation and/or death. Medicaid compensation for the screening would provide a stable source of revenue to support this legislatively mandated program. Therefore, revisions are needed to establish Medicaid coverage of a Newborn Metabolic Disorder Screening Program.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

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 3. HOSPITALS

317:30-5-47.1. Reimbursement for newborn screening services provided by the OSDH

Reimbursement for inpatient hospital services is made based on a prospective per diem level of care payment system. The per diem includes all non-physician services furnished either directly or under arrangements. Newborn screening performed by the Oklahoma State Department of Health in

accordance with State Law is excluded from the inpatient per diem.

[OAR Docket #03-957; filed 5-19-03]

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

[OAR Docket #03-956]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Client Services

Part 11. Other Community Residential Supports

317:40-5-152. [NEW]

(Reference APA WF # 03-04)

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:**

March 13, 2003

Approved by Governor:

April 30, 2003

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2004, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of revisions that will result in a significant savings to the Department of Human Services, Developmental Disabilities Services Division. The state constitution requires all agencies to maintain a balanced budget. The Oklahoma Department of Human Services pays the state share for these services and they have requested the promulgation of this rule in order for them to maintain a balanced budget as failure to do so would lead to a breach of the state constitution.

ANALYSIS:

Developmental Disabilities Services, Client Services specific, rules are revised to establish guidelines for new group home services for the Home and Community Based Waiver recipients. These new Group Home services will provide residential options for persons served in the Community through the waiver. The Department of Human Services will realize state dollar savings due to lower costs of residential care in group home settings by this agency accessing Medicaid federal financial participation. These revisions are needed to establish program guidelines for Waiver group home services and provide Medicaid federal financial participation for services.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

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. CLIENT SERVICES

PART 11. OTHER COMMUNITY RESIDENTIAL SUPPORTS

317:40-5-152. Group home services for persons with mental retardation

(a) **General Information.** Group homes provide a congregate living arrangement offering up to 24-hour per day supervision, supportive assistance, and training in daily living skills to eligible individuals eighteen years of age and older. Upon approval of the director of the Developmental Disabilities Services Division (DDSD) of the Department of Human Services or designee, persons younger than eighteen may be served.

(1) Group homes ensure that persons reside and participate in the community. Services are provided in homes located in close proximity to generic community services and activities.

(2) Group homes must be licensed by DDSD in accordance with 10 O.S. § 1430.1.

(3) Persons receiving group home services receive no other form of residential supports.

(4) Habilitation training specialist services or Home-maker services for persons receiving group home services may be approved only by the director of DDSD or designee to resolve a temporary emergency when no other resolution exists.

(b) **Minimum provider qualifications.** Approved providers must have a current contract with the Oklahoma Health Care Authority (OHCA) to provide Home and Community-Based Waiver Services for the Mentally Retarded.

(1) Group home providers must have a completed and approved Application for Provider Agency from DDSD.

(2) Provider's staff must:

(A) complete the DDSD-sanctioned training curriculum in accordance with OAC 340:100-3-38; and

(B) fulfill requirements for pre-employment screening given at OAC 340:100-3-39.

(c) **Description of services.** Group home services are provided in accordance with this subsection.

(1) Services to each individual are provided in accordance with the Individual Plan developed in accordance with OAC 340:100-5-50 through 100-5-54.

(2) Health care services are secured in accordance with OAC 340:100-5-26.

(3) Group homes follow protective intervention practices described in OAC 340:100-5-57 and 100-5-58.

(4) Individuals are offered recreational and leisure activities maximizing the use of generic programs and resources, including individual and group activities.

(5) Group home services meet all applicable requirements of OAC 340:100.

(6) In addition to the documentation required by OAC 340:100-3-40, the provider agency must maintain:

(A) staff time sheets which document the hours each staff member was present and on duty in the group home; and

(B) documentation of each service recipient's presence or absence on the daily attendance form provided by DDSD.

(7) The provider agency ensures that program coordination staff (PCS) supervise, guide, and oversee all aspects of group home services.

(A) The PCS must:

(i) get to know each person receiving services and his or her needs;

(ii) make announced and unannounced visits to the group home. The PCS makes a minimum of three unannounced monitoring visits per month. Of the unannounced visits:

(I) at least one unannounced visit each month must occur on Saturday or Sunday; and

(II) another must occur between 8:00 p.m. and 7:00 a.m. on a weekday;

(iii) provide support and assistance to any person receiving services who is experiencing an emotional, behavioral, or medical crisis;

(iv) be accessible to direct service staff 24 hours per day and available to respond, in person if necessary, to an emergency;

(v) supervise direct contact staff to promote achievement of outcomes in the Plan;

(vi) assist the case manager as requested to prepare for and implement the Plan and its revisions in accordance with OAC 340:100-5-50 through 340:100-5-58;

(vii) ensure rules of DHS and OHCA are followed; and

(viii) complete necessary training as specified in OAC 340:100-3-38.

(B) Each person filling this role in a provider agency must have a minimum of four years of any combination of college level education and full-time equivalent experience in serving persons with disabilities, unless this requirement is waived in writing by the DDSD director or designee.

(8) Staff who assist an individual with bathing or showering have the responsibility to ensure the water temperature is safe and comfortable for the individual being bathed. The requirements of this paragraph are enforced even if an anti-scald device is in use.

(d) **Coverage limitations.** Services are provided up to 366 days per year.

(e) **Types of group home services.** There are three types of group home services provided through Home and Community-Based Waiver Services.

(1) **Traditional group homes.** Traditional group homes serve no more than 12 persons.

(A) Homes opened after the effective date of these rules serve no more than six individuals.

(B) Traditional group home services may also be provided through DDSD state funds.

(2) **Community living homes.** Community living homes serve up to six individuals.

Emergency Adoptions

(A) Persons who receive community living home services have needs that cannot be met in a less structured setting. These include people with:

(i) a diagnosis of severe or profound mental retardation requiring frequent assistance in the performance of activities necessary for daily living or continual supervision to ensure the individual's health and safety;

(ii) complex needs requiring frequent assistance in the performance of activities necessary for daily living, such as the frequent assistance of staff for positioning, bathing, or other necessary movement; or

(iii) complex needs requiring frequent supervision and training in appropriate social and interactive skills in order to remain included in the community.

(B) Services offered in a community living home include:

(i) 24-hour awake supervision;

(ii) program supervision and oversight including hands-on assistance in performing activities of daily living, transferring, positioning, skill-building and training.

(3) Alternative community homes. Alternative community homes serve up to four individuals who have evidence of behavioral or emotional challenges in addition to mental retardation and require extensive supervision and assistance in order to remain in the community.

(A) To be eligible for alternative community homes services an individual must:

(i) experience behavioral episodes that are ongoing, intense in nature, and highly disruptive, requiring close supervision and frequent intervention by staff; and

(ii) have had at least one prior inpatient psychiatric stay.

(B) Services are provided in accordance with the needs of the person including:

(i) supports to assist individuals in acquiring, retaining, and improving self-care, daily living, social, adaptive, and leisure skills needed to reside successfully within the community;

(ii) 24-hour awake staff;

(iii) specialized training developed to meet the specific needs of each person; and

(iv) program supervision and oversight including 24-hour availability of response staff to meet individual schedules or unpredictable needs.

(C) Persons with pending criminal charges are not eligible for Alternative Community Living Home services unless it can be demonstrated that they will not pose an immediate danger to self or others.

(D) A determination must be made by the Developmental Disabilities Services Division Community Services Unit that the Alternative Community Living

Home is appropriate and all other community residential services are not appropriate.

[OAR Docket #03-956; filed 5-19-03]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 110. LICENSING SERVICES

[OAR Docket #03-903A]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Licensing Standards for Child Care Facilities

Part 1. Requirements for Child Care Centers

340:110-3-1 through 340:110-3-3 [AMENDED]

340:110-3-4 [REVOKED]

340:110-3-5 through 340:110-3-6 [AMENDED]

340:110-3-7.1 [AMENDED]

340:110-3-9.1 through 340:110-3-11 [AMENDED]

340:110-3-14 [AMENDED]

340:110-3-22 [AMENDED]

340:110-3-25 through 340:110-3-29 [AMENDED]

340:110-3-31 [AMENDED]

340:110-3-33 through 340:110-3-33.1 [AMENDED]

Part 14. Requirements for School-Age Programs [NEW]

340:110-3-220 through 340:110-3-242 [NEW]

(Reference APA WF # 03-10)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and the Oklahoma Child Care Facilities Licensing Act, Sections 401 et seq. of Title 10 of the Oklahoma Statutes.

DATES:

Adoption:

March 25, 2003.

Approved by Governor:

May 9, 2003

Effective:

July 1, 2003.

Expiration:

Effective through July 14, 2004, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

Emergency approval is requested as the Agency finds compelling public interest to preserve the health, safety, and welfare of children in out-of-home care by providing licensing rules that are up-to-date, clear, and concise, and in compliance regarding staff training requirements, staff-child ratios for infants, child restraint systems, and fire safety. The revised and new rules improve the quality of services that impact the health, development, and safety of children in out-of-home care, and enhance the capability of DCC staff to perform their duties.

ANALYSIS:

The revisions to Subchapter 3 of Chapter 110 update and clarify rules concerning: staff qualifications for director and master teacher; pre-service training requirements; staff-child ratio for infants; child restraint systems requirements; and fire safety requirements recommended by the State Fire Marshal. These revisions were recommended by a revision subcommittee consisting of experienced child care professionals, state agency experts in these fields, and Division of Child Care (DCC) licensing staff who based their recommendations on national research in health and safety standards. The revision process began in March 2001 and included statewide forums, day-long subcommittee meetings, six public hearings, and careful consideration of all comments. Revisions are needed to address new information on practices that protect the health and well-being of children in care. Separating the program requirements in the rules will facilitate service provision by DCC staff and expedite future revision processes as they occur within these programs.

Revisions of these program requirements occur as their services become more defined and specific to their individual program purposes.

CONTACT PERSON:

Dena Thayer, Rules & Policy Management Unit, 405-521-4326.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT OKLAHOMA DEPARTMENT OF HUMAN SERVICES, 2400 LINCOLN BOULEVARD, OKLAHOMA CITY, OKLAHOMA AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S. SECTION 255(B):

SUMMARY:

The revisions to Subchapter 3 of Chapter 110 update and clarify rules concerning: staff qualifications for director and master teacher; pre-service training requirements; staff-child ratio for infants; child restraint systems requirements; and fire safety requirements recommended by the State Fire Marshal.

340:110-3-7.1 is revised to reflect changes in categories of staff qualifications and training, and the requirement of pre-service training.

340:110-3-9.1 is revised to increase the age of an infant from 9 months to 12 months for increased supervision with regard to staff-child ratio.

340:110-3-29 is revised to reflect the category of child restraint system required during transportation.

340:110-3-33 is revised to reflect changes in fire safety requirements.

340:110-3-220 through 340:110-3-242 are issued. Part 14, Requirements for School-Age Programs, is created to make a distinct separation in the rules between the requirements for this program and the programs for child care centers. The rules pertaining to school-age requirements that are moved to Part 14 are not revised.

[OAR Docket #03-903A; filed 5-13-03]

**TITLE 800. DEPARTMENT OF WILDLIFE
CONSERVATION
CHAPTER 25. WILDLIFE RULES**

[OAR Docket #03-933]

RULEMAKING ACTION:
EMERGENCY adoption

RULE:
Subchapter 7. General Hunting Seasons
Part 19. Seasons on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service [AMENDED]

AUTHORITY:
Title 29 O.S., Section 3-103 and 5-401; Title 4 O.S. and Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:

Adoption:
March 3, 2003

Approved by Governor:
April 21, 2003

Effective:
April 21, 2003

Expiration:
Effective through July 14, 2004, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTION:
n/a

INCORPORATION BY REFERENCE:
n/a

FINDING OF EMERGENCY:
A finding of an emergency is necessary because the Wildlife Commission passed a statewide 16-day deer gun season which will effect ODWC managed public lands. ODWC biologist do not feel that some Wildlife Management

Areas can handle the additional harvest pressure and will remain at previous harvest levels.

ANALYSIS:

The rules changes are needed to adjust public land to manage hunting pressure.

CONTACT PERSON:

Alan Peoples, Chief of Wildlife Division, 405/521-2739 or APA Liaison, Rhonda Hurst, Administrative Assistant, 405/522-6279.

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 7. GENERAL HUNTING
SEASONS**

**PART 19. SEASONS ON AREAS OWNED
OR MANAGED BY THE OKLAHOMA
DEPARTMENT OF WILDLIFE CONSERVATION
AND THE U.S. FISH AND WILDLIFE SERVICE**

800:25-7-81. Altus-Lugert WMA

The following hunting and trapping seasons apply to the Altus-Lugert WMA. Unless otherwise provided, firearms are restricted to .22 caliber rimfire and shotgun with pellets.

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie Chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, 1 tom limit.
- (5) Turkey-Spring: Same as statewide dates, 1 tom limit.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates, except closed the last seven days and closed to antlerless hunting. Shotgun only.
- (16) Trapping: Open to water sets and live box traps only.

Emergency Adoptions

(17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.

(19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

800:25-7-82. Atoka WMA

The following hunting and trapping seasons apply to the Atoka WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season, ~~and designated controlled hunt dates.~~

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey-Fall:

(A) Archery: Same as statewide season dates, except closed during first 9 days of deer gun season, ~~and designated controlled hunt dates; either sex.~~

(B) Gun: Closed season.

(5) Turkey-Spring: Same as Southeast turkey season dates. One tom season limit.

(6) Squirrel: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season.

(8) Crow: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(11) Common snipe: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed from the opening day of archery season through first nine days of deer gun season.

(13) Deer-archery: Same as statewide season dates, except closed during first nine days of deer gun season, ~~and designated controlled hunt dates.~~

(14) Deer - primitive firearms: Controlled hunts only.

(15) Deer - gun: Controlled hunts only.

(16) Trapping: Open to water sets and live box traps only.

(17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season. In addition, closed during spring turkey season.

(18) Predator/furbearer calling: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season. In addition, closed during spring turkey season.

(19) Waterfowl: Same as statewide dates except closed from opening day of archery season through first nine days of deer gun season.

800:25-7-82.1. Atoka PHA

The following hunting and trapping seasons apply to the Atoka PHA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates; either-sex.

(B) Gun: Closed season.

(5) Turkey - Spring: Same as Southeast turkey season dates. One tom season limit.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates except closed during ~~the~~first nine days of deer gun season.

(8) Crow: Same as statewide season dates.

(9) Dove: same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates.

(14) Deer - primitive firearms: Same as statewide season dates.

(15) Deer - gun: Same as statewide season dates, except closed the last 7 days.

(16) Trapping: Same as statewide season dates.

(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates.

(19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-83. Beaver River WMA

The following hunting and trapping seasons apply to the Beaver River WMA:

(1) Quail: Same as statewide dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 p.m. daily.

(2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Same as statewide season dates, 1 bird either sex and shotgun only.

- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
- (14) Deer - primitive: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Same as statewide season dates except controlled ~~Controlled~~ hunts opening weekend with remainder and the following seven days of season ~~Buck~~ only hunting. Closed last seven days of deer gun season.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

800:25-7-84. Black Kettle WMA

The following hunting and trapping seasons apply to the Black Kettle WMA:

- (1) Quail: Same as statewide season dates, except closed during ~~primitive firearms season when it overlaps with quail season and~~ closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, one bird either-sex, shotgun only.
- (5) Turkey-Spring: Same as statewide season dates, 2 tom limit.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.

- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates, except closed last seven days.
- (16) Trapping: Open to watersets and live box traps.
- (17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

800:25-7-85. Blue River Hunt Area

The following hunting and trapping seasons apply to the Blue River Hunt Area:

- (1) Quail: Same as statewide season dates.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Closed season.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock. Same as statewide season dates.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Closed season.
- (15) Deer-gun: Same as statewide season dates, except closed the last seven days and closed to antlerless deer hunting, ~~and shotgun~~ Shotgun only.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

800:25-7-86. Broken Bow WMA

The following hunting and trapping seasons apply to the Broken Bow WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates; either-sex.
 - (B) Gun: Closed season.

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- (5) Turkey-Spring: Same as Southeast turkey season dates. Two tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates, except closed last seven days.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-88. Canton WMA

The following hunting and trapping seasons apply to the Canton WMA:

- (1) Quail: Same as statewide season dates, except closed ~~during deer primitive and~~ the first nine days of deer gun season and hunting hours close at 4:30 p.m. daily.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, one bird either-sex, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 2 tom limit.
- (6) Squirrel: Same as statewide dates, except closed ~~during deer gun season~~ the first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed ~~during deer gun season~~ the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates except closed the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed ~~during deer gun season~~ the first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed ~~during deer gun season~~ the first nine days of deer gun season.

- (13) Deer - archery: Same as statewide season dates except closed during the first nine days of deer gun season.
- (14) Deer - primitive firearms: Same as statewide season dates except controlled ~~Controlled~~ hunts during opening weekend ~~with and~~ the remainder of season buck only hunting.
- (15) Deer - gun: Same as statewide season dates except controlled hunts ~~Controlled hunting~~ opening weekend ~~with and the remainder~~ following seven days of the season buck only hunting. Closed the last seven days of the season.
- (16) Trapping: Open to watersets and live box traps only.
- (17) Pursuit with hounds: Same as statewide dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-90. Cherokee PHA

The following hunting and trapping seasons apply to the Cherokee PHA:

- (1) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season, ~~open the Monday following the close of the deer gun season.~~
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Closed season.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed from opening day of archery season through first nine days deer gun season.
- (8) Crow: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season. ~~In addition, closed during spring turkey season.~~
- (9) Dove: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season. ~~In addition, closed during spring turkey season.~~
- (10) Rail and gallinule: Same as statewide dates except closed from opening day of archery season through first nine days of deer gun season. ~~In addition, closed during spring turkey season.~~
- (11) Common snipe: Same as statewide dates, except closed from the opening day of deer archery season through the first nine days of deer gun season, ~~open the Monday following the close of the deer gun season.~~
- (12) Woodcock: Same as statewide dates, except closed from the opening day of deer archery season through the

~~first nine days of deer gun season, open the Monday following the close of the deer gun season.~~

- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates, except open to antlerless hunting the first 2 days only.
- (15) Deer-gun: Same as statewide dates, except closed to antlerless deer hunting.
- (16) Trapping: Same as statewide season dates, except closed first nine days of deer gun season.
- (17) Pursuit with hounds: Same as statewide dates, except closed from opening day of archery season through first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season.

800:25-7-92. Chickasaw NRA

The following hunting and trapping seasons apply to the Chickasaw NRA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, 1 tom limit.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates. ~~All deer harvested on Chickasaw NRA must be checked by a National Park Service Ranger.~~
- (14) Deer-primitive firearms: Same as statewide season dates. Additional controlled hunts may be held. ~~All deer harvested on Chickasaw NRA must be checked by a National Park Service Ranger.~~
- (15) Deer-gun: Same as statewide season dates, except closed the last seven days of the deer gun season. ~~All deer harvested on Chickasaw NRA must be checked by a National Park Service Ranger.~~
- (16) Trapping: Closed season.

- (17) Pursuit with hounds: Same as statewide season dates.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-94. Copan WMA

The following hunting and trapping seasons apply to the Copan WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days and closed to antlerless deer hunting.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of archery season through deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-94.1. Cooper WMA

The following hunting and trapping seasons apply to the Cooper WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and first nine days of deer gun season and hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, either-sex.

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- (B) Gun: Same as statewide season dates, one bird either sex, shotgun only.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates except closed during first nine days of deer gun season.
- (14) Deer-primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer-gun: Same as statewide season dates except controlled ~~Controlled~~ hunts opening weekend, with remainder and the following seven days of season buck only. Closed last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates, Water sets and live traps only.
- (17) Pursuit with hounds: Same as statewide season dates except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-94.4. Deep Fork NWR

The following hunting and trapping seasons apply to the Deep Fork NWR:

- (1) Quail: Closed season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Closed season.
 - (B) Gun: Closed season.
- (5) Turkey-Spring: Closed season.
- (6) Squirrel: Same as statewide season dates except closed from opening day of archery season through November 30. deer gun season. Hunting restricted to the use of federally approved nontoxic shot(shotguns) or .22 caliber rimfire rifles.
- (7) Rabbit: Same as statewide season dates, except closed from opening day of archery season through November 30. deer gun season. Hunting restricted to the use of federally approved nontoxic shot(shotguns) or .22 caliber rimfire rifles.
- (8) Crow: Closed season.
- (9) Dove: Closed season.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed season.

- (13) Deer-archery: Controlled Hunts only.
- (14) Deer-primitive firearms: Controlled Hunts only.
- (15) Deer-gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Open December 1 - January 31-31, raccoon only. Permits available through refuge office.
- (18) Predator/furbearer calling: Closed season.
- (19) Waterfowl: ~~Closed season.~~ Same as statewide dates except open after November 30.

800:25-7-94.6. Dewey County WMA

The following hunting and trapping seasons apply to the Dewey County WMA:

- (1) Quail: Same as statewide season dates, except closed ~~during deer primitive and the first nine days of deer gun season~~ and hunting hours close at 4:30 p.m. daily.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, one bird of either-sex.
 - (B) Gun: Closed season.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide dates except closed the first nine days of deer gun season.
- (7) Rabbit: ~~Open the Monday following deer gun season, closes same as statewide date.~~ Same as statewide dates, except closed the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed Season
- (13) Deer - archery: Same as statewide season dates except closed during the first nine days of deer gun season.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates, except legal archery equipment only, fluorescent orange regulations apply.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-95. Ellis County WMA

The following hunting and trapping seasons apply to the Ellis County WMA:

- (1) Quail: Same as statewide season dates, except closed during ~~primitive firearms season when it overlaps~~

~~with quail season and closed during first nine days of deer gun season.~~

- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, either-sex.
- (5) Turkey-Spring: Same as statewide season dates, 2 tom limit.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, ~~except closed during deer gun season.~~
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates, except closed last seven days and closed to antlerless deer hunting.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

800:25-7-96. Eufaula WMA:

The following hunting and trapping seasons apply to the Eufaula WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates.
 - (B) Gun: Same as statewide season dates.
- (5) Turkey-Spring: Same as statewide season dates.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-97. Fobb Bottom WMA

The following hunting and trapping season apply to the Fobb Bottom WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, either sex.
 - (B) Gun: Closed season.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates, except closed to antlerless hunting after the first day.
- (15) Deer-gun: Same as statewide season dates, except closed to antlerless hunting after the first day.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-98. Fort Cobb WMA

The following hunting and trapping seasons apply to the Fort Cobb WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.

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- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: ~~Closed season.~~ Same as statewide season dates.
 - (B) Gun: Closed season.
- (5) Turkey-Spring: Closed season.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, steel shot only.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Controlled hunts only.
- (15) Deer-gun: Same as statewide season dates, except closed last seven days. Shotgun only.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-99. Fort Gibson PHA

The following hunting and trapping seasons apply to the Fort Gibson PHA: That portion of Fort Gibson PHA between Snug Harbor and Whitehorn Cove Road, lying in Section 30, T18N, R19E; and Fort Gibson PHA lands surrounding Blue Bill Point Development Area, lying in Section 13, T18N, R18E, are restricted to archery and shotgun with pellets only. That portion of Fort Gibson PHA north of Hwy 51 and south of Toppers Road, in the Long Bay Area, is closed to centerfire rifles.

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall
 - (A) Archery: Closed season.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Closed season.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive: Same as statewide dates, except that portion of the Snug Harbor Area between Snug Harbor and Whitehorn Cove and lands surrounding Blue Bill Point Development in the NE 1/4, Section 24 T18N, R18E, are closed to primitive firearms.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of season and closed to antlerless deer hunting. ~~that portion of the Snug Harbor Area between Snug Harbor and Whitehorn Cove in the east half of section 30, T18N, R19E east of Whitehorn Cove Road, and lands surrounding Blue Bill Point Development area in Section 13, and the NE 1/4, Section 24, T18N, R18E are archery only. That portion North of Highway 51, West of Long Bay and South of Toppers Road is closed to rifles during deer gun season, and is open to archery, primitive firearms and shotgun with slugs only. Fort Gibson WMA (PHA Portion) is open to antlerless deer hunting only the 1st Saturday of deer gun season.~~
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-100. Fort Gibson WRP

The following hunting and trapping seasons apply to the Fort Gibson WRP:

- (1) Quail: ~~Controlled hunts.~~ Same as statewide season dates, except closed October 15 - January 31.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Controlled hunts only.
 - (B) Gun: Controlled hunts only.
- (5) Turkey-Spring: Controlled hunts only.
- (6) Squirrel: Same as statewide season dates, except closed October 15-January 31.
- (7) Rabbit: Same as statewide season dates, except closed October 15-January 31.
- (8) Crow: Same as statewide season dates, except closed October 15-January 31.
- (9) Dove: Same as statewide season dates, except closed October 15-January 31.
- (10) Rail and gallinule: Same as statewide season dates, except closed October 15-January 31.
- (11) Common snipe: Same as statewide season dates, except closed October 15-January 31.
- (12) Woodcock: Closed season.
- (13) Deer-archery: Controlled hunts only.
- (14) Deer-primitive firearms: Controlled hunts only.
- (15) Deer-gun: Closed season.
- (16) Trapping: Closed season.

- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Closed season.
- (19) Waterfowl: Same as statewide season dates, except closed October 15-January 31.

800:25-7-101. Fort Supply WMA

The following hunting and trapping seasons apply to Fort Supply WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and first nine days of deer gun season, ~~and hunting~~ Hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, except closed during controlled hunt dates, either-sex.
 - (B) Gun: Same as statewide season dates, one bird either sex, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (14) Deer - primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Same as statewide season dates except controlled ~~Controlled~~ hunts opening weekend with remainder and the following seven days of season buck only hunting. Closed the last seven days of deer gun season.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of gun season.

800:25-7-102. Gary Sherrer WMA

The following hunting and trapping seasons apply to the Gary Sherrer WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.

- (2) Pheasant - Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as stateside season dates; either-sex.
 - (B) Gun: Closed season
- (5) Turkey - Spring: Same as Southeast turkey season dates. One tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed last seven days.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-102.1. Gist WMA

The following hunting and trapping seasons apply to the Gist WMA:

- (1) Quail: ~~Closed season.~~ Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall
 - (A) Archery: Same as statewide, ~~except closed October 31.~~ season dates.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Closed season.
- (6) Squirrel: ~~Open September 1 through October 31.~~ Same as statewide season dates.
- (7) Rabbit: ~~Same as statewide dates, except closed October 31.~~ Same as statewide season dates.
- (8) Crow: ~~Same as statewide dates, except closed October 31.~~ Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed October 31.~~

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- (14) Deer - primitive firearms: Closed season.
- (15) Deer - gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: ~~Closed season.~~ Same as statewide season dates.
- (18) Predator/furbearer calling: ~~Closed season.~~ Same as statewide season dates.
- (19) Waterfowl: ~~Same as statewide season dates.~~ Same as statewide season dates.

800:25-7-102.2. Grassy Slough WMA

The following hunting and trapping seasons apply to the Grassy Slough WMA: All shotgun hunting restricted to federally approved nontoxic shot.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates; either-sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast turkey season dates. One tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates, except closed during first nine days of deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Closed season.
- (15) Deer-gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.
- ~~(20) All shotgun hunting restricted to federally approved nontoxic shot.~~

800:25-7-105.5. Hackberry Flat WMA

The following hunting and trapping seasons apply to the Hackberry Flat WMA: All shotgun hunting restricted to federally approved nontoxic shot.

- (1) Quail: Same as statewide dates, except closed during the first nine days of deer gun season.
- (2) Pheasant: Closed season

- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Closed season.
 - (B) Gun: Closed season.
- (5) Turkey-Spring: Closed season.
- (6) Squirrel: Closed season.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Closed season.
- (13) Deer-archery: Closed season.
- (14) Deer-primitive firearms: Closed season.
- (15) Deer-gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide dates, except closed at 1:00 p.m. daily.
- ~~(20) All shotgun hunting restricted to federally approved nontoxic shot.~~

800:25-7-106. Heyburn WMA

The following hunting and trapping seasons apply to the Heyburn WMA.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates.

- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-108. Hickory Creek WMA

The following hunting and trapping seasons apply to the Hickory Creek WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, 1 tom.
- (5) Turkey - Spring: Same as statewide season dates, 2 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-108.1. Honobia Creek WMA

The following hunting and trapping seasons apply to the Honobia Creek WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates; either-sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast turkey season dates. Two tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-109. Hugo WMA

The following hunting and trapping seasons apply to the Hugo WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, ~~except closed during designated controlled hunts; either sex.~~
 - (B) Gun: Closed Season.
- (5) Turkey - Spring: Same as Southeast turkey season dates. One tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season, ~~and designated controlled hunts.~~
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season, ~~and designated controlled hunts.~~
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season, ~~designated controlled hunts.~~
- (9) Dove: Same as statewide season dates, ~~except closed during designated controlled hunts.~~
- (10) Rail and gallinule: Same as statewide season dates, except closed during first nine days of deer gun season and designated controlled hunts.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season, ~~and designated controlled hunts.~~
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed during designated controlled hunts.~~

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- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season, and designated controlled hunts.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-110. Lyndol Fry WRP

The following hunting and trapping seasons apply to the Lyndol Fry WRP:

- (1) Quail: ~~Closed season. Same as statewide season dates, except closed October 15 - January 31.~~
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, ~~except either sex. Except closed October 15 - January 31, and during designated controlled hunts.~~
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast turkey season dates. One tom season limit.
- (6) Squirrel: Same as statewide season dates, ~~except closed October 15 - January 31, and during designated controlled hunts.~~
- (7) Rabbit: Same as statewide season dates, ~~except closed October 15 - January 31, and during designated controlled hunts.~~
- (8) Crow: Same as statewide season dates, ~~except closed October 15 - January 31, and during designated controlled hunts.~~
- (9) Dove: Same as statewide season dates, ~~except closed October 15 - January 31, and during designated controlled hunts.~~
- (10) Rail and gallinule: Same as statewide season dates, ~~except closed October 15 - January 31.~~
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed October 15 - January 31, and during designated controlled hunts.~~
- (14) Deer - primitive firearms: Closed season.
- (15) Deer - gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates, ~~except closed October 15 - January 31 and during designated controlled hunts.~~ In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, ~~except closed October 15 - January 31, and during designated controlled hunts.~~ In addition, closed during spring turkey season.
- (19) Waterfowl: Same as statewide season dates, ~~except closed October 15 - January 31.~~

800:25-7-111. Hulah PHA

The following hunting and trapping seasons apply to the Hulah PHA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, either-sex.
- (5) Turkey - Spring: Same as statewide season dates, 2 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless deer hunting.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide dates except closed from opening day of archery season through deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-112. Hulah WRP

The following hunting and trapping seasons apply to the Hulah WRP:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, 2 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed October 15-January 31.
- (7) Rabbit: Same as statewide season dates, except closed October 15-January 31.

- (8) Crow: Same as statewide season dates, except closed October 15- January 31.
- (9) Dove: Same as statewide season dates, except closed October 15-January 31.
- (10) Rail and gallinule: Same as statewide season dates, except closed October 15-January 31.
- (11) Common snipe: Same as statewide season dates, except closed October 15-January 31.
- (12) Woodcock: Closed season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates, except closed October 15-January 31.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed October 15-January 31.
- (19) Waterfowl: Same as statewide season dates, except closed October 15 - January 31.

800:25-7-113. James Collins WMA

The following hunting and trapping seasons apply to the James Collins WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season, ~~and designated controlled hunt dates.~~
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall
 - (A) Archery: Same as statewide season dates, except closed during first nine days of deer gun season, ~~and designated controlled hunt dates; either sex.~~
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast turkey season dates. One tom season limit.
- (6) Squirrel: Same as statewide dates, except closed from opening day of archery season through first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season.
- (8) Crow: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
- (11) Common snipe: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from the opening day of archery season through first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season, ~~and designated controlled hunt dates.~~

- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Open to watersets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season. In addition, closed during spring turkey season.
- (19) Waterfowl: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

800:25-7-114. John Dahl WMA

The following hunting and trapping seasons apply to the John Dahl WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Closed season.
 - (B) Gun: Closed season.
- (5) Turkey-Spring: Closed season.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates, except closed the last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates, except closed during first nine days of deer gun season.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, ~~except closed during deer gun season.~~

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800:25-7-115. Kaw WMA

The following hunting and trapping seasons apply to the Kaw WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and first nine days of deer gun season.
- (2) Pheasant: Same as statewide season dates and bag limits, except closed during first nine days of deer gun season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, 1 tom limit.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed during last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-116. Keystone WMA

The following hunting and trapping seasons apply to the Keystone WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant-NW: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex, except closed during deer gun season.
 - (B) Gun: Same as statewide season dates; one tom limit.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates, except closed during first nine days of deer gun season.
- (10) Rail and gallinule: Same as statewide season dates, except closed during first nine days of deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except open ~~Open~~ to either-sex hunting the first Saturday of deer gun season, with the remainder of season buck only hunting. Cottonwood Creek Wetland Unit lands closed to deer hunting during deer gun season.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-117. Lexington WMA

The following hunting and trapping seasons apply to the Lexington WMA:

- (1) Quail: Same as statewide season dates, except open the Monday following the close of the first nine days of deer gun season, ~~closed during deer gun season and designated controlled hunt dates~~.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Closed Season.
 - (B) Gun: Closed season.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

- (10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (11) Common snipe: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except open the Monday following the close of the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season, ~~and designated controlled hunt dates.~~
- (14) Deer - primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

800:25-7-118. Little River NWR

The following hunting and trapping seasons apply to Little River NWR:

- (1) Quail: Closed season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey -Fall:
 - (A) Archery: Open same as statewide season dates, except closed the Friday before deer primitive firearms season through the first nine days of deer gun season.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Controlled hunts only.
- (6) Squirrel: Same as statewide season dates, except closed the Friday before deer primitive firearms season through the first nine days of deer gun season, and the season closes the last day of January.
- (7) Rabbit: Same as statewide season dates, except closed the Friday before deer primitive firearms season through the first nine days of deer gun season, and the season closes the last day of January.
- (8) Crow: Closed season.
- (9) Dove: Closed season.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed season.
- (13) Deer - archery: Same as statewide season dates, except closed the Friday before deer primitive firearms season through the first nine days of deer gun season.
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Contact refuge for special restrictions.

- (17) Pursuit with hounds: Same as statewide season dates, except closed the Friday before deer primitive firearms season through the first nine days of deer gun season.
- (18) Predator/furbearer calling: Closed season.
- (19) Waterfowl: Contact refuge for special restrictions.

800:25-7-119. Lake Thunderbird State Park

The following hunting and trapping seasons apply to Lake Thunderbird State Park:

- (1) Quail: Closed season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Closed season.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Closed season.
- (6) Squirrel: Closed season.
- (7) Rabbit: Closed season.
- (8) Crow: Closed season.
- (9) Dove: Closed season.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Closed season.
- (15) Deer - gun: Same as statewide season dates, except legal archery equipment only, ~~gun tag required unless exempt, fluorescent orange regulations apply.~~
- (16) Trapping: Beaver only, by permit, contact State Park Headquarters.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Closed season.
- (19) Waterfowl: Same as statewide season dates for all open waterfowl seasons occurring between September 8 and February 15. Hunting closes at 1:00 p.m. daily. Hunting in designated areas only.

800:25-7-120. Love Valley WMA

The following hunting and trapping seasons apply to Love Valley WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, 1 tom.
- (5) Turkey - Spring: Same as statewide season dates, 2 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.

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- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-121. Major County WMA

The following hunting and trapping seasons apply to the Major County WMA:

- (1) Quail: Same as statewide season dates, except closed ~~during deer primitive and~~ the first nine days of deer gun season and hunting hours close at 4:30 p.m. daily.
- (2) Pheasant: closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, one bird of either-sex.
- (5) Turkey - Spring: Same as statewide season dates, 2 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed ~~during deer gun season~~ the first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed ~~during deer gun season~~ the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed ~~during deer gun season~~ the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season
- (11) Common snipe: Same as statewide dates, except closed ~~during deer gun season~~ the first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed ~~during deer gun season~~ the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates except closed during the first nine days of deer gun season.
- (14) Deer - primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season, and closed to antlerless hunting.

- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-123. McClellan-Kerr WMA

The following hunting and trapping seasons apply to the McClellan-Kerr WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, 1 tom.
- (5) Turkey - Spring: Same as statewide season dates.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-125. McGee Creek WMA

The following hunting and trapping seasons apply to the McGee Creek WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season, ~~and designated controlled hunt dates.~~
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, except closed during first nine days of deer gun season, ~~and designated controlled hunt dates; either sex.~~
 - (B) Gun: Closed season.

- (5) Turkey - Spring: Same as Southeast turkey season dates. One tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from the opening day of archery season through the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season, and designated controlled hunt dates.
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates except closed opening day of archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.
- (19) Waterfowl: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.

800:25-7-126. Mountain Park WMA

The following hunting and trapping seasons apply to the Mountain Park WMA: Unless otherwise provided, firearms are restricted to .22 caliber rimfire and shotgun with pellets.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates.
 - (B) Gun: Closed season.
- (5) Turkey-Spring: Closed season.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.

- (12) Woodcock: Same as statewide season dates.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Closed season.
- (15) Deer-gun: Closed season.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except Wetland Development Area portion shooting hours are $\frac{1}{2}$ hour before official sunrise to 1:00 p.m. daily.

800:25-7-127. Okmulgee GMA

The following hunting and trapping seasons apply to the Okmulgee GMA:

- (1) Quail: Same as statewide season dates, except closed during the first nine days of deer gun season, and designated controlled hunt dates.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Either-sex during open archery season.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Controlled hunt only.
- (6) Squirrel: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season, open the Monday following the close of the deer gun season.
- (8) Crow: Same as statewide season dates except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
- (10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed from the opening day of archery deer season through the first nine days of deer gun season, open the Monday following the close of the deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from the opening day of archery deer season through first nine days of deer gun season, open the Monday following the close of the deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed from opening day of primitive firearms season through first nine days of deer gun season.
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.

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(16) Trapping: ~~Open December 1—January 31. Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.~~

(17) Pursuit with hounds: ~~Open December 1—January 31. Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.~~

(18) Predator/furbearer calling: ~~Open December 1—January 31. Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.~~

(19) Waterfowl: Same as statewide season dates, except closed during designated controlled hunt dates.

800:25-7-128. Okmulgee PHA

The following hunting and trapping seasons apply to the Okmulgee PHA:

(1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Either-sex during open archery season.

(B) Gun: Closed season.

(5) Turkey - Spring: Same As statewide season, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed from opening day of deer archery season through first nine days of deer gun season.

(7) Rabbit: Same as statewide dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.~~open the Monday following the close of deer gun season.~~

(8) Crow: Open December 9 - March 4.

(9) Dove: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(11) Common snipe: Same as statewide dates except closed from opening day of archery season through first nine days of deer gun season.

(12) Woodcock: Same as statewide dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.~~open the Monday following the close of the deer gun season.~~

(13) Deer - archery: Same as statewide season dates.

(14) Deer - primitive firearms: Same as statewide season dates, closed to antlerless deer hunting.

(15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless deer hunting.

(16) Trapping: ~~Open December 1—January 31. Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.~~

(17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(19) Waterfowl: Same as statewide season dates.

800:25-7-129. Oologah WMA

The following hunting and trapping seasons apply to the Oologah WMA, that portion known as Goose Island is restricted to shotgun with pellets and archery only:

(1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Closed season.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates.

(14) Deer - primitive: Same as statewide season dates.

(15) Deer - gun: Same as statewide season dates, ~~except closed to antlerless deer hunting.~~

(16) Trapping: Same as statewide season dates.

(17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.

(19) Waterfowl: Same as statewide season dates.

800:25-7-130. Optima WMA

The following hunting and trapping seasons apply to the Optima WMA:

(1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 PM daily.

(2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

- (A) Archery: Same as statewide season dates, either-sex.
- (B) Gun: Same as statewide season dates, One tom only, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: closed season.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (14) Deer - Primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Same as statewide dates, except closed last seven days of deer gun season and closed to antlerless deer hunting.
- (16) Trapping: Open to water sets and live box traps.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-131. Optima NWR

The following hunting and trapping seasons apply to the Optima NWR.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season and hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Either-sex during open archery season.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Closed season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Closed season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: closed season.
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.

- (14) Deer - primitive firearms: Closed season.
- (15) Deer - gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Closed season.
- (19) Waterfowl: Closed season.

800:25-7-131.1. Osage WMA - Rock Creek Unit

The following hunting and trapping seasons apply to the Osage WMA Rock Creek Unit:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, either-sex.
- (5) Turkey - Spring: Same as statewide season dates, 2 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless deer hunting.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-131.2. Osage WMA - Western Wall Primitive Area

The following hunting and trapping seasons apply to the Osage WMA Western Wall Primitive Area. Unless otherwise provided, firearms are restricted to .22 rimfire and shotguns with pellets.

- (1) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (2) Pheasant: Closed season.

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- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, except closed from the opening day of deer primitive season through deer gun season.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
- (6) Squirrel: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (9) Dove: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (10) Rail and gallinule: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season ~~dates~~ dates, except closed from the opening day of deer primitive season through deer gun season.
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Closed season.
- (16) Trapping: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery season through deer gun season and spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

800:25-7-132. Ouachita WMA - LeFlore Unit

The following hunting and trapping seasons apply to the Ouachita WMA - LeFlore Unit:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates; either-sex.
 - (B) Gun: Closed season.

- (5) Turkey - Spring: Same as Southeast turkey season dates. Two tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

800:25-7-133.1. Ouachita WMA - McCurtain Unit

The following hunting and trapping seasons apply to the Ouachita WMA - McCurtain Unit:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates; either-sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast turkey season dates. Two tom season limit .
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.

- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-134. Packsaddle WMA

The following hunting and trapping seasons apply to the Packsaddle WMA.

- (1) Quail: Same as statewide season dates except closed ~~November 1 through deer gun season for controlled hunts.~~ during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates; one tom limit.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, ~~except closed during deer gun season.~~
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Same as statewide season dates, except controlled hunts opening weekend, with remainder of the season and the following seven days buck only. ~~Controlled hunts opening weekend, with remainder of the season and the following seven days buck only.~~ Closed last seven days of deer gun season.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates except closed opening day of archery season through deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-135. Pine Creek WMA

The following hunting and trapping seasons apply to the Pine Creek WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season. ~~and designated controlled hunts.~~
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, ~~except closed during designated controlled hunts; either sex.~~
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as southeast turkey season dates. One tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season. ~~and designated controlled hunts.~~
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season. ~~and designated controlled hunts.~~
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season. ~~designated controlled hunts.~~
- (9) Dove: Same as statewide season dates, ~~except closed during designated controlled hunts.~~
- (10) Rail and gallinule: Same as statewide season dates, ~~except closed during designated controlled hunts.~~
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season. ~~and designated controlled hunts.~~
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season. ~~and designated controlled hunts.~~
- (13) Deer - archery: Same as statewide season dates, ~~except closed during designated controlled hunts.~~
- (14) Deer - primitive firearms: Same as statewide season dates, ~~except closed during designated controlled hunts.~~
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season. ~~during designated controlled hunts.~~
- (16) Trapping: Same as statewide season dates, ~~except closed during designated controlled hunts.~~
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season, ~~and designated controlled hunts.~~
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season. ~~designated controlled hunts.~~
- (19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

800:25-7-136. Pushmataha WMA

The following hunting and trapping seasons apply to the Pushmataha WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season. ~~and designated controlled hunt dates.~~
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.

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- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, except closed during first nine days of deer gun season, and designated controlled hunt dates; either sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast turkey season dates. One tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season, and designated controlled hunt dates.
- (7) Rabbit: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season, and designated controlled hunt dates.
- (8) Crow: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season, and designated controlled hunt dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season, and designated controlled hunt dates.
- (11) Common snipe: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season, and designated controlled hunt dates.
- (12) Woodcock: Same as statewide season dates, except closed from the opening day of archery season through the first nine days of deer gun season, and designated controlled hunt dates.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season, and designated controlled hunt dates.
- (14) Deer - primitive firearms: controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.
- (19) Waterfowl: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season, and designated controlled hunt dates.

800:25-7-136.1. Red Slough WMA

The following hunting and trapping seasons apply to the Red Slough WMA: All shotgun hunting restricted to federally approved nontoxic shot.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.

- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates; either-sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast turkey season dates. One tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates, except closed during first nine days of deer gun season..
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Closed season.
- (15) Deer-gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.
- ~~(20) All shotgun hunting restricted to federally approved nontoxic shot.~~

800:25-7-136.2. Red Slough WRP

The following hunting and trapping seasons apply to the Red Slough WRP: All shotgun hunting restricted to federally approved nontoxic shot.

- (1) Quail: ~~Closed season.~~ Open February 1 through 15.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates; either-sex. Except closed October 15 - January 31.
 - (B) Gun: Closed season
- (5) Turkey - Spring: Same as Southeast turkey season dates. One tom season limit.
- (6) Squirrel: Same as statewide season dates except closed October 15-January 31.
- (7) Rabbit: Same as statewide season dates except closed October 15-January 31.
- (8) Crow: Same as statewide season dates except closed October 15-January 31.
- (9) Dove: Same as statewide season dates except closed October 15-January 31.
- (10) Rail and gallinule: Same as statewide season dates except closed October 15-January 31.

- (11) Common snipe: Same as statewide season dates except closed October 15-January 31.
- (12) Woodcock: Closed season.
- (13) Deer-archery: Same as statewide season dates except closed October 15-January 31.
- (14) Deer-primitive firearms: Closed season.
- (15) Deer-gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates except closed October 15-January 31.
- (18) Predator/furbearer calling: Same as statewide season dates except closed October 15-January 31.
- (19) Waterfowl: Same as statewide season dates except closed October 15-January 31.
- ~~(20) All shotgun hunting restricted to federally approved nontoxic shot.~~

800:25-7-137. Rita Blanca WMA

The following hunting and trapping seasons apply to the Rita Blanca WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates.
 - (B) Gun: Same as statewide season dates, one tom only, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates; one tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
- (14) Deer-primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless hunting.
- (16) Antelope: Controlled hunt only.
- (17) Trapping: Open to water sets and live box traps only.
- (18) Pursuit with hounds: Same as statewide season dates-, except closed during deer gun season.

- (19) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (20) Waterfowl: Same as statewide season dates, except closed during deer gun season.

800:25-7-138. Robbers Cave WMA

(a) The following hunting and trapping seasons apply to the Robbers Cave WMA (that portion lying east of State Highway 2 and Coon Creek Road):

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates; either-sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast turkey season dates. One tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

(b) The following hunting and trapping seasons apply to that portion lying north of State Highway 2 in Sections 5, 6 and 8 of the Robbers Cave WMA:

- (1) Quail: Closed season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates; either-sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast turkey season dates. One tom season limit.
- (6) Squirrel: Same as statewide season dates, shotgun only.
- (7) Rabbit: Closed season.

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- (8) Crow: Closed season.
- (9) Dove: Closed season.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Closed season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-140. Sandy Sanders WMA

The following hunting and trapping seasons apply to the Sandy Sanders WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season, ~~and designated controlled hunt dates~~. Hunting hours close at 4:30 PM daily.
 - (2) Pheasant: Closed season.
 - (3) Prairie chicken: Closed season.
 - (4) Turkey - Fall:
 - (A) Archery: Closed season.
 - (B) Gun: Closed season.
 - (5) Turkey - Spring: Closed season.
 - (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
 - (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
 - (8) Crow: Same as statewide season dates.
 - (9) Dove: Same as statewide season dates.
 - (10) Rail and gallinule: Closed season.
 - (11) Common snipe: Closed season.
 - (12) Woodcock: Closed season.
 - (13) Deer - archery: Same as statewide season dates.
 - (14) Deer - primitive firearms: Closed season.
 - (15) Deer - gun: Controlled hunts only.
 - (16) Trapping: Open to live box traps only.
 - (17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.
 - (18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.
 - (19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.
- (b) ~~The area is closed to all activities during deer gun season.~~

800:25-7-141. Schultz WMA

The following hunting and trapping seasons apply to the Schultz WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 PM daily.

- (2) Pheasant - Panhandle: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 PM daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, one tom only, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common Snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
- (14) Deer - primitive firearms: Same as statewide season dates. Closed to antlerless hunting.
- (15) Deer - gun: Same as statewide season dates; except closed the last seven days of deer gun season and closed to antlerless hunting.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-143. Skiatook WMA

The following hunting and trapping seasons apply to the Skiatook WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, either-sex, except closed during first nine days of deer gun season.
 - (B) Gun: Same as statewide season dates, one bird of either-sex.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.

- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide dates.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-144. Sparrowhawk WMA

The following hunting and trapping seasons apply to the Sparrowhawk WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Closed season.

800:25-7-146. Spavinaw PHA

The following hunting and trapping seasons apply to the Spavinaw PHA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.

- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, 1 either sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-147. Stringtown WMA

The following hunting and trapping seasons apply to the Stringtown WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates; either-sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as southeast turkey season dates. One tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.

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- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-148. Tenkiller WMA

The following hunting and trapping seasons apply to the Tenkiller WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-149. Texoma/Washita Arm WMA

The following hunting and trapping seasons apply to the Texoma/Washita Arm WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Closed season.

- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-149.1. Three Rivers WMA

The following hunting and trapping seasons apply to the Three Rivers WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates; either-sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast turkey season dates. Two tom season limit for 8 combined Southeast counties.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.

- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-152. Washita County WMA

The following hunting and trapping seasons apply to the Washita County WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: ~~Closed season.~~ Same as statewide season dates.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Closed season.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer - archery: ~~Closed season.~~ Same as statewide season dates.
- (14) Deer - primitive firearms: Closed season.
- (15) Deer - gun: Closed season.
- (16) Trapping: Open to watersets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-153. Washita NWR

The following hunting and trapping seasons apply to the Washita NWR: All shotgun hunting restricted to federally approved nontoxic shot.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Closed season.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Closed season.
- (6) Squirrel: Closed season.
- (7) Rabbit: Same as statewide season dates, except ~~open the Monday following the close~~ closed during first nine days of the deer gun season. Contact refuge for special restrictions.
- (8) Crow: Closed season.

- (9) Dove: Closed season.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed season.
- (13) Deer - archery: Closed season.
- (14) Deer - primitive firearms: Closed season.
- (15) Deer - gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Closed season.
- (19) Waterfowl: Controlled Hunts. Bonus hunt permit required. Consult bonus hunt regulations.

800:25-7-154. Waurika WMA

The following hunting and trapping seasons apply to the Waurika WMA: Unless otherwise provided, firearms are restricted to .22 caliber rimfire and shotgun with pellets.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Closed season.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Closed season.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except Wetland Development Area portion shooting hours are $\frac{1}{2}$ hour before official sunrise to 1:00 p.m. daily.

800:25-7-154.2. Whitegrass Flats WMA

The following hunting and trapping seasons apply to the Whitegrass Flats WMA: All shotgun hunting restricted to federally approved nontoxic shot.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:

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- (A) Archery: Same as statewide season dates; either-sex.
- (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast turkey season dates. One tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates, except closed during first nine days of deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Closed season.
- (15) Deer-gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.
- (20) All shotgun hunting restricted to federally approved nontoxic shot.

800:25-7-155. Wister WMA

The following hunting and trapping seasons apply to the Wister PHA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
- (A) Archery: Same as statewide season dates; either-sex.
- (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast turkey season dates. Two tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.

- (15) Deer - gun: Same as statewide season dates, except closed during last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-156. Wister WRP

The following hunting and trapping seasons apply to the Wister WRP: All shotgun hunting restricted to federally approved nontoxic shot.

- (1) Quail: ~~Closed season~~ Same as statewide season dates, except closed October 15 - January 31.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
- (A) Archery: Same as statewide season dates; either-sex. Except closed October 15 - January 31.
- (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast turkey season dates. Two tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed October 15-January 31.
- (7) Rabbit: Same as statewide season dates, except closed October 15-January 31.
- (8) Crow: Same as statewide season dates, except closed October 15-January 31.
- (9) Dove: Same as statewide season dates, except closed October 15-January 31.
- (10) Rail and gallinule: Same as statewide season dates, except closed October 15-January 31.
- (11) Common snipe: Closed season.
- (12) Woodcock: closed season.
- (13) Deer - archery: Same as statewide season dates, except closed October 15-January 31.
- (14) Deer - primitive firearms: Closed season.
- (15) Deer - gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same a statewide season dates, except closed October 15-January 31.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed October 15-January 31.
- (19) Waterfowl: Same as statewide season dates, except closed October 15-January 31.

800:25-7-157. Yourman WMA

The following hunting and trapping seasons apply to the Yourman WMA: Walk-in access only, except for designated camping and parking areas.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.

- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates; either-sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast turkey season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and Gallinule: Same as statewide season dates.
- (11) Common Snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - Archery: Same as statewide season dates.
- (14) Deer - Primitive: Same as statewide season dates.
- (15) Deer - Gun: Same as statewide season dates, except closed during last seven days of deer gun season.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates except closed during first nine days of deer gun season.
- (18) Predator/furbearer Calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

[OAR Docket #03-933; filed 5-19-03]

**TITLE 800. DEPARTMENT OF WILDLIFE
CONSERVATION
CHAPTER 30. DEPARTMENT OF
WILDLIFE LANDS MANAGEMENT**

[OAR Docket #03-932]

RULEMAKING ACTION:

EMERGENCY adoption

RULE:

Subchapter 1. Use of Department Managed Lands
800:30-1-7. [AMENDED]

AUTHORITY:

Title 29 O.S., Section 3-103 and 5-401; Title 4 O.S. and Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:

Adoption:

March 3, 2003

Approved by Governor:

April 21, 2003

Effective:

April 21, 2003

Expiration:

Effective through July 14, 2004, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTION:

n/a

INCORPORATION BY REFERENCE:

n/a

FINDING OF EMERGENCY:

A finding of an emergency is necessary because the Wildlife Commission passed a statewide 16-day deer gun season which will effect ODWC managed public lands. ODWC biologist do not feel that some Wildlife Management Areas can handle the additional harvest pressure and will remain at previous harvest levels.

ANALYSIS:

The rules changes are needed to adjust public land to manage hunting pressure.

CONTACT PERSON:

Alan Peoples, Chief of Wildlife Division, 405/521-2739 or APA Liaison, Rhonda Hurst, Administrative Assistant, 405/522-6279.

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. USE OF DEPARTMENT
MANAGED LANDS**

800:30-1-7. ¹ Livestock and feral hogs

(a) **Livestock.** It is unlawful for any person to willfully or neglectfully allow unauthorized livestock to encroach upon any lands owned or managed by the Oklahoma Department of Wildlife Conservation.

(b) **Horses.** No person shall ride, drive, lead or keep a horse or other livestock on lands owned or managed by the Oklahoma Department of Wildlife Conservation, except Honobia Creek WMA and Three Rivers WMA, during the period of October 1 through January 1 and spring turkey season, annually without prior written approval from the Oklahoma Department of Wildlife Conservation. Individuals or parties of less than 25 may ride on areas with prior approval of the local biologist during the closed period if no hunting seasons are in progress. U.S. Forest Service regulations shall apply to those lands owned by the Forest Service. See 800:25-7-71 [REVOKED] (renumbered to 800:30-1-20) also.

(c) **Use of horses.** Hunting on, from or with the aid of horses or mules on WMAs (except U.S. Forest Service lands, Honobia Creek WMA and Three Rivers WMA) is prohibited during daylight hours during the period of October 1 - January 1 and during spring turkey season. Persons holding nonambulatory permits or motor vehicle permits are exempt.

(d) **Feral hogs.** Feral hogs may be taken on lands owned or managed by the Oklahoma Department of Wildlife Conservation during any established hunting season with weapons and methods authorized by the Department for that hunting season except for Honobia Creek WMA, Three Rivers WMA, and Broken Bow WMA. Feral hogs may be killed only during the first nine days of the regular deer gun season, and after January 15, 2003, feral Feral hogs may also be killed during the regular deer archery and deer muzzleloading seasons on these three (3) WMAs, with weapons and methods legal for the open deer season.

EDITOR'S NOTE: ¹ Because the agency promulgated two different permanent actions on this section with the same effective date in 2002, both versions were published in the 2002 Supplement to the Oklahoma Administrative Code.

Emergency Adoptions

In the emergency action published herein, the agency is creating a single version of the section by amending a single reconciled version of the two permanent actions.

[OAR Docket #03-932; filed 5-19-03]

Permanent Final Adoptions

An agency may promulgate rules on a permanent basis upon "final adoption" of the proposed new, amended, or revoked rules. "Final adoption" occurs upon approval by the Governor and the Legislature, or upon enactment of a joint resolution of approval by the Legislature. Before proposed permanent rules can be reviewed and approved/disapproved by the Governor and the Legislature, the agency must provide the public an opportunity for input by publishing a Notice of Rulemaking Intent in the *Register*.

Permanent rules are effective ten days after publication in the *Register*, or on a later date specified by the agency in the preamble of the permanent rule document.

Permanent rules are published in the *Oklahoma Administrative Code*, along with a source note entry that references the *Register* publication of the permanent action.

For additional information on the permanent rulemaking process, see 75 O.S., Sections 303, 303.1, 303.2, 308 and 308.1.

TITLE 10. OKLAHOMA ACCOUNTANCY BOARD CHAPTER 15. LICENSURE AND REGULATION OF ACCOUNTANCY

[OAR Docket #03-968]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
 - 10:15-1-1 [AMENDED]
 - 10:15-1-2 [AMENDED]
- Subchapter 3. Requirements to Practice Public Accountancy
 - 10:15-3-1 through 10:15-3-4 [AMENDED]
- Subchapter 7. Application to Take An Examination
 - 10:15-7-2 [AMENDED]
- Subchapter 20. Internet Practice Requirements [NEW]
 - 10:15-20-1 [NEW]
- Subchapter 21. Reciprocity
 - 10:15-21-1 [AMENDED]
 - 10:15-21-3 [AMENDED]
- Subchapter 22. Substantial Equivalency [NEW]
 - 10:15-22-1 [NEW]
- Subchapter 23. Registration
 - 10:15-23-1 [AMENDED]
 - 10:15-23-2 [AMENDED]
- Subchapter 25. Permits
 - 10:15-25-2 through 10:15-25-5 [AMENDED]
- Subchapter 27. Fees
 - 10:15-27-6 [AMENDED]
 - 10:15-27-7 [REVOKED]
 - 10:15-27-7.1 [NEW]
 - 10:15-27-8 [AMENDED]
 - 10:15-27-11 [AMENDED]
- Subchapter 29. Continuing Professional Education
 - 10:15-29-1.1. [AMENDED]
 - 10:15-29-3 through 10:15-29-7 [AMENDED]
 - 10:15-29-9 [AMENDED]
- Subchapter 31. Standards for Continuing Professional Education
 - 10:15-31-1 through 10:15-31-6 [AMENDED]
- Subchapter 32. Standards for Continuing Professional Education (CPE) Programs [NEW]
 - 10:15-32-1 through 10:15-32-6 [NEW]
- Subchapter 35. Reinstatement
 - 10:15-35-1. [AMENDED]
 - 10:15-32-2. [AMENDED]
 - 10:15-35-4. [AMENDED]
- Subchapter 37. Enforcement Procedures
 - 10:15-37-1. [AMENDED]
 - 10:15-37-10. [AMENDED]
 - 10:15-37-11. [AMENDED]
- Subchapter 39. Rules of Professional Conduct
 - 10:15-39-2. [REVOKED]
 - 10:15-39-3. [AMENDED]
 - 10:15-39-7. [AMENDED]

AUTHORITY:

Oklahoma Accountancy Board, 59 O.S. Section 15.5.B.6

DATES:

Comment Period:

January 15, 2003 through February 21, 2003

Public Hearing:

February 21, 2003

Adoption:

February 28, 2003

Submitted to Governor:

March 5, 2003

Submitted to House:

March 5, 2003

Submitted to Senate:

March 5, 2003

Gubernatorial Approval:

April 15, 2003

Legislative Approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 30, 2003

Final Adoption:

April 30, 2003

Effective:

July 1, 2003

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Additions to the definitions correlate with the new rules for substantial equivalency and the new CPE standards. Amendments to the requirements to practice public accountancy establish the one-year experience requirement for certification or licensure mandated in Section 15.9D of the Oklahoma Accountancy Act. Amendments to applications to take an examination eliminate provisions for qualification on the basis of experience. Rules have been added to establish disclosure requirements for Internet practice and to administer Substantial Equivalency, mandated in Section 15.12A of the Act. Substantive amendments to permit requirements would allow registrants to perform incidental amounts of non-compensated services for immediate family members without holding a permit to practice public accounting. Provisions for substantial equivalence fees have been established. Substantive amendments to the continuing professional education rules provide for a quarterly pro-rated CPE requirement for those who enter or re-enter public accounting, interim permit applicants, new CPAs and PAs after their initial permits, and applicants for reciprocity. In addition, CPAs and PAs in industry will be allowed to take sixteen of the required forty hours of CPE in areas of their industry positions rather than in areas of public accounting. New standards for continuing professional education will become effective January 1, 2004. The new standards were developed jointly by the American Institute of CPAs and the National Association of State Boards of Accountancy and are national standards to become effective January 1, 2004. These standards will allow for half hour CPE credit after the first hour, allow for independent study programs, and require that self-study CPE programs guide the participant through the learning process by eliciting participant responses throughout the program and providing both evaluative feedback to incorrect answers and positive reinforcement to correct answers. Self-study programs must also be based on materials specifically developed for instructional use. Amendments to enforcement procedures require a signed written complaint or published source before the Board may initiate an investigative file and provide that members of the investigative committees may be compensated at a rate established by the Board on a case by case basis. The rules of professional conduct are amended to provide clearer definitions of client records and working papers and to establish that unpaid fees do not justify the retention of

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client records. Additional amendments to various other rules are considered to be non-substantive and therefore are not highlighted here.

CONTACT PERSON:

Edith Steele (405) 521-2397

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.8(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:

SUBCHAPTER 1. ¹ GENERAL PROVISIONS

10:15-1-1. Purpose

(a) The Oklahoma Accountancy Act, found in Title 59 of the Oklahoma Statutes, beginning at Section 15.1 has been adopted by the Oklahoma Legislature for the purposes of protecting the public and to prevent the public from being mistead misled as to competency and ability to provide professional accounting services of an individual or firm offering such services. The Oklahoma Accountancy Board has been created for the purpose of implementing the laws and policies established by the Legislature.

(b) In order to implement the policy established by the Legislature regarding the practice of public accounting in Oklahoma and for the administration of the provisions of the Oklahoma Accountancy Act the rules of this Chapter have been adopted by the Board.

(c) These rules, including the Rules of Professional Conduct, are applicable to candidates for certificates or licenses.

10:15-1-2. Definitions

In addition to the terms defined in the Oklahoma Accountancy Act, the following words or terms shall be applied when implementing that Act and, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Accountancy Act, Oklahoma Statutes, Title 59, §§ 15.1 through 15.37, dealing with the practice of public accountancy in Oklahoma.

"Accounting information system (AIS)" means a subsystem of the management information system within an organization. The accounting information system collects and records financial and related information used to support management decision making and to meet both internal and external financial reporting requirements. An AIS system includes, but is not limited to, the accounting for transactions cycles such as revenues and receivables, purchases and payables, payroll, inventory, cash receipts and cash disbursements, and related data based systems.

"Advanced" means the learning activity level most useful for individuals with mastery of the particular topic. This level focuses on the development of in-depth knowledge, a variety of skills, or a broader range of applications. Advanced level programs are often appropriate for seasoned professionals within organizations; however, they may also be beneficial

for other professionals with specialized knowledge in a subject area.

"Audit sensitive" means activities of an individual which are normally an element of or subject to significant internal accounting controls. For example, the following positions, which are not intended to be all inclusive, would normally be considered audit sensitive, even though not positions of significant influence: cashier, internal auditor, accounting supervisor, purchasing agent, or inventory warehouse supervisor.

"Basic" means the learning activity level most beneficial to registrants new to a skill or an attribute. These individuals are often at the staff or entry level in organizations, although such programs may also benefit a seasoned professional with limited exposure to the area.

"CBT" means computer based testing or computer based CPA/PA examination.

"Close relative" means a non-dependent child, stepchild, brother, sister, grandparent, parent, parent-in-law, and their respective spouses of a registrant. Close relatives of the registrant do not include the brothers and sisters of the spouse of the registrant.

"Code" means Title 10 of the Oklahoma Administrative Code.

"Compensation" means the receipt of any remuneration of any kind for public accounting services, including but not limited to salary, wages, bonuses or receipt of any tangible or intangible thing of value.

"Continuing Professional Education" means an integral part of the lifelong learning required to provide competent service to the public. The set of activities that enables registrants to maintain and improve their professional competence.

"CPE" means continuing professional education.

"CPE credit" means fifty minutes of participation in a group, independent study or self-study program. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

"CPE program sponsor" means the individual or organization responsible for setting learning objectives, developing the program materials to achieve such objectives, offering a program to participants, and maintaining the documentation required by these standards. The term CPE program sponsor may include associations of CPAs or PAs, whether formal or informal, as well as employers who offer in-house programs.

"Domicile" means an individual's place of residence.

"Engagement team" means auditors who are required to exercise significant judgment in the audit process and would include positions where the auditor was the person in charge of the fieldwork up through partner on the engagement.

"Evaluative feedback" means specific response to incorrect answers to questions in self-study programs. Unique feedback must be provided for each incorrect response, as each one is likely to be wrong for differing reasons.

"Examining Authority" means the agency, board or other entity, of the District of Columbia, or any state or territory of the United States, entrusted with the responsibility for the governance, discipline, registration, examination and award of certificates, licenses or conditional credits for certified public

accountants or public accountants and the practice of public accountancy in said jurisdictions.

"Firm" means a professional entity which is legally constituted in accordance with Oklahoma statutes to engage in accountancy.

"Generally accepted accounting principles" means the same as "Statement on Auditing Standards No. 69, The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles in the Independent Auditor's Report" adopted in 1992, and issued by the American Institute of Certified Public Accountants and subsequent amendments thereto.

"Generally accepted auditing standards" means those standards which are used to measure the quality of the performance of auditing procedures and the objectives to be obtained by their use. Statements on Auditing Standards issued by the American Institute of Certified Public Accountants, Standards for Audit of Government Organizations, Programs, Activities and Functions issued by the Comptroller General of the United States, and other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures from such pronouncements, where they are applicable, must be justified by those who do not follow them.

"Group program" means an educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants either in a classroom or conference setting or by using the Internet.

"Immediate family members" means the registrant's, or his/her spouse's, lineal and collateral heirs.

"Independent study" means an educational process designed to permit a participant to learn a given subject under a learning contract with a CPE program sponsor.

"Instructional methods" means delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs.

"Intermediate" means learning activity level that builds on a basic program, most appropriate for registrants with detailed knowledge in an area. Such persons are often at a mid-level within the organization, with operational and/or supervisory responsibilities.

"Internet-based programs" means a learning activity, through a group program or a self-study program, that is designed to permit a participant to learn the given subject matter via the Internet. To qualify as either a group or self-study program, the Internet learning activity must meet the respective standards.

"Learning activity" means an educational endeavor that maintains or improves professional competence.

"Learning contract" means a written contract signed by an independent study participant and a qualified CPE program sponsor prior to the commencement of the independent study that:

- (A) Specifies the nature of the independent study program and the time frame over which it is to be completed, not to exceed 15 weeks.

- (B) Specifies that the output must be in the form of a written report that will be reviewed by the CPE program sponsor or a qualified person selected by the CPE program sponsor.

- (C) Outlines the maximum CPE credit that will be awarded for the independent study program, but limits credit to actual time spent.

"Learning objectives" means specifications on what participants should accomplish in a learning activity. Learning objectives are useful to program developers in deciding appropriate instructional methods and allocating time to various subjects.

"Learning plans" means structured processes that help registrants guide their professional development. They are dynamic instruments used to evaluate and document learning and professional competence development. This may be reviewed regularly and modified, as registrants' professional competence needs change. Plans include:

- (A) A self-assessment of the gap between current and needed knowledge, skills, and abilities;

- (B) A set of learning objectives arising from this assessment; and

- (C) Learning activities to be undertaken to fulfill the learning plan.

"Licensee" means an individual designated as a CPA, PA, or equivalent designation in another state.

"Management information system (MIS)" means a computer or manual system, or a group of systems, within an organization that is responsible for collecting and processing data to ensure that all levels of management have the information needed to plan, organize, and control the operations of the organization and to meet both internal and external reporting requirements.

"New CPAs and PAs" refers to individuals who are initially certified or licensed in Oklahoma as the result of successfully completing the examination, including those individuals certified or licensed as the result of transferring all credits earned on an examination from another jurisdiction.

"Office" means a building, room, or series of rooms which are owned, leased, or rented by an individual or firm for the purpose of holding out or carrying out the practice of public accounting.

"Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, sole proprietorship, an association, two or more persons having a joint or common interest, an employer of CPAs or PAs, or any other legal or commercial entity.

"Other compensation" means compensation, including remuneration based on a percentage of the amounts involved received by a registrant who is engaged in the practice of public accounting for other than the performance of professional services or for the sale or referral of products or services of third parties.

"Other professional standards" means those standards as defined by Statements on Management Advisory Services, Statements on Responsibilities in Tax Practice and Statements on Standards for Accounting and Review Services, issued by the American Institute of Certified Public Accountants.

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"Overview" means learning activity level that provides a general review of a subject area from a broad perspective. These programs may be appropriate for professionals at all organizational levels.

"Period of professional engagement" means the period during which professional services are provided, with such period starting when the registrant begins to perform professional services requiring independence and ending with the notification of the termination of that professional relationship by the registrant or by the client.

"Personal development" means a field of study that covers such skills as communications, managing the group process, dealing effectively with others, interviewing, counseling, and career planning.

"Pilot test" means sampling of at least three independent individuals representative of the intended participants to measure the average completion time to determine the recommended CPE credit for self-study programs.

"Principal place of business" means that physical location identified by a licensee to a state's accountancy regulatory agency where substantial administrative or management activities are conducted. For purposes of "Substantial Equivalency" the physical location cannot be in the State of Oklahoma.

"Professional competence" means having requisite knowledge, skills, and abilities to provide quality services as defined by the technical and ethical standards of the profession. The expertise needed to undertake professional responsibilities and to serve the public interest.

"Program of learning" means a collection of learning activities that are designed and intended as continuing education and that comply with these standards.

"Reinforcement feedback" means specific responses to correct answers to questions in self-study programs. Such feedback restates why the answer selected was correct.

"Related individual" includes spouses, and dependent persons, whether or not related for all purposes of complying with the Rules of Professional Conduct, provided that the independence of the registrant and the firm of the registrant will not normally be impaired solely because of employment of a spouse or dependent person by a client if the employment is in a position that does not allow "significant influence" over the operating, financial, or accounting policies of the client. In the event such employment is in a position in which the activities of the related individual are audit-sensitive, even though not a position of significant influence, the registrant should not participate in the engagement.

"Self-study program" means an educational process designed to permit a participant to learn a given subject without major involvement of an instructor. Self-study programs use a pilot test to measure the average completion time from which the recommended CPE credit is determined.

"Sole Proprietorship" means an unincorporated business enterprise which is owned entirely by one (1) certificate or license holder.

"State" means the District of Columbia, any state, or territory of the United States.

"Update" means learning activity level that provides a general review of new developments. This level is for participants with a background in the subject area who desire to keep current.

SUBCHAPTER 3. REQUIREMENTS TO PRACTICE PUBLIC ACCOUNTANCY

10:15-3-1. Who may practice public accountancy

Public accounting may be practiced in this state by either an individual or a firm which holds a valid permit to practice issued by the Board. Registrants may not practice public accounting through an entity which does not hold a valid permit except under the provisions of 10:15-39-8(d)(2). The Board grants certificates, licenses, or permits to practice to applicants on condition that the registrants comply with the provisions of the Oklahoma Accountancy Act and the rules adopted for the implementation of that Act.

10:15-3-2. Certificate as a certified public accountant

(a) A certificate may be issued to a qualified applicant only after: ~~the eligibility requirements have been met and the examination has been satisfactorily completed~~

(1) ~~The examination has been satisfactorily completed;~~

(2) ~~Evidence, by means established in 10:15-37-11(e), is obtained that the applicant is of good moral character; and~~

(3) ~~Effective with all initial examination candidates for the November 2003 examination, documentation must be provided that the certification applicant has a total of Eighteen hundred (1,800) hours of part time or full time work experience in accounting as defined in Title 59, Section 15.9.D. of the Act. Work experience must have been obtained within the four (4) years immediately prior to filing the application for certification. This requirement may be satisfied through work experience in government, industry, academia, or public practice. Acceptable work experience includes accounting, attest, tax, and related services. Approved documentation of experience must be provided on a form prescribed by the Board.~~

(b) A certificate may be issued by reciprocity to an applicant upon satisfactorily meeting the requirements for such certificate.

10:15-3-3. License as a public accountant

(a) A license may be issued to a qualified applicant only after: ~~the eligibility requirements have been met and the examination has been satisfactorily completed.~~

(1) ~~The examination has been satisfactorily completed;~~

(2) ~~Evidence, by means established in 10:15-37-11(e), is obtained that the applicant is of good moral character; and~~

(3) ~~Effective with all initial examination candidates for the November 2003 examination, documentation must be~~

provided that the licensure applicant has a total of Eighteen hundred (1,800) hours of part time or full time work experience in accounting as defined in Title 59, Section 15.9.D. of the Act. Work experience must have been obtained within the four (4) years immediately prior to filing the application for certification. This requirement may be satisfied through work experience in government, industry, academia, or public practice. Acceptable work experience includes accounting, attest, tax, and related services. Approved documentation of experience must be provided on a form prescribed by the Board.

(b) A license may be issued by reciprocity to an applicant upon satisfactorily meeting the requirements for such license.

10:15-3-4. Permits to practice

In addition to a license or certificate, any individual or ~~entity~~ firm wishing to practice public accounting in this state shall also be required to have a valid permit to practice.

SUBCHAPTER 7. APPLICATION TO TAKE AN EXAMINATION

10:15-7-2. ~~Applicant experience equivalency~~ Educational requirements

~~(a) Subject to the dates set forth in Section 15.8 of the Oklahoma Accountancy Act, applicants seeking to qualify to take an examination for a certificate or license on the basis of experience equivalent to public accounting, shall show to the satisfaction of the Board that such experience was obtained during the time period specified in Section 15.8 of the Oklahoma Accountancy Act; and that the applicant participated in a minimum of two (2) of the following activities:~~

- ~~(1) Experience in the application of a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records; preparation of audit work papers covering the examination of the accounts usually found in accounting records; and preparation of written explanations and comments on the findings of an examination and the content of accounting records.~~
- ~~(2) Experience in preparation and analysis of financial statements together with explanations and notes thereon.~~
- ~~(3) Experience in preparation of individual and corporate tax returns, tax planning, and contested tax matters.~~
- ~~(4) Experience in the design of accounting systems, evaluation and design of internal control systems, analytical review of accounting records for the purpose of testing internal controls, or performance of operational audits for use in making management decisions based on accounting information.~~

~~(b) The Board may verify the applicant's experience to the extent the Board deems necessary.~~

~~(c) Subject to the dates set forth in Section 15.8 of the Oklahoma Accountancy Act, a person seeking to qualify on the basis of self-employment shall satisfy the Board that the requirements have been met. The Board may verify applicant's self-~~

~~employment experience to the extent the Board deems necessary.~~

~~(d)~~ (a) In lieu of experience an Applicant shall show to the satisfaction of the Board that the applicant has graduated from an accredited four-year college or university listed in the "Education Directory Colleges and Universities" as published by the Superintendent of Documents, Washington, D.C.

(1) As to an applicant whose college credits are reflected in quarter hours, each quarter hour of credit shall be considered as two-thirds (2/3) of one (1) semester hour when determining semester hour credits necessary to qualify for examination or transfer of credits.

(2) When determining eligibility based on educational qualifications the Board shall consider only educational credit reflected on official transcripts.

(3) The specific requirement that each applicant shall have completed at least one (1) course in auditing may only be satisfied with an auditing course taken in-class for credit from an accredited two-year or four-year college or university listed in the "Education Directory Colleges and Universities" as published by the Superintendent of Documents, Washington, D.C.

~~(e)~~ (b) When determining eligibility of an applicant for examination the Board shall not consider any combination of education and experience.

~~(f)~~ (c) The Board will also consider an applicant who has graduated from a college or university located outside the United States if an educational evaluation performed by the Foreign Academics Credentialing Service (FACS) or another credentialing agency which is a member of the National Association of Credential Evaluation Services, Inc. certifies in writing that the applicant's course of study and degree are equivalent to the requirements set forth in Section 15.8 of the Act.

~~(g)~~ (d) On and after July 1, 2003, one hundred fifty (150) hours of education is required to qualify for any examination as set forth in Section 15.8.D. of the Oklahoma Accountancy Act. Any MIS or AIS course, or derivative thereof, as defined in Code 10:15-1-2, used by the applicant to qualify must have a substantial relationship, either direct or indirect, to the accounting profession. However, only AIS courses will qualify for the core accounting courses as required in Section 15-8.d.

~~(h)~~ (e) Any candidate who has qualified to take the examination on the basis of education prior to July 1, 2003, as provided in Sections 15.8.B and C, is not subject to subparagraph ~~(g)~~ (d) of this subsection.

SUBCHAPTER 20. INTERNET PRACTICE REQUIREMENTS

10:15-20-1. Requirements regarding practice or solicitation of an engagement via electronic means

(a) An individual offering or rendering professional accounting services to Oklahoma clients from a Website shall disclose, via any such Website, the individual's principal jurisdiction of licensure, license number and an address as a means

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for regulators and the public to contact the individual regarding complaints, questions or regulatory compliance.

(b) A firm offering or rendering professional accounting services to Oklahoma clients from a Website shall provide on the Website's homepage, a name, an address, and the principal jurisdiction of licensure as a means for regulators and the public to contact a responsible licensee in charge at the firm regarding complaints, questions, or regulatory compliance.

SUBCHAPTER 21. RECIPROCITY

10:15-21-1. Application for certificate or license

An applicant seeking to obtain an Oklahoma certificate, license, or permit to practice public accounting in this state who holds a valid certificate or license pursuant to the laws of ~~the District of Columbia or any state or territory of the United States~~ another jurisdiction shall provide the Board with:

- (1) written proof of test scores received on all examinations from the other examining authority;
- (2) written information that the applicant met or currently meets all Oklahoma requirements for eligibility as provided by statute, § 15.13, Title 59, Oklahoma Statutes and these rules;
- (3) a current certificate of good standing from the examining authority of the district, state or territory who issued the certificate or license upon which the reciprocal certificate or license is based (the certificate of good standing must have been issued not more than sixty (60) days prior to filing the application); and
- (4) written proof of having met all Oklahoma continuing professional educational requirements for those applicants seeking a permit to practice public accounting.

10:15-21-3. Evaluation of qualifications

~~Evaluation of qualifications for approval~~ Evaluation and approval or denial of the application for a reciprocal certificate or license shall be performed by the Executive Director.

SUBCHAPTER 22. SUBSTANTIAL EQUIVALENCY

10:15-22-1. Notification

(a) A qualified individual seeking practice privileges in this state pursuant to Section 15.12A of the Oklahoma Accountancy Act shall comply with the notice requirement as follows:

- (1) Notice may be given electronically or in writing on forms prescribed by the Board;
- (2) Notice is immediately due and shall be received by the Board within thirty (30) days after the individual knowingly avails him/herself of the laws of this State by:
 - (A) Accepting an engagement or an assignment to render professional services in this State, or

(B) Offering to render professional services through direct solicitation or marketing targeted to persons in this state.

(3) In lieu of the procedure set out in paragraph (a)(2), at anytime prior to entering this State, an individual, directly or through the individual's firm, may be included in a master notice to all participating substantially equivalent jurisdictions including the Board by giving notice to the NASBA National Qualification Appraisal Service or other comparable service designated by the Board; and, provided the firm accepts responsibility for each individual's compliance with the accountancy laws and rules of this State for as long as the individual is included in the firm's master notice, keeps the master notice reasonably current and renews the notice annually. In any event, the individual seeking practice privileges is responsible for complying with the requirement that the notification required under this Section has been made.

(4) Staff will inform the individual if he/she must withdraw based on findings. Withdrawal must be immediate. Individuals may appeal, and practice in this State may continue during the appeal process.

(b) Notice shall be renewed annually on the anniversary date of the original notice for so long as the individual intends to use Substantial Equivalency privileges in this State.

(c) Notice shall be amended within thirty (30) days after the individual changes his/her principal place of business or within 30 days after the license has been denied, revoked, or suspended in any jurisdiction.

(d) A non-resident individual shall not be deemed to have entered this State for purposes of the Section and notice is not required under this Section if the individual's contact with this State is limited to any of the following activities:

- (1) teaching either a college or continuing professional education course,
- (2) delivering a lecture,
- (3) moderating a panel discussion,
- (4) rendering professional services to the individual's employer or to persons employed by the individual's employer, including affiliated, parent, or subsidiary entities, provided such services are not rendered for the employer's clients.

SUBCHAPTER 23. REGISTRATION

10:15-23-1. Registration of individuals

(a) On or before June 30, all individuals shall register biennially as provided in Section 15.14 of the Oklahoma Accountancy Act and shall file a registration statement with the Board ~~in such on a form and providing such information as the Board shall prescribe~~ prescribed by the Board.

(b) All registration statements shall be accompanied by a registration fee.

- (1) In the case of a registrant who has reached the age of sixty-five (65), the registration fee shall be reduced, as provided in Subchapter 27.

(2) In the case of a registrant who is disabled beyond gainful employment, as provided in Section 15.14 of the Oklahoma Accountancy Act, the registration fee may be waived for the period of disability.

(3) All requests for a reduction or waiver of the registration fee shall be addressed to the Board, in writing.

(4) The Board shall use its discretion in determining the conditions required for retirement or disability.

(c) In addition to the regular registration fee paid by an individual, there shall be a fee for registering after close of business on June 30 but within twelve (12) months after the lapse date of the certificate or license.

(d) In addition to the regular registration fee paid by an individual, there shall be a fee for registering later than twelve (12) months following the lapse date of the certificate or license.

(e) Evaluation of qualifications and approval of registrations filed by individuals shall be performed by the Executive Director, subject to the review and supervision of the Board.

(f) Denial of individual registrations shall be by the Board.

(g) During the period when a certificate or license is suspended by the Board, the suspended registrant shall be required to file annually with the Board an informational report on a form prescribed by the Board. No fee shall be required with such filing.

10:15-23-2. Registration of firms

(a) On or before August 31 of each year all firms of certified public accountants and all firms of public accountants qualified to register shall file a registration statement with the Board ~~in such form and providing such information as the Board shall prescribe on a form prescribed by the Board.~~

(b) The registration statement filed on behalf of a firm of certified public accountants shall be made by a partner or shareholder who holds a valid Oklahoma certificate.

(c) The statement filed on behalf of a firm of public accountants shall be made by a partner or shareholder who holds a valid Oklahoma license or certificate.

(d) Evaluation of qualifications and approval of registrations filed by firms shall be performed by the Executive Director, subject to the review and supervision of the Board.

(e) Denial of firm registrations shall be by the Board.

(f) Except for sole proprietorships, all registration statements filed on behalf of a firm shall be accompanied by an annual registration fee and all applicable permit fees for the firm, as provided in Subchapter 27.

~~(g) All statements filed on behalf of a firm shall be accompanied by the registration and all applicable permit fees for the firm, as provided in Subchapter 27.~~

SUBCHAPTER 25. PERMITS

10:15-25-2. Date of issue

(a) All permits shall bear a date of issue based on the date the application for a permit is ~~received in the office of~~ approved by the Board unless such registrant has been granted an exception

by the Board. Permits renewed on a timely basis will be effective July 1 for individuals and September 1 for firms.

(b) If an application for a permit which has been returned to the holder for correction or completion of information is returned to the Board in acceptable form within thirty (30) calendar days of the first denial, the permit shall bear the date on which the permit application was first received in the office of the Board. Failure to resubmit the corrected application within the thirty-day period shall cause the permit to be dated with the date the acceptable application is received in the office of the Board.

(c) Permits applied for and issued after July 1, for individuals; and after September 1, for partnerships and professional corporations; and except for (a) and (b) above, shall bear an issue date of the day such application for a permit is accepted in the office of the Board.

10:15-25-3. Individual permit

(a) An individual permit shall have a maximum term of one (1) year and shall expire on June 30 following the date of issuance.

(b) Any registrant who performs any of the services described in Section 15.1A(27) of the Oklahoma Accountancy Act, regardless of whether such services are rendered for compensation, must have a permit if the registrant is holding out as a CPA or PA in any manner as described in the Act. Each registrant who is engaged in the practice of public accounting in this state is required to hold a valid permit. However, for purposes of this section, an individual may not be considered to be in the practice of public accounting if the individual performs an incidental amount of non-compensated services for immediate family members. In order to obtain a permit, an individual must have a valid certificate or license, be properly registered, pay all applicable fees, and comply with the continuing education requirement unless the registrant is exempt from CPE compliance as provided in Code 10:15-29-3 or 10:15-29-10.

~~(c) Any registrant who performs any of the services described in Section 15.1A(27) of the Oklahoma Accountancy Act, regardless of whether such services are rendered for compensation, must have a permit if they are holding out as a CPA or PA in any manner as described in the Act.~~

~~(d) Any registrant who prepares tax returns for the public, whether or not such returns are prepared for compensation, will be considered to be holding out if the return is signed with the CPA or PA designation or if such designation is used in any manner associated with the tax practice.~~

~~(e) Any certified or licensed person employed by a firm located outside this state shall be required to hold a valid permit or to notify the Board of his/her intent to practice public accountancy in this State in accordance with the Substantial Equivalency provision in order to serve clients in this state State unless such service is incidental to other responsibilities in the firm or involves the internal review procedures of the firm.~~

(e) Renewal permit, for purposes of this Subchapter, refers to a permit applied for prior to the expiration of the current permit.

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~~(f) The application for renewal of a permit shall be filed in the office of the Board with the Board on a form prescribed by the Board prior to the expiration of the permit currently held and no later than June 30. Forms for this purpose shall be mailed by the Board in May of each year to each individual currently registered with the Board and holding a permit.~~

(g) At the time the application for a permit is filed, the registrant shall attest to compliance with the continuing education requirement for the applicable compliance period as specified by the Board.

(h) An application for a permit may be filed at any time during the year by a registrant who is entering or reentering the practice of public accounting. Such registrant shall attest to compliance with the applicable continuing education requirement.

(i) A registrant who engages in the practice of public accounting only during certain times of the year shall maintain a valid permit for an entire permit period.

(j) The fees to obtain a permit to practice shall accompany the application. The fees for the renewal of permits are set forth in Subchapter 27.

~~(k) Renewal permit, for purposes of this Subchapter, refers to a permit applied for prior to the expiration of the current permit.~~

10:15-25-4. Firm permits

(a) Each firm permit shall have a maximum term of one (1) year and shall expire on August 31 following the date of issuance.

~~(b) The application for renewal of a permit shall be filed in the office of with the Board on a form prescribed by the Board prior to the expiration of the permit currently held and no later than August 31.~~

(c) Each firm applying for a permit to practice as a certified public accountant firm or as a public accountant firm shall submit a written affidavit signed by an owner, partner, member or shareholder demonstrating compliance with the requirements set out in Section 15.15A of the Oklahoma Accountancy Act and attesting that each partner, shareholder, owner, member and certified or licensed employee of the firm serving Oklahoma clients holds a valid individual permit or has notified the Board of his/her intent to practice public accountancy in this State in accordance with the Substantial Equivalency provision.

~~(d) Forms to renew the permits shall be mailed by the Board in July of each year to each firm registered with the Board.~~

~~(ed)~~ A firm is required to hold a valid permit if that firm is serving Oklahoma clients from outside this state unless such service is incidental to other responsibilities in the firm or involves the internal review procedures of the firm.

~~(fe)~~ Each firm office that serves Oklahoma clients shall be required to hold a separate permit and pay the applicable fee for each office permit.

10:15-25-5. Transitional period for individuals entering and re-entering public practice

(a) A registrant who immediately gives written notice to the Board upon changing to public accounting status from nonpublic status may be granted a period of sixty (60) days from the date of such notification to complete the continuing education credit required for issuance of the permit. Such courses shall comply with the criteria set forth in Subchapter 29. The procedure for administering the code is as follows:

(1) A registrant who changes to public accounting status from nonpublic status shall immediately give written notification of such change to the Board and may request that the registrant be granted a period of sixty (60) days from the date the registrant begins the practice of public accounting in which to complete the continuing education credit required for issuance of a permit. The registrant shall furnish a letter if self employed or from the employer, if employed, attesting to the beginning date of the registrant's self employment or employment, and shall furnish a list of courses in which the registrant has enrolled during the 60-day period. The list should include course title, name of sponsor, CPE credits to be awarded, and approximate date course is to be completed.

(2) Upon receipt of the written notification, the Executive Director shall review the request for sufficiency of information and shall ascertain whether the registrant is to be granted the transitional CPE compliance period.

(3) The registrant shall be notified by letter within five (5) working days whether the transitional period has been granted. Such letter shall grant permission for the registrant to practice public accounting, without penalty, for the sixty (60) day transitional period or shall state the specific reason why the transitional period was not granted. A copy of the letter notifying the registrant that the transitional period was not granted will also be mailed to the registrant's employer, if employed.

(b) If a registrant is unable to qualify for the permit within the sixty (60) days provided for herein, the registrant may apply one time to the Board for an additional thirty (30) day period in which to qualify for the permit. The procedure for doing so is as follows:

(1) The self employed practitioner or the registrant's employer may petition for an additional thirty (30) days in which to comply. The written petition shall set forth the reason(s) for the registrant's inability to satisfy the CPE requirement within the sixty (60) days previously granted. The petition shall set forth the precise manner in which the registrant will satisfy the requirement for the issuance of a permit if the additional thirty (30) days is granted.

(2) Upon receipt of the petition from the self employed registrant or the employer, the Executive Director shall decide whether the registrant is to be granted the additional thirty (30) days in which to comply.

(3) If granted, the thirty (30) day period shall commence following the last day of the sixty (60) day period. The registrant and the employer, if applicable, shall be notified by the Board within five (5) working days following the Board's receipt of the employer's petition.

(4) If the additional thirty (30) day period is denied, the registrant and the employer, if applicable, will be informed in writing of the specific reason(s) for the denial within five (5) working days following receipt of the petition.

(5) Upon denial of the additional thirty (30) day period, the registrant and the employer, if applicable, will be notified in writing that the registrant must cease practicing public accounting until such time as the registrant has been issued the permit.

(c) Approval by the Board of such request(s) shall authorize the registrant to practice public accounting during the time period(s) referred to in this Subchapter.

SUBCHAPTER 27. FEES

10:15-27-6. Proctoring Out of State Candidates

The Board shall charge each candidate to be proctored a nonrefundable processing fee of One Hundred Dollars (\$100.00) per examination.

10:15-27-7. Reciprocal application [REVOKED]

~~Each application shall be accompanied by a fee of One Hundred Twenty Dollars (\$120.00).~~

10:15-27-7.1. Substantial equivalence

(a) Each application from an individual to enter Oklahoma under the substantial equivalency provisions from a substantially equivalent state shall be accompanied by a fee equal to the amount charged by that state to an Oklahoma licensee for the equivalent privilege to practice in that state.

(b) Each application from an individual to enter Oklahoma under the substantial equivalency provisions from a non-substantially equivalent state shall be accompanied by a fee equal to the amount of the Oklahoma annual registration and permit fees.

10:15-27-8. Registration

(a) The registration fee for an individual shall be Twenty-Five Dollars (\$25.00) per year.

(1) In addition to the regular registration fee there shall be a fee for registering after June 30, but within twelve (12) months after the lapse date of the certificate or license, of Fifty Dollars (\$50.00).

(2) In addition to the regular registration fee, there shall be a fee for registering later than twelve (12) months following the lapse date of the certificate or licensed One Hundred and Fifty Dollars (\$150.00).

(b) An individual who has reached the age of sixty-five (65) shall pay a registration fee of Ten Dollars (\$10.00) per year. In addition to the regular registration fee there shall be a fee for registering after June 30, but within twelve (12) months after the lapse date of the certificate or license, of Twenty Dollars (\$20.00).

(c) The registration fee for a firm, except a sole proprietorship, of certified public accountants or public accountants shall be Twenty-Five Dollars (\$25.00) per year.

10:15-27-11. Duplicate certificate or license

There shall be a fee of One Hundred and Fifty Dollars (\$150.00) for a duplicate certificate or license except for changes of name or the physical destruction or mutilation of a certificate, ~~then~~ for which the fee shall be Ten Dollars (\$10.00).

SUBCHAPTER 29. CONTINUING PROFESSIONAL EDUCATION

10:15-29-1.1. Burden of proof

The burden of proof rests solely upon the registrant to demonstrate to the satisfaction of the Board, in accordance with the Oklahoma Accountancy Act, that all continuing education courses reported meet all of the requirements as to content and subject matter related to the profession and enhances the applicant's ability to provide services in the or practice of public accounting, or in the industry of the permit holder or applicant's employer.

10:15-29-3. CPE compliance period for new CPAs and PAs

~~(a) The term "new CPAs and PAs" refers to individuals who are certified or licensed in Oklahoma as the result of successfully completing the examination, including those individuals certified or licensed as the result of transferring all credits earned on an examination from another district, state or territory of the United States.~~

~~(b) When a new CPA or PA becomes certified or licensed as a result of successfully completing the examination, including those individuals who are certified or licensed as the result of transferring all credits earned on an examination from another district, state or territory of the United States jurisdiction, the new CPA or PA shall be exempt from reporting CPE for the initial permit to practice public accounting. continuing education compliance period to obtain a permit shall begin on January 1 following the date of certification or licensing.~~

~~(b) For the first renewal after the initial permit to practice public accounting has been issued to a new CPA or PA, in order to renew the permit, the new CPA or PA shall be required to report:~~

~~(1) Forty (40) hours of acceptable CPE, including two (2) hours of professional ethics, must be reported if the certification or licensure was issued during the months of July, August or September;~~

~~(2) Thirty (30) hours of acceptable CPE, including two (2) hours of professional ethics, must be reported if the certification or licensure was issued during the months of October, November or December;~~

~~(3) Twenty (20) hours of acceptable CPE, including two (2) hours of professional ethics must be reported if the certification or licensure was issued during the months of January, February or March; or~~

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(4) Ten (10) hours of acceptable CPE, including two (2) hours of professional ethics must be reported if the certification or licensure was issued during the months of April, May or June.

10:15-29-4. Required CPE for issuance of a permit

(a) An individual who applies for a permit to practice public accounting shall comply with the CPE requirements prior to filing the application for a permit.

(b) An individual who applies ~~for~~ to renew a permit, other than a new CPA, new PA, or reciprocal applicant shall document that the applicant has:

(1) completed a minimum of forty (40) hours of qualifying CPE within the calendar year immediately preceding the filing of the application for the permit; or

(2) completed a minimum of forty (40) hours of qualified CPE within the three hundred sixty-five (365) day period immediately preceding the date of the application for the permit.

(c) An individual who applies for an initial interim permit shall document that the individual has completed within the previous calendar year or within the 365 days immediately preceding the date of application, CPE prorated according to the following schedule:

(1) If permit is applied for any time in July, August, or September, forty (40) hours of acceptable CPE, including two (2) hours of professional ethics, are required;

(2) If permit is applied for any time in October, November, or December, thirty (30) hours of acceptable CPE, including two (2) hours of professional ethics, are required;

(3) If permit is applied for any time in January, February, or March, twenty (20) hours of acceptable CPE, including two (2) hours of professional ethics, are required;

or

(4) If permit is applied for any time in April, May or June, ten (10) hours of acceptable CPE, including two (2) hours of professional ethics, are required.

~~(ed) Unless exempted by 10:15-29-10, every permit holder shall complete at least two (2) hours of professional ethics CPE as a part of the 40-hour CPE requirement. The ethics CPE requirement shall be effective for compliance periods beginning within calendar year 2001 and for each compliance period thereafter.~~

~~(de) An individual other than a new CPA or PA who applies for a permit after the permit has been suspended or revoked, or has lapsed, shall have completed forty (40) hours of qualifying CPE within the three hundred sixty-five (365) day period immediately preceding the date of the application for a permit.~~

~~(ef) Regardless of the time frame in which CPE credit is earned, once credit has been claimed to the Board toward the issuance of a permit to practice, such credit may not be claimed again.~~

~~(fg) For purposes of subparagraph (b) of this subsection, qualified Qualified CPE credit hours from any one course given on the same day may not be split in any manner between two consecutive compliance periods. Multiple CPE courses taken on the same day may be claimed between two consecutive compliance periods, but only if the sponsor of each separate~~

CPE course issues a separate letter or certification attesting to the completion of each individual course.

10:15-29-5. Reciprocity

(a) An individual who applies for a certificate or license by reciprocity shall comply with the CPE requirements provided for in the Oklahoma Accountancy Act and the rules implementing that Act, except that an applicant who is not practicing public accounting shall not be required to report CPE in conjunction with the application for reciprocity.

(b) An individual who applies for an initial permit shall document that the applicant has: completed within the previous calendar year or within the 365 days immediately preceding the date of application, CPE prorated according to the following schedule:

(1) completed a minimum of forty (40) hours of qualifying CPE within the calendar year immediately preceding the filing of the application for the reciprocal certificate or license; or If permit is applied for any time in July, August, or September, forty (40) hours of acceptable CPE, including two (2) hours of professional ethics, are required;

(2) completed a minimum of forty (40) hours of qualified CPE within the three hundred sixty-five (365) day period immediately preceding the date of the application for the reciprocal certificate or license. If permit is applied for any time in October, November, or December, thirty (30) hours of acceptable CPE, including two (2) hours of professional ethics, are required;

(3) If permit is applied for any time in January, February, or March, twenty (20) hours of acceptable CPE, including two (2) hours of professional ethics, are required;
or

(4) If permit is applied for any time in April, May or June, ten (10) hours of acceptable CPE, including two (2) hours of professional ethics, are required.

~~(e) An applicant who is unable to meet the criteria of this subsection to apply for the initial permit and who meets the criteria established by Code 10:15-25-5 may qualify for the initial permit utilizing the transitional period set forth therein.~~

~~(d) The applicant shall have completed forty (40) hours of qualified CPE before the end of the initial compliance period.~~

10:15-29-6. Reporting and documentation by registrants

(a) Each applicant seeking to obtain a permit shall certify, in writing, on a form prescribed by the Board, information regarding the CPE hours claimed for credit in the CPE compliance period.

(b) CPE hours claimed for credit may be claimed only for the compliance period in which the course was completed and credit granted, ~~except as otherwise specifically provided for by rule.~~

~~(c) The reporting form shall contain information demonstrating that not less than forty (40) hours of CPE was completed during each calendar year compliance period or three hundred sixty-five (365) day compliance period, whichever is chosen by the registrant.~~

(~~dc~~) At the time of completing each course, the registrant shall obtain a letter or certificate attesting to completion of the course from the sponsor of the course. Such letters or certificates shall be retained for a period of five (5) years after the end of the compliance period in which the program is completed and shall include the specific information set forth in ~~Code 10:15-31-5(a)~~ the Board's CPE Standards.

(~~ed~~) Participants in structured CPE programs shall also retain ~~a brochure or such other promotional-descriptive~~ material which reflects the content of a course in the event the participant is requested by the Board to substantiate the course content.

10:15-29-7. Qualifying subjects

(a) Acceptable CPE subjects include the fields of study which enhance a CPA's or PA's ability to serve and deliver ~~public accounting professional~~ services, as defined in Section 15.1A.~~29~~ 27 of the Oklahoma Accountancy Act, to clients or employers including such as accounting, auditing, advisory services, specialized knowledge and applications, practice management, personal development, taxation, ~~and~~ professional ethics, and subjects specifically related to the industry of the permit holder or applicant's employer. Other subjects may be acceptable to the Board if such subjects relate to the practice of public accounting ~~and~~ or maintain or increase the technical and nontechnical professional skills of the applicant for a permit.

(b) If a CPA's or PA's main area of employment is industry, at least 24 hours of the qualifying CPE completed by the permit holder shall be in subject areas related to the practice of public accounting.

(~~ec~~) The responsibility for demonstrating to the satisfaction of the Board that nontechnical courses maintain or increase the professional skills of the individual rests solely with the permit holder or the applicant for a permit. Failure to demonstrate to the satisfaction of the Board that a nontechnical CPE course will maintain or increase professional competence will result in the disallowance of credit for such course.

10:15-29-9. Penalties for noncompliance with the CPE requirement

(a) A false or misleading statement by an individual or firm permit holder or an applicant for a permit relating to information about CPE credits shall constitute a cause for disciplinary action pursuant to the provisions of the Oklahoma Accountancy Act.

(b) Failure of an individual permit holder, who is engaged in the practice of public accounting serving Oklahoma clients, to file an acceptable application for renewal of a permit by July 1, shall be subject to disciplinary action pursuant to the provisions of ~~subsection A of Section 15.14A~~ of the Oklahoma Accountancy Act.

SUBCHAPTER 31. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION

10:15-31-1. General standards for structured CPE

The following standards are in effect through December 31, 2003:

(~~1a~~) The subject matter, content, presentation, measurement, and reporting of CPE courses must meet the standards set forth by rule to qualify for credit pursuant to the provisions of the Oklahoma Accountancy Act.

(~~2b~~) Permit holders shall participate in structured programs of learning that maintain or increase their professional competence and ability to deliver public accounting services.

(~~A1~~) While permit holders participate in a wide variety of learning activities, CPE credit is allowed only for structured programs of learning.

(~~B2~~) An individual performing services of a professional nature needs to have a broad range of knowledge, skills, and abilities that enhance a registrant's ability to serve and deliver public accounting services to clients. The Board shall interpret the concept of professional competence broadly. Programs contributing to the development and maintenance of nontechnical professional skills that relate to the practice of public accounting shall also be recognized as acceptable CPE.

(~~3e~~) It is the responsibility of each permit holder to comply with all applicable CPE requirements. A permit holder may also have to meet CPE requirements of other jurisdictions, in order to engage in the practice of public accounting for Oklahoma clients.

(~~4d~~) CPE program sponsors have a responsibility to comply with standards established by the Board.

10:15-31-2. Standards for structured CPE program development

The following standards are in effect through December 31, 2003:

(~~1a~~) Sound administration, adequate resources, competent supervision, and an effective and supportive organizational structure are necessary elements in the design, development, implementation, and monitoring of CPE programs. For each CPE program sponsor, there shall be an identifiable administrator charged with demonstrating compliance with these standards.

(~~2b~~) CPE program developers shall state learning objectives and specify the level of knowledge of the program.

(~~3e~~) Learning objectives shall specify what participants will be able to perform upon completing the program. A program may have more than one (1) objective, but each objective shall be written to be consistent with the specified level of knowledge of the program. Levels of knowledge shall be described as "basic", "intermediate", "advanced", or "update".

(~~4d~~) CPE program developers shall state the prerequisites for education, experience, or both for all programs. All programs shall clearly identify prerequisites, if any. Prerequisites shall be written in precise language so that potential participants can readily ascertain whether they

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qualify for the program and whether the specified level of knowledge of the program is appropriate for them.

(~~5e~~) CPE program developers shall be qualified in the subject matter and knowledgeable in instructional design. Qualification in subject matter and knowledge of instructional design may be obtained through appropriate practical experience, education or both. The level of technical competence and instructional design skills that the CPE program developer shall possess may vary depending on certain characteristics of the program, such as the number of times it will be presented, the length of the program, the complexity of the subject matter, and the number of participants.

(~~6f~~) CPE program materials shall be reviewed to the extent necessary by a qualified individual other than the developer before the materials are used in order to assure the technical accuracy, current nature, and the sufficiency of the program to achieve the stated learning objectives.

(~~A+~~) In order to meet this standard, the program materials must be prepared in advance of the presentation. The nature and extent of review may vary depending on the characteristics of the programs.

(~~B2~~) If a review is considered appropriate, the level of technical competence and instructional design knowledge of a reviewer shall be at least equal to those of the CPE program developer.

10:15-31-3. Standards for structured CPE program presentation

The following standards are in effect through December 31, 2003:

(~~1a~~) CPE program sponsors shall inform participants before they enroll of learning objectives, prerequisites, level of knowledge of the program, program content, nature and extent of advance preparation, teaching methods to be used, recommended CPE credit, and relevant administrative policies.

(~~A+~~) In order for potential participants to effectively plan their CPE, the significant features of the CPE program should be disclosed in advance in brochures or other promotional material.

(~~B2~~) When CPE programs are offered in conjunction with noneducational activities or when several CPE programs are offered concurrently, an appropriate schedule of events indicating those components that are recommended for CPE credit shall be made available to participants. The CPE program registration policies of the sponsor and procedures should be formalized, published, and made available to participants.

(~~2b~~) CPE program sponsors should encourage participation only by individuals with appropriate education, experience, or both. Compliance with this standard may include:

(~~A+~~) Allowing enrollment only by eligible participants;

(~~B2~~) Making timely distribution of materials; and

(~~C3~~) Requiring completion of advance preparation materials by participants.

(~~3e~~) CPE program sponsors shall select instructors qualified with respect to both program content and teaching methods used.

(~~A+~~) Qualified instructors are those who are capable, through background, training, education, or experience, of communicating effectively and providing an environment conducive to learning.

(~~B2~~) Instructors should be competent in the subject matter, skilled in the use of the appropriate teaching methods, and prepared in advance.

(~~C3~~) Instructors are responsible for informing participants of any changes necessary to make the program current.

(~~4d~~) CPE program sponsors shall evaluate the performance of each instructor at the conclusion of each program to determine their suitability to continue to serve as instructors.

(~~5e~~) CPE program sponsors shall ensure that the number of participants and physical facilities are appropriate for the teaching methods specified by the CPE program developer.

(~~6f~~) The number of participants, quality of facilities, and seating arrangements are integral and important aspects of the educational environment and shall be carefully controlled by the program sponsor.

(~~7g~~) CPE program sponsors shall provide effective means for evaluating the quality of the program. The objective of evaluations is to increase program effectiveness. Evaluations shall be solicited from both participants and instructors. Evaluations may include questionnaires completed after a program, verbal comment and evaluation from participants, or tests for the effectiveness of a program. At a minimum, CPE programs shall be evaluated to determine whether:

(~~A+~~) Learning objectives have been met;

(~~B2~~) Prerequisites were necessary or desirable;

(~~C3~~) Program materials contributed to the achievement of the learning objectives; and

(~~D4~~) The program content was timely and relevant.

(~~8h~~) For group programs, programs shall be evaluated to determine whether

(~~A+~~) The knowledge and presentation skills of the instructor were effective; and

(~~B2~~) Facilities where the program was conducted were satisfactory.

(~~9i~~) CPE program sponsors shall periodically review the evaluation process to ensure its effectiveness.

10:15-31-4. Standards for structured CPE program measurement

The following standards are in effect through December 31, 2003:

(~~1a~~) CPE credit shall be recommended only for structured programs of learning that maintain or increase the professional competence of the individuals attending the programs.

~~(2b)~~ Continuing professional education credit is granted only for structured programs. A structured program of learning is a process that is designed and intended primarily as an educational activity and that complies with the standards set forth by the Board.

~~(3e)~~ All programs shall be measured in contact hours. The shortest program for CPE credit purposes shall consist of one (1) contact hour.

~~(A4)~~ A contact hour is fifty (50) minutes of participation in a group program.

~~(B2)~~ Credit is granted only for full contact hours.

~~(C3)~~ For programs in which individual segments are less than fifty (50) minutes, the sum of the segments shall be considered one (1) total program.

~~(4d)~~ CPE program sponsors must monitor organized group programs in order to accurately record the appropriate number of contact hours for participants.

~~(5e)~~ Structured individual study programs shall be pretested by the developer to determine average completion time.

~~(A4)~~ Interactive individual study programs shall receive CPE credit equal to the average completion time.

~~(B2)~~ An interactive individual study program is one which simulates a classroom learning process by providing ongoing responses and evaluation to the learner regarding his or her learning progress. These programs guide the learner through the learning process by:

~~(iA)~~ Requiring frequent student response to questions that test for understanding of the material presented;

~~(iiB)~~ Providing evaluative responses and comments to incorrectly answered questions; and

~~(iiiC)~~ Providing reinforcement responses and comments to correctly answered questions.

~~(C3)~~ Ongoing responses, comments, and evaluations communicate the appropriateness of a learner's response to a prompt or question. Such responses, comments, and evaluations must be frequent and provide guidance or direction for continued learning throughout the program by clarifying or explaining assessment of inappropriate responses, providing reinforcement for appropriate responses, and directing the learner to move ahead or review relevant material. It is the response of the learner that primarily guides the learning process in an interactive individual study program. Not all technology based individual study programs constitute interactive programs. Technology based individual study programs must meet the criteria set forth in the definition of interactive individual study programs, as must other individual study programs developed using different modes of delivery.

~~(D4)~~ Non-interactive individual study programs shall receive CPE credit equal to one-half (1/2) of the average completion time. For example, a non-interactive individual study program that takes an average

of eight hundred (800) minutes to complete should be recommended for eight (8) contact hours of CPE credit.

~~(6f)~~ CPE program developers shall keep appropriate records of how the average completion time of individual study programs was determined.

~~(7g)~~ For university or college courses which are successfully completed for credit, each unit of credit shall equal the following CPE contact hours:

~~(A4)~~ One (1) semester system hour equals fifteen (15) hours of CPE credit; and

~~(B2)~~ One (1) quarter system hour equals ten (10) hours of CPE credit.

~~(8h)~~ Seminar instructors or discussion leaders shall receive CPE credit for their preparation and presentation time if the seminar programs increase their professional competence and if the programs qualify for CPE credit for participants.

~~(A4)~~ Credit for seminar instructors or discussion leaders shall be measured in contact hours.

~~(B2)~~ Seminar instructors and discussion leaders shall receive CPE credit for both preparation and presentation. The first time a seminar instructor or discussion leader presents a program, credit for actual preparation hours up to two (2) times the number of presentation hours shall be allowed.

~~(C3)~~ For repeat presentations, instructors shall receive no credit unless it can be demonstrated that the program content involved was changed and such change required additional study or research.

~~(D4)~~ The maximum credit for preparation and presentation shall not exceed fifty percent (50%) of the total CPE credit required in a reporting period.

~~(9i)~~ Registrants who write articles, books, or CPE programs which are published shall receive CPE credit for their research and writing time only for those articles, books, or CPE programs which enhance the ability of a registrant to practice public accounting and which require research and study in excess of the previous knowledge base of the writer.

~~(A4)~~ Such credit shall be measured in contact hours.

~~(B2)~~ Writing articles, books, or CPE programs for publication is an activity that involves a formal process of learning. For the registrant to receive CPE credit, the article, book, or CPE program must be published by a publisher not subject to the control of the writer. A nonreturnable copy of the published article, book, or CPE program must be submitted to the Board for determination of credits to be allowed.

~~(C3)~~ CPE credit from this activity shall be limited to twenty-five percent (25%) of the CPE credit required in a compliance period and will be determined by the Board on a case by case basis.

~~(10j)~~ The entire continuing education requirement may be accomplished by programs designated as "individual study" programs.

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10:15-31-5. Standards for structured CPE program reporting by participant

The following standards are in effect through December 31, 2003:

(~~1~~) Participants in structured CPE programs of learning shall maintain documentation of their participation. Such documents shall include, but not be limited to:

- (~~A~~) Name of participant;
- (~~B~~) Program sponsor;
- (~~C~~) Program title or description of content;
- (~~D~~) Date completed; and
- (~~E~~) Contact hours of credit recommended by the course sponsor.

(~~2~~) Participants in structured CPE programs shall retain the documentation of their participation in CPE programs for a period of five (5) years after the end of the compliance period in which the program is completed. Participants in structured CPE programs shall also retain a brochure and other promotional material which reflects the content of a course in the event the participant is requested by the Board to substantiate the course content.

(~~3~~) Acceptable evidence of completion includes, but is not limited to the following:

(~~A~~) For group programs, a certificate or other verification supplied by the sponsor and signed by the sponsor's agent.

(~~B~~) For individual study programs, a certificate supplied by the sponsor after satisfactory completion of a workbook or examination.

(~~C~~) For a university or college course that is successfully completed for credit, an official transcript reflecting the grade earned.

(~~D~~) For instruction credit, evidence obtained from the sponsor of having been the seminar instructor or discussion leader at a program.

(~~E~~) For published articles, books, or CPE programs, evidence of publication.

(~~4~~) Sponsors shall furnish a record of attendance to participants which shall reflect each of the elements listed in 10:15-31-5(~~a~~)(~~1~~).

10:15-31-6. Documentation and record-keeping standards for CPE sponsors

The following standards are in effect through December 31, 2003:

(~~1~~) In order to support the information which may be required of a participant in their courses, a CPE program sponsor of group or individual study programs shall maintain records of programs sponsored which shall include, but not be limited to the following:

(~~A~~) Documentation that the programs were developed and presented in compliance with the standards established by rule;

(~~B~~) Date of each program presentation;

(~~C~~) Location where course was presented;

(~~D~~) Name and qualifications of each seminar instructor, discussion leader, and speaker conducting a program for the sponsor;

(~~E~~) Outline of the course or documentation which is the equivalent of an outline;

(~~F~~) Accurate attendance records;

(~~G~~) Number of CPE contact hours recommended for each course; and

(~~H~~) A summary of the program evaluations by the participants.

(~~2~~) If a CPE program is not developed by the CPE program sponsor, the sponsor shall be responsible for ensuring that the CPE program has been developed in compliance with all applicable standards.

(~~3~~) Each CPE program sponsor shall maintain documentation as to the procedures followed to assure compliance with all applicable standards.

(~~4~~) The CPE program sponsor shall maintain records and information required by (~~a~~) (1) and (~~b~~) (2) of this Section for a period of five (5) years after the end of the compliance period in which the CPE course was completed.

(~~5~~) Failure of a CPE program sponsor to comply with the CPE standards may be cause for a hearing before the Board to determine whether the Board will accept credit for courses offered by the CPE sponsor until such time as the CPE sponsor can demonstrate to the Board that the compliance standards are being met.

SUBCHAPTER 32. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAMS

10:15-32-1. Standards for permit holders

The following standards are effective for all CPE earned beginning January 1, 2004 and thereafter:

(1) All permit holders should participate in learning activities that maintain and/or improve their professional competence.

(A) Selection of learning activities should be a thoughtful, reflective process addressing the individual registrant's current and future professional plans, current knowledge and skills level, and desired or needed additional competence to meet future opportunities and/or professional responsibilities.

(B) Registrants' fields of employment do not limit the need for CPE. Those performing professional services need to have a broad range of knowledge, skills, and abilities. Thus, the concept of professional competence should be interpreted broadly. Accordingly, acceptable continuing education encompasses programs contributing to the development and maintenance of both technical and non-technical professional skills.

(C) Acceptable subjects include accounting, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects, including personal development, may also be acceptable if they maintain

and/or improve the registrant's professional competence.

(D) To help guide their professional development, registrants may find it useful to develop a learning plan. The learning plan can be used to evaluate learning and professional competence development. It should be reviewed periodically and modified as professional competence needs change.

(2) Permit holders should comply with all applicable CPE requirements and should claim CPE credit only for CPE programs when the CPE program sponsors have complied with the Standards for CPE Program Presentation and Standards for CPE Program Reporting.

(A) Permit holders are responsible for compliance with all applicable CPE requirements, rules, and regulations of state licensing bodies, other governmental entities, membership associations, and other professional organizations or bodies. They should contact each appropriate entity to which they report to determine its specific requirements or any exceptions it may have to the standards presented herein.

(B) Periodically, registrants participate in learning activities which do not comply with all applicable CPE requirements, for example specialized industry programs offered through industry sponsors. If registrants propose to claim credit for such learning activities, they should retain all relevant information regarding the program to provide documentation to state licensing bodies and/or all other professional organizations or bodies that the learning activity is equivalent to one which meets all these Standards.

(3) Registrants are responsible for accurate reporting of the appropriate number of CPE credits earned and should retain appropriate documentation of their participation in learning activities, including:

(A) name and contact information of CPE program sponsor;

(B) title and description of content;

(C) date(s) of program; and

(D) number of CPE credits, all of which should be included in documentation provided by the CPE program sponsor.

(4) To protect the public interest, regulators require CPAs and PAs to document maintenance and enhancement of professional competence through periodic reporting of CPE. For convenience, measurement is expressed in CPE credits. However, the objective of CPE must always be maintenance/enhancement of professional competence, not attainment of credits. Compliance with regulatory and other requirements mandates that registrants keep documentation of their participation in activities designed to maintain and/or improve professional competence. In the absence of legal or other requirements, a reasonable policy is to retain documentation for a minimum of five years from the end of the year in which the learning activities were completed.

(5) Participants must document their claims of CPE credit. Examples of acceptable evidence of completion include:

(A) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor;

(B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination;

(C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor;

(D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received;

(E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college; and

(F) For published articles, books, or CPE programs, (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer on a form prescribed by the Board supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer(s) or publisher.

(6) Individuals who complete sponsored learning activities that maintain or improve their professional competence should claim the CPE credits recommended by CPE program sponsors.

(7) Registrants may participate in a variety of sponsored learning activities, such as workshops, seminars and conferences, self-study courses, Internet-based programs, and independent study. While CPE program sponsors determine credits, CPAs should claim credit only for activities through which they maintained or improved their professional competence. CPAs who participate in only part of a program should claim CPE credit only for the portion they attended or completed.

(8) Registrants may engage in independent study under the direction of a CPE program sponsor who has met the applicable standards for CPE program sponsors when the subject matter and level of study maintain or improve their professional competence.

(9) Independent study is an educational process designed to permit a participant to learn a given subject under the guidance of a CPE program sponsor one-on-one. Participants in an independent study program should:

(A) Enter into a written learning contract with a CPE program sponsor who must comply with the applicable standards for CPE program sponsors.

(B) Accept the written recommendation of the CPE program sponsor as to the number of credits to be earned upon successful completion of the proposed learning activities. CPE credits will be awarded only if:

(i) All the requirements of the independent study as outlined in the learning contract are met;

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(ii) The CPE program sponsor reviews and signs the participant's report;

(iii) The CPE program sponsor reports to the participant the actual credits earned; and

(iv) The CPE program sponsor provides the participant with contact information.

(C) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(D) Complete the program of independent study in 15 weeks or less.

(10) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

10:15-32-2. Standards for CPE Program Sponsors

The following standards are effective for all CPE earned beginning January 1, 2004 and thereafter.

(1) CPE program sponsors are responsible for compliance with all applicable standards and other CPE requirements.

(2) CPE program sponsors may have to meet specific CPE requirements of state licensing bodies, other governmental entities, membership associations, and/or other professional organizations or bodies. Professional guidance for CPE program sponsors is available from the AICPA and NASBA; state-specific guidance is available from the state boards of accountancy. CPE program sponsors should contact the appropriate entity to determine requirements.

10:15-32-3. Standards for CPE Program Development

The following standards are effective for all CPE earned beginning January 1, 2004 and thereafter.

(1) Sponsored learning activities must be based on relevant learning objectives and outcomes that clearly articulate the knowledge, skills, and abilities that can be achieved by participants in the learning activities. Learning activities provided by CPE program sponsors for the benefit of CPAs should specify the level, content, and learning objectives so that potential participants can determine if the learning activities are appropriate to their professional competence development needs. Levels include, for example, basic, intermediate, advanced, update, and overview.

(2) CPE program sponsors should develop and execute learning activities in a manner consistent with the prerequisite education, experience, and/or advance preparation of participants. To the extent it is possible to do so, CPE program sponsors should make every attempt to equate program content and level with the backgrounds of intended participants. All programs must clearly identify

prerequisite education, experience, and/or advance preparation, if any, in precise language so that potential participants can readily ascertain whether they qualify for the program.

(3) CPE program sponsors must use activities, materials, and delivery systems that are current, technically accurate, and effectively designed. CPE program sponsors must be qualified in the subject matter.

(A) To best facilitate the learning process, sponsored programs and materials must be prepared, presented and updated timely. Learning activities must be developed by individuals or teams having expertise in the subject matter. Expertise may be demonstrated through practical experience or education.

(B) CPE program sponsors must review the course materials periodically to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter.

(4) CPE program sponsors of group and self-study programs must ensure learning activities are reviewed by qualified persons other than those who developed them to assure that the program is technically accurate and current and addresses the stated learning objectives. These reviews must occur before the first presentation of these materials and again after each significant revision of the CPE programs. Individuals or teams qualified in the subject matter must review programs. When it is impractical to review certain programs in advance, such as lectures given only once, greater reliance should be placed on the recognized professional competence of the instructors or presenters. Using independent reviewing organizations familiar with these standards may enhance quality assurance.

(5) CPE program sponsors of independent study learning activities must be qualified in the subject matter. A CPE program sponsor of independent study learning activities must have expertise in the specific subject area related to the independent study. The CPE program sponsor must also:

(A) Review, evaluate, approve and sign the proposed independent study learning contract, including agreeing in advance on the number of credits to be recommended upon successful completion.

(B) Review and sign the written report developed by the participant in independent study.

(C) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(6) Self-study programs must employ learning methodologies that clearly define learning objectives, guide the participant through the learning process, and provide evidence of a participant's satisfactory completion of the program.

(A) To guide participants through a learning process, CPE program sponsors of self-study programs must elicit participant responses to test for understanding of the material, offer evaluative

feedback to incorrect responses, and provide reinforcement feedback to correct responses. To provide evidence of satisfactory completion of the course, CPE program sponsors of self-study programs must require participants to successfully complete a final examination with a minimum-passing grade of at least 70 percent before issuing CPE credit for the course. Examinations may contain questions of varying format, (for example, multiple-choice, essay and simulations.) If objective type questions are used, at least five questions per CPE credit must be included on the final examination. For example, the final examination for a five-credit course must include at least 25 questions.

(B) Self-study programs must be based on materials specifically developed for instructional use. Self-study programs requiring only the reading of general professional literature, IRS publications, or reference manuals followed by a test will not be acceptable. However, the use of the publications and reference materials in self-study programs as supplements to the instructional materials could qualify if the self-study program complies with each of the CPE standards.

10:15-32-4. Standards for CPE Program Presentation

The following standards are effective for all CPE earned beginning January 1, 2004 and thereafter.

(1) CPE program sponsors must provide descriptive materials that enable registrants to assess the appropriateness of learning activities. To accomplish this, CPE program sponsors must inform participants in advance of learning objectives, prerequisites, program level, program content, advance preparation, instructional delivery methods, recommended CPE credit, and course registration requirements.

(A) For potential participants to effectively plan their CPE, the program sponsor should disclose the significant features of the program in advance (e.g., through the use of brochures, Internet notices, invitations, direct mail, or other announcements). When CPE programs are offered in conjunction with non-educational activities, or when several CPE programs are offered concurrently, participants should receive an appropriate schedule of events indicating those components that are recommended for CPE credit. The CPE program sponsor's registration policies and procedures should be formalized, published, and made available to participants.

(B) CPE program sponsors should distribute program materials timely and encourage participants to complete any advance preparation requirements. All

programs should clearly identify prerequisite education, experience, and/or advance preparation requirements, if any, in the descriptive materials. Prerequisites should be written in precise language so that potential participants can readily ascertain whether they qualify for the program.

(2) CPE program sponsors must ensure instructors are qualified with respect to both program content and instructional methods used.

(A) Instructors are key ingredients in the learning process for any group program. Therefore, it is imperative that CPE program sponsors exercise great care in selecting qualified instructors for all group programs. Qualified instructors are those who are capable, through training, education, or experience of communicating effectively and providing an environment conducive to learning. They should be competent and current in the subject matter, skilled in the use of the appropriate instructional methods and technology, and prepared in advance.

(B) CPE program sponsors should evaluate the instructor's performance at the conclusion of each program to determine the instructor's suitability to serve in the future.

(3) CPE program sponsors must employ an effective means for evaluating learning activity quality with respect to content and presentation, as well as provide a mechanism for participants to assess whether learning objectives were met.

(A) The objectives of evaluation are to assess participant satisfaction with specific programs and to increase subsequent program effectiveness. Evaluations, whether written or electronic, should be solicited from participants and instructors for each program session, including self-study, to determine, among other things, whether:

- (i) Stated learning objectives were met;
- (ii) If applicable, prerequisite requirements were appropriate;
- (iii) Program materials were accurate;
- (iv) Program materials were relevant and contributed to the achievement of the learning objectives;
- (v) Time allotted to the learning activity was appropriate;
- (vi) If applicable, individual instructors were effective;
- (vii) Facilities and/or technological equipment was appropriate;
- (viii) Handout or advance preparation materials were satisfactory; or
- (ix) Audio and video materials were effective.

(B) CPE program sponsors should periodically review evaluation results to assess program effectiveness and should inform developers and instructors of evaluation results.

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(4) CPE program sponsors must ensure instructional methods employed are appropriate for the learning activities. Learning activities should be presented in a manner consistent with the descriptive and technical materials provided.

(A) CPE program sponsors should evaluate the instructional methods employed for the learning activities to determine if the delivery is appropriate and effective. Integral aspects in the learning environment that should be carefully monitored include the number of participants and the facilities and technologies employed in the delivery of the learning activity.

(B) CPE program sponsors are expected to present learning activities that comply with course descriptions and objectives. Appropriate supplemental materials may also be used.

10:15-32-5. Standards for CPE Program Measurement

The following standards are effective for all CPE earned beginning January 1, 2004 and thereafter.

(1) Sponsored learning activities are measured by program length, with one 50-minute period equal to one CPE credit. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

(A) For learning activities in which individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three CPE credits. When the total minutes of a sponsored learning activity are greater than 50, but not equally divisible by 50, the CPE credits granted should be rounded down to the nearest one-half credit. Thus, learning activities with segments totaling 140 minutes should be granted two and one-half CPE credits.

(B) While it is the participant's responsibility to report the appropriate number of credits earned, CPE program sponsors must monitor group learning activities to assign the correct number of CPE credits.

(C) For university or college credit courses that meet these CPE Standards, each unit of college credit shall equal the following CPE credits:

- (i) Semester System 15 credits; and
- (ii) Quarter System 10 credits;

(D) For university or college non-credit courses that meet these CPE standards, CPE credits shall be awarded only for the actual classroom time spent in the non-credit course.

(E) Credit is not granted to participants for preparation time.

(F) Only the portions of committee or staff meetings that are designed as programs of learning and comply with these standards qualify for CPE credit.

(2) CPE credit for self-study learning activities must be based on a pilot test of the average completion time. A sample of intended professional participants should be

selected to test program materials in an environment and manner similar to that in which the program is to be presented. The sample group of at least three individuals must be independent of the program development group and possess the appropriate level of knowledge before taking the program. The sample does not have to ensure statistical validity. CPE credits should be recommended based on the average completion time for the sample. If substantive changes are subsequently made to program materials further pilot tests of the revised program materials should be conducted to affirm or amend, as appropriate, the average completion time.

(3) Instructors or discussion leaders of learning activities should receive CPE credit for both their preparation and presentation time to the extent the activities maintain or improve their professional competence and meet the requirements of these CPE standards. The maximum credit for preparation and presentation shall not exceed fifty percent (50%) of the total CPE credit required in a reporting period.

(A) Instructors, discussion leaders, or speakers who present a learning activity for the first time should receive CPE credit for actual preparation time up to two times the number of CPE credits to which participants would be entitled, in addition to the time for presentation.

(B) For repeat presentations, CPE credit can be claimed only if it can be demonstrated that the learning activity content was substantially changed and such change required significant additional study or research.

(4) Writers of published articles, books, or CPE programs should receive CPE credit for their research and writing time to the extent it maintains or improves their professional competence. CPE credit from this activity shall be limited to twenty-five percent (25%) of the CPE credit required in a compliance period and will be determined by the Board on a case by case basis. Writing articles, books, or CPE programs for publication is a structured activity that involves a process of learning. CPE credits should be claimed only upon publication.

(5) CPE credits recommended by a CPE program sponsor of independent study must not exceed the time the participant devoted to complete the learning activities specified in the learning contract. The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

10:15-32-6. Standards for CPE Program Reporting

The following standards are effective for all CPE earned beginning January 1, 2004 and thereafter.

(1) CPE program sponsors must provide program participants with documentation of their participation, which includes the following:

- (A) CPE program sponsor name and contact information;
- (B) Participant's name;
- (C) Course title;
- (D) Course field of study;
- (E) Date offered or completed;
- (F) Type of instructional/delivery method used;
- (G) Amount of CPE credit recommended; and
- (H) Verification by CPE program sponsor representative.

- (i) When the pilot test was conducted;
- (ii) The intended participant population;
- (iii) How the sample was determined;
- (iv) Names and profiles of sample participants;
and
- (v) A summary of participants' actual completion time.

(2) CPE program sponsors should provide participants with documentation to support their claims of CPE credit. Acceptable evidence of completion includes:

- (A) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor;
- (B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination;
- (C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor;
- (D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received;
- (E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college; and
- (F) For published articles, books, or CPE programs.
 - (i) A copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor; and
 - (ii) A statement from the writer on a form prescribed by the Board supporting the number of CPE hours claimed.

(3) CPE program sponsors must retain adequate documentation for five years to support their compliance with these standards and the reports that may be required of participants.

- (A) Evidence of compliance with responsibilities set forth under these Standards which is to be retained by CPE program sponsors includes, but is not limited to:
 - (i) Records of participation;
 - (ii) Dates and locations;
 - (iii) Instructor names and credentials;
 - (iv) Number of CPE credits earned by participants; and
 - (v) Results of program evaluations.
- (B) Information to be retained by developers includes copies of program materials, evidence that the program materials were developed and reviewed by qualified parties, and a record of how CPE credits were determined.
- (C) For CPE program sponsors offering self-study programs, appropriate pilot test records must be retained regarding the following:

SUBCHAPTER 35. REINSTATEMENT

10:15-35-1. Application for reinstatement

- (a) Upon application in writing on a form prescribed by the Board an individual may request reinstatement of a canceled, suspended, or revoked certificate or license.
- (b) The applicant shall be of good moral character.
- (c) In addition to the application fee the applicant shall pay the applicable required registration fees and permit fee, if applicable, the fee for the permit to practice public accounting if making application for the permit, as well as all costs and fines assessed by the Board which remain unpaid at the date the application is filed.

10:15-35-2. Evaluation of applications for reinstatement

- (a) Evaluation and approval of applications for reinstatement meeting all applicable requirements for reinstatement shall be performed by the Executive Director.
- (b) Denial of applications failing to meet all applicable requirements for reinstatement shall be by the Board.

10:15-35-4. Hearing on application for reinstatement

Upon request by the applicant or any other person, a public hearing may be scheduled before the Board regarding the reinstatement of a certificate or license.

SUBCHAPTER 37. ENFORCEMENT PROCEDURES

10:15-37-1. Initiation of investigation

- (a) When a signed, written complaint or information from a published source comes to the Board, an individual member of the Board, the Executive Director, or to any member of the Board staff concerning alleged violations of the Oklahoma Accountancy Act or the rules of the Oklahoma Accountancy Board, the information shall be forwarded to the Vice Chairman and one (1) other member of the Board who is not an officer of the Board appointed by the Chairman to receive such information.
- (b) The member(s) of the Board receiving the information may make appropriate inquiry to verify the information received. Upon completion of the preliminary inquiry, the Board member(s) may take one (1) or more of the following actions:

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- (1) Terminate the investigation because it appears there has been no violation of the law or rules or there is insufficient evidence to support any allegation of a violation.
- (2) Attempt an informal resolution of the allegations of violations contained in the information received.
- (3) Refer the matter to the Investigation Committee.
- (4) Refer the matter to an individual investigator to obtain additional information.
- (5) Refer the information to a special prosecutor, or legal counsel for further action.
- (6) Hold the file in abeyance pending receipt of information as a product of an investigation or hearing by another state or federal agency.

10:15-37-10. Investigation costs

~~(a) Members of the Investigation Committee shall be compensated at the rate of Twenty Five Dollars (\$25.00) per hour for the time spent performing duties directly related to the business of the Investigation Committee.~~

~~(ba) Investigators~~ Members of the Investigation Committee, investigators, and Special Prosecutors may be compensated at a rate established by the Board on a case by case basis.

~~(eb)~~ Members of the Investigation Committee, investigators and Special Prosecutors shall submit claims for payment in the same manner as other vendors doing business with the Board.

~~(ec)~~ Members of the Investigation Committee, investigators, and Special Prosecutors shall also be reimbursed for necessary expenses incurred in the performance of their duties upon submission of receipts.

10:15-37-11. Felony convictions and pleas

(a) The provisions of this section shall be applicable, except where indicated, to applicants for the examination, examination candidates, applicants for certificates and licenses, and registrants.

(b) When an applicant has been convicted of or plead guilty or ~~nolo contendere~~ *nolo contendere* to a felony, the applicant shall be required to furnish to the Board documentation of the charges and the final judgment of the Court in the form of certified documents from the Court file. Failure by an applicant for the examination to furnish adequate documentation no later than sixty (60) days prior to the commencement of the examination applied for shall result in denial of the application.

(c) Failure of any applicant to cooperate with an investigation conducted by the Board, shall result in denial of the application.

(d) The Vice Chairman shall review all documents pertaining to the applicant's conviction or plea and may further require that an investigation be conducted in accordance with Subchapter 37 of the Oklahoma Administrative Code.

(e) The Board may obtain from the Oklahoma State Bureau of Investigation, or other sources, a criminal record check of any applicant ~~who has had a felony conviction or plea.~~

(f) The Vice Chairman shall make a preliminary determination of whether the applicant satisfies the requirement of good moral character as set forth in Sections 15.8 and 15.9 of the Act. The Vice Chairman shall consider, but not be limited

to, the nature of the felony conviction or plea and the time period which has elapsed since the offense was committed or judgement was entered.

(g) When, in the opinion of the Vice Chairman, public protection requires conditional approval of an applicant, the Vice Chairman may negotiate a consent order with the applicant. The consent order shall set forth the terms and conditions proposed by the Vice Chairman for approving the application. All consent orders must be either approved or disapproved by the Board.

(h) If the Vice Chairman is unable to negotiate a consent order with an applicant, or if the Board does not approve the consent order, a hearing may be held to determine whether the application may be approved and to determine conditions for such approval which may be imposed by the Board as a result of the hearing.

(i) A list of all applicants having criminal histories, with information describing each felony conviction or plea and the penalty imposed for each, shall be presented to the ~~Board~~ Vice Chair. Board approval must be granted, or a hearing, as ordered by the Board, must be held in conjunction with each application presented to the Board.

(j) Individual registrants who have a felony conviction or plea are subject to the provisions of the Act and the enforcement procedures set forth in this Subchapter.

SUBCHAPTER 39. RULES OF PROFESSIONAL CONDUCT

10:15-39-2. Special definitions [REVOKED]

~~For purposes of the application of the Rules of Professional Conduct:~~

~~(1) "Related individual" includes spouses, and dependent persons, whether or not related for all purposes of complying with the Rules of Professional Conduct, provided that the independence of the registrant and the firm of the registrant will not normally be impaired solely because of employment of a spouse or dependent person by a client if the employment is in a position that does not allow "significant influence" over the operating, financial, or accounting policies of the client. In the event such employment is in a position in which the activities of the related individual are audit sensitive, even though not a position of significant influence, the registrant should not participate in the engagement.~~

~~(2) "Audit Sensitive" activities of an individual are activities which are normally an element of or subject to significant internal accounting controls. For example, the following positions, which are not intended to be all inclusive, would normally be considered audit sensitive, even though not positions of significant influence: cashier, internal auditor, accounting supervisor, purchasing agent, or inventory warehouse supervisor.~~

~~(3) "Close relative" of a registrant is a non dependent child, stepchild, brother, sister, grandparent, parent, parent in law, and their respective spouses. Close relatives~~

~~of the registrant do not include the brothers and sisters of the spouse of the registrant.~~

10:15-39-3. Independence

(a) A registrant who is performing an engagement in which the registrant will issue a report on or compilation of financial statements of any client, other than a report or compilation in which a lack of independence is disclosed, must be independent with respect to the client in fact and appearance.

(b) Independence will be considered to be impaired if, for example, during the period of the professional engagement or at the time of the issuing of the report:

- (1) The registrant or a related individual:
 - (A) had or was committed to acquire any direct or material indirect financial interest in the client; or
 - (B) was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the client; or
- (2) The registrant or a related individual had any joint or closely-held business investment with the client or any officer, director or principal stockholder thereof which was material in relation to the net worth of either the client or the registrant; or
- (3) The registrant or a related individual had any loan to or from the client or any officer, director, or principal stockholder of a client except as permitted as follows:
 - (A) The following types of loans obtained from a financial institution pursuant to the normal lending procedures of that institution, terms, and requirements and that meet the other specified conditions stated in this section, and that meet the conditions set forth in (B) and (C) of this paragraph.
 - (i) Home mortgages.
 - (ii) Other secured loans. The collateral on such loans must equal or exceed the remaining balance of the loan ~~on January 1, 1993, and at all times thereafter.~~
 - (iii) Loans not material to the net worth of the registrant.
 - (iv) The following types of personal loans obtained from a financial institution client for which independence is required pursuant to the normal lending procedures, terms, and requirements of that institution and such loans must, at all times, be kept current as to all terms:
 - (I) Automobile loans and leases collateralized by the automobile;
 - (II) Loans of the surrender value under terms of an insurance policy;
 - (III) Borrowing fully collateralized by cash deposits at the same financial institution such as but not limited to "passbook" loans;
 - (IV) Credit cards and cash advances on checking accounts with an aggregate balance not paid currently of Five Thousand Dollars (\$5,000.00) or less.

(B) The loans described in (A) of this paragraph must:

- ~~(i) exist as of January 1, 1993;~~
- ~~(ii) have been obtained from a financial institution prior to it becoming a client requiring independence;~~
- ~~(iii) have been obtained from a financial institution for which independence was not required and that were later sold to a client for which independence is required; or~~
- ~~(iv) have been obtained from a registrant's firm's financial institution client requiring independence, by a registrant or related individual borrower prior to that borrower becoming a person with respect to such client for whom independence is required.~~

(C) Independence will be considered to be impaired if ~~after January 1, 1993,~~ a CPA or PA obtains a loan of the type described in this paragraph from an entity that, at the time of obtaining the loan, is a client requiring independence. Grandfather loans must, at all times, be current as to all terms and such terms shall not be renegotiated after the latest of the dates in (B) of this paragraph.

(c) Independence will also be considered to be impaired if, during the period covered by the financial statements, during the period of the professional engagement or at the time of issuing the report the registrant, the firm of the registrant or a related individual, as defined in this Subchapter:

- (1) was associated with the client as a promoter, underwriter, voting trustee, director, or officer, or in any capacity equivalent to that of a member of management or of an employee; or
- (2) was a trustee for any pension or profit sharing trust of the client; or
- (3) had any direct or material indirect business relationship, other than as a consumer in the normal course of business, with a client or with individuals associated with the client in a decision making capacity, such as officers, directors or substantial stockholders, including but not limited to joint business ventures, limited liability companies or partnerships, limited partnership agreements, investments in supplier or customer companies, leasing interests, except for immaterial landlord-tenant relationships, and sales by the registrant of items other than professional services;
- (4) received other compensation from a client or a third party, or had a commitment to receive from the client or a third party, with respect to any services or products procured or to be procured by the client from a third party; or
- (5) had a commitment from the client for a contingent fee. For this purpose, a contingent fee means compensation for the performance of services the payment of which, or the amount of which, is contingent upon the findings or results of such services. However, fees shall not be regarded as being contingent if fixed by a court or other public authorities or, in tax matters, if determined

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based on the results of judicial proceedings or findings of governmental agencies.

(d) The examples of impaired independence described in (b) and (c) of this Section are not intended to be all-inclusive.

(e) The independence of a registrant's firm would be considered to be impaired with respect to an enterprise pursuant to the following:

(1) The independence of a registrant's firm would be considered to be impaired with respect to an enterprise if:

(A) during the period of the professional engagement or at the time of expressing an opinion, an individual participating in the engagement has a close relative with a financial interest in the enterprise that was material to the close relative and of which the individual participating in the engagement has knowledge.

(B) during the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion:

(i) An individual participating in the engagement has a close relative who could exercise significant influence over the operating, financial, or accounting policies of the enterprise or who is otherwise employed in a position where the activities of the individual are "audit sensitive"; or

(ii) A proprietor, partner, shareholder, or individual with a managerial position, any of whom are located in an office participating in a significant portion of the engagement, has a close relative who could exercise significant influence over the operating, financial, or accounting policies of the enterprise.

(2) The situations described in (1) of this Subsection should be considered minimum standards for the impairment of independence. It is impossible to enumerate all circumstances wherein the appearance of a registrant's independence might be questioned by third parties; but the registrant should be aware that other factors may also impair the independence or appearance of independence of the registrant. For example, a registrant's relationship with a cohabitant may be equivalent to that of a spouse. In addition, in situations involving the assessment of the association of any relative or dependent individual with a client, a registrant must consider whether the strength of personal and business relationships between the registrant and the relative or dependent individual, considered in conjunction with the specified association with the client, would lead a reasonable person aware of all the facts, and taking into consideration normal strength of character and normal behavior under the circumstances, to conclude that the situation poses an unacceptable threat to the registrant's objectivity and appearance of independence.

10:15-39-7. Responsibilities to clients

(a) **Confidential client communications.** Except by permission of the client, or the heirs, successors, or personal representatives of the client, a registrant or any partner, officer, shareholder, or employee of a registrant shall not voluntarily

disclose information communicated to the registrant by the client relating to and in connection with professional services rendered to the client by the registrant. Such information shall be deemed confidential, provided, however, that nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures in court proceedings, in investigations or proceedings pursuant to the provisions of the Oklahoma Accountancy Act, in ethical investigations conducted by private professional accounting organizations, or in the course of quality reviews.

(b) **Records of clients.**

(1) Client records do not include the following:

(A) Records of the procedures applied;

(B) The tests performed;

(C) The information obtained and the pertinent conclusions reached in an audit, review, compilation, tax, special report or other engagement; and

(D) Are not limited to audit or other programs, analyses, memoranda, letters of confirmation and representations, abstracts of company documents and schedules or commentaries prepared or obtained by the registrant.

(2) The form of working papers may be handwritten, typewritten, printed, photocopies, photographs, computer data, or any other letters, words, pictures, sounds, symbols or combinations thereof.

(3) Registrants shall adopt reasonable procedures for the safe custody of working papers and shall retain working papers for a period of five years to satisfy applicable professional standards and pertinent legal requirements for record retention.

(4) Registrants shall retain working papers during any pending Board investigation, disciplinary action, or other legal action or proceeding if no Board investigation is pending.

(5+) If Client records include and, if not previously furnished, a registrant shall furnish to the client or former client, upon request and reasonable notice:

(A) A copy of the working papers of the registrant, to the extent that such working papers include records that would ordinarily constitute part of the records of the client and are not otherwise available to the client; and

(B) Any accounting or other records belonging to, or obtained from or on behalf of the client, that the registrant removed from the premises of the client or received for the account of the client; but the registrant may make and retain copies of such documents of the client when they form the basis for work done by the registrant.

(6) Unpaid fees do not constitute justification for retention of client records.

(c) A registrant may furnish the requested records in computerized form, provided that the records must be furnished in a format which is useable by the client or the registrant must furnish readable printed copies of the documents requested.

Examples of records described in this section include, but are not limited to, general ledgers, subsidiary ledgers, adjusting, closing, and reclassification entries, journal entries and depreciation schedules, or their equivalents.

[OAR Docket #03-968; filed 5-20-03]

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

[OAR Docket #03-1004]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

317:2-1-2. [AMENDED]
(Reference APA WF # 02-28)

AUTHORITY:

Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; the Health Insurance Portability and Accountability Act (HIPAA) of 1996

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N/A

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N/A

ANALYSIS:

Grievance Procedures and Process rules are in need of revision to comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 regulations by adding language concerning confidentiality and hearings. Other revisions direct readers to correct rule sites.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003.

317:2-1-2. Grievance hearings

(a) **Overview.** The grievance procedure allows a recipient to appeal a decision which adversely affects their rights.

Examples are decisions involving medical services, prior authorizations for medical services, discrimination complaints, or HMO contract disputes. Appealable reviews are listed at Section 317:2-1-2(b). Recipient appeals are first reviewed by a three person program panel that may or may not contact the recipient [Section OAC 317:2-1-2.2(a)]. The recipient appeal next goes to the ALJ. The recipient must appear at this hearing and it is conducted according to Section OAC 317:2-1-2(c). The recipient may then appeal to the CEO, which is a record review at which the recipient does not appear (Section OAC 317:2-1-4). Provider appeals generally go to the ALJ (see Section OAC 317:2-1-2.1) and generally follow the procedure at OAC 317:2-1-2(c).

(b) **Receipt of grievances.**

(1) The Appellant (Appellant is the person or provider who files a grievance) shall file 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-1 forms are for recipient complaints, LD-2 forms are for provider grievances and LD-3 forms are for nursing home wage enhancement grievances.) In the case of tax warrant intercept appeals, the Appellant shall file a LD form requesting a grievance hearing within 30 days of written notice sent by the OHCA according to Title 68, Oklahoma Statutes, Section 205.2.

(2) If the LD form is not received within 20 days of the triggering event, OHCA shall send 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 form is not received within 30 days of written notice sent by OHCA according to Title 68, Oklahoma Statutes, Section 205.2, OHCA shall send the Appellant a letter stating the appeal will not be heard because it is untimely.

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

(4) If the Appellant is a member or a contract provider of a Health Maintenance Organization (HMO) and the HMO appeal process has not been used, the Appellant will be referred to the HMO. Appellant must exhaust the HMO appeals process, except in cases where it appears that a danger to life or health exists, then the appeal will be handled directly by OHCA. Any tax warrant intercept appeal will be handled directly by the OHCA.

(5) The docket clerk will send the Appellant, the HMO, and any other necessary party notice which states the hearing location, date, and time. If the Appellant is a provider, Appellant must serve the HMO, if involved, a copy of Appellant's LD form.

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

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

(2) Disputes involving the SoonerCare Plus or SoonerCare Choice contracts and all contracts or subcontracts with health care providers;

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- (3) Appeals by Long Term Care facilities for non-payment 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)(B), (e)~~(6)~~ (8), and (e)~~(10)~~ (12);
 - (4) Petitions for Rulemaking;
 - (5) Discrimination complaints regarding the Medicaid program;
 - (6) Appeals to the decision made by the Business Contracts manager related to Purchasing as found at OAC 317:10-1-5, 317:10-1-13, 317:25-1-5, and 317:25-1-12, and other appeal rights granted by contract;
 - (7) Appeals which relate to the scope of services, covered services, complaints regarding service or care, enrollment, disenrollment, and reenrollment in the Soon-Care Program;
 - (8) Fee for Service appeals regarding the furnishing of services, including prior authorizations;
 - (9) Nursing home contracts which are terminated, denied, or nonrenewed;
 - (10) Drug rebate appeals; ~~and~~
 - (11) Appeals which relate to the tax warrant intercept system through the Oklahoma Health Care Authority;
 - (12) Complaints regarding the possible violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and
 - (13) Proposed administrative sanction appeals pursuant to OAC 317:35-13-7.
- (d) **Hearing, ALJ, and Burden of Proof.**
- (1) Hearings shall be conducted in an informal manner without formal rules of evidence or procedure.
 - (2) No party is required to be represented by an attorney. Recipients may represent themselves or be represented by another party. Corporate entities must authorize a representative to represent a corporation in a hearing.
 - (3) The OHCA Administrative Law Judge or designee may:
 - (A) Rule on any requests for extension of time;
 - (B) Hold pre-hearing conferences to settle, simplify, or identify issues in a proceeding or to consider other matters that may end in the expeditious disposition of the proceeding;
 - (C) Require the parties to state their positions concerning the various issues in the proceeding;
 - (D) Require the parties to produce for examination those relevant witnesses and documents under their control;
 - (E) Rule on motions and other procedural items;
 - (F) Regulate the course of the hearing and conduct of the participants;
 - (G) Establish time limits for the submission of motions or memoranda;
 - (H) Impose appropriate sanctions against any person failing to obey an order of the ALJ or authorized under the rules in this Chapter which may include:
 - (i) Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
 - (ii) Excluding all testimony of an unresponsive or evasive witness; or
 - (iii) Expelling the person from further participation in the hearing;
 - (I) Take official notice of any material fact not appearing as evidence in the record, if the fact is among traditional matters of judicial notice;
 - (J) Administer oaths or affirmations;
 - (K) Determine the location of the hearing;
 - (L) Require the parties to be present and tape record the proceedings. In the event of the failure of a party to appear, the ALJ shall determine if good cause exists for the failure to appear. If good cause does not exist the ALJ may find in favor of the party who was present;
 - (M) Allow either party to request that the hearing be recorded by a court reporter with costs to be borne by the requesting party. The original of such transcription, if ordered, shall be given to the ALJ with a copy to be given to the requesting party;
 - (N) Recess and reconvene the hearing;
 - (O) Set and/or limit the time frame of the hearing;
 - (P) Reconsider or rehear a matter for good cause shown; and
 - (Q) Send a copy of the decision by the ALJ to both parties outlining their rights to appeal the decision. The decision letter need not contain findings of fact or conclusions of law.
 - (4) The burden of proof during the hearing shall be upon the appellant and the ALJ shall decide the case based upon a preponderance of evidence standard as defined by the Oklahoma Supreme Court.
 - (5) A copy of the decision will be forwarded to the docket clerk.
- [OAR Docket #03-1004; filed 5-20-03]*
-
- TITLE 317. OKLAHOMA HEALTH CARE
AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE
FOR SERVICE**
- [OAR Docket #03-998]*
- RULEMAKING ACTION:**
PERMANENT final adoption
- RULES:**
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-5. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 61. Home Health Agencies
317:30-5-547. [AMENDED]
Part 85. ADvantage Program Waiver Services
317:30-5-764. [AMENDED]
(Reference APA WF # 02-21A, 02-22, and 02-23A)

AUTHORITY:

Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 1915(c) of the Social Security Act; 1619b of the Social Security Act

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Subchapter 3. General Provider Policies
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Subchapter 5. Individual Providers and Specialties
Part 61. Home Health Agencies
317:30-5-547. [AMENDED]
(Reference APA WF # 02-22)

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20 Ok Reg 376

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Subchapter 5. Individual Providers and Specialties
Part 85. ADvantage Program Waiver Services
317:30-5-764. [AMENDED]
(Reference APA WF # 02-23A)

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20 Ok Reg 645

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INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Medical Providers-Fee for Service, General Provider Policies specific, rules are being revised to institute co-payments for prescription drugs for Home and Community Based Waiver service recipients. Currently, rules specify that a co-payment is not required for any Home and Community Based Waiver services. Individuals that are found eligible for the Home and Community Based Waiver are determined to be categorically needy and do not have a spenddown for Medicaid services. Due to Agency and State budgetary constraints and the Oklahoma constitutional requirement to maintain a balanced budget, the Agency identified several program areas in which significant savings could be made. Other revisions are needed to make agency rules conform to Oklahoma's Medicaid State Plan and existing agency

procedure by clarifying that all services to pregnant women do not require a co-payment.

Medical Providers-Fee for Service, Home Health Agencies specific, rules are being revised to remove the prior authorization requirement for home health visits in excess of fifteen visits per month. Current rules state that home health visits are limited to 36 visits per calendar year per eligible recipient and visits which exceed fifteen per month require prior authorization. Providers claiming for more than 15 visits in a month on one claim are only able to be paid for the first 15 visits with the system denying all remaining visits. The provider then must submit a second claim to request payment of the visits beyond the 15th visit, request a prior authorization for those visits, and wait for prior authorization approval before the second claim is paid. The administrative costs for time spent by the Medical Authorization and Customer Services Units on the additional claims and inquiries will be saved while streamlining the payment for providers. Therefore, rule revisions are needed to remove the prior authorization requirement for home health visits in excess of fifteen visits per month.

Medical Providers-Fee for Service, ADvantage Program Waiver services specific, rules are being revised to require MMIS prior authorization for all ADvantage service plan approved services. Existing rules allow the Administrative Agent (Long-Term Care Authority of Tulsa) to prior authorize only a subset of ADvantage services on the MMIS prior authorization file. Policy revisions allow the Administrative Agent to post, via electronic files generated from approved service plan or service plan updated records on the Waiver Management Information Systems, the prior authorizations to the MMIS. A benefit of the prior authorization process will be to identify problems related to consumer eligibility at the beginning of the service delivery authorization rather than to discover problems only after the ADvantage providers' claims are denied. The revision are needed to reduce reimbursement delays through more timely resolution of eligibility related issues and a reduction in the number of denied provider claims. An additional revision will identify certain ADvantage services and associate them with other established Medicaid or State funded services as those services' rate setting methodologies are currently used to determine the ADvantage service rates since the providers must have the equivalent qualifications to provide both services.

CONTACT PERSON:

Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003.

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-5. Assignment and Cost Sharing

(a) **Definitions.** The following words and terms, when used in subsection (c) of this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Fee-for-service contract"** means the provider agreement specified in OAC 317:30-3-2. This contract is the contract between the Oklahoma Health Care Authority and medical providers which provides for a fee with a specified service involved.

(2) **"Managed care health plan"** means those entities defined at OAC 317:25-5-2, 317:25-3-1 and 317:25-3-2.

(3) **"Within the scope of services"** means the set of covered services defined at OAC 317:25-5-30 and the provisions of the Health Plan contracts in the SoonerCare

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Plus program or Primary Care Case Manager contracts in the SoonerCare Choice Program.

(4) **"Outside of the scope of the services"** means all medical benefits outside the set of services defined at OAC 317:25-5-30 and the provisions of the Health Plan contracts in the SoonerCare Plus program or Primary Care Case Manager contracts in the SoonerCare Choice Program.

(b) **Assignment in fee-for-service.** The Authority's Medicaid State Plan provides that participation in the medical program is limited to providers who accept, as payment in full, the amounts paid by OHCA plus any deductible, coinsurance, or copayment required by the State Plan to be paid by the recipient and make no additional charges to the patient or others. Payments made by a SoonerCare Plus Health Plan are considered Medicaid payments and are subject to the payment in full requirements of the Medicaid program. Providers who render services to SoonerCare Plus members will be paid the Medicaid Fee for Service allowable amount unless there is a participation agreement between the provider and the Health Plan.

(1) OHCA presumes acceptance of assignment upon receipt of an assigned claim. This assignment, once made, cannot be rescinded, in whole or in part by one party, without the consent of the other party.

(2) Once an assigned claim has been filed, the patient must not be billed and the patient is not responsible for any balance except the amount indicated by OHCA. The only amount a patient may be responsible for is the personal participation as agreed to at the time of determination of eligibility, or the patient may be responsible for services not covered under the medical programs. The amount of personal participation will be shown on the OHCA notification of eligibility. In any event, the patient should not be billed for charges on an assigned claim until the claim has been adjudicated or other notice of action received by the provider. Any questions regarding amounts paid should be directed to OHCA, Customer Services.

(3) When potential assignment violations are detected, the Authority will contact the provider to assure that all provisions of the assignment agreement are understood. When there are repeated or uncorrected violations of the assignment agreement, the Authority is required to suspend further payment to the provider.

(c) **Assignment in a managed care plan.** Any provider who holds a fee for service contract and also executes a contract with a Medicaid Managed Care Health Plan or with the Authority to serve as a provider in the Primary Care Case Management program shall adhere to the rules of this subsection regarding assignment. Payments made by a SoonerCare Plus Health Plan are considered Medicaid payments and are subject to the payment in full requirements of the Medicaid program. Providers who render services to SoonerCare Plus members will be paid the Medicaid Fee for Service allowable amount unless there is a participation agreement between the provider and the Health Plan.

(1) If the service provided to the recipient in the Managed Care Health Plan is within the scope of the services

outlined in the SoonerCare Plus Contract or the SoonerCare Choice Contract, the recipient shall not be billed for the service. In this case, the provider shall pursue collection from the Managed Care Health Plan in the case of the SoonerCare Plus Program or the Primary Care Physician in the case of the SoonerCare Choice Program.

(2) If the service provided to the recipient in the Managed Care Health Plan is outside of the scope of the services outlined in the SoonerCare Plus Contract or the SoonerCare Choice Contract, then the provider may bill or seek collection from the recipient.

(3) In the event there is a disagreement whether the services are in or out of the scope of the contracts referenced in (1) and (2) of this subsection, the Oklahoma Health Care Authority shall be the final authority for this decision. The provider shall be required to appeal the denial of payment to the Managed Care Health Plan in the case of the SoonerCare Plus Program. After appeal to the Managed Care Health Plan, the provider may appeal to OHCA under the provisions of OAC 317:2-1-2.1. The provider seeking payment under the SoonerCare Choice Program may appeal to OHCA under the provisions of OAC 317:2-1-2.1.

(4) Violation of this provision shall be grounds for a contract termination in the fee-for-service program and all managed care programs.

(d) **Cost Sharing-Copayment.** Section 1902(a)(14) of the Social Security Act permits states to require certain recipients to share some of the costs of Medicaid by imposing upon them such payments as enrollment fees, premiums, deductibles, coinsurance, copayments, or similar cost sharing charges. OHCA requires a copayment of some Medicaid recipients for certain medical services provided through the fee for service program. A copayment is a charge which must be paid by the recipient to the service provider when the service is covered by Medicaid. Section 1916(e) of the Act requires that a provider participating in the Medicaid program may not deny care or services to an eligible individual based on such individual's inability to pay the copayment. A person's assertion of their inability to pay the copayment establishes this inability. This rule does not change the fact that a recipient is liable for these charges and it does not preclude the provider from attempting to collect the copayment.

(1) Copayment is not required of the following recipients:

(A) Individuals under age 21. Each recipient's date of birth is available on the REVS system or through a commercial swipe card system.

(B) Recipients in nursing facilities and intermediate care facilities for the mentally retarded.

(C) Pregnant women.

(D) Home and Community Based Waiver service recipients except for prescription drugs.

(2) Copayment is not required for the following services:

~~(A) Services furnished to pregnant women if the services are related to the pregnancy or to any other~~

~~medical condition which may complicate the pregnancy.~~

~~(B) Family planning services. Includes all contraceptives and services rendered.~~

~~(C) Emergency services provided in a hospital, clinic, office, or other facility.~~

~~(D) Home and Community Based Waiver services available through the ICF/MR Waiver and ADP Waiver and ADvantage waiver.~~

- (3) Copayments required include:
- (A) \$3.00 per day for inpatient hospital services.
 - (B) \$3.00 per day for outpatient hospital services.
 - (C) \$3.00 per day for ambulatory surgery services including free-standing ambulatory surgery centers.
 - (D) \$1.00 for each service rendered by the following providers:
 - (i) Physicians,
 - (ii) Optometrists,
 - (iii) Home Health Agencies,
 - (iv) Rural Health Clinics,
 - (v) Certified Registered Nurse Anesthetists, and
 - (vi) Federally Qualified Health Centers.
 - (E) Prescription drugs.
 - (i) \$1.00 for prescriptions having a Medicaid allowable of \$29.99 or less.
 - (ii) \$2.00 for prescriptions having a Medicaid allowable of \$30.00 or more.
 - (F) Crossover claims. Dually eligible Medicare/Medicaid recipients must make a copayment of \$.50 per service for all Part B covered services. This does not include dually eligible HCBW service recipients.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 61. HOME HEALTH AGENCIES

317:30-5-547. Reimbursement

(a) Payment is made for nursing services and home health aide services at a rate established by OHCA on a per visit basis. Reimbursement for any combination thereof shall not exceed 36 visits per calendar year per eligible recipient. ~~Visits which exceed fifteen per month require prior authorization.~~

(b) Reimbursement for durable medical equipment and supplies will be made using the lesser amount derived from one of the methods listed below:

- (1) **Method 1.** Reimbursement for durable medical equipment and supplies will be set at the lesser of the OHCA current allowed charge or the 1992 Medicare allowed charge; or
- (2) **Method 2.** Reimbursement for durable medical equipment and supplies for which there is no allowable under method one will be made using the suppliers wholesale

cost plus a price point percentage for profit and shipping. Wholesale Cost

- (A) less than \$100 PLUS 30% of wholesale cost
 - (B) \$100 - \$500 PLUS 25% of wholesale cost
 - (C) \$501 - \$999 PLUS 20% of wholesale cost
 - (D) \$1000 or more PLUS 15% of wholesale cost; or
- (3) **Method 3.** If there is no allowable charge derived by either (1)-(2) of this subsection, billed charges less the percentage will be allowed. Billed Charges:
- (A) \$1000 or more MINUS 30% of billed charges
 - (B) \$501 - 999 MINUS 25% of billed charges
 - (C) \$100 - \$500 MINUS 20% of billed charges
 - (D) less than \$100 MINUS 15% of billed charges
- (c) Reimbursement for oxygen and oxygen supplies is made at the OHCA allowable in effect in calendar 1992.

PART 85. ADVANTAGE PROGRAM WAIVER SERVICES

317:30-5-764. Reimbursement

(a) Rates for waiver services are set in accordance with the rate setting process by the Committee for Rates and Standards and approved by the Oklahoma Health Care Authority Board.

(1) The rate for NF Respite is set equivalent to the rate for enhanced nursing facility services that require providers having equivalent qualifications;

(2) The rate for daily units for Adult Day Health Care are set equivalent to the rate established by the Oklahoma Department of Human Services for the equivalent services provided for the DHS Adult Day Service Program that require providers having equivalent qualifications;

(3) The rate for units of Home-Delivered Meals are set equivalent to the rate established by the Oklahoma Department of Human Services for the equivalent services provided for the DHS Home-Delivered Meals Program that require providers having equivalent qualifications;

(4) The rates for units of In-Home Respite, CHC Personal Care, and CHC In-Home Respite are set equivalent to State Plan Agency Personal Care unit rate which require providers having equivalent qualifications;

(5) The rates for a unit of Skilled Nursing and CHC Skilled Nursing are set equivalent to State Plan Home Health Benefit Skilled Nursing unit that require providers having equivalent qualifications.

(b) The ~~certified AA approved~~ ADvantage service plan ~~authorizes services~~ is the basis for the MMIS service prior authorization, specifying:

- (1) service;
- (2) service provider;
- (3) units authorized; and
- (4) begin and end dates of service authorization.

~~(c) Providers file on Claim Form HCFA 1500.~~

~~(d) The AA prior authorizes on the MMIS prior authorization file the following ADvantage services:~~

- ~~(1) Medical Equipment and Supplies;~~
- ~~(2) Environmental Modifications;~~
- ~~(3) Nursing Facility Respite; and~~

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(4) Hospice Services.

(ec) As part of ADvantage quality assurance audits, the AA provider audits ~~evaluates~~ evaluate whether paid claims are consistent with service plan authorizations and documentation of service provision for services that are not prior authorized through the MMIS. Evidence of paid claims that are not supported by service plan authorization and/or documentation of service provision will be turned over to SURS for follow-up investigation.

[OAR Docket #03-998; filed 5-20-03]

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

[OAR Docket #03-1002]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. General Provider Policies

Part 3. General Medical Program Information

317:30-3-59. [AMENDED]

Part 5. Eligibility

317:30-3-78. [AMENDED]

317:30-3-82. [AMENDED]

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-7. [AMENDED]

Part 4. Long Term Care Hospitals

317:30-5-65. [AMENDED]

Part 69. Certified Registered Nurse Anesthetists

317:30-5-607. [AMENDED]

Part 79. Dentists

317:30-5-696. [AMENDED]

(Reference APA WF # 02-27 and 02-32)

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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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N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Medical Providers-Fee for Service, Physicians specific, rules are in need of revision to delete redundant and potentially confusing language regarding epidural anesthesia. Rules regarding the coverage for epidural anesthesia are adequately addressed under existing language for local anesthesia.

Medical Providers-Fee for Service rules are revised to: (1) replace the phrase "acute physical injuries" with "emergency medical condition" to agree with other language in policy; (2) correct erroneous rules references found in dental services and Long Term Care Hospitals rules; (3) correct or remove inaccurate languages regarding the need for prior authorizations which was overlooked in a prior rule revision; and, (4) remove obsolete language in Long Term Care Facilities rules.

CONTACT PERSON:

Joanne Terlizzi at 522-7272

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTION 308.1(A), WITH AN EFFECTIVE DATE
OF JUNE 26, 2003.**

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-59. General program exclusions - adults

The following are excluded from Medicaid coverage for adults:

- (1) Inpatient diagnostic studies that could be performed on an outpatient basis.
- (2) Services or any expense incurred for cosmetic surgery, including removal of benign skin lesions.
- (3) Services of two physicians for the same type of service to the same patient at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the patient's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the patient's care, the codes for subsequent hospital care should be used.
- (4) Refractions and visual aids.
- (5) Separate payment for pre and post-operative care when payment is made for surgery.
- (6) Reversal of sterilization procedures for the purposes of conception.
- (7) Treatment for obesity.
- (8) Non therapeutic hysterectomies. Therapeutic hysterectomies require that the following information to be attached to the claim:

(A) a copy of an acceptable acknowledgment form signed by the patient, or,

(B) an acknowledgment by the physician that the patient has already been rendered sterile, or,

(C) a physician's certification that the hysterectomy was performed under a life-threatening emergency situation.

- (9) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest.
- (10) Medical services considered to be experimental.
- (11) Services of a Certified Surgical Assistant.
- (12) Services of a Chiropractor. Payment is made for Chiropractor services on Crossover claims for coinsurance and/or deductible only.
- (13) Services of a Registered Physical Therapist.
- (14) Services of a Psychologist.
- (15) Services of a Speech and Hearing Therapist.
- (16) Physician and hospital services in a general acute care hospital beyond the 24 day compensable hospital period per person per State fiscal year.
- (17) Payment for more than two outpatient visits per month (home, office, outpatient hospital) per patient, except those visits in connection with family planning or acute physical injuries emergency medical condition.
- (18) Payment for more than two nursing home visits per month.
- (19) More than one inpatient visit per day per physician.

PART 5. ELIGIBILITY

317:30-3-78. Request for prior authorization for dental services

Request for Prior Authorization for Dental Services, Form CC-88, is used to request prior authorization for dental services that require a treatment plan or as indicated in Part 77 79 of Subchapter 5 of this Chapter. Attach to the MS-MA-5 when requesting approval of services for an individual not currently eligible.

317:30-3-82. Prior authorization for services to individuals under 21 years of age

Under the Medicaid Program, the following services require prior authorization by the OHCA for all recipients under 21 years of age:

- (1) Orthotic procedures (HCPCS Codes L5000 to L9999)
- (2) Appliances (orthopedic, hearing aids)
- (3) Dental services requiring a treatment plan as indicated in Subchapter 5 (Part 79 of this Chapter)
- (4) Food supplements
- (5) Hyperalimentation
- (6) Enteral therapy
- (7) Emergency medical services for certain aliens.
- (8) Adaptive Equipment for persons residing in private ICF/MR's.
- (9) Inpatient psychotherapy by a psychologist.

(409) Outpatient psychotherapy by a psychologist for children under three.

(410) Psychological testing by a psychologist beyond one hour four hours per recipient each 12 months.

(4211) Diagnosis and treatment services not otherwise covered under the program when identified during an EPSDT screening examination.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-7. Anesthesia

(a) Procedure codes. Anesthesia codes from the Physicians' Current Procedural Terminology should be used. Payment is made only for the major procedure during an operative session.

(b) Modifiers. All anesthesia procedure codes must have a modifier. Without the modifier, the claim will be denied.

(c) Qualifying circumstances. Certain codes in the Medicine section of the CPT are used to identify extraordinary anesthesia services. The appropriate modifiers should be added to these codes. Additional payment can be made for extremes of age, total body hypothermia, and controlled hypertension.

(d) Hypothermia. Hypothermia total body or regional is not covered unless medical necessity is documented and approved through review by the Authority's Medical Consultants.

(e) Anesthesia with Blood Gas Analysis. Blood gas analysis is part of anesthesia service. Payment for anesthesia includes payment for blood gas analysis.

(f) Steroid injections. Steroid injections administered by an anesthesiologist are covered as nerve block. The appropriate CPT procedure code is used to bill services.

(g) Local anesthesia. If local anesthesia is administered by attending surgeon, payment is included in the global surgery fee, except for spinal or epidural anesthesia in conjunction with childbirth.

(h) Epidural anesthesia. Continuous epidural analgesia for labor and cesarean section or vaginal delivery is covered. Payment for these codes will include consideration for placement when associated with the anesthesia procedure.

(i) Stand by anesthesia. This is not covered unless the physician is actually in the operating room administering medication, etc. If this is indicated, claim will be processed as if anesthesia was given. Use appropriate anesthesia code.

(j) Other qualifying circumstances. All other qualifying circumstances, i.e., physical status, emergency, etc. have been structured into the total allowable for the procedure.

(k) Central venous catheter and anesthesia. Payment for placement of central venous catheter, injection of anesthesia substance or similar procedures will be made only when the procedure is distinctly separate from the anesthesia procedure.

PART 4. LONG TERM CARE HOSPITALS

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317:30-5-65. Ancillary services

Ancillary services are those items which are not considered routine services. Ancillary services may be billed separately to the Oklahoma Medicaid program, unless reimbursement is available from Medicare or other insurance or benefit programs. Coverage criteria, utilization controls and program limitations are specified in ~~OAC 317:30-5-206~~ OAC 317:30-5-211. Ancillary services are limited to the following services:

- (1) Services requiring prior authorization:
 - (A) Respirators and supplies.
 - (B) Ventilators and supplies.
 - (C) Total Parenteral Nutrition (TPN), and supplies.
 - (D) Custom wheelchairs.
 - (E) Enteral feeding.
- (2) Services not requiring prior authorization:
 - (A) Permanent indwelling or male external catheters and catheter accessories.
 - (B) Colostomy and urostomy supplies.
 - (C) Tracheostomy supplies.
 - (D) Prescription drugs, laboratory procedures, and x-rays.

PART 69. CERTIFIED REGISTERED NURSE ANESTHETISTS

317:30-5-607. Billing instructions

The CRNA is responsible for entering the correct anesthesia procedure code on the appropriate claim form. Anesthesia codes from the Physicians' Current Procedural Terminology or Medicare assigned codes should be used.

- (1) Payment is made only for the major procedure during an operative session.
- (2) All anesthesia procedure codes must have a modifier. Without the modifier, the claim will be denied. Payment is 80% of the allowable.
- (3) Certain codes in the Medicine section of the CPT are used to identify extraordinary anesthesia services. Additional payment can be made when applicable for extremes of age, total body hypothermia and controlled hypertension.
- (4) All other qualifying circumstances, i.e., physical status, emergency, etc., have been structured into the total allowable for the procedure.
- (5) Hypothermia total body or regional is not covered unless medical necessity is documented and approved through review by the Authority's Medical Consultants.
- ~~(6) For epidural anesthesia, continuous epidural analgesia for labor and cesarean section or vaginal delivery is covered. Payment includes consideration for placement when associated with the anesthesia procedure.~~
- ~~(7) Payment for placement of central venous catheter, injection of anesthesia substance or similar procedures will be made only when the procedure is distinctly separate from the anesthesia procedure.~~

PART 79. DENTISTS

317:30-5-696. Coverage by category

Payment is made for dental services as set forth in this Section.

- (1) **Adults.** Dental coverage for adults is limited to emergency extractions. Payment will be made for dental care for adults residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and who have been approved for ICF/MR level of care, similar to the scope of services available to persons under age 21. Payment is also made for medical and surgical services performed by a dentist, to the extent such services may be performed under State law either by a doctor of dental surgery or dental medicine, when those services would be covered if performed by a physician. Payment is made to Dentists, who have successfully completed an accredited/approved residency program in anesthesiology, for the administration of anesthetic agents.

(A) **Procedure codes.** The anesthesiologist is responsible for entering the correct anesthesia procedure code on the appropriate claim form. Anesthesia codes from the Physicians' Current Procedural Terminology should be used. Payment is made only for the major procedure during an operative session.

(B) **Modifiers.** All anesthesia procedure codes must have a modifier. Without the modifier, the claim will be denied. Payment rate is 100% of the OHCA allowable.

(C) **Qualifying circumstances.** Certain codes in the Medicine section of the CPT are used to identify extraordinary anesthesia services. The appropriate modifiers should be added to these codes. Additional payment can be made for extremes of age, total body hypothermia and controlled hypotension.

(D) **Hypothermia.** Hypothermia total body or regional is not covered unless medical necessity is documented and approved through review by the Authority's Medical Consultants.

(E) **Anesthesia with Blood Gas Analysis.** Blood gas analysis is part of anesthesia service. Payment for anesthesia includes payment for blood gas analysis.

(F) **Steroid injections.** Steroid injections administered by an anesthesiologist are covered as nerve block.

~~(G) **Epidural anesthesia.** Continuous epidural analgesia for labor and cesarean section or vaginal delivery is covered. Payment for these codes will include consideration for placement when associated with the anesthesia procedure.~~

~~(HG) **Stand by anesthesia.** Stand by anesthesia is not covered unless the physician is actually in the operating room administering medication, etc. If this is indicated, claim will be processed as if anesthesia was given. Use appropriate anesthesia code.~~

~~(H) **Other qualifying circumstances.** All other qualifying circumstances, i.e., physical status, emergency, etc. have been structured into the total allowable for the procedure.~~

(H) **Central venous catheter and anesthesia.** Payment for placement of central venous catheter, injection of anesthesia substance or similar procedures will be made only when the procedure is distinctly separate from the anesthesia procedure.

(2) **Home and community based waiver services for the mentally retarded (HCBWS).** All providers participating in the HCBWS must have a separate contract with this Authority to provide services under the HCBWS. All services are prior authorized.

(3) **Children.** The following services are compensable for eligible persons under 21 years of age without prior authorization. ALL OTHER DENTAL SERVICES FOR PERSONS UNDER 21 YEARS OF AGE AND ELIGIBLE ADULTS RESIDING IN PRIVATE ICF/MR'S MUST BE PRIOR AUTHORIZED. Anesthesia services are covered for children in the same manner as adults.

(A) Examination. Two dental examinations, two prophylaxis with/without topical fluoride treatment, and two bitewing x-rays once each twelve month period regardless of the number of dentists involved.

(B) Oral hygiene instructions. The dentist or registered dental hygienist shall instruct the patient or the responsible adult, if the child is under five years of age, in proper tooth brushing and flossing by actual demonstration. Verbal and/or written proper diet information should be discussed. This service shall include a new tooth brush and a small container of six or more yards of dental floss dispensed to the patient. This service is limited to once per 12 months.

(C) Application of dental sealants. (A.D.A. certified materials). All teeth must be caries free on all surfaces to be eligible for this service.

(D) Emergency examinations. This procedure will not be allowed within two months of a periodic oral examination, same provider, same client.

(E) Emergency extractions. For the relief of pain or treatment of acute infection.

(F) Injectable antibiotics.

(G) Composite restorations in vital or successfully treated non-vital permanent anterior teeth. Composite restorations in vital primary incisors; tooth numbers O and P to age 4.0 years, numbers E and F to age 5.0 years, numbers N and Q to 5.0 years, and numbers D and G to 6.0 years.

(H) Amalgam or composite restorations in posterior, vital permanent teeth. Amalgam or composite restoration in vital posterior primary teeth with 70 percent or more root structure remaining or more than 12 months prior to normal exfoliation.

(I) Chrome steel crowns. Applies to all primary teeth when the child is five years or less and 70 percent or more of the root structure remains, or when the tooth would not exfoliate within the next 12 months. This applies to teeth with pulpotomies or pulpectomies if the above conditions exist, permanent teeth where more than three surfaces of decay exists or where cuspal occlusion is lost due to decay

or accident. Chrome steel crowns are the treatment of choice for the above conditions on permanent teeth unless they are abutment teeth for fixed or removable prosthetics prior to age 16.0 years. Pre-operative periapical x-rays must be available for review, if requested.

(J) Pulpotomies. All primary molars having at least 70 percent or more of their root structure remaining or more than 12 months prior to normal exfoliation; primary incisor teeth numbers O and P before age 4.0 years; numbers E and F before 5.0 years; numbers N and Q before 5.0 years; and numbers D and G before 6.0 years, with the 70 percent root structure rule applied. Pre and post-operative periapical x-rays must be available for review, if requested.

(K) Pulpectomies. All primary teeth having 70 percent or more root structure remaining or at least 12 months before normal exfoliation. Pre and post-operative periapical x-rays must be available for review, if requested.

(L) Anterior root canals. Permanent teeth numbers 6, 7, 8, 9, 10, 11, and 22, 23, 24, 25, 26, 27, where there are no other missing teeth in the same arch requiring replacement, unless numbers 6, 11, 22, or 27 are abutments for a prosthesis. Accepted A.D.A. filling materials must be used. Materials such as N-2 or similar formulas are not acceptable. Pre and post-operative periapical x-rays must be available for review, if requested.

(M) Space maintainers.

(i) Band and loop type space maintenance of all primary molars where permanent successor is missing or where succedaneous tooth is more than 5mm below the crest of the alveolar ridge or where the successor tooth would not normally erupt in the next 12 months. First primary molars will not be allowed space maintenance after age 8 years if the second primary and first permanent molars are present and in cuspal interlocking occlusion whether normal relationship is or is not present. If there are missing teeth bilaterally in the same arch, under the above guidelines, lingual arch is the treatment of choice. The teeth numbers shown on the claim should be that of the missing teeth. Post-operative bitewing x-rays must be available for review.

(ii) Lingual arch bar is to be used where multiple missing teeth exist in the same arch. The requirements are the same as for band and loop space maintainer. Multiple missing upper anterior primary incisors may be replaced with the appliance to age 5.0 years to prevent abnormal swallowing habits. Post-operative bitewing x-rays must be available. Anterior saddle and pontics may be added to this appliance to replace teeth D, E, F, and G to age 5.0 years. See code number attachment (prosthetic section) for proper code

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number for primary anterior teeth. Saddle (includes up to 4 teeth or pontics) is further described under services requiring prior authorization, #g.

(iii) Acrylic flippers are to be used for single or multiple anterior permanent tooth replacement to age 18.0 years.

(N) Cement base. To be used where pulp cap, pulpotomy or pulpectomy is not necessary. Cement bases are for very deep restorations requiring thermal shock protection for the pulpal tissues. Cement bases are not cavity liners such as cavitec, CAO, or similar quick set products. Acceptable cement bases are IRM, zinc oxide and eugenol, glass ionomers, or crown and bridge cements. These are indirect pulp caps. Pre-operative radiographs must be available for review, if requested.

(O) Pulp caps (direct). A.D.A. accepted CAO containing materials.

(P) Sedative treatment. Temporary restoration must be ADA acceptable materials. This restoration is used for very deep cavities to prevent doing a pulpotomy, pulpectomy or root canal. This restoration, when properly used, includes direct or indirect pulp cap. This is the only restoration allowed per tooth per day. Subsequent restoration of the tooth is allowed after 30 days.

(Q) History and physical. For the purpose of admitting a patient to a hospital for dental treatment.

(4) **Individuals eligible for Part B of Medicare.**

(A) Payment is made utilizing the Medicaid allowable for comparable services. This is an all inclusive payment on assigned claims.

(B) Services which have been denied by Medicare as noncompensable should be filed directly with this Authority with a copy of the Medicare EOB attached.

[OAR Docket #03-1002; filed 5-20-03]

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

[OAR Docket #03-1006]

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PERMANENT final adoption

RULES:
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Part 9. Long Term Care Facilities
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(APA WF # 02-35)

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ANALYSIS:

Medical Providers-Fee for Service, Long-Term Care Facilities specific, rules are in need of revision to simplify the Quality of Care reporting process by eliminating the requirement for the monthly reporting of the minimum wage section (Part B) of the Quality of Care report. This revision reduces administrative burdens on approximately 420 long term care facilities.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

317:30-5-131.2. Quality of care fund requirements and report

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Nursing Facility and Intermediate Care Facility for the mentally retarded"** means any home, establishment, or institution or any portion thereof, licensed by the State Department of Health as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes.

(2) **"Quality of Care Fee"** means the fee assessment created for the purpose of quality care enhancements pursuant to Section 2002 of Title 56 of the Oklahoma Statutes upon each nursing facility and intermediate care facility for the mentally retarded licensed in this State.

(3) **"Quality of Care Fund"** means a revolving fund established in the State Treasury pursuant to Section 2002 of Title 56 of the Oklahoma Statutes.

(4) **"Quality of Care Report"** means the monthly report developed by the Oklahoma Health Care Authority to document the staffing ratios, total patient gross receipts,

total patient days, and minimum wage compliance for specified staff for each nursing facility and intermediate care facility for the mentally retarded licensed in the State.

(5) **"Staffing ratios"** means the minimum direct-care-staff-to-resident ratios pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statutes.

(6) **"Peak In-House Resident Count"** means the maximum number of in-house residents at any point in time during the applicable shift.

(7) **"Staff Hours worked by Shift"** means the number of hours worked during the applicable shift by direct-care staff.

(8) **"Direct-Care Staff"** means any nursing or therapy staff who provides direct, hands-on care to residents in a nursing facility and intermediate care facility for the mentally retarded pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statutes and as defined in subsection (c) of this Section.

(9) **"Major Fraction Thereof"** is defined as an additional threshold for direct-care-staff-to-resident ratios at which another direct-care staff person(s) is required due to the peak in-house resident count exceeding one-half of the minimum direct-care-staff-to-resident ratio pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statutes.

(10) **"Minimum wage"** means the amount paid per hour to specified staff pursuant to Section 5022.1 of Title 63 of the Oklahoma Statutes.

(11) **"Specified staff"** means the employee positions listed in the Oklahoma Statutes under Section 5022.1 of Title 63 and as defined in subsection (d) of this Section.

(12) **"Total Patient Days"** means the monthly patient days that are compensable for the current monthly Quality of Care Report.

(13) **"Total Gross Receipts"** means all cash received in the current Quality of Care Report month for services rendered to all residents in the facility. Receipts should include all Medicaid, Medicare, Private Pay and Insurance including receipts for items not in the normal per diem rate. Charitable contributions received by the nursing facility shall not be included.

(14) **"Service rate"** means the minimum direct-care-staff-to-resident rate pursuant to Section 1-1925.2 of Title 63 of Oklahoma Statutes.

(b) **Quality of care fund assessments.**

(1) The Oklahoma Health Care Authority (OHCA) was mandated by the Oklahoma Legislature to assess a monthly service fee to each Licensed Nursing Facility in the State. The fee shall be assessed on a per patient day basis. The amount of the fee shall be uniform for each facility type. The fee shall be determined as six percent (6%) of the average total gross receipts divided by the total days for each facility type.

(2) In determination of the fee for the time period beginning October 1, 2000, a survey was mailed to each licensed nursing facility requesting calendar year 1999 Total Patient Days, Gross Revenues and Contractual Allowances and Discounts. This data shall be used to determine the amount of fee to be assessed for the period of

10-01-00 through 06-30-01. The fee shall be determined by totaling the "annualized" gross revenue and dividing by the "annualized" total days of service. "Annualized" means that the surveys received that do not cover the whole year of 1999 shall be divided by the total number of days that are covered and multiplied by 365.

(3) The fee for subsequent State Fiscal Years shall be determined by using the monthly gross receipts and census reports for the six (6) month period October 1 through March 31 of the prior fiscal year, annualizing those figures, and then determining the fee as defined above.

(4) Monthly reports of Gross Receipts and Census shall be included in the monthly Quality of Care Report. The data required includes, but is not limited to, the Total Gross Receipts and Total Patient Days for the current monthly report.

(5) The method of collection shall occur as follows:

(A) The Oklahoma Health Care Authority shall assess each facility monthly based on the reported patient days from the Quality of Care Report filed two (2) months prior to the month of the fee assessment billing. As defined in this subsection, the total assessment shall be the fee times the total days of service. The Oklahoma Health Care Authority shall notify the facility of its assessment by the end of the month of the Quality of Care Report submission date.

(B) Payment shall be due to the Oklahoma Health Care Authority by the 10th of the following month. Failure to pay the amount by the 10th or failure to have the payment mailing postmarked by the 8th shall result in a debt to the State of Oklahoma and shall be subject to penalties of ten percent (10%) of the amount and interest of one and one-quarter percent (1.25%) per month. The Quality of Care Fee shall be submitted no later than the 10th of the month. If the 10th falls upon a holiday or weekend (Saturday-Sunday), the fee shall be due by 5 p.m. (Central Standard Time) of the following business day (Monday-Friday).

(C) The monthly assessment including applicable penalties and interest shall be paid regardless of any appeals action requested by the facility. If a provider fails to pay the Authority the assessment within the time frames noted on the second invoice to the provider, the assessment, applicable penalty, and interest will be deducted from the facility's payment. Any change in payment amount resulting from an appeals decision will be adjusted in future payments. Adjustments to prior months' reported amounts for gross receipts or patient days may be made by filing an amended part C of the Quality of Care Report.

(D) The Quality of Care fee assessments excluding penalties and interest are an allowable cost for Oklahoma Health Care Authority Cost Reporting purposes.

(E) The Quality of Care fund shall contain assessments collected excluding penalties and interest as described in this subsection and any interest attributable to investment of any money in the fund shall be

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deposited in a revolving fund established in the State Treasury. The funds will be used pursuant to Section 2002 of Title 56 of the Oklahoma Statutes.

(c) **Quality of care direct-care-staff-to resident-ratios.**

(1) Effective September 1, 2000, all nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR) subject to the Nursing Home Care Act, in addition to other state and federal staffing requirements, shall maintain the minimum direct-care-staff-to-resident ratios or direct-care service rates as cited in Section 1-1925.2 of Title 63 of the Oklahoma Statutes.

(2) For purposes of staff-to-resident ratios, direct-care staff are limited to the following employee positions:

- (A) Registered Nurse
- (B) Licensed Practical Nurse
- (C) Nurse Aide
- (D) Certified Medication Aide
- (E) Qualified Mental Retardation Professional (ICFs/MR only)
- (F) Physical Therapist
- (G) Occupational Therapist
- (H) Respiratory Therapist
- (I) Speech Therapist
- (J) Therapy Aide/Assistant
- (K) Social Services Director/Social Worker
- (L) Other Social Services Staff
- (M) Activities Director
- (N) Other Activities Staff
- (O) Combined Social Services/Activities

(3) Prior to September 1, 2003, activity and social services staff who are not providing direct, hands-on care may be included in the direct-care-staff-to-resident ratio in any shift or direct-care service rates. On and after September 1, 2003, such persons shall not be included in the direct-care-staff-to-resident ratio or direct-care service rates.

(4) In any shift when the direct-care-staff-to-resident ratio computation results in a major fraction thereof, direct-care staff shall be rounded to the next higher whole number.

(5) To document and report compliance with the provisions of this subsection, nursing facilities and intermediate care facilities for the mentally retarded shall submit the monthly Quality of Care Report pursuant to subsection (e) of this Section.

(d) **Quality of care minimum wage for specified staff.**

Effective November 1, 2000, all nursing facilities and private intermediate care facilities for the mentally retarded receiving Medicaid payments, in addition to other federal and state regulations, shall pay specified staff not less than in the amount of \$6.65 per hour. Employee positions included for purposes of minimum wage for specified staff are as follows:

~~(1) Employee positions included for purposes of minimum wage for specified staff are as follows:~~

- ~~(A1) Registered Nurse~~
- ~~(B2) Licensed Practical Nurse~~
- ~~(C3) Nurse Aide~~
- ~~(D4) Certified Medication Aide~~

- ~~(E5) Other Social Service Staff~~
- ~~(F6) Other Activities Staff~~
- ~~(G7) Combined Social Services/Activities~~
- ~~(H8) Other Dietary Staff~~
- ~~(I9) Housekeeping Supervisor and Staff~~
- ~~(J10) Maintenance Supervisor and Staff~~
- ~~(K11) Laundry Supervisor and Staff~~

~~(2) To document and report compliance with the provisions of this subsection, all nursing facilities and private intermediate care facilities for the mentally retarded receiving Medicaid payments shall submit the requested information pertaining to Minimum Wage Compliance on the Quality of Care Report monthly pursuant to subsection (e) of this Section.~~

(e) **Quality of care reports.** Effective September 1, 2000, all nursing facilities and intermediate care facilities for the mentally retarded shall submit a monthly report developed by the Oklahoma Health Care Authority, the Quality of Care Report, for the purposes of documenting the extent to which such facilities are compliant with the minimum direct-care-staff-to-resident ratios and ~~the minimum wage requirements for specified staff~~ or direct-care service rates.

(1) The monthly report must be signed by the preparer and by the Owner, authorized Corporate Officer or Administrator of the facility for verification and attestation that the reports were compiled in accordance with this section.

(2) The Owner or authorized Corporate Officer of the facility shall retain full accountability for the report's accuracy and completeness regardless of report submission method.

(3) Penalties for false statements or misrepresentation made by or on behalf of the provider are provided at 42 U.S.C. Section 1320a-7b which states, in part, "*Whoever... (2) at any time knowingly and willfully makes or causes to be made any false statement of a material fact for use in determining rights to such benefit or payment... shall (i) in the case of such statement, representation, concealment, failure, or conversion by any person in connection with furnishing (by that person) of items or services for which payment is or may be made under this title (42 U.S.C. §1320 et seq.), be guilty of a felony and upon conviction thereof fined not more than \$25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than \$10,000 or imprisoned for not more than one year, or both.*"

(4) The Quality of Care Report shall be submitted by 5 p.m. (CST) on the 15th of the following month. If the 15th falls upon a holiday or a weekend (Saturday-Sunday), the report shall be due by 5 p.m. (CST) of the following business day (Monday - Friday).

(5) The Quality of Care Report will be made available in an electronic version for uniform submission of the required data elements.

(6) Facilities shall submit the monthly report either through electronic mail to the Provider Compliance Audits Unit or send the monthly report in disk or paper format by certified mail. The submission date shall be determined by the date and time recorded through electronic mail or the postmark date and the date recorded on the certified mail receipt.

(7) Should a facility discover an error in its submitted report for the previous month only, the facility shall provide to the Provider Compliance Audits Unit written notification with adequate, objective and substantive documentation within five (5) business days following the submission deadline. Any documentation received after the five (5) business day period shall not be considered in determining compliance and for reporting purposes by the Oklahoma Health Care Authority.

(8) An initial administrative penalty of \$150.00 shall be imposed upon the facility for incomplete or non-timely filing of the Quality of Care Report. Additionally, a daily administrative penalty will begin upon the Authority notifying the facility in writing that the report was not complete or not timely submitted as required. The \$150.00 daily administrative penalty shall accrue for each calendar day after the date the notification is received. The penalties shall be deducted from the Medicaid facility's payment. For one hundred percent (100%) private pay facilities, the penalty amount(s) shall be included and collected in the fee assessment billings process. Imposed penalties for incomplete reports or non-timely filing shall not be considered for Oklahoma Health Care Authority Cost Reporting purposes.

(9) The Quality of Care Report shall include, but is not limited to, information pertaining to the necessary reporting requirements in order to determine the facility's compliance with subsections (b); ~~and~~ (c) ~~and~~ (d) of this Section. Such reported information includes, but is not limited to: staffing ratios; peak in-house resident count; staff hours worked by shift; ~~payroll information relevant to minimum wage~~; total patient days; ~~and~~ total gross receipts; ~~and direct-care service rates~~.

(10) ~~Desk audits will~~ Audits may be performed monthly ~~on each facility to ascertain instances of non-compliance determine compliance~~ pursuant to subsections (b), (c) and (d) of this Section. Announced/unannounced on-site audits of reported information may also be performed.

(11) Direct-care-staff-to-resident information and on-site audit findings pursuant to subsection (c), will be reported to the Oklahoma State Department of Health for their review in order to determine "willful" non-compliance and assess penalties accordingly pursuant to Title 63 Section 1-1912 through Section 1-1917 of the Oklahoma Statutes. The Oklahoma State Department of Health shall inform the Oklahoma Health Care Authority of all final penalties as required in order to deduct from the Medicaid facility's payment. Imposed penalties shall not be considered for Oklahoma Health Care Authority Cost Reporting purposes.

~~(12) Pursuant to subsection (d), the monitoring of minimum wage compliance for specified staff by the Oklahoma Health Care Authority shall begin with the November monthly report that shall be submitted by 5 p.m. (CST) on December 15th, 2000. If a Medicaid provider is found non-compliant pursuant to subsection (d) based upon a desk audit and/or an on-site audit, for each hour paid to specified staff that does not meet the regulatory minimum wage of \$6.65, the facility must reimburse the employee(s) retroactively to meet the regulatory wage for hours worked. Additionally, an administrative penalty of \$25.00 shall be imposed for each non-compliant staff hour worked. For Medicaid facilities, a deduction shall be made to their payment. Imposed penalties for non-compliance with minimum wage requirements shall not be considered for Oklahoma Health Care Authority Cost Reporting purposes. Furthermore, 100% private pay facilities and public intermediate care facilities for the mentally retarded shall not be required to provide minimum wage information on the Quality of Care Report.~~

(13) Long Term Care facility providers may appeal the administrative penalty described in subsection (b)(5)(B) and subsections (e) (8) and (e) (12).

[OAR Docket #03-1006; filed 5-20-03]

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

[OAR Docket #03-1003]

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Part 1. Physicians
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N/A

ANALYSIS:

Medical Providers-Fee for Service, Physicians specific, rules are in need of revision to add coverage for iron injections. When medically necessary and documented by objective evidence of failure to respond to oral iron, iron injections would become a covered Medicaid service. Iron injections would be more cost effective than paying for blood transfusions for individuals with severe anemia or other blood related conditions.

CONTACT PERSON:

Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-14. Injections

(a) Coverage for injections is limited to those categories of drugs included in the vendor drug program for Medicaid. OHCA administers and maintains an open formulary subject to the provisions of Title 42, United States Code (U.S.C.), Section 1396r-8. The Authority covers any drug for its approved purpose that has been approved by the Food and Drug Administration (FDA). Administration of injections is paid in addition to the medication.

(1) **Immunizations for children.** An administration fee will be paid for vaccines administered by providers participating in the Vaccines for Children Program. When the vaccine is not included in the program, the administration fee is included in the vaccine payment. Payment will not be made for vaccines covered by the Vaccines for Children Program.

(2) **Immunizations for adults.** Coverage for adults is limited to:

- (A) influenza immunizations,
- (B) Pneumococcal Immunizations, and
- (C) Gamma Globulin and Hepatitis A Vaccine when documentation shows the individual has been exposed to Hepatitis.

(b) The following drugs, classes of drugs or their medical uses are excluded from coverage:

- (1) Agents used for the treatment of anorexia, weight gain, or obesity;
- (2) Agents used to promote fertility;
- (3) Agents used to promote hair growth;
- (4) Agents used for cosmetic purposes;
- (5) Agents used for the symptomatic relief of coughs and colds. Cough and cold drugs are not covered;

(6) Agents that are experimental or whose side effects make usage controversial; and

(7) Vitamins and Minerals with the following exception:

(A) Vitamin B-12 is covered only when there is a documented occurrence of malabsorption disease; ~~and~~

(B) Vitamin K injections are compensable; and

(C) Iron injections when medically necessary and documented by objective evidence of failure to respond to oral iron.

(c) Use the appropriate HCPC code when available. When drugs are billed under miscellaneous codes, a paper claim must be filed. The claims must contain the drug name, strength, dosage amount, and National Drug Code (NDC).

(d) Payment is made for allergy injections for adults and children. When the physician personally supervises preparation of the allergy antigen, payment is based on the number of treatments per vial. The appropriate CPT code is used times the number of treatments in a vial. When the physician actually administers the injection, the administration fee is compensable. No payment is made for administration when the allergy antigen is self-administered by the patient. When the allergy antigen is purchased by the physician, payment is made by invoice attached to the claim. If the physician also administers the allergy antigen, payment is made for each administration.

(e) Rabies vaccine, Imovax, Human Diploid and Hyperab, Rabies Immune Globulin are covered under the vendor drug program and may be covered as one of the covered prescriptions per month. Payment can be made separately to the physician for administration. If the vaccine is purchased by the physician, payment is made by invoice attached to the claim.

(f) Trigger point injections (TPI's) are covered using appropriate CPT codes. Modifiers are not allowed for this code. Payment is made for up to three injections (3 units) per day at the full allowable. Payment is limited to 12 units per month. The medical records must clearly state the reasons why any TPI services were medically necessary. All trigger point records must contain proper documents and be available for review. Any services beyond 12 units per month or 36 units per 12 months will require mandatory review for medical necessity. Medical records must be automatically submitted with any claims for services beyond 36 units.

(g) If a physician bills separately for surgical injections and identifies the drugs used in a joint injection, payment will be made for the cost of the drug in addition to the surgical injection. The same guidelines apply to aspirations.

(h) When IV administration in a Nursing Facility is filed by a physician, payment may be made for medication. Administration should be done by nursing home personnel.

(i) Intravenous fluids used in the administration of IV drugs are covered. Payment for the set is included in the office visit reimbursement.

[OAR Docket #03-1003; filed 5-20-03]

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

[OAR Docket #03-1000]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals

317:30-5-47. [AMENDED]

(Reference APA WF #02-10 and 02-36)

AUTHORITY:

Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Article X, Section 23 of the Oklahoma Constitution; 63 Okla. Stat. § 5006(A)(1); 42 USC § 1396(w)(1)(A); 42 CFR § 433.51; 42 CFR § 447.272

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Final adoption:

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Superseded rules:

Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals

317:30-5-47. [AMENDED]

(Reference APA WF # 02-10)

Gubernatorial approval:

June 12, 2002

Register publication:

19 Ok Reg 2939

Docket number:

02-1290

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Medical Providers-Fee for Service, Inpatient Hospital Services specific, rules are revised to allow for enhanced Medicaid payments to Oklahoma non-State publicly owned hospitals. The Agency will create a funding pool to provide Medicaid enhanced payments to non-state publicly owned hospitals. These payments are in addition to the basic payment rates to these providers. The funding pool will be calculated by determining the difference between the upper payment limit (based on Medicare payment principles) and the allowable Medicaid payments for each qualifying facility in the State. The combined total of the differences for all qualifying facilities will represent the funding pool. The total pool will be distributed to the participating providers (as an enhanced payment) based on the proportionate share of the total pool among all participating providers. Once each provider receives the enhanced payment (Federal share only), a portion of the funds will be transferred back to the OHCA for other uses. Rule revisions are needed in order to allow for enhanced Medicaid payments to these non-state public hospitals.

Other revisions are incorporated into this Section of rules related to adjustment of the payment methodology used for payment of Graduate Medical Education (GME) funds to qualifying hospitals. This issue was addressed in an Agency Rule Report submitted for approval on February 18, 2003. That Fee for Service rule is revised to: (1) adjust the payment methodology used for payment of Graduate Medical Education (GME) funds to qualifying hospitals, and (2) allow an all-inclusive per diem rate for out-of-state certain residential treatment facilities. The current payment methodology used for Graduate Medical Education pays qualifying hospitals based as an add-on to their fee-for-service rates (cost report data from the base year) and from a "supplemental" GME program which pays to the hospitals from a pool of funds. The pool of funds is made available by State matching funds provided by the University Hospital Authority. Revisions to the payment methodology would remove the provision in the fee-for-service rate section that allows for a component of the rate to pay for GME. The funds that are paid through this section will be rolled into the "supplemental" GME pool and paid through that system. This will allow the Agency to simplify GME payments by combining all funds into one program and also allow the Managed Care Plans to negotiate with hospitals that have GME and those that do not without having GME as an obstacle to negotiations. Additionally, revisions are needed in the "supplemental" GME payment method that incorporates the funds from above and distributes the resulting pool of funds in a more equitable fashion. Currently the monies available are allocated quarterly to the hospitals based solely on the number of resident-months that are supported by the hospitals. This method does not take into consideration the Medicaid services rendered. Therefore, revisions are being made to the method which will allocate the funds based on the relative value of those resident-months weighted by the Medicaid services rendered. This relative value will be determined by multiplying the resident-months by the eligible patient days and by the individual hospital acuity factor determined from MMIS data. The total relative value of each hospital will be used to allocate the funds. The results of the GME revisions will allow for the allocation of funds based on all three factors which satisfy the rules governing the payment of services, which state that the payments should be for the Medicaid portion of those expenses to the hospitals. The proposed changes will allow the Agency to distribute the funds for Direct Graduate Medical Education by number of resident months weighted for Medicaid services rendered by acuity of those services as opposed to the current method which only uses number of resident-months as a measure.

Medical Providers-Fee for Service, Inpatient Hospital specific, rules are revised to clarify which outpatient services provided within 72 hours prior to admission to a hospital are included in the inpatient reimbursement. The revisions will equalize payment for similar services as some hospitals have been applying this Medicare rule to their billing while others have not.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTION 308.1(A), WITH AN EFFECTIVE DATE
OF JUNE 26, 2003.**

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS
AND SPECIALTIES**

PART 3. HOSPITALS

317:30-5-47. Reimbursement for inpatient hospital services

Reimbursement for inpatient hospital services is made based on a prospective per diem level of care payment system. Reimbursement for inpatient care includes services provided to the patient within 72 hours of admission. This includes diagnostic testing, emergency room, observation room, and outpatient surgery charges. The per diem includes

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all non-physician services furnished either directly or under arrangements. When a patient is taken to another facility with a Medicaid contract for treatment not available at the admitting facility, reimbursement to the treating facility by the admitting facility will be limited to the Medicaid fee schedule. This does not include reimbursement for services in Residential Psychiatric Treatment Facilities.

(1) **Components.** There are ~~three~~ two distinct payment components under this system. Total per diem reimbursement under the reimbursement system will equal the sum of:

- (A) Level of care per diem; plus
- (B) Fixed capital per diem; ~~plus~~
- (C) ~~Direct medical education per diem (if applicable).~~

(2) **Level of care per diem rates.** The level of care per diem rates are payments for operating costs and movable capital costs. Hospitals with actual costs above the statewide median level of care will be limited to reimbursement of the statewide median level of care rate. The median was calculated by level of care using FY 1988 base year operating and moveable capital costs trended forward to the beginning of the third quarter FY 1991. Beginning July 1, 1993, when a hospital's actual costs are less than the statewide median level of care, 25 percent of the difference between the statewide median level of care rate and the hospital's specific level of care cost will be added to each level of care rate.

- (A) **Levels of care.** There are eight levels of care:
- (i) Burn Care (Level 1). Presence of burn unit revenue code charges (Revenue code 207);
 - (ii) Neonatal intensive Care Unit (NICU) (Level 2). Presence of neonatal intensive care unit revenue code charges on NICU claims from Level III providers (Revenue code ~~475~~ 174);
 - (iii) Maternity care (Level 3). Diagnosis codes;
 - (iv) Surgical care (Level 4). Presence of surgical revenue code charges (Revenue codes 360 - 369 including C-Sections). (See (B)(ii) of this paragraph for exception to payment of minor surgical procedures);
 - (v) Rehabilitation care (Level 5). Range of primary and secondary diagnosis codes (Diagnosis codes V57xx - V5799);
 - (vi) Psychiatric care (Level 6). Range of primary diagnosis codes (Diagnosis codes 290 - 316);
 - (vii) Intensive Care Unit/Coronary Care Unit (ICU/CCU) (Level 7). Presence of Intensive Care Unit/Coronary Care Unit revenue code charges (Revenue codes 200-206, 208-219);
 - (viii) Routine care (Level 8). All remaining days (Revenue codes 101, 110 - 179, 186 - 189).

(B) **Claims.** Claims will be classified into each of the eight levels of care based on the hierarchy shown in (A)(i) through (A)(viii) of this paragraph, with claims potentially classifying into Level 1 first, then Level 2, and so forth. Payment of claims classified into Levels 1 - 6 and Level 8 is made at a single level

of care rate. For example, if a claim is classified into Level 3, the Maternity level of care, then all covered days submitted on that claim will be made at the Level 3 per diem rate. There are two exceptions to this rule:

(i) Payment of claims classified into Level 7 may be made at two level of care rates. This would occur if a claim is submitted for payment with both ICU/CCU revenue code charges and routine revenue code charges; payment is split between Levels 7 and 8. For example, if a claim is submitted with three covered ICU/CCU days and seven covered routine days, the claim shall be paid three days at the ICU/CCU per diem rate and seven days at the routine per diem rate. However, if a claim is submitted with ten covered ICU/CCU days and no routine days, ten days will be made at the ICU/CCU level of care rate. Claims for a single stay shall not be split and submitted as two claims solely for the purpose of obtaining two different level of care payment rates (except when patients receiving psychiatric care in acute care hospitals are transferred to medical units because their non-psychiatric medical needs become the primary cause of hospitalization). There are two restrictions on these levels of care:

(I) Only Level III neonatal units will be paid the NICU level of care per diem rate. For rate setting purposes a hospital is considered eligible to receive the level III NICU rate if it meets the criteria used by the Health Planning Commission (now part of the Oklahoma Department of Health) in its 1988 Hospital Utilization and Plan Survey.

(II) All claims from free-standing inpatient psychiatric hospitals will be paid at the Level 6, Psychiatric, level of care rate. (Psychiatric claims from acute care hospitals will also be paid at the Level 6 rate).

(ii) Certain surgical procedures are paid at a lower level of care than the surgery rate. These procedures do not require the same resources as most procedures paid at a surgical rate; and are classified as minor surgeries and paid at a routine level of care. When a minor surgery is involved, but a level of care other than routine is indicated, payment will be made at the appropriate level of care. Minor procedures include:

- (I) 03.31 Spinal Tap
- (II) 03.90 Insertion of catheter into spinal canal for infusion of palliative or therapeutic substance
- (III) 03.91 Injection of anesthesia into spinal canal
- (IV) 03.92 Injection of other agent into spinal canal
- (V) 04.80 Injection of peripheral nerve, NOS

- (VI) 04.81 Injection of anesthetic into peripheral nerve for analgesia
- (VII) 04.89 Injection of other agent (except neurolytic)
- (VIII) 06.11 Closed (percutaneous) (needle) biopsy of thyroid gland
- (IX) 08.81 Linear repair of laceration of eyelid
- (X) 14.21 Destruction of chorioretinal lesion by diathermy
- (XI) 14.22 Destruction of chorioretinal lesion by cryotherapy
- (XII) 14.23 Destruction of chorioretinal lesion by xenon arc photocoagulation
- (XIII) 14.24 Destruction of chorioretinal lesion by laser photocoagulation
- (XIV) 14.25 Destruction of chorioretinal lesion, unspecified
- (XV) 14.26 Destruction of chorioretinal lesion by radiation therapy
- (XVI) 14.29 Destruction of chorioretinal lesion, NOS
- (XVII) 16.21 Ophthalmoscopy
- (XVIII) 18.02 Incision of external auditory canal
- (XIX) 18.11 Otoscopy
- (XX) 18.12 Biopsy of external ear
- (XXI) 18.19 Other diagnostic procedure on external ear
- (XXII) 18.4 Suture of laceration of external ear
- (XXIII) 20.1 Removal of tympanostomy tube
- (XXIV) 20.31 Electrocochiliography
- (XXV) 21.00 Control of epistaxis NOS
- (XXVI) 21.01 Control of epistaxis by anterior nasal packing
- (XXVII) 21.02 Control of epistaxis by posterior and anterior nasal packing
- (XXVIII) 21.03 Control of epistaxis by cauterization and packing
- (XXIX) 21.22 Biopsy of nose
- (XXX) 21.29 Other diagnostic procedure on nose
- (XXXI) 21.71 Closed reduction of nasal fracture
- (XXXII) 21.81 Suture of laceration of nose
- (XXXIII) 22.11 Closed (endoscopic) (needle) biopsy of nasal sinus
- (XXXIV) 22.19 Other diagnostic procedure on nasal sinus
- (XXXV) 23.2 Restoration of tooth by filling
- (XXXVI) 23.3 Restoration of tooth by inlay
- (XXXVII) 23.41 Dental restoration by application of crown
- (XXXVIII) 23.42 Dental restoration by fixed bridge
- (XXXIX) 23.43 Dental restoration by removable bridge
- (XL) 23.49 Dental restoration, other
- (XLI) 24.11 Biopsy of the gum
- (XLII) 24.12 Biopsy of the alveolus
- (XLIII) 24.19 Other diagnostic procedures on teeth, gums, alveoli
- (XLIV) 24.7 Application of orthodontic appliance
- (XLV) 24.8 Other orthodontic operation
- (XLVI) 25.01 Closed (needle) biopsy of tongue
- (XLVII) 25.09 Other diagnostic procedure on tongue
- (XLVIII) 25.51 Suture of laceration of tongue
- (IL) 25.91 Lingual frenotomy
- (L) 26.11 Closed (needle) biopsy of salivary gland or duct
- (LI) 26.19 Other diagnostic procedures on salivary glands and ducts
- (LII) 26.91 Probing of salivary duct
- (LIII) 27.21 Biopsy of bony palate
- (LIV) 27.22 Biopsy of uvula and soft palate
- (LV) 27.23 Biopsy of lip
- (LVI) 27.24 Biopsy of mouth, unspecified structure
- (LVII) 27.29 Other diagnostic procedures on oral cavity
- (LVIII) 27.51 Suture of laceration of lip
- (LIX) 27.52 Suture of laceration of other part of mouth
- (LX) 27.91 Labial frenotomy
- (LXI) 31.41 Tracheoscopy through artificial stoma
- (LXII) 31.42 Laryngoscopy and other tracheoscopy
- (LXIII) 31.43 Closed (endoscopic) biopsy of larynx
- (LXIV) 31.44 Closed (endoscopic) biopsy of trachea
- (LXV) 33.21 Bronchoscopy through artificial stoma
- (LXVI) 33.22 Fiberoptic bronchoscopy
- (LXVII) 33.23 Other bronchoscopy
- (LXVIII) 33.24 Closed (endoscopic) biopsy of bronchus
- (LXIX) 33.91 Bronchial dilation
- (LXX) 34.04 Insertion of intercostal catheter for ~~rainage~~ drainage
- (LXXI) 34.25 Closed (percutaneous) (needle) biopsy of mediastinum
- (LXXII) 34.91 Thoracentesis
- (LXXIII) 34.92 Injection into thoracic cavity
- (LXXIV) 37.70-37.73 Insertion of leads: NOS, atrium, ventricle, atrium and ventricle
- (LXXV) 37.74-37.77 Replacement/revision of leads
- (LXXVI) 37.78 Insertion of temporary pacemaker
- (LXXVII) 38.91 Arterial catheterization

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- (LXXVIII) 38.92 Umbilical vein catheterization
- (LXXIX) 38.93 Venous catheterization, NOS
- (LXXX) 38.94 Venous cutdown
- (LXXXI) 38.95 Venous catheterization for renal dialysis
- (LXXXII) 38.98 Other puncture of an artery
- (LXXXIII) 38.99 Other puncture of vein
- (LXXXIV) 39.95 Hemodialysis
- (LXXXV) 42.22 Esophagoscopy through artificial stoma
- (LXXXVI) 42.23 Other esophagoscopy
- (LXXXVII) 42.24 Closed (endoscopic) biopsy of esophagus
- (LXXXVIII) 42.92 Dilation of esophagus
- (LXXXIX) 44.12 Gastrosocopy through artificial stoma
- (XC) 44.13 Other gastrosocopy
- (XCI) 44.14 Closed (endoscopic) biopsy of stomach
- (XCII) 44.22 Endoscopic dilation of pylorus
- (XCIII) 45.12 Endoscopy of large intestine through artificial stoma
- (XCIV) 45.13 EGD
- (XCV) 45.14 Closed (endoscopic) biopsy of small intestine
- (XCVI) 45.16 EGD with biopsy
- (XCVII) 45.22 Endoscopy of large intestine through artificial stoma
- (XCVIII) 45.23 Colonoscopy
- (IC) 45.24 Flexible sigmoidoscopy
- (C) 45.25 Colonoscopy with biopsy
- (CI) 45.42 Endoscopic polypectomy of large intestine
- (CII) 48.22 Proctosigmoidoscopy through artificial stoma
- (CIII) 48.23 Rigid proctosigmoidoscopy
- (CIV) 48.24 Closed (endoscopic) biopsy of rectum
- (CV) 54.91 Percutaneous abdominal paracentesis
- (CVI) 54.98 Peritoneal dialysis
- (CVII) 56.31 Ureteroscopy
- (CVIII) 56.32 Closed percutaneous biopsy of ureter
- (CIX) 56.33 Ureteroscopy with biopsy (endoscopic)
- (CX) 57.31 Cystoscopy through artificial stoma
- (CXI) 57.32 Other cystoscopy
- (CXII) 58.22 Other urethroscopy
- (CXIII) 58.31 Urethroscopy with biopsy
- (CXIV) 58.6 Dilation of urethra
- (CXV) 60.11 Closed (percutaneous) biopsy of prostate
- (CXVI) 62.11 Closed (percutaneous) biopsy of testis
- (CXVII) 70.0 Culdocentesis
- (CXVIII) 70.12 Culdotomy
- (CXIX) 70.21 Vaginoscopy
- (CXX) 71.3 Other local excision or destruction of vulva and perineum
- (CXXI) 79.00-79.09 Closed reduction of fracture (various sites)
- (CXXII) 79.70-79.79 Closed reduction of dislocation (various sites)
- (CXXIII) 81.91 Arthrocentesis
- (CXXIV) 81.92 Injection of therapeutic substance into joint or ligament
- (CXXV) 83.21 Biopsy of soft tissue
- (CXXVI) 84.41 Fitting of prosthesis, upper arm and shoulder
- (CXXVII) 84.42 Fitting of prosthesis, lower arm and hand
- (CXXVIII) 84.43 Fitting of prosthesis, arm, NOS
- (CXXIX) 84.45-84.47 Fitting of prosthesis, above knee, below knee, leg, NOS
- (CXXX) 85.11 Closed (percutaneous) (needle) biopsy of breast
- (CXXXI) 85.19 Other diagnostic procedure on breast
- (CXXXII) 85.91 Aspiration of breast
- (CXXXIII) 85.92 Injection of therapeutic agent into breast
- (CXXXIV) 86.01 Aspiration of skin and subcutaneous tissue
- (CXXXV) 86.03 Incision of pilonidal sinus or cyst
- (CXXXVI) 86.04 Other incision with drainage of skin and subcutaneous tissue
- (CXXXVII) 86.07 Insertion of VAD (infusaport)
- (CXXXVIII) 86.09 Other incision of skin and subcutaneous tissue
- (CXXXIX) 86.11 Biopsy of skin and subcutaneous tissue
- (CXL) 86.19 Other diagnostic procedure on skin and subcutaneous tissue
- (CXLI) 86.26 Ligation of dermal appendage
- (CXLII) 86.28 Non-excisional debridement of wound
- (CXLIII) 86.59 Suture of skin and subcutaneous tissue, other sites
- (CXLIV) 87.01-99.99 Miscellaneous diagnostic and non-surgical procedures
- (iii) ICU/CCU (level 7) and routine (level 8) care are peer grouped based on hospital teaching and nonteaching status. These two levels of care are peer grouped because a statistically significant difference in cost was found between teaching and nonteaching hospitals in these categories. Therefore, for payment purposes, hospitals that either belong to the Council on Teaching Hospitals or have a medical school affiliation qualify for the teaching peer grouped rate for Levels 7 and 8. All

other hospitals shall receive the nonteaching rate for Levels 7 and 8.

(C) **Adjustments.** Level of care per diem rates will be reviewed periodically and adjusted as necessary through a public process.

(3) **Fixed capital per diem.** The second rate component is the per diem capital component. Fixed capital per diem is calculated separately for acute care inpatient hospitals and freestanding inpatient psychiatric hospitals using different methodologies.

(A) **Fixed capital per diem methodology for freestanding psychiatric hospitals.** Inpatient psychiatric hospitals fixed rate capital cost will be reimbursed using the average fixed rate capital cost of all Medicaid enrolled freestanding psychiatric inpatient hospitals from calendar year 1991 cost reports.

(B) **Fixed capital per diem methodology for acute care inpatient hospitals.** Inpatient hospital fixed capital per diem cost will be reimbursed using a peer group fixed capital weighted payment method.

(i) There are five peer groups based on level of care of the services offered:

- (I) Teaching hospitals with burn and NICU units.
- (II) Teaching hospitals with NICU units, but no burn unit.
- (III) Teaching hospitals without NICU or burn unit.
- (IV) Non-teaching hospitals with NICU units, but no burn unit.
- (V) Non-teaching hospitals with no burn or NICU unit.

(ii) A value factor for each level of care within a peer group is determined by dividing each level of care per diem rate (peer group statewide level of care rate per diem) by the average of all the level of care rates within a peer group.

(iii) The peer group fixed capital per diem weighted payment component for each level of care is then determined by multiplying the statewide median fixed capital of all inpatient hospitals by the level of care value factor derived in (ii) of this subparagraph.

(C) **Adjustments.** The statewide fixed capital per diem average of all freestanding psychiatric hospitals and the statewide fixed capital per diem median of all inpatient hospitals will be reviewed periodically and adjusted as necessary through a public process.

~~(4) **Medical education per diem.** The third rate component, a direct medical education per diem, is paid to those hospitals with direct medical education costs. New hospitals must have 12 full months of cost report data in order to receive a hospital specific direct medical education per diem. The medical education per diem will be reviewed periodically and adjusted as necessary through a public process.~~

~~(5) **Disproportionate share hospitals (DSH).**~~

(A) **Eligibility.** A hospital shall be deemed a disproportionate share hospital, as defined by Section 1923 of the federal Social Security Act, if the hospital's Medicaid inpatient utilization rate is at least one standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state or if the hospital's low-income utilization rate exceeds 25%.

(i) Eligibility for disproportionate share hospital payments will be determined annually by the OHCA before the beginning of each federal fiscal year based on cost and revenue survey data completed by the hospitals. The survey must be received by OHCA each year by April 30. The information used to complete the survey must be extracted from the hospital's financial records and fiscal year cost report ending in the most recently completed calendar year, for entities that meet the Medicare Provider designation (refer to Medicare Program Memorandum No. A-96-7 for requirements). A hospital may not include costs or revenues on the survey which are attributable to services rendered in a separately licensed/certified entity. Hospitals found to be ineligible for disproportionate share status upon audit shall be required to reimburse the Authority for any disproportionate share payment adjustments paid for the period of ineligibility.

(ii) Beyond meeting either of the tests found in (i) of this subparagraph, there are three additional requirements which are:

(I) Any hospital offering non-emergency obstetrical services must have at least two obstetricians with staff privileges who have agreed to provide services to Medicaid beneficiaries. This requirement does not apply to children's hospitals.

(II) In the case of an urban hospital, a hospital located in an MSA, an "obstetrician" is defined as any board-certified obstetrician with staff privileges who performs non-emergency obstetrical services at the hospital. In the case of a rural hospital, an "obstetrician" is defined to include any physician with staff privileges who performs non-emergency obstetrical services at the hospital.

(III) A hospital must have a Medicaid inpatient utilization rate of at least one percent.

(B) **Payment adjustment.**

(i) Beginning federal fiscal year 1993 and each year thereafter, DSH payment adjustments will be capped by the federal government. Financial participation from the federal government will not be allowed for expenditures exceeding the capped amount. Eligible DSH hospitals will be assigned to one of the three following categories:

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- (I) public-private acute care teaching hospital which has 150 or more full-time equivalent residents enrolled in approved teaching programs (using the most recently completed annual cost report) and is licensed in the state of Oklahoma. Public-private hospital is a former state operated hospital that has entered into a joint operating agreement with a private hospital system;
 - (II) other state hospitals; or
 - (III) private hospitals and all out-of-state hospitals.
- (ii) Payment adjustments will be made on a quarterly basis for federal fiscal year 1994 and thereafter using the following formula that determines the hospital's annual allocation:
- (I) Step 1. The Medicaid revenue and imputed revenue for charity are totaled for each hospital qualifying for disproportionate share adjustments.
 - (II) Step 2. A weight is assigned to each qualifying hospital by dividing each hospital's revenue total (Medicaid and charity) by the revenue total of the public-private acute care teaching hospital, which has the assigned weight of 1.0.
 - (III) Step 3. A weighted value is then determined for each hospital by multiplying the hospital's assigned weight by the hospital's total Medicaid and charity revenue.
 - (IV) Step 4. The weighted values of all hospitals qualifying for disproportionate share adjustments are totaled.
 - (V) Step 5. The percentage of the public-private acute care teaching hospital's weighted value is determined in relation to the weighted values of all qualifying disproportionate share hospitals.
 - (VI) Step 6. The weighted values of all state hospitals (except public-private acute care teaching hospital) are totaled.
 - (VII) Step 7. The weighted values of all private and out-of-state hospitals qualifying for disproportionate share adjustments are totaled.
 - (VIII) Step 8. The percentage of the total weighted values of the hospitals included in Step 6 (State hospitals except public-private acute care teaching hospital) is calculated in relation to the total weighted values (sum of Step 6 and 7) of all remaining hospitals qualifying for disproportionate share adjustment.
 - (IX) Step 9. The percentage of weighted values of the hospitals included in Step 7 (private hospitals and all out-of-state hospitals) is calculated in relation to the total weighted values (sum of Steps 6 and 7) of all remaining hospitals qualifying for disproportionate share adjustment.

- (X) Step 10. The weighted percentages for the three hospital groups are next applied to the capped disproportionate share amount allowed by HCFA for the federal fiscal year. The amount of disproportionate share to be paid to the public-private acute care teaching hospital is determined by multiplying the state disproportionate share allotment by the weighted percentage of the public-private acute care teaching hospital. Beginning FFY 96, the weighted percentage amount to be paid will not exceed 82.82%. Payment of disproportionate share funds to public/private hospitals will be made to the public entity that is organizationally responsible for indigent care. The weighted percentage amount is then subtracted from the state disproportionate share allotment. Once the public-private acute care teaching hospital's share of the state disproportionate share allotment has been subtracted, the state hospitals' weighted percentage is applied to the remainder. Beginning FFY 96, the State hospital's weighted percentage (from VIII of this subunit) will not be less than 75.3%. The balance of the disproportionate share allotment is distributed to private hospitals and all out-of-state hospitals. Distribution of funds within each group will be made according to the relationship of each hospital's weighted value to the total weighted value of the group.

- (iii) Payment adjustments to individual hospitals will be limited to 100 percent of the hospital's costs of providing services (inpatient and outpatient) to Medicaid recipients and the uninsured, net of payments received from Medicaid (other than DSH) and uninsured patients.

(65) Critical Access Hospitals. Critical Access Hospitals (CAHs) are rural public or non-profit hospitals which provide 24 hour emergency care services, are limited to 15 inpatient beds (can have 10 additional swing beds) and inpatient stays are limited to 96 hours. A payment adjustment will be made to hospitals certified by the Oklahoma State Department of Health as Critical Access Hospitals.

(76) Indirect medical education (IME) adjustment.

(A) Effective February 11, 1999, acute care hospitals that qualify as major teaching hospitals will receive an indirect medical education (IME) payment adjustment, which covers the increased operating, or patient care, costs that are associated with approved intern and resident programs.

(B) In order to qualify as a major teaching hospital and be deemed eligible for an IME adjustment, the hospital or hospitals of common ownership must:

- (i) belong to the Council on Teaching Hospitals or have a medical school affiliation; and
- (ii) be licensed by the State of Oklahoma; and

(iii) have 150 or more full-time equivalent (FTE) residents enrolled in approved teaching programs ~~using the 1996 annual cost report.~~

(C) Eligibility for an IME adjustment will be determined by the OHCA ~~at the beginning of the state fiscal year, using the provider's 1996 completed most recently received annual cost report or the application [see paragraph (7) of this subsection] for the quarterly Direct Medical Education Supplemental payment adjustment.~~

(D) ~~The annual payment amount for state fiscal year 1999 (base year) is \$10,038,714, which will be paid out during the third quarter of the state fiscal year. For subsequent fiscal years, the payment will be made during the first quarter of the state fiscal year. An annual fixed IME payment pool will be established based on the State matching funds made available by transfers from other State agencies. The pool of funds will be distributed annually each State fiscal year. The total pool of monies made available by funds transferred by any State agency will be limited to \$10,038,714, the 1999 base year amount. The base year payment amount will be updated annually each July 1 using the first quarter publication of the DRI PPS-type Hospital market basket forecast for the midpoint of the upcoming fiscal year, if funds are available.~~

(E) ~~The annual payment payments will be distributed proportionately based on the number of interns and residents, to all providers who qualify according to the following formula: $\$10,038,714 \times (\text{total residents in the hospital's inpatient hospital program} / \text{total residents in all inpatient hospital programs})$ equally. For hospitals that have public-private ownership, or have entered into a joint operating agreement, payment will be made to the public entity that is organizationally responsible for the public teaching mission.~~

(F) If payment causes total payments to exceed Medicare upper limits as required by 42 CFR 447.272, the payment will be reduced to not exceed the Medicare upper limit.

(87) Direct medical education supplemental incentive payment adjustment.

(A) Effective July 1, 1999, in-state hospitals that qualify as teaching hospitals will receive a supplemental payment adjustment for direct medical education (DME) expenses. These payments will be made in order to encourage training in rural hospital and primary care settings and to recognize the loss of support for GME due to the advent of Managed Care capitated programs.

(B) In order to qualify as a teaching hospital and be deemed eligible for DME supplemental incentive payment adjustments, the hospital must:

- (i) be licensed by the State of Oklahoma;
- (ii) have costs associated with approved or certified Oklahoma medical residency programs

in medicine, osteopathic medicine, and associated specialties and sub-specialties. An approved medical residency program is one approved by the Accrediting Council for Graduate Medical Education of the American Medical Association, by the Bureau of Professional Education of the American Osteopathic Association, or other professional accrediting associations. A resident is defined as a Post-Graduate Year 1 (PGY1) and above resident who participates through hospital or hospital-based rotations in approved medical residency/internship programs in Family Medicine, Internal Medicine, Pediatrics, Surgery, Ophthalmology, Psychiatry, Obstetrics/Gynecology, Anesthesiology, Osteopathic medicine, or other Certified Medical Residencies, including specialties and sub-specialties as required in order to become certified by the appropriate board; and

(iii) apply for certification by the OHCA prior to receiving payments for any quarter during a State Fiscal year. To qualify, a hospital must have a contract with the Oklahoma Health Care Authority (OHCA) to provide Medicaid services and belong to The Council on Teaching Hospitals or otherwise show proof of affiliation with an approved Medical Education Program. Affiliation means an agreement to support the costs of medical residency education in the approved programs. In addition to the OHCA contract, hospitals located in a SoonerCare Plus service area must have a participation agreement with at least one SoonerCare Plus Health Plan.

(iv) Federal and state hospitals, including Veteran's Administration, Indian Health Service/Tribal and Department of Mental Health Hospitals are not eligible for supplemental DME payments. Major teaching hospitals as defined in (5)(B)(i)(I) of this subsection are eligible.

(C) Determination of a hospital's eligibility for a DME supplemental payment adjustment will be done quarterly by the OHCA based on reports designed by the OHCA. The reports will detail the resident-months of support provided by the hospital and the total eligible Medicaid days of service from the paid claims for the same quarter and be attested to by the hospital Administrator, or designated personnel ~~and by the Residency program Director. The annual application must be attested to by the hospital administrator and by the residency program director.~~ The All reports will be subject to audit and payments will be recouped for inaccurate or false data. The amount of resident-months will also be compared to the annual budgets of the schools, the annual HCFA form 2552 (Cost Report) and the monthly assignment schedules.

(D) An annual fixed DME payment pool will be established based on the State Matching funds made

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available by the University Hospitals Authority or other State agencies.

(E) The payments will be distributed based on the ~~number~~ relative value of the weighted resident-months at each participating hospital. A resident-month is defined as a PGY1 and above resident full-time equivalent (FTE) for that month. Resident is defined in (B)(ii), ~~above of this paragraph~~. An FTE is defined as a resident assigned by the residency program to a rotation that is hospital or hospital-based. The resident must be assigned to a specific hospital for a supervised hospital-based residency experience. Required residency clinical or educational experience will be allowed. ~~Rotations that are primarily clinical even though involving some hospital training are not counted as resident months.~~ The time residents spend in non-provider settings such as freestanding clinics, nursing homes and physicians' offices in connection with approved programs may be included in determining the number of FTE's in the count if the following conditions are met:

(i) The resident spends his or her time in patient care activities.

(ii) The written agreement between the hospital and the non-hospital site must indicate that the hospital will incur the cost of the resident's salary and fringe benefits while the resident is training in the non-hospital site and the hospital is providing reasonable compensation to the non-hospital site for supervisory teaching activities.

(iii) The hospital must incur all or substantially all of the costs for the training program in the non-hospital setting, which means the residents' salaries and fringe benefits (including travel and lodging where applicable) and the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct graduate medical education.

(F) Training outside the formal residency program (moonlighting) is not eligible for this payment. ~~For payment purposes, the payment may be weighted towards public/private major teaching hospitals as defined in (5)(B)(i)(I) of this subsection.~~ The pool of available funds will be ~~paid out by quarter and will be allocated to the hospitals based on the prior quarter's reported resident months, weighted as described above~~ distributed quarterly based on the relative value of the eligible hospitals' resident-months weighted for Medicaid services rendered.

(i) The weighted relative value is determined as follows:

(I) Annually (prior to each state fiscal year) the OHCA will determine each participating hospital's individual acuity factor from data taken from the Oklahoma MMIS system (or reported claims data) by using the days of services and weights determined for the levels of care.

(II) Determine the total resident-months from the quarterly reports in (7)(C) of this subsection for each hospital.

(III) Determine the total eligible patient days for the quarter from the quarterly reports in (7)(C) of this subsection for each hospital reporting.

(IV) Determine the relative value for each hospital. The relative value is defined as the product of the individual acuity factor [see (I) of this unit] times the total resident-months [see (II) of this unit] times the eligible patient days [see III of this unit].

(ii) The pool of available funds will be allocated quarterly based on the prior quarter's relative value as determined in (i)(IV) of this subparagraph. The per resident-month amount will be limited to \$11,000 and the total payments will be limited to and not exceed the upper payment limits described in (G) of this paragraph.

~~(F)G~~ If payment in (D), above, of this paragraph causes total payments to exceed Medicare upper limits as required by CFR 447.272, the payment will be reduced to not exceed the Medicare upper limit.

(8) **Non-State Public Hospital Payment Adjustment.** Effective July 1, 2002, all Oklahoma non-state publicly owned hospitals (i.e., City, County or Title 60 Trust hospitals within the state of Oklahoma that are neither owned nor operated by the state of Oklahoma) shall qualify for a public hospital rate adjustment. The adjustment shall be equal to each eligible hospital's pro rata share of a funding pool, based on the hospital's Medicaid utilization in the base year. The amount of the total pool will not be in excess of the aggregate Medicare-related upper payment limit. The amount of the funding pool shall be determined by OHCA annually as follows:

(A) Using data from the most recently completed cost reports and Medicaid Management Information System data, the OHCA shall determine each non-state publicly owned hospital's Medicaid cost (using Medicare allowable cost reimbursement principles) and Medicaid payments.

(B) The base Medicaid cost will be trended forward using an annual DRI PPS-type hospital market basket index. Base year Medicaid payments will be trended by applicable updates to the payment rates.

(C) Once the Medicaid costs have been trended forward, the base Medicaid payments will be subtracted from the allowable costs. This difference for each hospital is their portion of the total available funding pool.

(D) The amount of each eligible hospital's payment adjustment shall be its pro rata percentage multiplied by the amount of the funding pool.

(E) Payment will be made on a quarterly basis.

(9) **Transplants.** In addition to the normal level of care per diem rate, an additional reimbursement amount may be negotiated, subject to the availability of services.

The negotiated rate for the inpatient hospital charges associated with the transplant surgery shall not exceed 75 percent of the billed charges with a maximum payment of \$150,000.

(10) **Prosthetic devices.** Payment for prosthetic devices implanted during surgery is included within the level of care per diem rates except for: Cochlear Implants, Vagus Nerve Stimulator, and implantable medication pumps. Additional payment will be considered on a case by case basis. A prior authorization from the Medical Professional Services Unit of the OHCA will be required.

(11) **Out-of-state hospitals.**

(A) Out-of-state hospitals, for which the Authority has on file a fiscal year 1989 or more recent cost report, shall be reimbursed ~~in the same manner as in-state Oklahoma hospitals~~ as follows:

- (i) the level of care per diem rate
- (ii) a fixed capital per diem
- (iii) a hospital-specific per diem direct medical education rate.

(B) Hospitals, for which the Authority does not have a fiscal year 1989 or more recent cost report on file, will also receive the level of care per diem rates; however, capital and direct medical education rate components will not be reimbursed on a hospital-specific basis. Instead, these hospitals shall receive the statewide median capital per diem amount. The statewide median direct medical education per diem rate will be paid to qualifying hospitals.

(C) In the absence of substantiating information verifying eligibility for the teaching hospital peer group, an out-of-state hospital will be presumed to be a non-teaching hospital and will be paid at the non-teaching rate for levels 7 and 8.

(D) In the absence of substantiating information verifying the presence of a burn unit or a level III NICU, an out-of-state hospital will be presumed to be ineligible for burn and NICU level of care payments.

(E) Out-of-state hospitals shall submit to the Authority the following documentation (as appropriate):

- (i) Substantiating information verifying qualification as a teaching hospital
- (ii) Substantiating information verifying presence of a burn unit
- (iii) Substantiating information verifying presence of a NICU that meets Level III criteria established by the Health Planning Commission (now part of the Oklahoma Department of Health) in its 1988 Hospital Utilization and Plan Survey.

[OAR Docket #03-1000; filed 5-20-03]

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

[OAR Docket #03-997]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 5. Pharmacists

317:30-5-78.1. [AMENDED]

(Reference APA WF # 02-29)

AUTHORITY:

Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 433.139(e)

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N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Medical Providers-Fee for Service, Pharmacists specific, rules are revised to move from a pay and chase system to a cost avoidance system for pharmacy claims. Revisions are needed as information received from the Center for Medicare and Medicaid Services (CMS) indicates an Agency Waiver expires February 2003 and will not be renewed due to a recent OIG report showing the deficiency of the pay and chase system.

CONTACT PERSON:

Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 5. PHARMACISTS

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317:30-5-78.1. Special billing procedures

(a) **Antihemophilic Factor (AHF) Products.** AHF products are sold by the amount of drug (International Units of AHF) in the container. For their products, regardless of the container size, the package size is always "1". Therefore, pricing assumes that the "package size" actually dispensed is the actual number of units dispensed. Examples: If 250 AHF units are dispensed and multiplied by a unit cost of \$.25, the allowable cost would be \$62.50. Metric Quantity is shown as 250; if 500 AHF units are dispensed and multiplied by a unit cost of \$.25, the allowable would be \$125.00. Metric Quantity is shown as 500.

(b) **Compound and intravenous drugs.** Prescriptions claims for compound and Intravenous (IV) drugs are billed and reimbursed using the NDC number and quantity for each compensable ingredient in the compound or IV, up to 25 ingredients. Ingredients without an NDC number are not compensable. A dispensing fee as described in OAC 317:30-5-78(a)(5) is added to the total ingredient cost.

(c) **Co-Payment.** ~~The Oklahoma Health Care Authority operates under a waiver of the Medicaid Third Party Cost Avoidance requirement, set out in 42 CFR 433.139, for prescription drug services. Pharmacies may fill prescriptions and file for provided Oklahoma patient/recipients without pursuing the third party liability resources previously required. The pharmacist may also file for the insurance payment. Pharmacies must pursue all third party resources before filing a claim with OHCA as set out in 42 CFR 433.139. If there is a copayment associated with the private insurance coverage the pharmacists files with OHCA in one of the following manners:~~

(1) ~~When the cost of the prescription is greater than the co-payment, bill OHCA for the co-payment in the following manner. Show the amount of co-payment in Block 18. Show the amount due from the insurance company in Block 16 and mark "no" in Block 19. This indicates that the insurance company did not deny the claim. Mark "no" only when an insurance payment is shown.~~

(2) ~~When the cost of the prescription is less than the amount of co-payment, indicate in Block 19 that "yes" the insurance company denied coverage and attach a copy of the explanation of benefits or computer screen print showing that the co-payment was greater than the billed charges. Providers using electronic billing media must retain hard copy denial letters and copies of cards in their files for a period not to exceed six months from the date of the filing. (This applies to private insurance information only and in no way affects the need to retain prescription and pharmacy claim information for six years.) OHCA will do a random sampling of claims with insurance carrier denied indicator and request supporting documentation. Failure to provide the supporting documentation could result in recoupment of Medicaid payments and an audit of billing procedures.~~

(d) **Over-the-counter drugs.** Payment for covered over-the-counter medication is made according to the reimbursement methodology in OAC 317:30-5-72.1(2)(E) without a dispensing fee.

(e) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services. The appropriate Durable Medical Equipment Regional Carrier (DMERC) carrier must be billed prior to billing OHCA for all Medicare compensable drugs.

[OAR Docket #03-997; filed 5-20-03]

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

[OAR Docket #03-1005]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties
Part 95. Agency Personal Care Services
317:30-5-951. through 317:30-5-953. [AMENDED]
(Reference APA WF # 02-34B)

AUTHORITY:

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

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None held or requested

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INCORPORATIONS BY REFERENCE:

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ANALYSIS:

Medical Providers-Fee for Service, Agency Personal Care Services specific, rules are in need of revision to provide consistency in rules by: (1) adding a previously approved exception regarding where personal care services may be provided; and (2) changing from a weekly to a monthly method of calculating the number of units of personal care services that an eligible recipient may be approved to receive.

CONTACT PERSON:

Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 95. AGENCY PERSONAL CARE SERVICES

317:30-5-951. Coverage by category

Medicaid payment is made to agencies, on behalf of ~~ategorically needy or medically needy~~ Medicaid recipients, for personal care services provided in the recipient's home. Personal Care services may be provided in an educational or employment setting to assist the client in achieving vocational goals identified on the service plan with the approval of the DHS area nurse. Personal care services prevent, or minimize, physical health regression and deterioration. Tasks performed during the provision of personal care services include, but are not limited to, assisting an individual in performing tasks of personal hygiene, dressing and medication. Tasks may also include meal preparation, light housekeeping and laundry directly related to the recipient's personal care needs. Personal care does not include the provision of care of a technical nature. For example, tracheal suctioning, bladder catheterization, colostomy irrigation and operation/maintenance of technical machinery is not performed as part of personal care services.

(1) **Adults.** Payment for agency personal care services is made on behalf of aged or disabled individuals who have been assessed using the Uniform Comprehensive Assessment Tool (UCAT) and whose needs, as determined through the assessment, require the provision of this service, in accordance with OAC ~~317:35-13-4~~ 317:35-15-4. To be eligible for personal care services the individual must:

- (A) require a treatment plan involving the planning and administration of services delivered under the supervision of professional personnel and are prescribed by the physician;
- (B) have a physical impairment or combination of physical and mental impairments;
- (C) lack the ability to meet personal care needs without additional supervision or assistance, or to communicate needs to others; and
- (D) require assistance, not of a technical nature, to prevent or minimize physical health regression and deterioration.

(2) **Children.** Coverage for persons under 21 years of age is the same as for adults.

317:30-5-952. Prior authorization

Each individual receiving personal care services must have a treatment plan developed by a Department of Human Services (DHS) Long Term Care (LTC) nurse or by an ADvantage Program Case Manager. The amount and frequency of the service, to be provided to the individual, is listed on the treatment plan. The amount and frequency is also prior authorized by the LTC nurse or by the AA certification of the ADvantage Program Service Plan. The number of units of service the individual is eligible to receive each ~~week~~ month is limited to the number of hours approved on the nurse's prior

authorization or on the AA certified ADvantage Program Service Plan. Services provided without prior authorization are not compensable.

317:30-5-953. Billing

Agency personal care unit of service is one hour. ~~Claim forms are submitted to the Medicaid agency's fiscal agent, in accordance with OAC 317:30-7-1.~~ Billing procedures for Personal Care services are contained in the OKMMIS Billing and Procedure Manual.

[OAR Docket #03-1005; filed 5-20-03]

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

[OAR Docket #03-1001]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 3. Coverage and Exclusions
317:35-3-1. [AMENDED]
- 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]
- Subchapter 7. Medical Services
Part 7. Certification, Redetermination and Notification
317:35-7-60. [AMENDED]
- Subchapter 15. Personal Care Services
317:35-15-8. [AMENDED]
- 317:35-15-8.1. [NEW]
- 317:35-15-13. [REVOKED]
- 317:35-15-13.1. [NEW]
- 317:35-15-13.2. [NEW]

(Reference APA WF # 02-20 and 02-25)

AUTHORITY:

Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Sections 1115(a) and 1902(A)(34) of the Social Security Act; Senate Bill 732 of the 2nd Session of the 48th Legislature; Sections 1025.1 through 1025.3 of Title 56 of Oklahoma Statutes

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Subchapter 3. Coverage and Exclusions
317:35-3-1. [AMENDED]

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]

Subchapter 7. Medical Services

Part 7. Certification, Redetermination and Notification
317:35-7-60. [AMENDED]

(Reference APA WF # 02-25)

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 15. Personal Care Services

317:35-15-8. [AMENDED]

317:35-15-8.1. [NEW]

317:35-15-13. [REVOKED]

317:35-15-13.1. [NEW]

317:35-15-13.2. [NEW]

(Reference APA WF # 02-20)

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April 1, 2003

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20 Ok Reg 1069

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03-606

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Medical Assistance for Adults and Children-Eligibility rules are revised to limit retroactive eligibility for certain Medicaid eligibles. The groups of Medicaid eligibles that will be effected by these revisions include categorically needy pregnant women and individuals to Aid to Families with Dependent Children.

The initial SoonerCare 1115(a) Waiver application submitted by the Oklahoma Health Care Authority to the Center for Medicare and Medicaid (CMS) requested approval to waive Section 1902(A)(34) of the Social Security Act requiring the State to provide for up to three months of retroactive eligibility. OHCA was granted authority to waive this provision in the SoonerCare demonstration project award letter dated October 12, 1995. The purpose of waiving this provision was to allow the State to enroll, almost immediately, demonstration participants into prepaid health plans through a streamline eligibility process. However, at the time of the SoonerCare demonstration project approval, the State had not developed a streamline eligibility process and the supporting operational protocol was not developed.

The Agency has since developed and implemented an effective streamlined eligibility process for pregnant women, TANF/AFDC related and low income children. These categorical groups represent the majority of SoonerCare demonstration participants. The Agency, in collaboration with CMS, has begun the operational protocol for the elimination of retroactive eligibility for pregnant women, TANF/AFDC related and low income children. Other revisions: (1) move language from actual agency rules to the appropriate sections' "Instructions to Staff" and (2) clarify procedures to be followed by DHS staff when determining eligibility for Medicaid benefits.

Medical Assistance for Adults and Children-Eligibility, Personal Care specific, rules are revised to comply with recent revisions to Sections 1025.1 through 1025.3 of Title 56 of the Oklahoma Statutes. Revisions add the definition of a Community Services Worker, the Community Services Worker Registry, and Medicaid personal care services provider to agency rules. In order to separate policy and procedures for the agency personal care providers from those for the individual personal care providers, three new policy sections have been written; the revisions are necessary to provide clarification and instruction for DHS and OHCA staff, the Long Term Care Authority, Personal Care providers, and Medicaid recipients. Other revisions: (1) update procedures to current practice; (2) add or update references to OHCA and DHS policy; and, (3) update form names and numbers used by the LTC nurse in the

medical eligibility process. Revisions are needed to amend agency rules to comply with Sections 1025.1 through 1025.3 of Title 56 of Oklahoma Statutes.

CONTACT PERSON:

Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003.

SUBCHAPTER 3. COVERAGE AND EXCLUSIONS

317:35-3-1. Payment for ~~Title XIX~~ (Medicaid) services

(a) **Payment eligibility.** In order for the Authority to make payment for ~~Title XIX~~ Medicaid services, the individual must ~~have been~~ be determined eligible to have such payment made by:

- (1) having eligibility previously determined as a categorically needy or medically needy individual, or
- (2) making application for ~~Title XIX~~ Medicaid at the time the medical services is requested, and having eligibility determined at that time, ~~or,~~
- (3) ~~making application for a medical service that was provided during one of the prior three months, and having eligibility determined for the time the service was received.~~

(b) **Recipient lock-in.** ~~Title XIX~~ Medicaid recipients who have demonstrated ~~Title XIX~~ Medicaid usage above the statistical norm, during a 12-month period, may be "locked-in" to one primary physician and/or one pharmacy. If OHCA has determined that ~~Title XIX~~ Medicaid has been over-utilized, the recipient is notified, by letter, of the need to select a primary physician and/or pharmacy and of their opportunity for a fair hearing. A copy of the letter is sent to the DHS county office. If the recipient does not select a physician and/or pharmacy, one is selected for her/him. "Locked-in" recipients may obtain emergency services from a physician and/or an emergency room facility in the event of a medical emergency.

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

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 third month prior to of the month of application. The certification period is determined beginning with the month the medical service was received or expected to be received or the month of application for categorically needy cases in which a medical service has not been received. The period of certification may cover not be for retroactive or future months. For children in DHS custody who are placed outside the home, the certification period on the computer input record will show 99 months. The certification period in family cases is assigned for the shortest period of eligibility determined for any individual in the case. However, 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 other certification periods in the case.

(1) **Certification as categorically needy 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 application. If the individual is eligible for payment for medical services received during the three months preceding the month of application, the application for Health Benefits is processed as a Medical Assistance Only case. A copy of the application form and documentation of all eligibility factors is placed in the Medical Assistance case record if processed after the TANF case has been certified. A categorically needy individual who is not being certified for TANF is assigned a certification period according to categorical relationship. The first month of certification is the month that a medical service was provided or, if no medical service was provided, the month of application. A child in DHS custody or Indian Tribal custody (under Foster Care agreement with DHS) who is determined eligible, is certified effective the month custody was granted.

(A2) **Certification of non-cash assistance individuals categorically needy and categorically related to AFDC.** The certification period for the individual categorically related to AFDC is six months. If the individual had a medical service within three months prior to the application date, the certification period may include one, two, or three months plus the six months, not to exceed a period of nine months. The individual must be determined as categorically needy for each month of the certification period. If the application includes one, two, or three of the months prior to the date of application and if in any of those months the individual is not categorically needy, a second application is required for continuous benefits. The certification period can be less than six months if the individual:

- (iA) is certified as eligible in a money payment case during the six-month period;
- (iiB) is certified for long-term care during the six-month period;
- (iiiC) becomes ineligible for medical assistance after the initial month; or
- (ivD) becomes ineligible as categorically needy.

(B) **Certification period.** If the certification period was determined as six to nine months and any of the situations listed in subparagraph (A) of this paragraph occur after the initial month, the case is closed by the worker.

- (i) If an income change after certification causes the case to exceed the categorically needy maximums, the case is closed. If medical services are required, a reapplication must be made to determine eligibility as medically needy.
- (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.

(C3) **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. The first month of the certification is the earliest month a medical service was received. Certification cannot be earlier than the first day of the third month prior to the month of application. 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.

(D4) **Certification of newborn child deemed eligible.** (iA) There are two circumstances that a newborn child is deemed eligible on the date of birth for Medicaid benefits. For purposes of this subparagraph, a newborn child is defined as any child under the age of one year.

- (i) The first circumstance is when a child is born to a woman who is eligible for pregnancy-related services as categorically needy. The newborn child is deemed eligible, as categorically needy, 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.

(ii) The second circumstance is when a child is born to a woman who is eligible for pregnancy-related services as medically needy. In this instance, see OAC 317:35-7-60(a)(2)(D)(i)(II) 317:35-7-60-(b)(2)(D)(i)(II).

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(~~ii~~B) In both instances, the newborn child is deemed eligible for Medicaid only 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. However, it is recommended that social security number 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 referral enables Child Support Services to be initiated.

(~~ii~~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.

(~~iv~~D) When a categorically needy newborn child is deemed eligible for Medicaid, he/she is added for a certification period of 13 months. The certification period expires at the end of the month that the newborn child reaches age one. 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~~) his/her death expires.

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

(2) ~~**Certification procedures for a family case.** Each individual to be included in a family case is coded on the computer input document with the appropriate categorical relationship and whether categorically or medically needy. Family cases may contain individuals who are categorically related to different categories and may include individuals who are categorically needy and others who are medically needy. If all individuals in the case are categorically needy, the countable income is shown on a monthly basis for each individual. If the family case has a combination of categorically needy and medically needy individuals, the case is handled as medically needy (see OAC 317:35-7-60(a)(5)(A)(ii)).~~

SUBCHAPTER 7. MEDICAL SERVICES

PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION

317:35-7-60. Certification for Medical Services

(a) The rules in this Section apply to all categories of eligibles EXCEPT:

(1) categorically needy SoonerCare Health Benefit recipients who are categorically related to AFDC or Pregnancy Related Services, AND

(2) who if eligible, would be enrolled in SoonerCare (managed care).

(b) An individual determined eligible for Medical Services may be certified for a medical service provided on or after the first day of the third month prior to the month of application. The certification period is determined beginning with the month the medical service was received or expected to be received or the month of application for categorically needy cases in which a medical service has not been received. The period of certification may cover retroactive or future months. Assignment of the certification period is dependent on the categorical relationship and whether the individual is categorically or medically needy. Form MA-2, Medical Assistance Computation Work Sheet, is used to determine the certification period. Children in DHS custody who are placed outside the home are assigned a certification period according to categorical relationship, 6 months for AFDC and 12 months for ABD. ~~Although "medical eligibility number of months" on the computer input record will show 99 months, redetermination of eligibility is completed according to the categorical relationship.~~ The certification period in family cases is assigned for the shortest period of eligibility determined for any individual in the case.

(1) **Certification as categorically needy.** A categorically needy individual who is determined eligible for a State Supplemental Payment is certified effective the month of application. If the individual is eligible for payment for medical services received during the three months preceding the month of application, the application for Medicaid is processed in as a Medical Assistance Only case. ~~A copy of the application form and documentation of all eligibility factors is placed in the Medical Assistance case record if processed after the SSP has been certified.~~ A categorically needy individual who is categorically related to ABD but is not being certified for SSP is assigned a certification period of six months. The first month of certification is the month that a medical service was provided or, if no medical service was provided, the month of application. A child in DHS custody or Indian Tribal custody (under Foster Care agreement with DHS) who is determined eligible, is certified effective the month custody was granted. There is not a spenddown on a case certified as categorically needy.

(A) **Certification of individuals categorically needy and categorically related to ABD.** The certification period for the individual categorically related to ABD can be assigned for up to six months. The individual must be determined as categorically needy for each month of the certification period. The individual cannot be certified as categorically needy if he/she is medically needy during one month of the first three months of the certification period. The certification period is six months unless the individual:

- (i) is certified as eligible in a money payment case during the six-month period;

- (ii) is certified for long-term care during the six-month period;
- (iii) becomes ineligible for medical assistance after the initial month;
- (iv) becomes ineligible as categorically needy; or
- (v) is deceased.

(B) **Certification period.** If the certification period was determined as six months and any of the situations listed in subparagraph (A) of this paragraph occur after the initial month, the case is closed by the worker.

- (i) If income and/or resources change after certification causing the case to exceed the categorically needy maximums, the case is closed. If medical services are required, a reapplication must be made to determine eligibility as medically needy.
- (ii) A pregnant individual included in an ABD case which closes continues to be eligible for pregnancy related services through the postpartum period.

(2) **Certification as medically needy.** The certification period for medically needy individuals is determined beginning with the month that the medical service was received or is expected to be received with the certification period assigned in accordance with subparagraph (A) of this paragraph. In a family case where some individuals are medically needy and others are categorically needy, the medically needy individuals are certified only if a medical service has been received or is expected to be received by at least one of the medically needy individuals.

(A) **Certification period.**

- (i) The certification period for medically needy individuals is three months unless the individual is:
 - (I) certified as eligible in a money payment case during the three-month period;
 - (II) certified for long-term care during the three-month period;
 - (III) ineligible for medical assistance after the initial month;
 - (IV) certified as eligible for the Catastrophic Illness Program, which is a 12-month certification; or
 - (V) deceased.
- (ii) If the certification period was determined as three months and any of the situations in (i) of this subparagraph occurs after the initial month, the case is closed by the worker.

(B) **Spendedown computation period.** For medically needy cases, spenddown for the certification period is computed based on a spenddown computation period. The spenddown computation period is three months except as given in unit (i) of this subparagraph. All income, maintenance standards and medical expenses are totaled for all family members

for the spenddown computation period to determine the spenddown for the entire certification period.

- (i) The spenddown computation period may be less than three months only if:
 - (I) the individual is certified for long-term care;
 - (II) the individual is certified for a money payment after the initial month;
 - (III) monthly income, medical expenses and maintenance standard have already been considered in a spenddown computation for another certification period;
 - (IV) the individual is certified for coverage of a catastrophic illness, which has a monthly spenddown computation period; or
 - (V) the individual is deceased.

(ii) The first month of the spenddown computation period will be the first month of the certification period. If that month was included in a previous computation, the spenddown computation of income, maintenance standards and medical expenses will include only the amounts not previously considered.

(iii) The spenddown computation period may include months which are not included in the certification period if ineligibility is determined for any month in the certification period.

(iv) A case which is determined medically needy for any month during the computation period is considered medically needy for the entire certification period.

(C) **Certification of individuals medically needy and categorically related to pregnancy-related services.** Federal legislation requires that Medicaid eligibility be extended two months for postpartum care to the woman determined eligible as medically needy.

- (i) Criteria for this extended coverage is as follows:
 - (I) To be eligible for the extended coverage, application for Medicaid must have been filed prior to the end of the pregnancy and the case was Medicaid eligible for the month that pregnancy ended.
 - (II) The extended eligibility is for two months after the month that pregnancy ends by delivery, miscarriage or federally-funded induced abortion.

(ii) The individual who meets the criteria in (i) of this subparagraph is deemed eligible without regard to income and a spenddown is not computed for the extended eligibility period.

(iii) During this special extended eligibility period, the individual is eligible for the full scope of Medicaid services. The special extended medical provision does not apply if the individual is determined eligible for Medicaid benefits for reasons other than postpartum care since postpartum

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services would be covered under the Medicaid eligibility.

(iv) When eligibility for extended medical services for postpartum care is determined, the case is recertified (a new application is not required) using the same application date. The certification date for the extended eligibility period, not to exceed two months, is determined based on the expiration of the ~~Title XIX Medicaid~~ certification.

(v) The procedure for recertification of the mother is handled through the Medical Authorization File and will issue computer generated notices to the client and provider, if known.

(D) Certification of newborn child deemed eligible.

(i) There are two circumstances that a newborn child is deemed eligible on the date of birth for Medicaid benefits. For purposes of this subparagraph, a newborn child is defined as any child under the age of one year.

(I) The first circumstance is when a child is born to a woman who is eligible for pregnancy-related services as categorically needy (~~see OAC 317:35-6-60(1)(D)(i)(I). In this instance, see OAC 317:35-6-60(4)(A)(i).~~

(II) The second circumstance is when a child is born to a woman who is eligible for pregnancy-related services as medically needy. The newborn child is deemed eligible, as medically needy, through the last day of the month that the child attains the age of one year, as long as the mother remains eligible for Medicaid. The newborn child is added to the mother's case prior to the expiration of the postpartum period.

(ii) In both instances, the newborn child is deemed eligible for Medicaid benefits only 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. However, it is recommended that social security number 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 referral enables Child Support Services to be initiated.

(iii) 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.

(iv) In medically needy cases, the certification period may be shortened if the mother loses her Medicaid eligibility, as well as in the event the newborn child:

(I) leaves the mother's home;

(II) loses Oklahoma residence;

(III) has medical needs included in another assistance case; or

(IV) ~~his/her death expires.~~

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

(3) **Certification of individuals categorically related to ABD and eligible as Qualified Medicare Beneficiaries Plus.** ~~The effective date of certification for QMBP benefits is the first day of the month following the month in which the eligibility determination is made (regardless of when application was made).~~ In the event of an a SSP case, the effective date of the QMBP benefit is the month of certification. If the individual is not eligible for SSP, the ~~Title XIX Medicaid benefit, except for the Medicare Part B premium buy-in,~~ may be certified on the first day of the third month prior to the month of application or later. The effective date of certification for the Medicare Part B premium buy-in is the first day of the month following the month in which the eligibility determination is made (regardless of when application was made).

(A) An individual determined eligible for QMBP benefits is assigned a certification period of 12 months. At any time during the certification period that the individual becomes ineligible, the case is closed using regular negative action procedures.

(B) At the end of the certification period a redetermination of QMBP eligibility is required, using the same forms and procedures as for ABD categorically needy individuals ~~who receive a State Supplemental Payment.~~ However, a redetermination of QMBP eligibility must also be done at the same time the dually eligible individual has a redetermination of eligibility for other Medicaid benefits, i.e., as categorically needy and receiving SSP or as a long-term care recipient.

(4) **Certification of individual categorically related to ABD and eligible as Qualified Disabled and Working Individual.** The Social Security Administration is responsible for referrals of individuals potentially eligible for QDWI. Eligibility factors verified by the SSA are Medicare Part A eligibility and discontinuation of disability benefits due to excessive earnings. When the DHS State Office receives referrals from SSA the county will be notified and is responsible for obtaining an application and establishing other factors of eligibility. If an individual contacts the county office stating he/she has been advised by SSA that they are a potential QDWI, the county takes a Medicaid application. If the individual does not have verification of eligibility factors determined by SSA, the county contacts DHS, FSSD, State Office, for assistance in verifying those factors. The verification will be obtained by DHS State Office and sent to the county office. The effective date of certification for QDWI benefits is based on the date of application and the date all eligibility criteria,

including enrollment for Medicare Part A, are met. For example, if an individual applies for benefits in October and is already enrolled in Medicare Part A, eligibility can be effective October 1 (or up to three months prior to October 1, if all eligibility criteria are met during the three month period). However, if in the example, the individual's enrollment for Part A is not effective until November 1, eligibility cannot be effective until that date. Eligibility can never be effective prior to July 1, 1990, the effective date of this provision. These cases will be certified for a period of 12 months. At the end of the 12-month period, eligibility redetermination is required. If the individual becomes ineligible at any time during the certification period, the case is closed. The reason for closure is 69, and the worker completes the Notice to Client form.

(5) Certification procedures for a family case. Each individual to be included in a family case is coded on the computer input document with the appropriate categorical relationship and whether categorically or medically needy. Family cases may contain individuals who are categorically related to different categories and may include individuals who are categorically needy and others who are medically needy. The following procedures are used when establishing a family case:

(A) Procedures for coding income on the computer form.

- (i) If all individuals in the case are categorically needy, the countable income and resources are shown on a monthly basis for each individual.
- (ii) If all individuals are medically needy, each individual's income is shown as the total amount for the months of the spenddown computation period from Form MA-2,II,B.
- (iii) If the family case has a combination of categorically needy and medically needy individuals, the case is handled as medically needy and income shown as in unit (ii) of this subparagraph.

(B) Procedures for certifying a case with multiple categorical relationships and containing both categorically needy and medically needy individuals. If the family case includes an individual(s) who is determined categorically needy and:

- (i) other family members are medically needy with no medical services needed, the case is certified with only the categorically needy individuals added. The medically needy individuals are coded on the case as not included in the benefit (coded with letter "O" in F25) but income and resources for those categorically related to ABD are considered.
- (ii) other family members are medically needy and at least one requires services, the case is certified for both the categorically needy individuals and the medically needy individuals with the certification period assigned according to (2)(A) of this subsection. When the certification period expires but a categorically needy individual in the case is categorically related to pregnancy related

services, the computer input form is updated for the remaining period of coverage for the pregnancy related services. The medically needy individuals continue to be shown on the family case but are not included in the benefit.

(iii) other family members are medically needy and have a medical service after certification of only the categorically needy individuals, a new application is not required. The addition of the medically needy individual(s) is handled by verifying all eligibility factors and updating the application form in red. The application date is retained but the certification date and certification period are updated on the computer. The certification period is assigned based on the rules in (2)(A) of this subsection. When the certification period expires but a categorically needy individual in the case is categorically related to pregnancy related services, the computer input form is updated for the remaining period of coverage for the pregnancy related services. The medically needy individuals continue to be shown on the family case but are not included in the benefit.

(65) Certification of Individual Categorically Related to ABD and Eligible as Specified Low-Income Medicare Beneficiary (SLMB). The effective date of certification of SLMB benefits may begin on the first day of the third month prior to the month of application or later. A certification can never be earlier than the date of entitlement of Medicare Part A. An individual determined eligible for SLMB benefits 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 SLMB eligibility is required. A redetermination of SLMB eligibility must also be done at the same time a dually eligible individual has a redetermination of eligibility for other Medicaid benefits such as long-term care.

(76) Certification of individuals categorically related to disability and eligible for TB related services.

- (A) An individual determined eligible for TB related services may be certified three months the first day of the third month prior to the month of application was made or later, as long as verification is received of a diagnosis of TB infection.
- (B) A certification period of 12 months will be assigned. At any time during the certification period that the individual becomes ineligible, the case is closed using the regular negative action procedures.
- (C) At the end of the certification period a new application will be required if additional treatment is needed.

(87) Certification of Individual Categorically Related to ABD and Eligible as Qualifying Individuals.

(A) Qualifying Individuals-1. The effective date of certification for the QI-1 may begin on the first day of the third month prior to the month of application

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or later. A certification can never be earlier than the date of entitlement of Medicare Part A. An individual determined eligible for QI benefits 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 QI eligibility is required.

(i) Since the State's allotment to pay Medicare premiums for this group of individuals is limited, the State must limit the number of QIs so that the amount of assistance provided during the year does not exceed the State's allotment for that year.

(ii) Persons selected to receive assistance in a calendar year are entitled to receive assistance with their Medicare premiums for the remainder of the year, but not beyond, as long as they continue to qualify. The fact that an individual is selected to receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year.

(B) **Qualifying Individuals-2.** The effective date of certification for the QI-2 individual is the first day of the month in which eligibility is established. The certification is a one time payment consisting of the total number of months in the calendar year in which the individual was not covered by Medicaid. The payment is the amount attributable to the shift of some home health benefits from Medicare Part A to Medicare Part B.

(i) Since the State's allotment for Qualifying Individuals is capped, the State must limit the number of QIs so that the amount of assistance provided during the year does not exceed the State's allotment for that year.

(ii) The fact that an individual is selected to receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year.

~~the client and contractor to begin care plan and service plan implementation. The nurse maintains the original plans and forwards a copy of the approved Personal Care plan and service plan to the chosen contractor within one working day of notice of approval. The client's Personal Care service plan and care plan includes:~~

- ~~(1) goals and tasks;~~
- ~~(2) the number of authorized Personal Care units (hours) per week;~~
- ~~(3) frequency of service visits;~~
- ~~(4) the effective date for services; and~~
- ~~(5) the certification period for the care plan and service plan.~~

~~(b) After medical and financial eligibility have been established, the LTC nurse reviews the care plan and service plan with the client and contractor and notifies the client and agency contractor to begin care plan and service plan implementation. The nurse maintains the original plans and forwards a copy of the UCAT, the Personal Care Planning Schedule, the approved Personal Care plan and the service plan to the chosen agency contractor and client within one working day of notice of approval. The agency, prior to placing a PCA in the client's home, initiates an OSBI background check, checks the DHS Community Services Worker Registry in accordance with Section 1025.2 of Title 56 of the Oklahoma Statutes, and, as appropriate, checks the Certified Nurse Aid Registry.~~

~~(c) The client chooses a primary and secondary agency contractor, from a list of qualified agencies, provided by the LTC nurse [see OAC 317:35-15-13(1)]. When an individual PCA is selected, the DHS nurse explains DHS Form Adm 66, Authorization for Withholding of FICA Tax in Personal Care, and obtains the client's signature. The LTC nurse reviews the care plan and service plan with the client and the PCA or makes the referral to the agency selected by the client.~~

~~(d) With the exception of clients served by a Home and Community Based Waiver, the The LTC nurse is the case manager and monitors the care plan and service plan for clients with an individual PCA. Written information is provided to the client on the method used to contact the LTC nurse. The LTC nurse contacts the client within 30 calendar days of submitting the care plan and service plan to the agency in order to make sure that services have been implemented and the needs of the client are being met. The LTC nurse makes a home visit at a minimum of every 180 days beginning within 90 days of the date of service initiation for all individuals receiving Personal Care for the purpose of assessing the client's satisfaction with their care and for evaluating the plan of care for adequacy of goals and units allocated. Whenever a home visit is made, the LTC nurse communicates to the home health agency the results of the visit as documented on the Personal Care Services Progress Notes, DHS form AG-22. Requests by the agency for increases in the time allocated in the care plan and service plan are submitted to the LTC nurse and approved by the area nurse, or designee, prior to implementation.~~

~~(d) When the service provider returns the service plan with a start date, the LTC nurse or the AA notifies the county social worker in writing of the number of units and the start date of PC services.~~

SUBCHAPTER 15. PERSONAL CARE SERVICES

317:35-15-8. Agency Personal Care service management

(a) The LTC nurse informs the client of the Agency Personal Care service contractors in the local area who are contracted to deliver Personal Care services ~~to obtain and obtains~~ the client's informed choice of agencies. The client chooses a primary and secondary agency contractor from a list of qualified agencies. If the client and/or family declines to make a choice, the nurse uses a rotating system to select an agency contractor from a list of all local certified provider agencies. The LTC nurse documents the name of the selected agency on the DHS form AG-6, Personal Care Service Plan.

~~(b) When the area nurse, or designee, notifies the county office of medical eligibility (MS 52) and the county office staff determines financial eligibility, the LTC nurse notifies~~

(e) For clients who select an agency contractor, with the exception of clients serviced by a Home and Community Based Waiver, the LTC nurse reviews the care plan and service plan with the client and forwards a copy of the UCAT, care plan and service plan to the agency. All requests by the agency for increases in the time allocated in the care plan and service plan are submitted to the LTC nurse and approved by the area nurse, or designee, prior to implementation. The LTC nurse makes a home visit at a minimum of every 180 days for all individuals receiving Personal Care for the purpose of surveying the client's satisfaction with their care and for evaluating the plan of care for adequacy of goals and units allocated. Whenever a home visit is made, the LTC nurse communicates with the home health agency the results of the visit as documented on the Personal Care Services Progress Notes, DHS form AG-22. The LTC nurse contacts the client within 30 calendar days of submitting the care plan and service plan to the agency in order to assure that services have been implemented and the needs of the client are being met.

(f) Personal Care is provided under the State Plan if a client requires Personal Care and is approved for the ADvantage waiver. It is the ADvantage case manager's responsibility to develop and monitor the care plan and service plan. The ADvantage case manager reviews the service plan with the client and forwards a copy of the service plan to the agency. All requests by the agency for increases in the time allocated in the service plan are submitted to the case manager and must be approved by the AA, or designee, prior to implementation. The ADvantage case manager contacts the client monthly and makes a home visit at a minimum of every 90 days and the home care agency nurse makes a home visit at a minimum of every 180 days to evaluate the client. Case manager and home care agency nurse visits are for the purpose of surveying the client's satisfaction with their care and for evaluating the plan of care for adequacy of goals and units allocated. The ADvantage case manager contacts the client within 5 calendar days of service plan certification by the AA in order to assure make sure that services have been implemented. The ADvantage case manager contacts the client within 30 calendar days of service plan certification by the AA in order to assure make sure that the needs of the client are being met. Any person approved under the ADvantage waiver is eligible to receive any Medicaid service including those in the State Plan (Refer to OAC 317:35-17).

(g) With the exception of clients served by the ADvantage or any other Home and Community Based Services (HCBS) Waiver, the LTC nurse is the case manager for Personal Care (PC) clients. Clients served by the ADvantage or any other HCBS Waiver have case management services provided through these waivers. This function involves advocacy, service planning, coordination, monitoring and problem solving with service providers and with families in the provision of services.

(h) Since PC services are intended to supplement and support existing informal care, use of informal supports as PCAs may jeopardize the informal support system [see OAC 317:35-15-2(a)]. Under certain circumstances, the use of informal supports as PCAs may be the only available option for

providing services to the client. The case manager authorizes the use of informal supports for the PC program. The provider agency may only employ informal supports with the written agreement of the interdisciplinary team.

(1) One or more of the following conditions as determined by the LTC nurse or PC provider agency must exist in order for informal supports to be approved as PCA service providers:

(A) The informal support is the only person who has the special ability and willingness to provide care due to the complexity of care need; or,

(B) The client lives in a remote, rural area that has no personal care providers; or

(C) No other persons are available to provide PCA services in the community where the client lives.

(2) The PC provider agency or, when an individual PCA is used, the LTC nurse provides written justification on the plan of care for use of a family member as the PCA.

(3) Whenever informal supports provide PCA services, care plan and service plan development must include components to prevent failure/burnout of the informal supports and assurances that the client is receiving the care required.

(A) Components built into the care plan to prevent failure/burnout of informal supports may include, but are not limited to, the following:

(i) an informal support, other than the one providing PCA services, provides services; and

(ii) home delivered meals, adult day care, or formal PCA services are provided.

(B) The case manager routinely reviews the care plan to evaluate whether the client's needs are being met in accordance with the plan and to assess the stability of the informal support system. The case manager may increase the frequency of care plan reviews for clients receiving PCA services from an informal support.

(i) When the service provider returns the service plan with a start date, or when a PCA begins providing services, the LTC nurse or the AA notifies the county social worker of the PC provider (agency or individual), the number of units (hours), and the start date. DHS Form K-13 may be used for this purpose. The social worker will input the authorization on the computer system within ten (10) working days of the date of receipt of the information. The LTC nurse also provides a copy of the care plan and service plan to the client.

317:35-15-8.1. Agency Personal Care contractors; billing, and problem resolution

The Administrative Agent (AA) certifies qualified agencies and facilitates the execution of contracts on behalf of OHCA with qualified agencies for provision of Personal Care services. At contract renewal, the AA re-evaluates provider qualifications and facilitates execution of renewal contracts on behalf of the OHCA. OHCA will check the list of providers that have been barred from Medicare/Medicaid participation to ensure that the provider agency is not listed.

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(1) **Payment for Personal Care.** Payment for Personal Care is generally made for care in the client's own home. A rented apartment, room or shelter shared with others is considered "own home". A facility that meets the definition of a nursing facility, room and board, licensed residential care facility, licensed assisted living facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-890.1 et seq., and Section 1-1902 et seq., does not constitute a suitable substitute home. Personal Care may not be approved if the client lives in the PCA's home except with the interdisciplinary team's written approval. With DHS area nurse approval, or for ADvantage waiver clients, with service plan authorization and ADvantage Program Manager approval, Personal Care services may be provided in an educational or employment setting to assist the client in achieving vocational goals identified on the service plan.

(A) **Use of agency contractors for Personal Care.** To provide Personal Care services, an agency must be licensed by the Oklahoma State Department of Health, meet certification standards identified by DHS or the Administrative Agent (AA), and possess a current Medicaid contract.

(B) **Reimbursement.** Personal Care payment for a client is made according to the number of units of service identified in the service plan.

(i) The unit amounts paid to agency contractors is according to the established rates. A service plan will be developed for each eligible individual in the home and units of service assigned to meet the needs of each client. The service plans will combine units in the most efficient manner to meet the needs of all eligible persons in the household.

(ii) The contractor payment fee covers all Personal Care services included on the service and care plans developed by the LTC nurse or ADvantage case manager. Payment is made for direct services and care of the eligible client(s) only. The area nurse, or designee, authorizes the number of units of service the client receives each month.

(2) **Problem resolution.** If the client is dissatisfied with the agency or the assigned PCA, the client contacts the LTC nurse for problem resolution. If the situation cannot be resolved, the client has the right to appeal to the OHCA. (Refer to OAC 317:2). For clients receiving ADvantage services, their case manager should be contacted for the problem resolution. If the problem remains unresolved, the contact may be made with the Consumer Inquiry System (CIS) at the Long Term Care Authority.

Administrative Agent (AA) certifies qualified agencies and facilitates the execution of agreements on behalf of OHCA with qualified agencies for provision of Personal Care services. At contract renewal for agency Personal Care providers, the AA re-evaluates provider qualifications and facilitates execution of renewal agreements on behalf of the OHCA.

~~(1) **Payment for Personal Care.** Payment for Personal Care is generally made for care in the client's own home. A rented apartment, room or shelter shared with others is considered "own home". A facility which meets the definition of a nursing facility, room and board, licensed residential care facility, licensed assisted living facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-890.1 et seq., and Section 1-1902 et seq., does not constitute a suitable substitute home. Personal Care may not be approved if the client lives in the PCA's home except with Aging Services Division approval. The LTC nurse, with input from the social worker, submits a written request for an exception to the rule for the client receiving Personal Care while living in the PCA's home. Documentation included with the exception request shall include the name and case number of the client, the name and address of the potential PCA, the client's diagnosis, physical condition and care needs and the reason for the request. The potential PCA must meet the minimum requirements under (2) of this subsection. With Aging Services Division approval, or for ADvantage waiver clients, with service plan authorization and ADvantage Program Manager approval, Personal Care services may be provided in an educational or employment setting to assist the client in achieving vocational goals identified on the service plan. The LTC or Administrative Agent (AA) nurse submits a written request to the area nurse for an exception to the rule restricting provision of Personal Care to the home setting. Documentation included with the exception request shall include the name and case number of the client, the client's vocational goal(s) and goal justification, the name of the potential PCA or PC agency, the client's diagnosis and care needs in the vocational setting, the number of units of care requested per week in the vocational setting and the vocational setting name and address.~~

~~(A) **Use of agency contractors for Personal Care.** To provide Personal Care service in a client's home, an agency must be licensed by the Oklahoma State Department of Health, meet certification standards identified by DHS or the Administrative Agent (AA), and possess a current Medicaid contract. Clients will be provided a list of agencies from which to choose. If the client is unable to make a choice, the LTC nurse or the Administrative Agent makes the selection for the client using a rotating system. An agency's contract can be terminated if the agency:~~

- ~~(i) fails to maintain licensure; or~~
- ~~(ii) violates terms of the contract; or~~
- ~~(iii) fails to maintain certification standards; or~~

317:35-15-13. Personal Care contractor; billing, training, and program administration [REVOKED]

The Department of Human Services executes initial agreements with qualified individuals for provision of Personal Care services as defined in OAC 317:35-15-2. The contract renewal for PCA is the responsibility of the OHCA fiscal agent. The

(iv) fails to provide the services outlined in the service and care plans.

(B) Payment schedule for agency/individual Personal Care contractors. Personal Care payment for a categorically needy client or for a medically needy client is made according to the number of units of service identified in the service plan.

(i) The unit amounts paid to agency and individual contractors is according to the established rates. A service plan will be developed for each eligible individual in the home and units of service assigned to meet the needs of each client. The service plans will combine units in the most efficient manner to meet the needs of all eligible persons in the household. PCAs bill for services using the HCFA-1500. Agencies use the HCFA-1500 form and procedure code W4802 to bill for agency personal care.

(ii) From the total amounts billed by the PCA in (i) of this subparagraph, the OHCA (acting as agent for the client employer) withholds the appropriate percentage of FICA tax and sends it to the Internal Revenue Service as the individual contractor's contribution toward Social Security coverage. To assure that the individual contractor's social security account may be properly credited, it is vital that the individual contractor's social security number be entered correctly on each claim. In order for the OHCA to withhold FICA tax, the LTC nurse must obtain DHS Form Adm-66, Authorization for Withholding of FICA Tax in Personal Care, from the client as soon as the area nurse, or designee, has approved Personal Care. Form Adm-66 must be in the case record and a contract must be on file with the fiscal agent before the individual contractor's first claim can be submitted.

(iii) The contractor payment fee covers all Personal Care services included on the service and care plans developed by the LTC nurse. Payment is made for direct services and care of the eligible client(s) only. The area nurse, or designee, authorizes the number of units of service the client receives each week.

(iv) A client may select more than one individual contractor. This may be necessary as indicated by the service and care plans.

(v) The individual contractor may care for several households during one week, as long as the daily number of paid service units do not exceed eight per day. The total number of hours per week cannot exceed 40.

(C) Release of wage and/or employment information for individual contractors. Any inquiry received by the local office requesting wage and/or employment information for an individual Personal Care contractor will be forwarded to the OHCA, Claims Resolution and Monitoring.

(2) Client selection of individual PCA. Clients and/or family members recruit, interview, conduct reference checks, and select the individual to be considered as an individual contractor. An individual contractor applicant must have a background check performed by the Oklahoma State Bureau of Investigation (OSBI). The results of the background check determine whether a person will be permitted to work as an individual Personal Care contractor. [For selection of agency Personal Care contractors, refer to OAC 317:35-15-8(a)].

(A) Individuals eligible to serve as individual Personal Care Assistants. Payment is made for Personal Care Services to an individual who:

- (i) is at least 18 years of age,
- (ii) has no pending notation related to abuse, neglect or exploitation as reported by the Oklahoma State Department of Health Nurse Aide Registry,
- (iii) has not been convicted of a crime as outlined in Title 63 of Oklahoma Statutes, Sections 1-1950,
- (iv) demonstrates the ability to understand and carry out assigned tasks,
- (v) is not a legally responsible family member (spouse or parent of a minor child) of the client being served,
- (vi) has a verifiable work history and/or personal references, verifiable identification, and
- (vii) meets any additional requirements as outlined in the contract and certification requirements with the Oklahoma Health Care Authority.

(I) An Oklahoma State Bureau of Investigation (OSBI) background check will be initiated prior to the PCA beginning work. The LTC nurse will initiate the request for the check to the Personal Care Program Administrator by the close of business the day the application is taken. Only Aging Services Division may forward requests to OSBI and authorize payment. The Aging Services Division will notify the LTC nurse who initiated the request of the results of the OSBI background check. Aging Services Division will enter the names of ineligible PCAs on the "UNEMNT" mailbox.

(II) Information regarding criminal records is confidential and shall not be released or disclosed to any person without the permission of the individual to whom the records pertain. Files containing criminal records from OSBI background checks will be kept confidential in the Aging Services Division. Criminal records will be destroyed after one year from the end of employment of the person to whom such records relate. This also applies to PCAs who have had their contracts/agreements terminated because of a criminal record. Aging Services

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Division may release the results of their determination to home health care agencies with the written consent of the individual.

(III) When the client selects the individual to be considered as the Personal Care Assistant, the client notifies the county. The LTC nurse makes an appointment for the individual to come to the county office for orientation and determination that the individual meets the minimum qualifications for Personal Care Assistant. The PCA may begin work after completing a contract and a determination of competency to carry out the plan of care is made by the LTC nurse. The LTC nurse notifies the social worker of the service effective date. The county forwards the original contract to the fiscal agent, who will be responsible for annual renewal. Once the client selects the PCA, the social worker updates the authorization file.

(B) **Individuals ineligible to serve as Personal Care Assistants.** Payment for Personal Care services may not be made to an individual who is a legally responsible family member of the client to whom he/she is providing personal care services.

(i) The DHS Director may give approval for an exception to rules prohibiting payment for Personal Care to a legally responsible family member of the client being served when no other PCA is available, available PCAs are unable to provide care to the client or the needs of the client are so extensive that the legally responsible family member who provides the care is prohibited from working outside the home due to the client's need for care. The LTC nurse submits requests for consideration to grant an exception to the rule prohibiting a legally responsible family member from providing care to the Aging Services Division who forwards the requests to the DHS Director. The Aging Services Division notifies the county of the Director's decision and, if approved by the Director, provides special instructions for filing the claims. The DHS Director annually reviews the decision to continue payment.

(ii) Payment cannot be made to a DHS or OHCA employee. Payment cannot be made to a family member of a DHS employee who works in the same county without Aging Services Division approval.

(iii) When a family member relationship exists between a DHS employee and PCA in the same county, the LTC nurse and social worker submits a memo to Aging Services Division outlining the names of the individuals, the relationship, the responsibility of the DHS staff member and a recommendation for consideration. The Aging Services Division notifies the county of the authorization in writing.

(iv) If it is determined that an employee is interfering in the process of providing Personal Care Services for personal or family benefit, he/she will be subject to disciplinary action.

(3) **Orientation of the Personal Care Assistant.** When a client selects an individual, the LTC nurse contacts the individual to report to the county office to complete DHS form AG-23, Application for Independent Medicaid Personal Care Contractor, and for a determination of qualifications and orientation. This process is the responsibility of the LTC nurse.

(A) Initial interaction between the LTC nurse and the PCA includes, at a minimum:

(i) a determination that the PCA has met the qualifying criteria for personal care service provision and has the knowledge and skill to carry out the assigned task on the plan of care as documented on DHS form AG-24, Documentation Of Qualifications To Provide Personal Care Service.

(ii) discussion of the role and responsibilities of the PCA;

(iii) discussion of the needs of the client and the tasks included on the plan of care, DHS form AG-4, Personal Care Plan;

(iv) discussion of the employer/employee relationship between the client and PCA;

(v) assistance in completing OHCA form 0026, Personal Care Program Individual Contract;

(vi) discussion of the method of filing claim for payment and record maintenance;

(vii) discussion of the date service is to begin, the number of units (hours) and the days per week;

(viii) discussion of the use of DHS form AG-5, Personal Care Planning Schedule and DHS form AG-6, Personal Care Service Plan;

(ix) FICA information; and

(x) when and how to contact the LTC nurse and social worker.

(B) The PCA cannot begin work until he/she has been interviewed and oriented by the LTC nurse, has initiated a contract, the effective service date has been established and the OSBI background check has been initiated.

(4) **Training of Personal Care Assistants.** It is the responsibility of the LTC nurse to assure for each client, that the PCA has the training needed to carry out the plan of care prior to service initiation.

(5) **Home visit frequency.** The LTC nurse determines the frequency of home visits based upon the plan of care and the needs of the client. The home visit must be made a minimum of every 180 days. The LTC nurse documents the nursing goals and frequency of home visits in the Personal Care progress notes. The frequency of the home visit is based upon the following criteria:

(A) the ability of the client or someone acting on the client's behalf to supervise and monitor the PCA's performance in service delivery;

- (B) the stability of the client's health such as whether there exists a stable chronic condition, an unstable chronic condition or unstable condition as a result of an acute episode;
- (C) the stability of the client and PCA relationship; and,
- (D) the care plan.

(6) **Problem resolution related to the performance of the Personal Care Assistant.** When it comes to the attention of the LTC nurse or social worker that there is a problem related to the performance of the PCA, a conference is held between the client, LTC nurse and social worker.

(A) **Counseling.** The LTC nurse will counsel the PCA regarding problems with his/her performance. A follow-up letter is sent to the PCA stating the reason for counseling and the expected change in performance. Notice is also given that continued problems will result in termination. Counseling is considered when the staff believe that counseling will result in improved performance. The LTC nurse sends a copy of the PCA letter to the client and files a copy in the county PCA's file and the client's case record maintained by the nurse.

(B) **Termination of the PCA Provider Agreement.** The process for termination of the PCA Provider Agreement is given in this subparagraph.

(i) A recommendation for the termination of a PCA occurs when:

- (I) a PCA's performance is such that his/her continued participation in the program could pose a threat to the health and safety of clients; or
- (II) the PCA failed to comply with the expectations outlined in the PCA Provider Agreement and counseling is not appropriate or has not been effective.

(ii) The LTC nurse develops a memo recommending termination and submits it to the Aging Services Division. The memo shall include a specific description of the problems, the specific contract violation, facts substantiating the problems, any actions taken previously to correct the problems and a proposed effective date of termination of the Personal Care Program Individual Contract. When the problem is related to allegations of abuse, neglect, or exploitation, Adult Protective Services, State Attorney General's Medicaid Unit, and Oklahoma State Department of Health are notified by the LTC nurse. The LTC nurse or county director suspends all services of the PCA immediately.

(iii) Upon review of the information submitted, the Aging Services Division will take one of the actions in (I) — (III) of this unit.

(I) Approve the recommendation of termination of the Provider Agreement. A letter is prepared advising the PCA of the reason for

termination of the Provider Agreement, the effective date of termination and his/her opportunity to request a reconsideration of this decision within ten days of receipt of the letter. The letter is sent certified mail with copies to the LTC nurse, county office, client, and OHCA, Attn: Service Contracts Operations. A copy of the letter is also sent to the Developmental Disabilities Services Division. Aging Services Division will enter the termination decision on the AUNEMNT@ file.

(II) Deny the recommendation for termination of the provider agreement and give written notification to the LTC nurse of the reason.

(III) Refer the case to the Office of Inspector General for investigation by completion of DHS form ARD-1, Referral Form. In this instance, the investigation is carried out as expeditiously as possible. When the results of the investigation are received, the Aging Services Division takes the appropriate action as outlined in subunits (I) or (II) of this unit.

(C) **Process for reconsideration of decision to terminate a PCA.** The PCA may submit a written request for reconsideration of the decision to terminate to the Aging Services Division within ten working days of receipt of the letter of notice of termination of the provider agreement. A committee of three supervisory staff members of the Aging Services Division will review the request for reconsideration with all information pertaining to the case. The committee will make a recommendation to the Aging Services Division Administrator who makes the final decision. The Division Administrator issues a certified letter to the PCA notifying him/her of the decision. If the original decision is reversed, notice of the reversal will be sent to all offices and persons notified of the original decision to terminate.

317:35-15-13.1. Individual Personal Care service management

(a) An individual PCA may be authorized to provide PC services when it is documented to be in the best interest of the client to have an individual PCA or when there are no agency contractors available in the local area. When an individual PCA is selected by the client, the DHS nurse explains OHCA form HCA-66, Authorization for Withholding of FICA Tax in Personal Care, to the client and obtains his/her signature. OHCA will check the list of providers that have been barred from Medicare/Medicaid participation to ensure that the individual provider is not listed.

(b) After medical and financial eligibility have been established, the LTC nurse reviews the care plan and service plan with the client and individual PCA and notifies the client and PCA to begin care plan and service plan implementation. The nurse maintains the original plans and forwards a copy of the approved Personal Care plan and service plan to the chosen PCA within one working day of notice of approval.

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(c) The LTC nurse is the case manager and monitors the care plan and service plan for clients with an individual PCA. The LTC nurse makes a home visit at a minimum of every 180 days beginning within 90 days of the date of service initiation for all individuals receiving Personal Care for the purpose of surveying the client's satisfaction with their care and for evaluating the plan of care for adequacy of goals and units allocated. Requests for increases in the time allocated in the care plan and service plan are submitted to the LTC nurse and approved by the area nurse, or designee, prior to implementation.

(d) Personal Care is provided under the State Plan if a client requires Personal Care and is approved for the ADvantage waiver. It is the ADvantage case manager's responsibility to develop and monitor the care plan and service plan. The ADvantage case manager reviews the service plan with the client and forwards a copy of the service plan to the individual PCA. Requests for increases in the time allocated in the service plan are submitted to the case manager and must be approved by the AA, or designee, prior to implementation. The ADvantage case manager contacts the client monthly and makes a home visit at a minimum of every 90 days and the LTC nurse makes a home visit at a minimum of every 180 days for supervision. Case manager and LTC nurse visits are for the purpose of assessing the client's satisfaction with their care and for evaluating the plan of care for adequacy of goals and units allocated. The ADvantage case manager contacts the client within 5 calendar days of service plan certification by the AA in order to make sure that services have been implemented. The ADvantage case manager contacts the client within 30 calendar days of service plan certification by the AA in order to make sure that the needs of the client are being met. Any person approved under the ADvantage waiver is eligible to receive any Medicaid service including those in the State Plan (Refer to OAC 317:35-17).

(e) With the exception of clients served by the ADvantage or any other Home and Community Based Services (HCBS) Waiver, the LTC nurse is the case manager for Personal Care (PC) clients. Clients served by the ADvantage or any other HCBS Waiver have case management services provided through these waivers. This function involves advocacy, service planning, coordination, monitoring and problem solving with service providers and with families in the provision of services.

(f) Since PC services are intended to supplement and support existing informal care, use of informal supports as PCAs may jeopardize the informal support system [see OAC 317:35-15-2(a)]. Under certain circumstances, the use of informal supports as PCAs may be the only available option for providing services to the client. The interdisciplinary team authorizes the use of informal supports for the PC program.

(1) One or more of the following conditions as determined by the LTC nurse must exist in order for informal supports to be approved as PCA service providers:

(A) The informal support is the only person who has the special ability and willingness to provide care due to the complexity of care needed; or,

(B) The client lives in a remote, rural area that has no personal care providers; or

(C) No other persons are available to provide PCA services in the community where the client lives.

(2) The interdisciplinary team provides written justification on the plan of care for use of a family member as the PCA.

(3) Whenever informal supports provide PCA services, care plan and service plan development must include components to prevent failure/burnout of the informal supports and assurances that the client is receiving the care required.

(A) Components built into the care plan to prevent failure/burnout of informal supports may include, but are not limited to, the following:

(i) an informal support, other than the one providing PCA services, provides services; and

(ii) home-delivered meals, adult day care, or formal PCA services are provided.

(B) The case manager routinely reviews the care plan to evaluate whether the client's needs are being met in accordance with the plan and to assess the stability of the informal support system. The case manager may increase the frequency of care plan reviews for clients receiving PCA services from an informal support.

317:35-15-13.2. Individual Personal Care contractor; billing, training, and problem resolution

While OHCA is the contractor authorized under federal law, the Department of Human Services initiates initial contracts with qualified individuals for provision of Personal Care services as defined in OAC 317:35-15-2. The contract renewal for the PCA is the responsibility of the Oklahoma Health Care Authority (OHCA).

(1) **Payment for Personal Care.** Payment for Personal Care is generally made for care in the client's own home. A rented apartment, room or shelter shared with others is considered "own home". A facility that meets the definition of a nursing facility, room and board, licensed residential care facility, licensed assisted living facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-890.1 et seq., and Section 1-1902 et seq., does not constitute a suitable substitute home. Personal Care may not be approved if the client lives in the PCA's home except with the interdisciplinary team's written approval. The potential individual PCA must meet the minimum requirements under (2) of this subsection. With DHS area nurse approval, or for ADvantage waiver clients, with service plan authorization and ADvantage Program Manager approval, Personal Care services may be provided in an educational or employment setting to assist the client in achieving vocational goals identified on the service plan.

(A) **Reimbursement.** Personal Care payment for a client is made according to the number of units of service identified in the service plan.

(i) The unit amounts paid to individual contractors is according to the established rates. A

service plan will be developed for each eligible individual in the home and units of service assigned to meet the needs of each client. The service plans will combine units in the most efficient manner to meet the needs of all eligible persons in the household.

(ii) From the total amounts billed by the individual PCA in (i) of this subparagraph, the OHCA (acting as agent for the client-employer) withholds the appropriate percentage of FICA tax and sends it to the Internal Revenue Service as the individual contractor's contribution toward Social Security coverage. To assure that the individual contractor's social security account may be properly credited, it is vital that the individual contractor's social security number be entered correctly on each claim. In order for the OHCA to withhold FICA tax, the LTC nurse must obtain a signed OHCA Form HCA-66, Authorization for Withholding of FICA Tax in Personal Care, from the client as soon as the area nurse, or designee, has approved Personal Care. A copy of the signed HCA-66 must be in the case record. A signed OHCA-0026, Personal Care Program Individual Contract must be on file with the OHCA before the individual contractor's first claim can be submitted.

(iii) The contractor payment fee covers all Personal Care services included on the service and care plans developed by the LTC nurse or ADvantage case manager. Payment is made for direct services and care of the eligible client(s) only. The area nurse, or designee, authorizes the number of units of service the client receives each month.

(iv) A client may select more than one individual contractor. This may be necessary as indicated by the service and care plans.

(v) The individual contractor may provide Medicaid Personal Care services for several households during one week, as long as the daily number of paid service units do not exceed eight per day. The total number of hours per week cannot exceed 40.

(B) Release of wage and/or employment information for individual contractors. Any inquiry received by the local office requesting wage and/or employment information for an individual Personal Care contractor will be forwarded to the OHCA, Claims Resolution.

(2) Client selection of individual PCA. Clients and/or family members recruit, interview, conduct reference checks, and select the individual to be considered as an individual contractor. An individual contractor applicant must have a background check performed by the Oklahoma State Bureau of Investigation (OSBI). The results of the background check determine whether a person will be permitted to work as an individual Personal Care contractor. According to Section 1025.2 of Title 56 of the Oklahoma Statutes, before the client employer

makes an offer to employ or contract with a Medicaid Personal Care Assistant applicant to provide Personal Care Services to a person who receives state Medicaid Personal Care Services, the DHS LTC nurse, acting for the client, must check the DHS Community Services Worker Registry to determine if the name of the applicant seeking employment or contract has been entered. The DHS LTC nurse must also check the Certified Nurse Aid Registry. The DHS LTC nurse must affirm that the applicant's name is not contained on either registry. The LTC nurse will notify the OHCA if the applicant is on the registry.

(A) Persons eligible to serve as individual Personal Care Assistants. Payment is made for Personal Care Services to an individual who:

(i) is at least 18 years of age,

(ii) has no pending notation related to abuse, neglect or exploitation as reported by the Oklahoma State Department of Health Nurse Aide Registry,

(iii) is not included on the DHS Community Services Worker Registry in accordance with Section 1025.2 of Title 56, of Oklahoma Statutes,

(iv) has not been convicted of a crime as outlined in Title 63 of Oklahoma Statutes, Sections 1-1950 as determined by an OSBI background check,

(v) demonstrates the ability to understand and carry out assigned tasks,

(vi) is not a legally responsible family member (spouse or parent of a minor child) of the client being served,

(vii) has a verifiable work history and/or personal references, verifiable identification, and

(viii) meets any additional requirements as outlined in the contract and certification requirements with the Oklahoma Health Care Authority.

(B) Persons ineligible to serve as Personal Care Assistants. Payment from Medicaid funds for Personal Care services may not be made to an individual who is a legally responsible family member of the client to whom he/she is providing personal care services.

(i) The DHS Director may give approval for payment from DHS state funds for Personal Care to a legally responsible family member of the client being served when no other PCA is available, available PCAs are unable to provide care to the client, or the needs of the client are so extensive that the legally responsible family member who provides the care is prohibited from working outside the home due to the client's need for care.

(ii) Payment cannot be made to a DHS or OHCA employee. Payment cannot be made to an immediate family member of a DHS employee who works in the same county without Aging Services Division approval. When a family member

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relationship exists between a DHS LTC nurse and a PCA in the same county, the LTC nurse cannot manage services for a client whose individual provider is a family member of the LTC nurse.

(iii) If it is determined that an employee is interfering in the process of providing Personal Care Services for personal or family benefit, he/she will be subject to disciplinary action.

(3) Orientation of the Personal Care Assistant. When a client selects an individual PCA, the LTC nurse contacts the individual to report to the county office to complete the ODH form 805, Uniform Employment Application for Nurse Aide Staff, and the DHS form DDS-39, Employment Application Supplement, and for a determination of qualifications and orientation. This process is the responsibility of the LTC nurse. The PCA can begin work when:

- (A) he/she has been interviewed by the client.
- (B) he/she has been oriented by the LTC nurse.
- (C) he/she has executed a contract (OHCA-0026) with the OHCA.
- (D) the effective service date has been established.
- (E) the Community Service Worker Registry has been checked and the PCA's name is not on the Registry.
- (F) the Oklahoma State Department of Health Nurse Aide Registry has been checked and no notations found, and
- (G) the OSBI background check has been completed.

(4) Training of Personal Care Assistants. It is the responsibility of the LTC nurse to make sure for each client, that the PCA has the training needed to carry out the plan of care prior to service initiation.

(5) Problem resolution related to the performance of the Personal Care Assistant. When it comes to the attention of the LTC nurse or social worker that there is a problem related to the performance of the PCA, a counseling conference is held between the client, LTC nurse and social worker. The LTC nurse will counsel the PCA regarding problems with his/her performance. Counseling is considered when the staff believe that counseling will result in improved performance.

(6) Termination of the PCA Provider Agreement. (A) A recommendation for the termination of a PCA's contract is submitted to the OHCA and the services of the PCA are suspended immediately when:

- (i) a PCA's performance is such that his/her continued participation in the program could pose a threat to the health and safety of the client or others; or
- (ii) the PCA failed to comply with the expectations outlined in the PCA Provider Agreement and counseling is not appropriate or has not been effective; or
- (iii) a PCA's name appears on the DHS Community Services Worker Registry, even though

his/her name may not have appeared on the Registry at the time of application or hiring.

(B) The LTC nurse makes the recommendation for the termination of the PCA to the OHCA Legal Division with a copy to the DHS State Office Aging Services Division. When the problem is related to allegations of abuse, neglect, or exploitation, DHS Adult Protective Services, State Attorney General's Medicaid Unit, the OHCA, and the Oklahoma State Department of Health are notified by the LTC nurse.

[OAR Docket #03-1001; filed 5-20-03]

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

[OAR Docket #03-1007]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:

Subchapter 15. Personal Care Services
317:35-15-1. through 317:35-15-3. [AMENDED]
317:35-15-6. [AMENDED]
317:35-15-10. [AMENDED]
317:35-15-14. through 317:35-15-15. [AMENDED]
Subchapter 17. ADvantage Waiver Services
317:35-17-3. through 317:35-17-5. [AMENDED]
317:35-17-10. [AMENDED]
317:35-17-14. [AMENDED]
317:35-17-16. through 317:35-17-19. [AMENDED]
317:35-17-24. [AMENDED]
Subchapter 19. Nursing Facility Services
317:35-19-2. [AMENDED]
317:35-19-18. through 317:35-19-22. [AMENDED]
(Reference APA WF # 02-34A)

AUTHORITY:

Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.167; 42 CFR 440.181; 42 CFR 440.155

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Failure of the Legislature to disapprove the rule(s) resulted in approval on May 15, 2003

Final adoption:

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June 26, 2003

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Medical Assistance for Adults and Children-Eligibility, Long Term Care specific, rules are revised to: (1) provide clarification of existing rule for Long Term Care applicants, recipients, and their responsible parties as well as DHS staff and Long Term Care providers; (2) incorporate current procedures and terminology; (3) update an incorrect policy cite; and (4) remove instructions from agency rules. Revisions are needed to provide consistency and clarity within agency rules.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003.

SUBCHAPTER 15. PERSONAL CARE SERVICES

317:35-15-1. Overview of long-term medical care services; relationship to QMB, SLMB and other Medicaid service eligibility and spenddown calculation

(a) Long-term medical care for the categorically needy includes:

- (1) care in a nursing facility (refer to OAC 317:35-19);
- (2) care in a public and or private intermediate care facility for the mentally retarded (refer to OAC 317:35-9);
- (3) care of persons age 65 years or older in mental health hospitals (refer to OAC 317:35-9);
- (4) Home and Community Based Waiver Services for the Mentally Retarded (refer to OAC 317:35-9);
- (5) Home and Community Based Waiver Services for the ADvantage program (refer to OAC 317:35-17); and
- (6) Personal Care services (refer to this subchapter). Personal Care provides services in the own home for both categorically needy and medically needy for non-institutionalized Medicaid eligible individuals.

(b) Any time an a categorically needy individual is certified as eligible for Medicaid coverage of long-term care, the individual is also eligible for other Medicaid services. Another application or spenddown computation is not required. Spenddown is applied to the first long term care claim filed. Any time an aged, blind or disabled individual is determined eligible for long-term care, a separate eligibility determination must be made to see if eligibility conditions as a for Qualified Medicare Beneficiary Plus (QMB) (QMBP) or Specified Low-Income Medicare Beneficiary (SLMB) are met benefits. Another application for QMB QMBP or SLMB benefits is not required. Any spenddown computed for long-term care is not applicable to QMB QMBP coverage.

317:35-15-2. Personal Care in own home services

(a) Personal Care is defined as assistance to an individual in carrying out activities of daily living, such as bathing, grooming and toileting, or in carrying out instrumental activities of daily living, such as preparing meals and doing laundry, to assure personal health and safety of the individual or to prevent

or minimize physical health regression or deterioration. Personal Care services do not include service provision of a technical nature, i.e., tracheal suctioning, bladder catheterization, colostomy irrigation, and operation/maintenance of equipment of a technical nature.

(a) Personal Care is a level of care for individuals who do not require care in a nursing facility (NF) or intermediate care facility for the mentally retarded (ICF/MR). Personal Care services are initiated to support the informal care that is being provided in the client's home. A rented apartment, room or shelter shared with others is considered "the client's home". A facility which meets the definition of a nursing facility, room and board, licensed residential care facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-899.1 et seq., and Section 1-1902 et seq., is not a setting that qualifies as the "the client's home" for delivery of Medicaid Personal Care Program services. Personal Care shall not be approved if the clients lives in the PCA's home except with agreement of the interdisciplinary service planning team that this is consistent with plan goals and outcomes for the client and has Personal Care Program administrative approval, or, if an ADvantage client, AA administrative approval. These services are not intended to take the place of regular care by family and significant others. When there is an informal (not paid) system of care available in the home, Personal Care service provision will supplement the system within the limitations of policy.

(b) Personal Care services may be provided either by an individual DHS qualified contractor who is referred to as a Personal Care Assistant (PCA) employed by the client or by an agency holding a valid certification and contract to provide Medicaid Personal Care service.

(c) Personal Care is defined as assistance to an individual in carrying out activities of daily living, such as bathing, grooming and toileting, or in carrying out instrumental activities of daily living, such as preparing meals and doing laundry, to assure personal health and safety of the individual or to prevent or minimize physical health regression or deterioration. Personal Care services do not include service provision of a technical nature, i.e., tracheal suctioning, bladder catheterization, colostomy irrigation, and operation/maintenance of equipment of a technical nature.

317:35-15-3. Application for Personal Care; forms

(a) ~~Application procedures~~ **Requests for Personal Care.** A request for payment for Personal Care is made to the local DHS office in the county where the applicant lives. This can be done by the receipt of Part I of the Uniform Comprehensive Assessment Tool (UCAT), DHS form AG 2A Part I from the Long Term Care Authority which is the Administrative Agent (AA) for Oklahoma, or by completion of the form by the staff of the county. The AG 2A, Part I is routed to both the Long Term Care (LTC) nurse and the social worker to begin processing the application. A written financial application is not required for an individual who has an active Medicaid case. A financial application for Personal Care consists of the Medical Assistance Application form. The form is signed by the client, parent, spouse, guardian or someone else acting on

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the client's behalf. All conditions of financial eligibility must be verified and documented in the case record. When current information already available in the local office establishes eligibility, the information may be used by recording source and date of information. If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the application form.

(b) **Date of application.**

(1) The date of application is:

~~(A) 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 in the county office;~~

~~(B) When the application is initiated outside the county office, the application date is the date the application is stamped into the county office when the application is initiated outside the county office; or,~~

~~(C) When a request for the date when the request for Medicaid is made by an oral request, orally and the financial application form is signed later, the date of the oral request is the application date.~~

(2) An exception to paragraph (1) of this subsection would occur is when DHS has contracts with certain providers to take applications and obtain documentation. After the documentation is obtained, the contract provider forwards the application and documentation to the DHS county office of the client's county of residence for Medicaid eligibility determination. The application date is the date the client signed the application form for the provider.

(c) **Eligibility status.** ~~The social worker notifies the LTC nurse of the financial eligibility of the client, using DHS form ABCDM 37 D, Notice to Nursing Care Facility. If the client does not have an active Medicaid case, the social worker will notify the LTC nurse of this and again notify the nurse when the eligibility determination has been made. Financial and medical eligibility must be established before services can be initiated.~~

317:35-15-6. Determining financial eligibility of categorically needy individuals

Financial eligibility for Personal Care for categorically needy individuals is determined as follows:

(1) **Financial eligibility/categorically related to AFDC.** In determining income for the individual related to AFDC, all family income is considered. (See OAC 317:35-5-45 for Exceptions to AFDC rules.) The "family", for purposes of determining need, includes the following persons if living together (or if living apart but there has been no break in the family relationship):

(A) spouse; and

(B) parent(s) and minor children of their own.

(i) For adults, to be categorically needy, the net income must be less than the categorically needy standard as shown on the DHS Appendix C-1, Schedule X.

(ii) For individuals under 19, to be categorically needy, the net income must be equal to or less

than the categorically needy standard as shown on the DHS Appendix C-1, Schedule I. A.

(2) **Financial eligibility/categorically related to ABD.** In determining income and resources for the individual related to ABD, the "family" includes the individual and spouse, if any. To be categorically needy, the countable income must be less than the categorically needy standard as shown on the DHS Appendix C-1, Schedule ~~VIII. A VI.~~ If an individual and spouse cease to live together for reasons other than institutionalization or receipt of the ADvantage waiver or HCBW/MR services, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the spouse after the mutual consideration has ended are considered.

(3) **Determining financial eligibility for Personal Care.** For individuals determined categorically needy for Personal Care, excess income is not applied to a vendor payment. If the individual is determined ineligible as categorically needy based on income and resources, the eligibility is determined under the medically needy standards on the DHS Appendix C-1, Schedule II. A., Medically Needy Maintenance Standard.

317:35-15-10. Redetermination of for Personal Care service plan services

(a) **Recertification.** ~~When the area nurse, or designee, determines medical eligibility for Personal Care, a service plan and care plan re-certification review date is entered on the MEDATS system. The care plan and service plan re-certification depends on the client's physical condition and needs and on the adequacy of the client's caregiver support to manage the care and the care plan.~~ The LTC nurse re-assesses the client for medical re-certification using the UCAT. The LTC nurse, with the client's input, prepares a new care plan and service plan with any required adjustments in service. The LTC nurse submits the re-assessment, new care plan, and new service plan to the area nurse, or designee, for re-certification and authorization of services at a maximum of every 36 months. Recertification documents are sent to the area nurse, or designee, by the tenth day of the month in which the certification expires. When the area nurse, or designee determines medical eligibility for Personal Care, a service plan and care plan re-certification review date is entered on the system. The care plan and service plan re-certification depends on the client's needs and on the adequacy of the client's caregiver support.

(b) **Change in level of care.** If it comes to the attention of the LTC nurse that there is a marked change in an individual's condition that may affect medical eligibility or level of care, the nurse and social worker discuss the change to determine a plan of action. The LTC nurse discusses the plans with the client and contractor. If a client in a nursing facility is planning to return home, requests personal care and has a current medical evaluation review date, another medical decision is necessary. ~~The LTC nurse notifies the area nurse, or designee, of the~~

~~request for change in level of care by submitting a new or updated UCAT including an assessment of the environment and potential for community placement, care plan and service plan. If there is not a current medical review date and the client requests a change in level of care, the UCAT, care plan and service plan are completed and sent to the area nurse, or designee, for a medical decision. If a client is receiving a lower level of care than nursing facility care and is requesting nursing facility care, see OAC 317:35-19-3 through 317:35-19-20. The area nurse, or designee, may request additional information from the LTC nurse if needed. All changes in level of care require coordination between the area nurse, or designee, LTC nurse and social worker.~~

(c) **Change in service plan and care plan.**

(1) **Non-ADvantage clients.** The service contractor or the LTC nurse initiates the process for an increase or decrease in units of service to the client's service and care plans using a service provider communication form, DHS form AG-7. Requested changes in service and justification for changes must be documented on the form. The area nurse, or designee, approves or denies the service plan and care plan change within three working days of receipt of the plan. ~~When the LTC nurse decreases the number of units of service, a copy of the signed service plan is forwarded to the social worker for entry into the authorization file effective the first of the next month. If received after the computer change deadline, the change will be effective the first of the following month.~~ A copy of the signed service plan is included in the case record. A significant change in the client's physical condition or caregiver support that requires an increase in service of ~~four~~ 18 hours per ~~week~~ month, either wholly or incrementally during the medical certification period, requires a UCAT re-assessment by the LTC nurse. Based on the re-assessment, the client may, as appropriate, be certified for a new care plan and service plan, certified for a different level of care or be eligible for a different service program. The LTC nurse notifies the social worker of an increase or decrease in services once approval is received in order that the authorization system can be updated.

(2) **ADvantage clients.** The service contractor or the ADvantage case manager initiates the process for an increase ~~of~~ or decrease in units of service to the client's service plan using a service provider communication form. Requested changes in service and justification for changes must be documented on the form. The AA, or designee, approves or denies the service plan change within three working days of receipt of the plan. When the AA authorizes an increase in the number of units of service, the AA notifies the county social worker for entry into the authorization file effective the date the hours increased. When the AA authorizes a ~~change~~ decrease in the number of units of service, the AA notifies the county social worker for entry into the authorization file effective the first of the next month. If received after the computer change deadline, the change will be effective the first of the following month. A copy of the certified service plan addendum is included in the case record by the AA. The

AA notifies the social worker of an increase or decrease in services in order that the authorization system can be updated.

(d) **Voluntary closure of Personal Care services.** If the client agrees Personal Care is no longer needed to meet his/her needs, a medical decision from the area nurse, or designee, is not needed. The client and the LTC nurse or social worker completes and signs DHS form AG-17, Voluntary Action of Personal Care Case Closure form.

(e) **Resuming Personal Care services.** If a client approved for Personal Care services has been without services for less than 90 days and has a current medical and financial eligibility determination, services may be resumed using the previously approved care plan and service plan.

(f) **Financial ineligibility.** Anytime the local office determines a client does not meet the financial eligibility criteria, the local office notifies the client, contractor, and the LTC nurse of financial ineligibility. A medical eligibility redetermination is not required when the period of financial ineligibility does not exceed 90 days during the medical certification.

(g) **Closure due to medical ineligibility.** Any time the local office is notified through ~~MEDATS~~ the system of a decision that the client is no longer medically eligible for Personal Care, the social worker notifies the client ~~and contractor~~ of the decision. The nurse is responsible for notifying the contractor.

(h) **Termination of Personal Care Services.** The process for termination of Personal Care is provided in this subsection.

- (1) Personal Care services may be terminated if:
 - (A) the client poses a threat to self or others as supported by professional documentation;
 - (B) other members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat of harm or injury to the client or other household visitors;
 - (C) the client or family member fails to cooperate with Personal Care service delivery or to comply with OHCA or DHS rules;
 - (D) the client's health, safety, and well-being is at risk as documented on the UCAT; or
 - (E) additional services are provided in the home eliminating the need for Medicaid Personal Care services.

(2) Personal Care services will be terminated when the client refuses to select and/or accept the services of an agency or PCA for 90 consecutive days.

(3) The LTC nurse submits documentation with recommendation to the ~~DHS Aging Services Division State Office~~ area nurse for a medical decision. The DHS Aging Services Division notifies the client and the Personal Care PCA, area nurse, LTC nurse and social worker of the decision to terminate services. The social worker is responsible for updating the computer system, closing the authorization and sending official notice to the client with the appropriate client rights.

317:35-15-14. Billing procedures for Personal Care

Billing procedures for Personal Care Services are contained in the ~~OHCA Provider Manual~~ OKMMIS Billing and

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Procedure Manual. Questions regarding billing procedures that cannot be resolved through a study of the provider manuals manual are referred to the OHCA. Contractors for Personal Care bill on HCFA-1500. The county office ~~staff give provide~~ instructions to an individual PCA for completion of the claim at the time of the contractor orientation. Each Personal Care contractor submits a claim for each client. The contractor prepares claims for services provided ~~during the month as soon as possible after the last working day of the month~~ and submits the claims to the fiscal agent who is responsible for assuring that the claims have been properly completed. All Personal Care contractors must have ~~an 11 digit a unique~~ provider number ~~comprised of prefix "C" followed by their social security number and a check digit~~. New contractors will be mailed the ~~11 digit~~ provider number after they have been placed on the claims processing contractor's provider file.

317:35-15-15. Referral for social services

In many situations, ~~social services are needed by adults who are receiving medical services through Medicaid adults who are receiving medical services through Medicaid need social services~~. The LTC nurse may make referrals for social services to the worker in the local office ~~by use of Form K-13, Information/Referral Social Services~~. In addition to these referrals, a request for social services may be initiated by a client or by another individual acting upon behalf of a client.

- (1) The worker is responsible for providing the indicated services or for referral to the appropriate resource outside the Department if the services are not available within the Department.
- (2) Among the services provided by the worker are:
 - (A) Services ~~which that~~ will enable individuals to attain and/or maintain as good physical and mental health as possible;
 - (B) Services to assist patients who are receiving care outside their own homes in planning for and returning to their own homes or to other alternate care;
 - (C) Services to encourage the development and maintenance of family and community interest and ties;
 - (D) Services to promote maximum independence in the management of their own affairs;
 - (E) Protective services, including evaluation of need for and arranging for guardianship; and
 - (F) Appropriate family planning services, which include assisting the family in acquiring means to responsible parenthood. Services are offered in making the necessary referral and follow-up.

SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

317:35-17-3. ADvantage program services

(a) The ADvantage program is a Medicaid Home and Community Based Waiver used to finance noninstitutional long-term care services for elderly and a targeted group of

physically disabled adults who without those services would require nursing facility care. ADvantage program clients must be Medicaid eligible and must not reside in an institution, room and board, licensed residential care facility, or licensed assisted living facility. The number of clients who may receive ADvantage services is limited.

(1) To receive ADvantage services, individuals must meet one of the following categories:

- (A) be age 65 years or older, or
- (B) be age 21 or older if physically disabled and not developmentally disabled or if the person has a clinically documented, progressive degenerative disease process that responds to treatment and previously has required hospital or NF level of care services for treatment related to the condition and requires ADvantage services to maintain the treatment regimen to prevent health deterioration, or
- (C) if developmentally disabled and between the ages of 21 and 65, not have mental retardation or a cognitive impairment related to the developmental disability.

(2) In addition, the individual must meet ~~all both~~ of the following criteria:

- (A) require nursing facility level of care; and
- (B) meet service eligibility criteria; and
- ~~(C) have available supports, or decision making ability as documented on the UCAT, to remain in their home without risk to their health, safety, and well-being.~~

(b) Home and Community Based Waiver Services are outside the ~~normal~~ scope of the state plan Medicaid services. The Medicaid waiver allows the OHCA to offer certain Home and Community Based services to an annually capped number of persons who are categorically needy (refer to DHS Appendix C-1, Schedule VIII. B. 1.) and without such services would be institutionalized. The estimated cost of providing an individual's care outside the nursing facility cannot exceed the annual cost of caring for that individual in a nursing facility. When determining the ADvantage service plan cost cap for an individual, the comparable Medicaid cost to serve that individual in a nursing facility is estimated. If the individual has Acquired Immune Deficiency Syndrome (AIDS) or if the individual ~~required~~ requires ventilator care, the appropriate Medicaid enhanced nursing facility rate to serve the individual is used to estimate the ADvantage cost cap. To meet program cost effectiveness eligibility criteria, the annualized cost of a client's ADvantage services cannot exceed the ADvantage program services expenditure cap unless approved by the Administrative Agent (AA) under one of the exceptions listed in (1)-(4) of this subsection. The cost of the service plan furnished to a client may exceed the expenditure cap only when all of the increased expenditures above the cap are due solely to:

- (1) a one-time purchase of home modifications and/or specialized medical equipment; and/or
- (2) documented need for a temporary (not to exceed a 60-day limit) increase in frequency of service or number of services to prevent institutionalization; or

- (3) expenditures are for ADvantage Hospice services; and/or,
- (4) expenditures in excess of the cap are for prescribed drugs, which would be paid by Medicaid if the individual were receiving services in a nursing home, and the annualized expenditures for ADvantage services to a client under these circumstances can reasonably be expected to be no more than 200% of the individual cap.
- (c) Services provided through the ADvantage waiver are:
 - (1) case management or Comprehensive Home Care (CHC) case management;
 - (2) respite or CHC in-home respite;
 - (3) adult day health care;
 - (4) environmental modifications;
 - (5) specialized medical equipment and supplies;
 - (6) physical therapy/occupational therapy/respiratory therapy/speech therapy or consultation;
 - (7) advanced supportive/restorative assistance or CHC advanced supportive/restorative assistance;
 - (8) skilled nursing or CHC skilled nursing;
 - (9) home delivered meals;
 - (10) hospice care;
 - (11) medically necessary prescription drugs ~~beyond the State Plan limit~~ within the limits of the waiver;
 - (12) personal care (state plan) or CHC personal care; and
 - (13) Medicaid medical services for individuals age 21 and over within the scope of the State Plan.
- (d) The DHS area nurse or designee makes a determination of service eligibility prior to evaluating the UCAT assessment for nursing facility level of care. The following criteria are used to make the service eligibility determination:
 - (1) an open ADvantage Program waiver slot, as authorized by the waiver document approved by the ~~Health Care Financing Administration (HCFA)~~ Centers for Medicare and Medicaid Services (CMS), is available to assure federal participation in payment for services to the client. If the AA determines all ADvantage waiver slots are filled, the client cannot be certified on the DHS computer system as eligible for ADvantage services and the client's name is placed on a waiting list for entry as an open slot becomes available. ADvantage waiver slots and corresponding waiting lists, if necessary, are maintained for persons that have a developmental disability and those that do not have a developmental disability.
 - (2) the client is in the ADvantage targeted service group. The target group is an individual who is frail and 65 years of age or older or age 21 or older with a physical disability and who does not have mental retardation or a cognitive impairment.
- (e) The AA in conjunction with the DHS area nurse determines ADvantage Program eligibility through service plan development. The following criteria are used to make the ADvantage program eligibility determination:
 - (1) the client's needs as identified by UCAT, Preadmission Screening and Resident Review (PASRR) and other professional assessments can be met through ADvantage program services, Medicaid State Plan services and other formal or informal services. The State, as part of the

waiver program approval authorization, assures HCFA CMS that each waiver client's health, safety, or welfare can be maintained in their home. If a client's identified needs cannot be met through provision of ADvantage program or Medicaid State Plan services and other formal or informal services are not in place or immediately available to meet those needs, the client's health, safety or welfare in their home cannot be assured and the client cannot receive ADvantage program services.

- (2) if the client poses a threat to self or others as supported by professional documentation, he/she is not eligible.
- (3) if other members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat of harm or injury to the client or other household visitors, the client is not eligible.
- (4) ~~the client has available supports, as documented on the UCAT, to remain in his/her home without risk to his/her health, safety, or well-being;~~ the client has the potential to remain safely in the community with services.
 - (A) ~~the individual has the decision making ability to respond appropriately to situations that jeopardize his/her health and safety or available supports that compensate for his/her lack of ability as documented on the UCAT, or~~
 - (B) ~~an individual has his/her decision making ability but lacks the physical capacity to respond appropriately to situations that jeopardize health and safety and has been informed by the LTC nurse of potential risks and consequences, may be eligible.~~
- (f) Individuals determined ineligible for ADvantage program services are notified in writing by DHS of the determination and of their right to appeal the decision.

317:35-17-4. Application for ADvantage services

(a) **Application procedures for ADvantage services.** If waiver slots are available, the application process is initiated by the receipt of a UCAT₁ Part I or by an oral request for services. A written financial application is not required for an individual who has an active Medicaid case. ~~As~~ A financial application for ADvantage services consists of the Medical Assistance Application form. The form is signed by the applicant, parent, spouse, guardian or someone else acting on the applicant's behalf.

- (1) All conditions of financial eligibility must be verified and documented in the case record. When current information already available in the local office establishes financial eligibility, such information may be used by recording source and date of information. If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the application form.
- (2) An individual residing in an NF or requesting waiver services, or the individual's community spouse may request an assessment of resources available to each spouse by using DHS form MA-11, Assessment of Assets, when Medicaid application is not being made. The

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individual and/or spouse must provide documentation of resources. The assessment reflects all countable resources of the couple (owned individually or as a couple) and establishes the spousal share to be protected when subsequent determination of Medicaid ~~long-term~~ long-term care eligibility is made. ~~A copy of Form MA-11 is provided to each spouse for planning in regard to future financial eligibility and a copy is retained in the county office in case of subsequent application.~~

(3) When Medicaid application is being made, an assessment of resources must be ~~made~~ completed if it was not completed when the individual entered the NF or began receiving waiver services. For applicants of the ADvantage waiver, the spousal share of resources is determined by those resources owned by the couple the month the service began. If the individual applies for Medicaid at the time of entry into the ADvantage waiver, Form MA-11 is not appropriate. However, the spousal share must be determined using the resource information provided on the Medicaid application form and computed using DHS form MA-12, Title XIX Worksheet.

(b) **Date of application.**

(1) The date of application is:

(A) ~~The the date the individual applicant or someone acting in his/her behalf makes a request for payment for ADvantage waiver services to the local office signs the application in the county where the applicant lives; office; or A written application is not required for a client who has an active Medicaid case. 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.~~

(B) ~~When the application is initiated outside the county office, the date of application is the date the application is stamped into the county office when the application is initiated outside the county office; or When a request for medical services~~

(C) ~~the date when the is made by an oral request for Medicaid is made orally to DHS or the AA, and the financial application form is signed later, the . The date of the oral request is entered in "red" above the date the form is signed. The date of the oral request is the date of application.~~

(2) An exception is when DHS has contracts with certain providers to take applications and obtain documentation. After the documentation is obtained, the contracted provider forwards the application and documentation to the DHS county office of the client's county of residence for Medicaid eligibility determination. The application date is the date the client signed the application form for the provider.

(c) **ADvantage waiting list procedures.** ADvantage Program "available capacity in the month" is the number of additional clients that may be enrolled in the Program in a given month without exceeding, on an annualized basis, the maximum number authorized by the waiver to be served in the waiver year. The available capacity in the month for any particular month is calculated as follows: Available capacity in

the month equals [(Waiver year C value) minus (unduplicated number during the current waiver fiscal year served as of the last day of the previous month)] divided by (the number of months remaining in the waiver year). Upon notification from the AA that ~~98%~~ 95% of the ~~authorized waiver slots are filled~~ available capacity in the month has been attained, DHS Aging Services Division (DHS/ASD) notifies DHS county offices and contract agencies approved to complete the UCAT, Parts I and II that, until further notice, requests for ADvantage services are not to be processed as applications, but referred to AA to be placed on a waiting list of requests for ADvantage services. ~~If waiver slots for the developmentally disabled target group are filled, any UCAT I and II or PASRR level I that indicates that a person requesting ADvantage services meets target group criteria in OAC 317:35-17-3(a)(3) is placed on a waiting list of requests from persons with a developmental disability for ADvantage services.~~

(1) As waiver slots are available, the AA forwards requests from the waiting list to the appropriate DHS county office for processing the application.

(2) If elapsed days between UCAT, Parts I and II date and notification to DHS to process Medicaid application for ADvantage is more than 14 calendar days, the AA updates the UCAT, Parts I and II prior to forwarding to the appropriate DHS county office.

(3) The criterion for suspending waiting list procedures is the occurrence of two consecutive months in which no person is retained on the waiting list the entire month and less than 95% of the available capacity in the month is attained. Upon notification from the AA that waiting list procedures are no longer necessary, DHS/ASD notifies DHS county offices and contract agencies approved to complete the UCAT, Parts I and II to process requests for ADvantage services as applications.

317:35-17-5. ADvantage program medical eligibility determination

The DHS area nurse, or designee, makes the medical ~~decision~~ eligibility determination utilizing professional judgment, the Uniform Comprehensive Assessment Tool (UCAT), Part III, and other available medical information ~~and professional judgement.~~

(1) When ADvantage care services are requested or the UCAT is received in the county office:

(A) the LTC nurse is responsible for completing the UCAT, LTC Preadmission Level I screen, and securing a physician's primary, secondary and other current diagnoses and order for ADvantage Waiver services.

(B) the social worker is responsible for contacting the individual within three working days to initiate the financial eligibility application process.

(C) When a physician's order for ADvantage services cannot be obtained due to lack of medical information on the individual, the local office county director, or designee, authorizes a medical examination if current medical information is not available. When authorization is necessary, the county director issues DHS form ABCDM-16, Authorization for

Examination, and DHS form ABCDM-80, Report of Physician's Examination, to a licensed medical or osteopathic physician as defined in OAC 317:30-5-1. A physician does not include those physicians who is not in a medical facility intern, residency or fellowship program or in the full time employment of the Veterans Administration, Public Health Service or other agency.

(2) Categorical relationship must be established for determination of eligibility for ADvantage services. If categorical relationship to disability has not already been established, the local social worker submits the same information described in ~~(1)(A) of this section~~ OAC 317:35-5-4(2) to the Level of Care Evaluation Unit (LOCEU) to request a determination of eligibility for categorical relationship. LOCEU renders a decision on categorical relationship to the disabled using the same definition used by SSA. A follow-up is required by the DHS social worker with the Social Security Administration to be sure their disability decision agrees with the decision of LOCEU.

(3) ~~Approved contract~~ Community agencies complete the UCAT, Part I and H and forwards the form to the county office. If the UCAT, Part I and H indicate indicates that the applicant does not qualify for Medicaid long-term care services, the applicant is referred to appropriate community resources.

(4) The LTC nurse conducts the PASRR Level I screen for MI/MR and completes the UCAT, Part III assessment visit with the client within 10 working days of receipt of the UCAT I and H request referral for ADvantage services for a client with an ABCD or M case number who is Medicaid eligible at the time of the request. The LTC nurse completes the UCAT, Part III assessment within 20 working days of the date the Medicaid application is completed for new clients. ~~The UCAT II Screening score sets priority for scheduling the UCAT III assessment visit.~~

(5) During the assessment visit, the LTC nurse informs the client of medical eligibility criteria and provides information about the different long-term care service options. If there are multiple household members applying for the ADvantage program, the UCAT assessment is done for the applicant household members during the same visit. The LTC nurse documents whether the client chooses NF program services or ADvantage program services. In addition, the LTC nurse makes a level of care and service program recommendation.

(6) The LTC nurse informs the client and family of agencies certified to deliver ADvantage case management and in-home care services in the local area to obtain the client's primary and secondary informed choices.

(A) If the client and/or family declines to make a provider choice, the LTC nurse documents that decision on the client choice form.

(B) The AA uses a rotating system to select an agency for the client from a list of all local certified case management and in-home care agencies.

(7) The LTC nurse documents the names of the chosen agencies and the agreement (by dated signature) of the client to receive services provided by the agencies. ~~In geographic areas where there are no case management service providers, the AA will provide case management.~~

(8) If the needs of the client require an immediate inter-disciplinary team (IDT) meeting with home health agency nurse participation to develop a care plan and service plan, the LTC nurse documents the need.

(9) The LTC nurse scores the UCAT, Part III and follows-up to facilitate physician completion and timely return of the LTC-300, Long Term Care Assessment form, or the recommendation for ADvantage services. Upon receipt of certification of level of care completed by the applicant's physician, the LTC nurse ~~completes the Long Term Care Preadmission Screen form and forwards the completed assessment form, preadmission screen form,~~ the UCAT, Parts I, H, and III, documentation of financial eligibility, and documentation of the client's case management and in-home care agency choices to the area nurse, or designee, for medical eligibility determination.

(10) If, based upon the information obtained during the assessment, the LTC nurse determines that the client may be at risk for health and safety, DHS Adult Protective Services (APS) staff are notified immediately and the referral is documented on the UCAT.

(11) Within ten working days of receipt of a complete ADvantage application not requiring a PASRR level II preadmission screen, the area nurse, or designee, determines medical eligibility using NF level of care criteria and service eligibility criteria [refer to OAC 317:35-17-2 and OAC 317:35-17-3] and enters the medical decision on ~~MEDATS~~ the system. The original documents are sent with the MS-52 to the AA and copies of the UCAT and identified pages of the original Level I preadmission screening are sent to the OHCA.

(12) Upon notification of financial eligibility from the social worker, medical eligibility (MS-52) and approval for ADvantage entry from the area nurse, or designee, the AA communicates with the client and case management provider to begin care plan and service plan development. The AA communicates to the client's case management provider the client's name, address, case number and social security number, the units of case management and, if applicable, the number of units of home health agency nurse evaluation authorized for care plan and service plan development, whether the needs of the client require an immediate IDT meeting with home health agency nurse participation and the effective date for client entry into ADvantage. ~~In geographic areas where there are no case management services providers, the AA will provide case management.~~

(13) If the services must be in place to ensure the health and safety of the client upon discharge to the home from the NF, the LTC nurse or AA provides administrative case management to develop and implement the care plan and service plan. For administrative case management, the LTC nurse, ~~or AA,~~ or a nurse case manager from an

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ADvantage case management provider selected by the client and referred by the AA follows ADvantage case management procedures for care plan and service plan development and implementation. If the LTC nurse of AA has provided transition case management services, when when the client returns home, the LTC nurse or AA begins transitioning case management to the ADvantage case management provider chosen by the client.

(14) If a client in a hospital requests ADvantage services, the hospital initiates a request for Medicaid ADvantage services by contacting the AA for intake and screening.

(A) The LTC nurse, AA, or a nurse case manager from an ADvantage case management provider selected by the client and referred by the AA completes the UCAT, Part III assessment visit, if possible, with the hospitalized applicant. During the assessment visit, the LTC nurse, AA, or ADvantage nurse case manager informs the client of financial and medical eligibility criteria and provides information about the different long-term care service options. The LTC nurse, AA, or ADvantage nurse case manager documents the client's choice on the UCAT, Part III. The LTC nurse, AA, or ADvantage nurse case manager will review forms documenting the selection of provider(s), agreement with the service plan and release of information with the client and obtain the client's dated signature on the forms.

(B) If the UCAT indicates the client is eligible for ADvantage services and financial eligibility has been determined, the LTC nurse, AA, or ADvantage nurse case manager, in consultation with the hospital discharge planner provides administrative case management. The LTC nurse, AA, or ADvantage nurse case manager develops a temporary care plan and service plan if services must be in place to ensure the health and safety of the client upon discharge from the hospital. When the client returns home, the LTC nurse, AA, or ADvantage nurse case manager transitions case management to the ADvantage case management provider chosen by the client. ~~If Medicare in home services will be provided, a temporary care plan and service plan are not required.~~

(15) If the client has a current certification (~~MS-52~~) and requests a change from Personal Care Services to ADvantage services, a new UCAT and a physician's order is are required. The UCAT is updated when a client requests a change from ADvantage services to Personal Care services, or when a client requests a change from the nursing facility to ADvantage services. If a client is receiving ADvantage services and requests to go to a nursing facility, the LTC nurse will obtain the physician's order and primary and secondary diagnoses to submit to the area nurse. A new medical level of care decision is not needed.

(16) When a UCAT assessment has been completed more than 90 days prior to submission to the area nurse or designee for a medical decision, a new assessment is required.

317:35-17-10. Determining financial eligibility/categorical relationship for the ADvantage program

Financial eligibility for the ADvantage program is determined as follows:

(1) **Financial eligibility/categorically related to ABD.** In determining income and resources for the individual categorically related to ABD, the "family" includes the individual and spouse, if any. If an individual and spouse cease to live together for reasons other than institutionalization, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the spouse after the mutual consideration has ended are considered. If the individual and spouse cease to live together because of the individual entering a nursing facility, see OAC:35-19-21 to determine financial eligibility.

(A) The categorically needy standard on DHS Appendix C-1, Schedule VIII, is applicable for individuals categorically related to ABD.

(B) If the individual is receiving ADvantage program services and has received services for 30 days or longer, the categorically needy standard in DHS Appendix C-1, Schedule VIII. ~~B. B.1.~~, is used. The 30-day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the 30-day period ends. If the individual does not require services past the 30 days, the categorically needy standard in DHS Appendix C-1, Schedule ~~VIII. A. VI.~~, is used.

(2) **Transfer of capital resources on or before August 10, 1993.** Individuals who have transferred capital resources on or before August 10, 1993 and applying for or receiving ADvantage waiver services are subject to penalty if the individual, the individual's spouse, the guardian, or legal representative of the individual or individual's spouse, disposes of resources for less than fair market value during the 30 months immediately prior to eligibility for Title XIX if the individual is eligible at institutionalization. If the individual is not eligible for Title XIX at institutionalization, the individual is subject to penalty if a resource was transferred during the 30 months immediately prior to the date of application for Title XIX. Any subsequent transfer is also subject to the rules in this paragraph. When there have been multiple transfers of resources without commensurate return, all transferred resources are added together to determine the penalty period. The penalty consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the resource by the average monthly cost (\$2,000) to a private patient in a nursing facility level of care in Oklahoma. The penalty period begins with the month the resource or resources were first transferred and cannot exceed 30 months. Uncompensated value is defined as the difference between the equity value and the amount received for the resource.

- (A) However, the penalty would not apply if:
 - (i) the transfer was prior to July 1, 1988;
 - (ii) the title to the individual's home was transferred to:
 - (I) the spouse;
 - (II) the individual's child who is under age 21 or is blind or totally disabled;
 - (III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the individual's admission to the ADvantage program; or
 - (IV) the individual's son or daughter who resided in the home and provided care for at least two years prior to the individual's entry into the ADvantage program;
 - (iii) the individual can show satisfactorily that the intent was to dispose of resources at fair market value or that the transfer was for a purpose other than eligibility;
 - (iv) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's resource allowance;
 - (v) the resource was transferred to the individual's minor child who is blind or totally disabled;
 - (vi) the resource was transferred to the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the resources are not subsequently transferred to still another person for less than fair market value; or
 - (vii) the denial would result in undue hardship. Such determination should be referred to DHS State Office for a decision.
- (B) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment for ADvantage program services and the continuance of eligibility for other Title XIX services.
- (C) The penalty period can be ended by either the resource being restored or commensurate return being made to the individual.
- (D) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored resource or the amount of commensurate return.
- (E) The restoration or commensurate return will not entitle the client to benefits for the period of time that the resource remained transferred. An applicant cannot be certified for ADvantage program services for a period of resource ineligibility.

(3) **Transfer of assets on or after August 11, 1993.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after August 11, 1993 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

- (A) For an institutionalized individual, the look-back date is 36 months before the first day the individual is both institutionalized and has applied for Medicaid. However, in the case of payments from a trust or portions of a trust that are treated as transfers of assets, the look-back date is 60 months.
- (B) For purposes of this paragraph, an "institutionalized" individual is one who is receiving ADvantage program services.
- (C) The penalty period begins the first day of the first month during which assets have been transferred and which does not occur in any other period of ineligibility due to an asset transfer. When there have been multiple transfers, all transferred assets are added together to determine the penalty.
- (D) The penalty period consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the asset by the average monthly cost (\$2,000) to a private patient in an NF level of care in Oklahoma. In this calculation, any partial month is dropped. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.
- (E) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:
 - (i) by the individual or such individual's spouse;
 - (ii) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or
 - (iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.
- (F) A penalty would not apply if:
 - (i) the title to the individual's home was transferred to:
 - (I) the spouse;
 - (II) the individual's child who is under age 21 or is blind or totally disabled as determined by Social Security;
 - (III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the institutionalization of the individual; or
 - (IV) the individual's son or daughter who resided in the home and provided care for at least two years prior to the individual's institutionalization.
 - (ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market

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value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for Medicaid. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for Medicaid. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of Medicaid if the individual qualifies for Medicaid as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance.

(iv) the asset was transferred to the individual's minor child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Such determination should be referred to DHS State Office for a decision.

(G) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of ADvantage program services and the continuance of eligibility for other Medicaid services.

(H) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(I) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(J) The restoration or commensurate return will not entitle the client to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for ADvantage program services for a period of asset ineligibility.

(K) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated shall be considered a transfer.

(L) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the

spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(4) **Commensurate return.** Commensurate return for purposes of this Section is defined as actual money payment or documentation of money spent on the client's behalf; i.e., property taxes, medical debts, nursing care expenses, etc., corresponding to the market value of the transferred property. The definition does not include personal services, labor or provision of rent-free shelter. It also does not include a monetary value assigned and projected for future payment either by cash or provision of services. Any transfer of property within the five years prior to application or during receipt of assistance must be analyzed in regard to commensurate return as well as determination of intent.

317:35-17-14. Case Management services

(a) ~~Case Management service plan development and monitoring.~~ This Section describes case management service development and monitoring. ~~The AA will provide case management services in geographic areas where there is no case management entity and in geographic areas in which no case management entity has successfully completed training to provide case management to persons meeting target group criteria in OAC 317:35-17-3(a).~~ Case management services involve ongoing assessment, service planning and implementation, service monitoring and evaluation, client advocacy, and discharge planning.

(1) Within one working day of receipt of an ADvantage referral from the AA, the case management supervisor assigns a case manager to the client. Within three working days of being assigned an ADvantage client, the case manager makes a home visit to review the ADvantage program (its purpose, philosophy, and the roles and responsibilities of the client, service provider, case manager, Administrative Agent and DHS in the program), and the UCAT assessment, and to discuss service needs and ADvantage service providers.

(2) Within 10 working days of the receipt of ADvantage referral, or the annual re-assessment visit, the case manager completes and submits to the case management supervisor an individualized care plan and service plan for the client. The care plan and service plan are based on the client's service needs identified by the UCAT, Part III, and includes only those ADvantage services required to sustain and/or promote the health and safety of the client. The case manager uses an interdisciplinary team (IDT) planning approach for care plan and service plan development. If in-home care ~~are is~~ is the primary services service, the IDT includes, at a minimum, the client, a nurse from the ADvantage in-home care provider chosen by the client, and the case manager. Otherwise, the client and case manager constitute a minimum IDT.

(3) The case manager identifies ~~long-term~~ long-term goals, challenges to meeting goals, and service goals including plan objectives, actions steps and expected

outcomes. The case manager identifies services, service provider, funding source, units and frequency of service and service cost, cost by funding source and total cost for ADvantage services. The client signs and indicates review/agreement with the care plan and service plan by indicating acceptance or non-acceptance of the plans. The client, the client's legal guardian or legally authorized representative shall sign the service plan in the presence of the case manager. The signatures of two witnesses are required when the client signs with a mark. If the client refuses to cooperate in development of the service plan, or, if the client refuses to sign the service plan, the case management agency refers the case to the AA for resolution. In addition, based on the UCAT and/or case progress notes that document chronic uncooperative or disruptive behaviors, the LTC nurse or AA may identify clients that require AA intervention.

(#A) For clients that are uncooperative or disruptive, the AA develops an individualized Addendum to the Rights and Responsibilities Agreement to try to modify the client's uncooperative/disruptive behavior. The rights and responsibilities addendum focuses on behaviors, both favorable and those that jeopardize the consumer's well-being and includes a design approach of incremental plans and addenda that allow the client to achieve stepwise successes in the modification of their behavior.

(#B) The AA may implement a service plan without the client's signature if the AA has developed an Addendum to the Rights and Responsibilities Agreement for the client. For these clients the presence of a document that "requires" their signature may itself trigger a "conflict". In these circumstances, mental health/behavioral issues may prevent the client from controlling their behavior to act in their own interest. Since the person by virtue of level of care and the IDT assessment, needs ADvantage services to assure their health and safety, the AA may implement the service plan if the AA demonstrates effort to work with and obtain the client's agreement through an individualized Addendum to the Rights and Responsibilities Agreement. Should negotiations not result in agreement with the care plan and service plan, the client may withdraw their request for services or request a fair hearing.

(4) The case manager submits the care plan and service plan to the case management supervisor for review. The case management supervisor documents the review/approval of the plans within two working days of receipt from the case manager or returns the plans to the case manager with notations of errors, problems, and concerns to be addressed. The case manager re-submits the corrected care plan and service plan to the case management supervisor within two working days. The case management supervisor returns the approved care plan and service plan to the case manager. Within one working day of receiving supervisory approval, the case manager makes a copy of the plans and other client original documents for

the client file, faxes a copy of the plan to the AA and forwards the original care plan and service plan and required documents.

(5) Within one working day of notification of care plan and service plan ~~certification-authorization~~, the case manager communicates with the ~~care-plan/service~~ service plan providers and with the client to facilitate ~~care-plan~~ and service plan implementation. Within one working day of receipt of a copy or the computer-generated authorized service plan certification from the AA, the case manager sends (by mail or fax) copies of the ~~certified care plan and authorized service plan~~ or computer-generated copies to providers. Within five working days of notification of an initial or new ~~care-plan~~ and service plan ~~certification~~ authorization, the case manager visits the client, gives the client a copy of the ~~care-plan~~ and service plan or computer-generated copy of the service plan and evaluates the progress of the ~~care-plan~~ and service plan implementation. The case manager evaluates ~~care-plan~~ and service plan implementation on the following minimum schedule:

(A) within 30 calendar days of the ~~certified~~ authorized effective date of the service plan or service plan addendum amendment; and

(B) monthly after the initial 30 day follow-up evaluation date.

(b) **Certification Authorization of service plans and amendments to service plans.** The Administrative Agent certifies the individual service plan and all service plan amendments for each ADvantage client. When the AA verifies client ADvantage eligibility, plan cost effectiveness, that service providers are ADvantage ~~certified~~ authorized and Medicaid contracted, and that the delivery of ADvantage services are consistent with the client's level of care need, the service plan is ~~certified~~ authorized. Family members may not receive payment for providing ADvantage waiver services. A family member is defined as an individual who is legally responsible for the client (spouse or parent of a minor child).

(1) If the service plan ~~certification~~ authorization or amendment request packet received from case management is complete and the service plan is within cost effectiveness guidelines, the AA ~~certifies~~ authorizes or denies ~~certification~~ authorization within three working days of receipt of the request. If the service plan ~~certification~~ authorization or amendment request packet received from case management is complete and the service plan is not within cost-effectiveness guidelines, the plan is referred for administrative review to develop an alternative cost-effective plan or assist the client to access services in an alternate setting or program. If the request packet is not complete, the AA notifies the case manager immediately and puts a "hold" on ~~certification~~ authorization until the required additional documents are received from case management.

(2) The AA ~~certifies~~ authorizes the service plan by entering the ~~certification~~ authorization date and signing the submitted service plan. Notice of ~~certification~~ authorization and a copy of the ~~certified~~ authorized plan or a

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~~computer-generated copy of the authorized plan~~ are provided to case management. AA ~~certification~~ authorization determinations are provided to case management within one working day of the certification date. A service plan may be ~~certified~~ authorized and implemented with specific services temporarily denied. The AA communicates to case management the conditions for approval of temporarily denied services. The case manager submits revisions for denied services to AA for approval.

(3) For audit purposes (including SURS reviews), the computer-generated copy of the authorized service plan is documentation of service authorization for ADvantage waiver and State Plan Personal Care services. State or Federal quality review and audit officials may obtain a copy of specific service plans with original signatures by submitting a request to the AA.

(c) **Change in service plan.** The process for initiating a change in the service plan is described in this subsection.

(1) The service provider initiates the process for an increase or decrease in service to the client's service plan. The requested changes and justification for them are documented by the service provider and, if initiated by a direct care provider, submitted to the client's case manager. If in agreement, the case manager requests the service changes on a care plan and service plan amendment submitted to the AA. The AA approves or denies the care plan and service plan changes within two working days of receipt of the plan.

(2) A significant change in the client's physical condition or caregiver support, one ~~which~~ that requires additional goals, deletion of goals or goal changes, or requires a four-hour or more adjustment in services per week, requires a UCAT reassessment by the case manager. The case manager, in consultation with AA, makes the determination of need for reassessment. Based on the reassessment and consultation with the AA, the client may, as appropriate, be ~~certified~~ authorized for a new service plan or be eligible for a different service program. If the client is significantly improved from the previous assessment and does not require ADvantage services, the case manager obtains the client's dated signature indicating voluntary withdrawal for ADvantage program services. If unable to obtain the client's consent for voluntary closure, the case manager requests assistance from the AA. The AA requests that the DHS area nurse initiate a reconsideration of level of care. If the client's service needs are different or have significantly increased, the case manager develops an amended or new service plan and care plan, as appropriate, and submits the new/amended plans for ~~certification~~ authorization.

317:35-17-16. Client annual level of care re-evaluation and annual re-certification re-authorization of service plan

(a) As part of the fourth quarter monitoring of the service plan for years 1 and 2 for the client, the case manager reassesses the client's needs and re-evaluates the client's care plan and service plan, especially with respect to progress of the client

toward care plan and service plan goals and objectives. Based on the re-evaluation, the case manager develops a new care plan and service plan with the client and service providers, as appropriate, and submits the new care plan and service plan to the AA for certification. Along with the care plan and service plan submitted for annual recertification, the case manager forwards to AA the supporting documentation and the evaluation of the existing service plan and care plan. The case manager initiates the fourth quarter monitoring to allow sufficient time for certification of a new care plan and service plan prior to the expiration date on the existing care plan and service plan.

(b) For ADvantage, annual medical recertification of the client is not required. However, the AA will evaluate whether the client continues to meet minimum criteria for medical eligibility as part of the care plan and service plan recertification process. If the client appears not to meet NF level of care, the AA requests the LTC nurse to complete a UCAT, Parts I and III. The LTC nurse submits the UCAT to the area nurse, or designee, for determination of medical eligibility. The area nurse, or designee, sends the client's redetermined MS-52 to the AA. If the client no longer meets medical eligibility, the AA communicates this to the client's case manager. The case manager communicates with the client and if requested, helps the client to arrange alternate services in place of ADvantage. [See OAC 317:35-17-19(b)]

(c) At a maximum of every 36 months, the LTC nurse makes a home visit to assess the ADvantage client using the UCAT, Parts I and III. The LTC nurse assessment substitutes for the case manager's fourth quarter assessment in the client's third year. The LTC nurse submits the UCAT assessment to the area nurse, or designee, for a determination of continued medical eligibility before case management develops a care plan and new service plan. The LTC nurse initiates the third year assessment to allow sufficient time for certification of a new care plan and service plan prior to the expiration date on the existing care plan and service plan.

317:35-17-17. Supplemental process for expedited eligibility process determination (SPEED)

(a) When DHS or the Administrative Agent (AA) determines that a person requires ADvantage services to begin immediately to prevent nursing facility admission or to ensure the person's health or safety and the UCAT, Part I and II document documents that the person is expected to be eligible for ADvantage, ~~and at least one certified provider has agreed to provide the required care, the following process is followed: either the DHS LTC nurse or the AA will complete the assessment for medical eligibility determination. The completed assessment forms are submitted to the area nurse who makes the medical eligibility decision, enters it on the system and notifies the AA of the decision.~~

~~(1) DHS or AA staff forwards the UCAT I and II along with notification of need for supplemental eligibility and information on willing providers to the DHS area nurse;~~

~~(2) within one working day, the DHS area nurse forwards the supplemental eligibility application to a LTC~~

nurse or to the AA, depending upon available resources within DHS;

- (3) ~~within 48 hours:~~
 - (i) ~~the LTC nurse completes the UCAT assessment including documentation of need for supplemental eligibility consideration and other program entry procedures described under OAC 317:35-17-5(4) through (10), forwards the UCAT and supporting level of care documentation to the DHS area nurse and assists the applicant to initiate the financial eligibility application process; or,~~
 - (ii) ~~the AA completes the UCAT assessment including documentation of need for supplemental eligibility consideration and other program entry procedures described under OAC 317:35-17-5(4) through (10), makes the medical eligibility decision, forwards the level of care decision and supporting level of care documentation to the DHS area nurse, and assists the applicant to initiate the financial eligibility application process;~~
- (4) ~~within one working day of receipt of the UCAT III, the DHS area nurse enters the medical eligibility decision on MEDATS and forwards the medical decision to the AA;~~
- (5) ~~if the applicant meets medical eligibility, within one working day of the medical level of care decision, the AA develops and certifies the client's ADvantage service plan;~~
- (6) ~~providers deliver services to the client in compliance with the ADvantage service plan;~~
- (7) ~~when financial eligibility is established, the MEDATS medical eligibility is the earliest date for program eligibility.~~

(b) If the applicant fails to meet financial eligibility, providers follow special procedures specified by the AA to bill for services provided. If authorized by the AA, case management providers may bill using an administrative case management procedure code for SPEED services delivered and not reimbursable under any other ADvantage case management procedure code.

317:35-17-18. Suspension of ADvantage services during hospitalization or NF placement

If a client requires hospital or nursing facility services, the case manager assists the client is accessing institutional care, periodically monitors the client's progress during the institutional stay and, as appropriate, updates the service plan and prepares services to start on the date the client is discharged from the institution and returns home. All case management units for "institution transition" services to plan for and coordinate service delivery and to assist the client to safely return home, even if provided while the person is in an institution, are to be considered delivered on and billed for the date the client returns home from institutional care. When the case manager is informed (by the client, family or service provider) of a client's hospitalization or placement in an NF, the case manager determines the date of the client's institutionalization and communicates the date, name of institution, reason for placement and expected duration of placement to the Administrative Agent (AA) and the client's social worker.

(1) **Hospital discharge.** When the client returns home from a hospital or when notified of the client's anticipated discharge date, the case manager notifies relevant providers and the AA and the DHS county office coordinates the resumption of services.

(2) **NF placement of less than 30 days.** When the client returns home from ~~the a~~ NF stay of 30 days or less or when notified of the client's anticipated discharge date the case manager notifies relevant providers, the client's social worker notifies and the AA of the discharge in order for case management service to resume and coordinates the resumption of ADvantage services in the home.

(3) **NF placement greater than 30 days.** When the client is scheduled to be discharged and return home from a NF stay that is greater than 30 days, the client's DHS social worker, ADvantage case manager, or the AA (whoever first receives notification of the discharge), notifies other ADvantage Program Administrative partners to expedite the restart of ADvantage services for the client. In these circumstances, the SPEED process may be used to re-establish ADvantage eligibility to coincide with the date of discharge from the NF. The client's case manager provides "institution transition" case management services to assist the client to re-establish him or herself safely in the home.

317:35-17-19. Closure or termination of ADvantage services

(a) **Voluntary closure of ADvantage services.** If the client requests a lower level of care than ADvantage services or if the client agrees that ADvantage services are no longer needed to meet his/her needs, a medical decision by the area nurse, or designee, is not needed. The closure request is completed and signed by the client and the case manager and sent to the AA to be placed in the client's case record. The AA notifies the DHS county office of the voluntary closure and effective date of closure. The case manager documents in the case record all circumstances involving the reasons for the voluntary termination of services and alternatives for services if written request for closure cannot be secured.

(b) **Closure due to financial or medical ineligibility.** The process for closure due to financial or medical ineligibility is described in this subsection.

(1) **Financial ineligibility.** Anytime the local DHS office determines a client does not meet the financial eligibility criteria, the local DHS office notifies the client, provider, and AA of financial ineligibility. A medical eligibility redetermination is not required when a financial ineligibility period does not exceed the medical certification period.

(2) **Medical ineligibility.** Any time the local DHS office is notified through MEDATS of a decision that the individual is no longer medically eligible for ADvantage services, the local office notifies the individual, AA and provider of the decision.

(c) **Closure due to other reasons.** This subsection provides the reasons and the process for the termination of ADvantage services.

(1) ADvantage services may be terminated if:

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- (A) the client poses a threat to self or others as supported by professional documentation;
 - (B) other members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat of harm or injury to the client or other household visitors;
 - (C) the client does not have available supports, as documented on the UCAT, to remain in their home without risk to their health, safety, and well-being. The individual does not have the decision making ability to respond appropriately to situations that jeopardize their health and safety or available supports that compensate for their lack of ability as documented on the UCAT;
 - (D) the client has been in an NF for more than three weeks and the date for the client's ability to return home is indeterminate; or
 - (E) the client or family member fails to cooperate with ADvantage services delivery.
- (2) The AA forwards a request to reconsider a client's ADvantage eligibility to the Aging Services Division. The memo includes a specific description of the problem(s), facts substantiating the problem(s), and actions taken previously to correct the problem(s). Depending upon the severity of the allegations, and the risk to the client's health and safety if the services are disrupted, the provider may be required to continue providing service until a decision is made. Upon review of the information submitted, the Aging Services Division (ASD) takes one of the actions in (A) - (B) of this paragraph.

(A) ASD may terminate ADvantage services. ASD prepares a letter advising the client of the reason for termination of ADvantage services and the effective date of termination. The letter is mailed to the client with copies to the local DHS county office, area nurse, AA and case management provider. The case management provider will notify the in-home care service provider. The social worker updates the computer system by closing the authorization and sending official notice to the client with required client rights.

(B) ASD may notify the AA and case management provider in writing that ADvantage eligibility is to continue. The case management provider will notify the in-home care provider agency.

(d) Resumption of ADvantage services. If a client approved for ADvantage services has been without services for less than 90 days and has a current medical and financial eligibility determination, services may be resumed using the previously approved service plan. If a client decides he/she desires to have his/her services restarted after 90 days, the client must request the services as a new referral through the county office.

317:35-17-24. Referral for social services

In many situations, social services are needed by adults who are receiving medical services through Medicaid. The LTC nurse may make referrals for social services to the social

worker in the local office ~~by use of DHS Form K-13, Information/Referral Social Services~~. In addition to these referrals, a request for social services may be initiated by a client or by another individual acting upon behalf of a client.

(1) The social worker is responsible for providing the indicated services or for referral to the appropriate resource outside the Department if the services are not available within the Department.

(2) Among the services provided by the social worker are:

(A) Services which will enable individuals to attain and/or maintain as good physical and mental health as possible;

(B) Services to assist patients who are receiving care outside their own homes in planning for and returning to their own homes or to other alternate care;

(C) Services to encourage the development and maintenance of family and community interest and ties;

(D) Services to promote maximum independence in the management of their own affairs;

(E) Protective services, including evaluation of need for and arranging for guardianship; and

(F) Appropriate family planning services which include assisting the family in acquiring means to responsible parenthood. Services are offered in making the necessary referral and follow-up.

SUBCHAPTER 19. NURSING FACILITY SERVICES

317:35-19-2. Nursing Facility (NF) program medical eligibility determination

The DHS area nurse, or designee (OHCA, LOCEU makes some determinations when PASRR is involved), determines medical eligibility for nursing facility (NF) services based on the Long Term Care (LTC) nurse's UCAT, Part III assessment of the client's needed level of care, the outcome of the Level II Preadmission Screening and Resident Review (PASRR), if completed, and professional judgement. A physician's recommendation is required for NF level of care including the diagnoses. Refer to OAC 317:35-19-7.1(3) for nursing facility level of care medical eligibility requirements.

(1) When NF care services are requested prior to admission, the same rules related to medical eligibility determination identified in OAC 317:35-17-5 for ADvantage services are followed.

(2) The LTC nurse submits the UCAT, Part III, the physician's level of care certification, the Long-Term Care Preadmission Screen form (PASRR), and the NF request for assessment to the area nurse, or designee, for medical eligibility determination.

(3) PASRR requirements are identified in OAC 317:35-19-8 and 317:35-19-9.

(4) When it is not possible for the UCAT assessment to be completed prior to admission, the NF is responsible for notifying the Department of Human Services of the

admission. Notification will be by mailing or by faxing the DHS form ABCDM-83 (~~Notification~~—Notification Regarding Patient In A Nursing Facility, Intermediate Care Facility for the Mentally Retarded or Hospice), DHS form ABCDM-96 (Management of Recipient-Recipient's Funds), and ~~the request for nursing assessment DHS form ABCDM-83-A, Request for Title XIX Nursing Assessment,~~ to the local DHS county office. Upon receipt, the DHS county office processes the ABCDM-83, ABCDM-96, and ~~the request for nursing assessment ABCDM-83-A~~ and completes and forwards the DHS form ABCDM-37D (Notice to Nursing Care Facility or LTCA Regarding Financial Eligibility) to the NF. Identified sections of the UCAT reflecting the domains for meeting medical criteria are completed for applicants residing in the NF at the time of assessment. The area nurse, or designee, determines the date of medical eligibility and records it on ~~MEDATS~~ the system based on the date of financial eligibility. The facility is responsible for performing the PASRR Level I screen and consulting with staff of the OHCA as to whether a need exists for a Level II screen. The LTC nurse will conduct the assessment visit within 15 working days of request for assessment if the individual's needs are included in an active ABCDM case. If the individual's needs are not included in an active ABCDM case, the assessment is conducted within 20 working days of the date of the signed application. The LTC nurse forwards the completed preadmission screen, ~~the request for nursing and assessment form ABCDM-83-A,~~ and the UCAT, Part III to the area nurse or designee.

(5) The area nurse, or designee, will evaluate the PASRR Level I screen and the UCAT, Part III and consult with staff of the OHCA as to whether a need exists for a Level II screen as necessary.

(6) The area nurse, or designee, will evaluate the UCAT, Parts I and III, the Long-Term Care Preadmission Screen form and the physician's diagnosis to determine whether the applicant meets the medical eligibility criteria for NF level of care. Individuals may be medically certified for NF level of care for various lengths of time depending upon the needs of the client. The area nurse, or designee, enters the medical eligibility decision, and when required, the medical certification review date on the ~~MEDATS~~ system within ten working days. A medical eligibility redetermination is not required when a client is discharged from the NF for a period not to exceed 90 days and the original certification is current.

(7) If the LTC nurse recommends NF level of care and the client is determined by the area nurse, or designee, not to be medically eligible for NF level of care, the LTC nurse can submit additional information to the area nurse, or designee. When necessary, a visit by the LTC nurse to obtain additional information can be initiated at the recommendation of the area nurse, or designee.

317:35-19-18. Change in level of long-term medical care

(a) When a client is receiving Personal Care services and requests nursing facility care or when a client is in a nursing facility and requests Personal Care services, a new UCAT is required. The UCAT is updated if the client is in the nursing facility and requests ADvantage waiver services. For a change from ADvantage waiver to nursing facility care, doctor's orders and diagnosis are needed for submission to the area nurse. No new medical decision is needed. Also, no new medical decision is needed for admission to a nursing facility from home if the period of absence from the nursing facility is less than 90 days. No new medical decision is needed if the client loses financial eligibility but maintains medical eligibility by having a current medical decision and by remaining in the facility during the period of financial ineligibility.

(b) When there is a decision that a client approved for one level of long term care is eligible for a different level of care, the local office is advised by update of the ~~MEDATS~~ file. If the change is from facility care to Personal Care, a new UCAT, Part III care plan, service plan, and other required forms are submitted to the area nurse, or designee. If the Personal Care recipient requests a decision regarding facility care prior to admission to a facility, the LTC nurse is responsible for submitting the UCAT, Part III, a physician's order for NF of care, and LTC-300A to the area nurse, or designee for a decision. When the area nurse, or designee, determines that a nursing care recipient no longer needs this level of care, payment may be continued while the recipient, or other responsible person, makes other arrangements. The length of such continuation of payment depends upon the circumstances, but must allow time for the appropriate advance notice to the recipient and cannot exceed 60 days from the date of the decision.

317:35-19-19. General financial eligibility requirements for NF and skilled nursing care

(a) **Financial eligibility for NF care.** Financial eligibility for NF care is determined using the rules on income and resources according to the category to which the individual is related. (See OAC 317:35-10 for individuals categorically related to AFDC, and OAC 317:35-7-36 for those categorically related to ABD.)

(1) Income, resources and expenses are evaluated on a monthly basis for all individuals requesting payment for NF care. Each individual requesting payment for NF care is allowed a personal needs allowance.

(2) To be eligible for long-term care in an NF, the individual must be determined categorically needy according to the standards appropriate to the categorical relationship.

(3) If the individual's gross income exceeds the categorically needy standard as shown on DHS Appendix C-1, Schedule VIII. B. 1., refer to OAC 317:35-5-41(d)(9)(F)(ii) for rules on establishing a Medicaid Income Pension Trust.

(4) When eligibility for long-term care has been determined, the spenddown amount is determined based on type of care, categorical relationship, community spouse, etc.

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(5) The spenddown is applied to the vendor payment on the first NF claim(s) received on behalf of the individual.

(6) For an individual eligible for long-term care in a NF, the individual's share of the vendor payment is not prorated over the month. As Medicaid is the payer of last resort, the full amount of the recipient's share of the vendor payment must first be applied to the facility's charges before Medicaid reimbursement begins.

(b) **Financial eligibility for skilled nursing.** Skilled Nursing Care is covered as part of the Medicare Part A coverage. For clients who are currently receiving this benefit through the QMB program, no further action is needed. For individuals who do not have an active Medicaid case, an application is processed to receive the Medicare crossover and deductible benefits. Income eligibility is based on the categorically needy standard in DHS Appendix C-1, Schedule ~~VIII. A.~~ VI., for the first 30 days. After the initial 30 days, income eligibility is based on the categorically needy standard in DHS Appendix C-1, Schedule VIII. B. 1.

(1) QMB eligible individuals in skilled nursing care are allowed the resource standard as shown on DHS Appendix C-1, Schedule VI, but must meet the Medicaid resource standard as shown on DHS Appendix C-1, Schedule VIII. D., for NF level of care. For individuals with no active case, use the resource standard shown on DHS Appendix C-1, Schedule VIII. D.

(2) Rules concerning transfer of assets do not apply to skilled level of care.

317:35-19-20. Determining financial eligibility of categorically needy individuals

Financial eligibility for NF medical care is determined as follows:

(1) Financial eligibility/categorically related to AFDC.

(A) In determining income for the individual related to AFDC, all family income is considered. The "family", for purposes of determining need, includes the following persons if living together (or if living apart but there has been no break in the family relationship):

- (i) spouse; and
- (ii) parent(s) and minor children of their own.
 - (I) For adults, to be categorically needy, the net income must be less than the categorically needy standard as shown on the DHS Appendix C-1, Schedule X.
 - (II) For individuals under 19, to be categorically needy, the net income must be equal to or less than the categorically needy standard as shown on the DHS Appendix C-1, Schedule I. A.

(B) Individuals related to AFDC but not receiving a money payment are not entitled to one-half income disregard following the earned income deduction.

(2) Financial eligibility/categorically related to ABD. In determining income and resources for the individual related to ABD, the "family" includes the individual

and spouse, if any. If an individual and spouse cease to live together for reasons other than institutionalization, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the spouse after the mutual consideration has ended are considered. If the individual and spouse cease to live together because of the individual entering a nursing facility, see paragraph (2) of OAC 317:35-19-20 to determine financial eligibility.

(A) The categorically needy standard on DHS Appendix C-1, Schedule ~~VIII. VI.~~, is applicable for individuals related to ABD. If the individual is in an NF and has received services for 30 days or longer, the categorically needy standard in DHS Appendix C-1, Schedule VIII. B. 1., is used. If the individual leaves the facility prior to the 30 days, or does not require services past the 30 days, the categorically needy standard in DHS Appendix C-1, Schedule VIII. A., is used. The rules on determination of income and resources are applicable only when an individual has entered a NF and is likely to remain under care for 30 consecutive days. The 30-day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the 30-day period ends.

(B) An individual who is a patient in an extended care facility may have SSI continued for a three month period if he/she meets conditions described in Subchapter 5 of this Chapter. The continuation of the payments is intended for use of the recipient and does not affect the vendor payment. If the institutional stay exceeds the three month period, SSI will make the appropriate change.

(3) **Transfer of capital resources on or before August 10, 1993.** Individuals who have transferred capital resources on or before August 10, 1993 and applying for or receiving NF ICF/MR or receiving HCBW/MR services are subject to penalty if the individual, the individual's spouse, the guardian, or legal representative of the individual or individual's spouse, disposes of resources for less than fair market value during the 30 months immediately prior to eligibility for Medicaid if the individual is eligible at institutionalization. If the individual is not eligible for Medicaid at institutionalization, the individual is subject to penalty if a resource was transferred during the 30 months immediately prior to the date of application for Medicaid. Any subsequent transfer is also subject to this policy. When there have been multiple transfers of resources without commensurate return, all transferred resources are added together to determine the penalty period. The penalty consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the resource by the average monthly cost (\$2,000) to a private patient in a nursing facility in Oklahoma. The penalty period begins with the month the resource or resources were first transferred

and cannot exceed 30 months. Uncompensated value is defined as the difference between the equity value and the amount received for the resource.

- (A) However, the penalty would not apply if:
 - (i) The transfer was prior to July 1, 1988.
 - (ii) The title to the individual's home was transferred to:
 - (I) the spouse;
 - (II) the individual's child under age 21 or who is blind or totally disabled;
 - (III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the individual's admission to the nursing facility; or
 - (IV) the individual's son or daughter who resided in the home and provided care for at least two years prior to the individual's admission to the nursing facility.
 - (iii) The individual can show satisfactorily that the intent was to dispose of resources at fair market value or that the transfer was for a purpose other than eligibility.
 - (iv) The transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's resource allowance.
 - (v) The resource was transferred to the individual's minor child who is blind or totally disabled.
 - (vi) The resource was transferred to the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the resources are not subsequently transferred to still another person for less than fair market value.
 - (vii) The denial would result in undue hardship. Such determination should be referred to DHS State Office for a decision.
- (B) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of NF and the continuance of eligibility for other Medicaid services.
- (C) The penalty period can be ended by either the resource being restored or commensurate return being made to the individual.
- (D) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored resource or the amount of commensurate return.
- (E) The restoration or commensurate return will not entitle the client to benefits for the period of time that the resource remained transferred. An applicant cannot be certified for NF, HCBWS/MR, or ADvantage waiver services for a period of resource ineligibility.

(4) **Transfer of assets on or after August 11, 1993.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of

assets on or after August 11, 1993 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

- (A) For an institutionalized individual, the look-back date is 36 months before the first day the individual is both institutionalized and has applied for medical assistance. However, in the case of payments from a trust or portions of a trust that are treated as transfers of assets, the look back date is 60 months.
- (B) For purposes of this paragraph, an "institutionalized" individual is one who is residing in an NF.
- (C) The penalty period begins the first day of the first month during which assets have been transferred and which does not occur in any other period of ineligibility due to an asset transfer. When there have been multiple transfers, all transferred assets are added together to determine the penalty.
- (D) The penalty period consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the asset by the average monthly cost (\$2,000) to a private patient in a nursing facility in Oklahoma. In this calculation, any partial month is dropped. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.
- (E) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:
 - (i) by the individual or such individual's spouse;
 - (ii) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or
 - (iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.
- (F) A penalty would not apply if:
 - (i) the title to the individual's home was transferred to:
 - (I) the spouse;
 - (II) the individual's child under age 21 or who is blind or totally disabled as determined by Social Security;
 - (III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the institutionalization of the individual; or
 - (IV) the individual's son or daughter who resided in the home and provided care for at

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least two years prior to the individual's institutionalization.

- (ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for Medicaid. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for Medicaid. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of Medicaid if the individual qualifies for Medicaid as a result of the transfer.
 - (iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance.
 - (iv) the asset was transferred to the individual's minor child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.
 - (v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value.
 - (vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.
 - (vii) the denial would result in undue hardship. Such determination should be referred to DHS State Office for a decision.
- (G) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of NF and the continuance of eligibility for other Medicaid services.
- (H) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.
- (I) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.
- (J) The restoration or commensurate return will not entitle the client to benefits for the period of time that the asset remain transferred. An applicant cannot be certified for nursing care services for a period of asset ineligibility.
- (K) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and

the individual's ownership or control of the asset is reduced or eliminated shall be considered a transfer.

(L) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

- (5) **Commensurate return.** Commensurate return for purposes of this Section is defined as actual money payment or documentation of money spent on the client's behalf; i.e., property taxes, medical debts, nursing care expenses, etc., corresponding to the market value of the transferred property. The definition does not include personal services, labor or provision of rent-free shelter. It also does not include a monetary value assigned and projected for future payment either by cash or provision of services. Any transfer of property within the five years prior to application or during receipt of assistance must be analyzed in regard to commensurate return as well as determination of intent.

317:35-19-21. Determining financial eligibility for care in NF

Financial eligibility and vendor payment calculations for individuals in an NF are determined according to whether or not a spouse remains in the home.

- (1) **Individual without a spouse.** For an individual without a spouse, the following rules are used to determine financial eligibility.

(A) **Income eligibility.** To determine the income of the individual without a spouse, the rules in (i) - (iii) of this subparagraph apply.

(i) If payment of income is made to the individual and another person(s), the income is considered in proportion to the individual's interest.

(ii) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(iii) After determination of income, the gross income of the individual cannot exceed the categorically needy standard in DHS Appendix C-1, Schedule VIII. B. 1., to be eligible for NF services. If the individual's gross income exceeds this standard, refer to Medicaid rules for establishing a Medicaid Income Pension Trust [~~OAC 317:35-5-42(d)(9)(F)(ii)~~ OAC 317:35-5-41(d)(9)(F)(ii)].

(B) **Resource eligibility.** In order for an individual without a spouse to be eligible for NF services, his/her countable resources cannot exceed the maximum resource standard listed in DHS Appendix C-1, Schedule VIII. D.

(C) **Vendor payment.** When eligibility for NF care has been determined, the vendor payment is computed. For an individual eligible for long-term

care in a NF, the individual's share of the vendor payment is not prorated over the month. As Medicaid is the payer of last resort, the full amount of the recipient's share of the vendor payment must first be applied to the facility's charges before Medicaid reimbursement begins.

(D) **First month.** For the first month of care, the following procedures apply when determining the vendor payment:

(i) When an individual enters the facility on the first day of the month, all countable income is considered with the facility maintenance standard allowed.

(ii) When an individual enters the facility after the first day of the month, all countable income is considered with the own home standard allowed in computation of the vendor payment. Only the remaining income actually available is used to compute the vendor payment.

(E) **Equity in capital resources.** If the equity in capital resources is in excess of the standards, certification is delayed up to 30 days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources, along with excess income to be considered against the vendor payment, are in excess of one month's vendor payment, the application is denied.

(2) **Individual with a spouse who is institutionalized in a NF or ICF/MR, or who receives ADvantage or HCBW/MR services, or is 65 or over and in a mental health hospital.** For an individual with a spouse who is institutionalized in a NF or ICF/MR, or who receives ADvantage or HCBW/MR services, or is 65 or over and in a mental health hospital, resources are determined for each individual as the amount owned by each individual plus one-half of the jointly owned resources of the couple. Once this separation of assets is made, a resource of either spouse is not considered available to the other during institutionalization.

(A) **Income eligibility.** To determine income for an individual whose spouse is institutionalized in a NF or ICF/MR, or who receives ADvantage or HCBW/MR services, or is 65 or over and in a mental health hospital, income determination is made individually. The income of either spouse is not considered as available to the other during institutionalization. The rules in (i) - (v) of this subparagraph apply in this situation.

(i) If payment of income is made solely to one or the other, the income is considered available only to that individual.

(ii) If payment of income is made to both, one-half is considered for each individual.

(iii) If payment of income is made to either one or both and another person(s), the income is considered in proportion to either spouse's interest (if payment is to that spouse) or one-half of the joint interest if no interest is specified.

(iv) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(v) After determination of income, the gross income of the individual cannot exceed the categorically needy standard in DHS Appendix C-1, Schedule VIII. B. 1., to be eligible for ADvantage services. If the individual's gross income exceeds this standard, refer to Medicaid rules for establishing a Medicaid Income Pension Trust [OAC 317:35-5-41(d)(9)(F)(ii)].

(B) **Resource eligibility.** In order for an individual with a spouse who is institutionalized in a NF or ICF/MR, receives ADvantage or HCBW/MR services, or is 65 or older and in a mental health hospital to be eligible for NF services, his/her countable resources cannot exceed the maximum reserve standard for an individual listed in DHS Appendix C-1, Schedule VIII. D.

(C) **Vendor payment.** When eligibility for NF services has been determined, the spenddown calculation is used to compute the vendor payment. For an individual eligible for long-term care in a NF, the individual's share of the vendor payment is not prorated over the month. As Medicaid is the payer of last resort, the full amount of the recipient's share of the vendor payment must first be applied to the facility's charges before Medicaid reimbursement begins.

(D) **First month.** For the first month of care, the following procedures apply when determining the vendor payment:

(i) When an individual enters the facility on the first day of the month, all countable income is considered with the facility maintenance standard allowed.

(ii) When an individual enters the facility after the first day of the month, all countable income is considered with the own home standard allowed in computation of the vendor payment. Only the remaining income actually available is used to compute the vendor payment.

(E) **Equity in capital resources.** If the equity in capital resources is in excess of the standards, certification is delayed up to 30 days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources, along with excess income to be considered against the vendor payment, are in excess of one month's vendor payment, the application is denied.

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(3) **Individual with a spouse remaining in the home who does not receive ADvantage or HCBW/MR services.** When an individual and spouse are separated due to the individual entering an NF, income and resources are determined separately. However, the income and resources of the community spouse must be included on the application form. At redetermination of eligibility, the community spouse's income must be included in the review process. During any month that the individual is in the NF, income of the community spouse is not considered available to that individual. The following rules are used to determine the income and resources of each:

(A) **Income eligibility.** To determine the income of both spouses, the following rules in this subparagraph apply:

(i) If payment of income is made solely to one or the other, the income is considered available only to that individual.

(ii) If payment of income is made to both, one-half is considered for each individual.

(iii) If payment of income is made to either one or both and another person(s), the income is considered in proportion to either the spouse's interest (if payment is to that spouse) or one-half of the joint interest if no interest is specified.

(iv) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(v) If the individual's gross income exceeds the categorically needy standard as shown on DHS Appendix C-1, Schedule VIII. B. 1., refer to Medicaid rules for establishing a Medicaid Income Pension Trust [OAC 317:35-5-41(d)(9)(F)(ii)].

(B) **Resource eligibility.** To determine resource eligibility, it is necessary to determine the amount of resources for both spouses for the month of the individual's entry into the nursing facility. Of the resources available to the couple (both individual and joint ownership) an amount will be protected for the community spouse which will not be considered available to the spouse in the NF. DHS form MA-11, Assessment of Assets, is used for the assessment prior to application for Medicaid. The amount determined as the spousal share is used for all subsequent applications for Medicaid, regardless of changes in the couple's resources. The protected spousal share cannot be changed for any reason. When application for Medicaid is made at the same time the individual enters the NF, DHS form MA-12, Title XIX Worksheet, is used in lieu of DHS form MA-11.

(i) The first step in the assessment process is to establish the total amount of resources for the couple during the first month of the entry of the spouse into the NF.

(ii) The community spouse's share is equal to one-half of the total resources of the couple not to exceed the maximum amount of resource value

that can be protected for the community spouse, as shown on DHS Appendix C-1, Schedule XI.

(iii) The minimum resource standard for the community spouse, as established by the OHCA, is found on DHS Appendix C-1, Schedule XI. When the community spouse's share is less than the minimum standard, an amount may be deemed from the other spouse's share to ensure the minimum resource standard for the community spouse. If the community spouse's share equals or exceeds the minimum resource standard, deeming cannot be done.

(iv) If deeming is necessary to meet the minimum resource standard for the community spouse, the amount that is deemed must be legally transferred to the community spouse within one year of the effective date of certification for Medicaid. At the first redetermination of eligibility, the social worker must document that the resources have been transferred. After the first year of Medicaid eligibility, resources of the community spouse will not be available to the other spouse and resources cannot be deemed to the community spouse.

(v) After the month in which the institutionalized spouse and community spouse have met the resource standards and the institutionalized spouse is determined eligible for benefits, no resources of the community spouse, regardless of value, will be considered available to the institutionalized spouse. If the resources of the community spouse grow to exceed the original deemed amount, the State cannot require the community spouse to apply any of these excess resources toward the cost of the care of the institutionalized spouse.

(vi) When determining eligibility for Medicaid, the community spouse's share of resources is protected and the remainder considered available to the spouse in the NF.

(vii) The resources determined above for the individual in the NF cannot exceed the maximum reserve for an individual as shown in DHS Appendix C-1, Schedule VIII. D.

(viii) Once the dollar value of the community spouse's share of resources is established for the month of the other spouse's entry into NF, that amount is used when determining resource eligibility for a subsequent Medicaid application for NF.

(ix) Once a determination of eligibility for Medicaid is made, either spouse is entitled to a fair hearing. Any such hearing regarding the determination of the community spouse's resource allowance shall be held within 30 days of the date of the request for the hearing. Either spouse is entitled to a fair hearing if dissatisfied with a determination of:

(I) the community spouse's monthly income allowance;

- (II) the amount of monthly income otherwise available to the community spouse;
 - (III) determination of the spousal share of resource;
 - (IV) the attribution of resources (amount deemed); or
 - (V) the determination of the community spouse's resource allowance.
- (x) The rules on determination of income and resources are applicable only when an individual has entered an NF and is likely to remain under care for 30 consecutive days. The 30-day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the 30-day period ends.
- (xi) The rules on resources included in this Section apply only to those cases in which an individual begins a continuous period of care in an NF on or after September 30, 1989.
- (xii) If the individual was admitted prior to September 30, 1989, there is not a protected amount for the community spouse. Resources are separated according to spousal ownership with one-half of jointly owned resources counted for each. In this instance, each spouse's resources are considered separately and the resources of the community spouse does not affect the eligibility of the spouse in the NF.
- (C) **Vendor payment.** After the institutionalized spouse has been determined eligible for long-term care, the vendor payment is computed. For an individual eligible for long-term care in a NF, the individual's share of the vendor payment is not prorated over the month. As Medicaid is the payer of last resort, the full amount of the recipient's share of the vendor payment must first be applied to the facility's charges before Medicaid reimbursement begins.
- (D) **Excess resources.** If the equity in capital resources is in excess of the standards but less than the amount of one month's vendor payment, certification is delayed up to 30 days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources, along with excess income to be considered against the vendor payment, are in excess of the vendor payment, the application is denied.

317:35-19-22. Certification for NF

(a) **Application date.** The date of the application for NF care is most important in determining the date of eligibility. If the applicant is found eligible for Medicaid, certification may be made retroactive for any service provided on or after the first day of the third month prior to the month of application and for future months. ~~When categorically needy individuals are certified for State Supplemental Payment or TANF, the~~

~~retroactive certification is handled with an M-category case number. The first month of the certification period must be the first month that medical service was provided and the recipient was determined eligible.~~

- (1) As soon as eligibility or ineligibility for long-term medical care is established the local office updates the computer form and the appropriate notice is computer generated to the client and vendor. Notice information is retained on the notice file for county use.
 - (2) An applicant approved for long-term medical care under Medicaid as categorically needy is mailed a Medical Identification Card.
 - (3) When eligibility is established for care in an NF, the certification is not teleprocessed until the Management of Recipient's Funds form has been received from the administrator of the facility providing the care.
- (b) **Time limited approvals for nursing care.** A medical certification period of a specific length may be assigned for an individual who is categorically related to ABD or AFDC. This time limit is noted on MEDATS the system. It is the responsibility of the nursing facility to notify the area nurse 30 days prior to the end of the certification period if an extension of approval is required by the client. Based on the information from the NF the area nurse, or designee, determines whether or not an update of the UCAT is necessary for the extension. The area nurse, or designee, coordinates with appropriate staff for any request for further UCAT assessments.
- (c) **Certification period for long-term medical care.** A financial certification period of 12 months is assigned for an individual categorically related to ABD who is approved for long-term care. When the individual determined eligible for long-term medical care is categorically related to AFDC, a certification period of six months is assigned. Although "medical eligibility number of months" on the computer input record will show 99 months, redetermination of eligibility is completed according to the categorical relationship.

[OAR Docket #03-1007; filed 5-20-03]

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

[OAR Docket #03-999]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 17. ADvantage Waiver Services

317:35-17-1. [AMENDED]

317:35-17-22. [AMENDED]

(Reference APA WF # 02-21B and 02-23B)

AUTHORITY:

Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 1915(c) of the Social Security Act; 1619b of the Social Security Act

DATES:

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Permanent Final Adoptions

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SUPERSEDED EMERGENCY ACTIONS:**Superseded rules:**

Subchapter 17. ADvantage Waiver Services

317:35-17-1. [AMENDED]

(Reference APA WF # 02-21B)

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December 23, 2002

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20 Ok Reg 376

Docket number:

03-08

Superseded rules:

Subchapter 17. ADvantage Waiver Services

317:35-17-22. [AMENDED]

(Reference APA WF # 02-23B)

Gubernatorial approval:

January 30, 2003

Register publication:

20 Ok Reg 652

Docket number:

03-305

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Medical Assistance for Adults and Children-Eligibility rules are revised to institute co-payments for prescription drugs for Home and Community Based Waiver service recipients. Currently, rules specify that a co-payment is not required for any Home and Community Based Waiver services. Individuals that are found eligible for the Home and Community Based Waiver are determined to be categorically needy and do not have a spenddown for Medicaid services. Due to Agency and State budgetary constraints and the Oklahoma constitutional requirement to maintain a balanced budget, the Agency identified several program areas in which significant savings could be made. Other revisions are needed to make agency rules conform to Oklahoma's Medicaid State Plan and existing agency procedure by clarifying that all services to pregnant women do not require a co-payment.

Medical Assistance for Adults and Children-Eligibility, ADvantage Waiver Services specific, rules are revised to require MMIS prior authorization for all ADvantage service plan approved services. Existing rules allow the Administrative Agent (Long-Term Care Authority of Tulsa) to prior authorize only a subset of ADvantage services on the MMIS prior authorization file. Policy revisions allow the Administrative Agent to post, via electronic files generated from approved service plan or service plan updated records on the Waiver Management Information Systems, the prior authorizations to the MMIS. A benefit of the prior authorization process will be to identify problems related to consumer eligibility at the beginning of the service delivery authorization rather than to discover problems only after the ADvantage providers' claims are denied. The revision are needed to reduce reimbursement delays through more timely resolution of eligibility related issues and a reduction in the number of denied provider claims. An additional revision will identify certain ADvantage services and associate them with other established Medicaid or State funded services as those services' rate setting methodologies are currently used to determine the ADvantage service rates since the providers must have the equivalent qualifications to provide both services.

CONTACT PERSON:

Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003.

SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

317:35-17-1. Overview of long-term medical care services; relationship to QMBP, SLMB, and other Medicaid services service eligibility

(a) Long-term medical care for the categorically needy includes:

- (1) care in a nursing facility (refer to OAC 317:35-19);
- (2) care in a public or private intermediate care facility for the mentally retarded (refer to OAC 317:35-9);
- (3) care of persons age 65 years or older in mental health hospitals (refer to OAC 317:35-9);
- (4) Home and Community Based ~~Services—Waivers~~ Waiver Services for the Mentally Retarded (refer to OAC 317:35-9);
- (5) Personal Care services (refer to OAC 317:35-15); and
- (6) the Home and Community Based Services Waiver for the frail elderly; and a targeted group of adults with physical disabilities age 21 and over who do not have mental retardation or a cognitive impairment (ADvantage Waiver).

(b) Any time ~~an~~ a categorically needy individual is certified as eligible for Medicaid coverage of long-term care, the individual is also eligible for other Medicaid services. Another application ~~or spenddown computation~~ is not required. ~~There is not a copayment for ADvantage services.~~ ADvantage Waiver recipients do not have a copayment for ADvantage services except for prescription drugs. Any time an aged, blind or disabled individual is determined eligible for long-term care, a separate eligibility determination must be made ~~to see if eligibility conditions as a~~ for Qualified Medicare Beneficiary Plus (QMBP) or Specified Low-Income Medicare Beneficiary (SLMB) ~~are met~~ benefits. Another application for QMBP or SLMB benefits is not required.

317:35-17-22. Billing procedures for ADvantage services

(a) Billing procedures for long-term care medical services are contained in the ~~Provider Manuals—OKMMIS Billing and Procedure Manual~~. Questions regarding billing procedures which cannot be resolved through a study of ~~these manuals~~ the manual should be referred to the OHCA.

(b) The ~~certified AA approved~~ ADvantage service plan ~~authorizes services~~ is the basis for the MMIS service prior ~~authorization~~, specifying:

- (1) service;
- (2) service provider;
- (3) units authorized; and
- (4) begin and end dates of service authorization.

(c) ~~The AA prior authorizes on the MMIS prior authorization file the following ADvantage services:~~

- (1) ~~Medical Equipment and Supplies;~~
- (2) ~~Environmental Modifications;~~
- (3) ~~Nursing Facility Respite; and~~
- (4) ~~Hospice Services.~~

(d) As part of ADvantage quality assurance audits, the AA ~~provider audits are used to evaluate~~ evaluate whether paid claims are consistent with service plan authorizations and documentation of service provision ~~for services that are not prior authorized through the MMIS~~. Evidence of paid claims that are not supported by service plan authorization and/or documentation of service provision will be turned over to SURS for follow-up investigation.

[OAR Docket #03-999; filed 5-20-03]

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

[OAR Docket #03-991]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Human Resources Management Division (HRMD)
 - Part 1. General Provisions
 - 340:2-1-1 through 340:2-1-3 [AMENDED]
 - 340:2-1-5 through 340:2-1-6 [AMENDED]
 - Part 3. Personnel Regulations Relative to Individual Employee
 - 340:2-1-25 through 340:2-1-29 [AMENDED]
 - 340:2-1-31 through 340:2-1-32 [AMENDED]
 - 340:2-1-34 [AMENDED]
 - Part 5. Administrative Procedures
 - 340:2-1-55 through 340:2-1-58 [AMENDED]
 - Part 7. Recruitment, Selection, and Placement Policy and Procedures
 - 340:2-1-75 through 340:2-1-86 [AMENDED]
 - 340:2-1-88 through 340:2-1-89 [AMENDED]

(Reference APA WF # 02-43 and 03-01)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Section 1247 of Title 21 of the Oklahoma Statutes, Senate Bill 1553; Sections 840-2.17; 840-2.11, 840-3.4, 840-4.2, 840-4.12 of Title 74 of the Oklahoma Statutes, and Senate Bill 1384 (2002).

DATES:

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None requested

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Failure of the Legislature to disapprove the rule(s) resulted in approval on May 20, 2003.

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June 26, 2003

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 1. Human Resources Management Division (HRMD)
 - Part 5. Administrative Procedures
 - OAC 340:2-1-57 [AMENDED]
- (Reference APA WF# 02-43)**

Gubernatorial approval:

March 5, 2003

Register publication:

20 Ok Reg 737

Docket number:

03-396

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Human Resources Management Division (HRMD) proposed rule revisions bring the Oklahoma Department of Human Services' (OKDHS) rules into compliance with the recently passed Senate Bills 1384 and 1553 and clarify language to reflect OKDHS' practice. HRMD rules are revised by: changing the title of the Agency to Oklahoma Department of Human Services and its acronym to OKDHS; removing titles of certain unclassified positions that may be appointed by the OKDHS Director; adding references to state statutes; changing grammar and punctuation to reflect OKDHS' current standards; relocating references to longevity benefits; adding a requirement of written acknowledgement for a direct hire, reinstatement, or any other employee not hired from an Office of Personnel Management (OPM) certificate who will serve a probationary period; adding a requirement that a classified employee who is laterally transferred or voluntarily demoted will serve a six-month trial period; adding conditions of employee's return to former position if the employee does not prove to be satisfactory in the new position; adding a requirement regarding classified employees who are inter-agency transfers; adding conditions of employee's reinstatement to former job family and pay band if the employee does not prove to be satisfactory in the new position; adding the requirement that an employee who requests a salary exception or accepts a voluntary demotion must complete required form; removing language that is no longer needed; adding references that waivers of posting provisions for unclassified positions may not be delegated by the OKDHS Director and the exception to that rule; adding requirement that vacant positions be announced for a minimum of ten working days and exceptions to that rule; adding references that vacancy announcements are posted on the OKDHS website; adding requirements of trial periods and reviews of minimum qualifications for voluntary demotions and lateral transfers; adding references to identity of selecting officials; adding criteria for interviews of employees on applicant list; adding references and criteria for requirement of trial periods for inter-agency transfers; adding requirement of written notice of probationary status for reinstated employees; adding requirement of local administrator to inform all candidates when selection is finalized; clarifying language and criteria when using certain codes on an OPM certificate; and adding language regarding smoking in and around any building or office leased or occupied by OKDHS to comply with Senate Bill 1553.

CONTACT PERSON:

Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003.

Permanent Final Adoptions

SUBCHAPTER 1. HUMAN RESOURCES MANAGEMENT DIVISION

PART 1. GENERAL PROVISIONS

340:2-1-1. Purpose

The Purpose of this Subchapter is to describe the rules governing the appointment and administration of the Oklahoma Department of Human Services (OKDHS) employees.

340:2-1-2. Appointing authority

(a) Section 4 of Article XXV, of the Constitution of the State of Oklahoma provides that the Director of Public Welfare the Oklahoma Department of Human Services (OKDHS), subject to the control of the Oklahoma Public Welfare Commission for Human Services, has the power and duty to employ personnel of the Department OKDHS. Consequently, as the executive and administrative officer of the Department OKDHS, the Director likewise has final responsibility for all administrative decisions affecting personnel actions of the Department OKDHS. Authority to appoint employees in the unclassified service, in addition to that found in Article XXV, Section 4, has been authorized for these positions: is found in Section 26.17 of Title 56 and Sections 840-5.3 through 5.5 of Title 74 of the Oklahoma Statutes.

- (1) Director of Human Services;
- (2) Secretary to the Director of Human Services;
- (3) part-time legal counsel;
- (4) part-time physicians serving as members of review teams or as medical consultants without administrative responsibilities;
- (5) part-time practicing physicians and other professional personnel engaged for clinical and consultant services;
- (6) post-graduate lecturers;
- (7) part-time manual helpers paid by the hour; [Executive Order 11/6/59];
- (8) medical doctors;
- (9) osteopathic physicians;
- (10) dentists;
- (11) psychologists;
- (12) certified public accountants;
- (13) licensed attorneys; and
- (14) licensed veterinarians. [74 O.S. 840-5.5B-74 O.S. Supp. 1996, 840-5.3-840-5.13 and 56 O.S. Supp. 1996, 26.17]

(b) The decision to place a position or employee in the unclassified service is based primarily on whether the duties assigned to the position are policy-making policy-making and or are confidential in nature. Additional factors that may be considered in this decision relate to rank in the organization, executive level reporting relationships, responsibilities for defining program direction, or the presence of executive duties and responsibilities.

340:2-1-3. Oklahoma Merit System of Personnel Administration (Merit System)

The Office of Personnel Management (OPM) and the Oklahoma Merit Protection Commission (Commission MPC) are charged with the responsibility for the development, implementation, and administration of the Merit System. [74 O.S. § 840-1.1] [74 O.S. § 840-1.4] DHS The Oklahoma Department of Human Services (OKDHS) appoints and employs persons in the classified service in accordance with the Merit System of Personnel Administration Rules (Merit Rules). Certain Merit Rules apply only to employees in the classified service. Many Merit Rules apply to both classified and unclassified service employees. Some provisions of the Merit Rules also apply to unclassified and exempt employees. The Oklahoma Commission for Human Services has adopted the personnel policies and procedures found in OAC 340:2-1. DHS OKDHS cooperates fully with both OPM and the Commission MPC in fulfilling the responsibilities assigned to those merit agencies for in the administration of the Merit System.

340:2-1-5. Benefits

(a) **Old Age and Survivor's Disability Insurance (OASDI).** The Oklahoma Department of Human Services (OKDHS) and the employee jointly participate in the OASDI program. Each month the employee's share of the premium, which goes to the OASDI, is withheld from his or her check and remitted quarterly along with the Department's OKDHS' share of the premium.

(b) **Oklahoma Public Employee's Employees Retirement System (OPERS).** The Department OKDHS makes a monthly payment into this System OPERS for each participating employee. The benefits under the System OPERS are described in the OKDHS retirement handbook, copies of which Copies are available in each OKDHS office of the Department. The age of an employee at date of employment is not a consideration in determining eligibility for membership in this system-OPERS. Each employee is eligible for coverage the first day of the month immediately following his or her date of employment, if all of the requirements in (1) - through (4) of this subsection are met. The:

- (1) position the employee holds is not seasonal or temporary, unless the employee is a retiree who returns to state employment;
- (2) position the employee holds requires at least 1,000 hours of work per year;
- (3) employee's salary or wages wage is at least \$305.50 per month, or a salary established by statute to be more than \$305.50 per month; and
- (4) employee is not currently a contributing member of another retirement plan authorized under any other law of the state for the same employment; and is not a contributing member of the Federal Civil Service Retirement System.

(c) **Longevity payment.** Longevity pay is a lump sum payment to all employees having two or more years of continuous state service in full-time status or in part-time status working more than 1,000 hours per year. Longevity is paid each year

in the month following the employee's annual longevity anniversary date. In accordance with Section 840-2.18 of Title 74 of the Oklahoma Statutes, payment is based upon the number of years of state service. The employee's longevity date is affected when an employee has 30 consecutive days or more leave without pay. An employee receiving temporary total disability (TTD) due to a work-related illness or injury is eligible for longevity payment only for 12 months. If an employee remains on leave without pay one year due to a workers' compensation injury, his or her longevity payment is discontinued. [74 O.S. § 840-2.21(H)] An employee leaving state service before his or her anniversary date does not receive any prorating of the longevity payment. Exception is made for employees who retire or are separated from OKDHS due to a reduction-in-force. A prorated longevity payment is paid to the employee, his or her spouse, or surviving dependent(s) when an employee dies while employed.

(ed) **Unemployment compensation.** Employees of the ~~Department OKDHS~~ may qualify for unemployment compensation under certain circumstances, ~~for unemployment compensation.~~ [Part 2, Eligibility, of the Oklahoma Employment Security Act as amended by the 1988 Session of the Oklahoma Legislature effective May 5, 1988] When an individual files for unemployment compensation, the Oklahoma Employment Security Commission (OESC) notifies ~~the Department's agent by use of OKDHS or its agent with~~ Form OES-617, Notice of Application for Unemployment Compensation, in-state application, or Form IB-3, Claimant/Employer Separation Statement, out-of-state application. Information pertaining to ~~the Department's OKDHS or its agent,~~ such as name, address, phone, and fax number, may be obtained from the Human Resources Management Division (HRMD). ~~In order to~~ To be filed timely, the OKDHS' or its agent's response for the Department of Human Services must be postmarked within ten calendar days of the date of the notice. If the response is not filed timely, the eligibility for compensation is determined from the information provided by the claimant. Local offices fully cooperate fully in providing information requested by the Department's OKDHS or its agent to ensure timely filing of the response. When a notice of application for unemployment compensation is received in the local offices, schools, hospitals, or institutions, it is immediately faxed to HRMD or OKDHS' agent, with the hard copy forwarded to the Department's HRMD or the OKDHS' agent.

(de) **Eligibility for DHS OKDHS program benefits.** Benefits through ~~the Department's OKDHS'~~ programs are available to employees an employee and their his or her legal dependents dependent(s) who meet meets all conditions of eligibility for the specific program for which application is made. The application for ~~such~~ benefits, the determination of original eligibility and continuing eligibility, and the delivery of services are handled in the same manner as for any other individual, except that an employee cannot certify self himself or herself, relatives, or unrelated persons living in the employee's home.

(ef) **Other benefits.** Other benefits, including ~~Workers' Compensation workers' compensation,~~ deferred compensation, leave, holidays, health insurance, dental insurance,

life insurance, disability insurance, and flexible benefits, are provided to employees in accordance with state law and ~~DHS OKDHS~~ policy. The eligibility requirements, effective date, and specific provisions of these benefits vary and are addressed elsewhere in policy.

340:2-1-6. Investigation of employees accused of child abuse or neglect

~~Under Oklahoma Statutes the~~ The Oklahoma Department of Human Services (OKDHS) is responsible for receiving and investigating complaints of child abuse and neglect. ~~However, when~~ When an employee of ~~the Department OKDHS~~ is alleged to have abused or neglected a child or children in ~~their~~ his or her care, special procedures are followed to provide outside accountability and to assure the employee that an unbiased investigation is completed. These procedures are outlined in ~~OAC 340:75-3-6(f)~~ OAC 340:75-3-6.1(c).

**PART 3. PERSONNEL REGULATIONS
RELATIVE TO INDIVIDUAL EMPLOYEE**

340:2-1-25. Application

(a) **Classified service.** Any person interested in securing employment in the classified service may take the open competitive examination through the Office of Personnel Management (OPM). The individual must meet the minimum education and experience qualifications for the job family for which he or she is applying. Application to take an examination is made to OPM on Form OPM-4, State of Oklahoma Employment Application.

(1) Applications for non-competitive positions in the classified service are submitted directly to ~~DHS Oklahoma Department of Human Services (OKDHS)~~ work locations using such jobs. These are primarily used in residential facilities and group homes.

(2) ~~DHS~~ Form P-1, Application for Employment, is provided to the applicant either during the initial interview or at the time of contact when his or her name appears within the hiring rule on an OPM certificate of eligibles. The applicant returns Form P-1 to the local ~~DHS-OKDHS~~ office.

(3) ~~If Form P-1 has not been received, the interviewing official is responsible for preparing a written summary of the interview on Form P-5, Applicant Interview Report.~~ The interviewing official or local administrator is responsible for preparing Form P-6, Form Letter to Employment Reference, or Form P-7, Form Letter to Personal Reference. The applicant has a right to review the information obtained from these inquiries.

(4) The interviewing official is responsible for explaining ~~the Department's OKDHS'~~ benefits and conditions of employment.

(5) Applications of persons recommended for employment are submitted to the appropriate local office or the Human Resources Management Division (HRMD) with Form P-S-76, Applicant List.

Permanent Final Adoptions

(b) **Unclassified service.** ~~The Department posts OKDHS may post~~ positions in the unclassified service. [OAC 340:2-1-76(13)(14)] Persons interested in applying for unclassified positions ~~do so by submitting~~ submit any of the documents listed in (1) - through (3) of this subsection and any additional, requested documentation to HRMD. An acceptable application document is:

- (1) a resume;
- (2) Form P-1, ~~Application for Employment~~;
- (3) Form P-12, Personal Data Summary Sheet, and Form P-12A, Application Cover Memo.

340:2-1-26. Employment and assignment

(a) **Selection from Office of Personnel Management (OPM) certificate of eligibles (certificate) also ~~know~~ known as the merit register.** The process to fill a position is initiated by use of Form P-31-A, Announcement Requisition, which is forwarded to the Human Resources Management Division (HRMD), Oklahoma Department of Human Services (~~DHS~~OKDHS). When HRMD is notified of vacancies, and these are not filled by promotion, demotion, transfer, or reinstatement, in accordance with ~~the Agency's~~ OKDHS' recruitment, selection, and placement policy and procedures, HRMD may request an OPM certificate. OPM supplies names of eligible individuals. The hiring rule is the first top ten individuals listed on the OPM certificate and available eligibles, or anyone whose name is tied with the lowest ranked eligible within the hiring rule. [OAC 530:10-9-92 and 74 O. S. § 840-4.13] ~~DHS~~ OKDHS makes its selection from the OPM certificate within the hiring rule. ~~DHS~~ OKDHS may request OPM to supply a certificate consisting only of names of those persons who are residents of a local area that has been established by ~~DHS~~ OKDHS for the local office. ~~DHS~~ OKDHS may then select a candidate from this OPM certificate. In selecting new personnel from the OPM certificate, ~~DHS~~ OKDHS may consider any information legally available concerning each applicant, including data recorded on the application, reports of interviews with applicants and references, performance evaluations, letters of reference, and background checks. ~~DHS~~ OKDHS does not discriminate in any of its employment policies and is an equal opportunity employer.

(b) **Determination of availability.** Upon receipt of the OPM certificate, HRMD submits the OPM certificate to the requesting official. This official contacts applicants within the hiring rule on the list to determine if the applicants are available for an interview.

- (1) If an applicant declines an offer of appointment, fails to report for a personal interview, or fails to report for duty, the circumstances are documented for the record. An eligible candidate may be considered to have declined and may be removed from consideration if he or she fails to reply to a written inquiry within seven calendar days, exclusive of the date of mailing, ~~or within four calendar days after an inquiry is made by telegram,~~ or if the applicant verbally declines an offer, or an opportunity for an interview with a representative of ~~the Department~~ OKDHS.

(2) Information regarding an applicant's availability for appointment is transmitted to HRMD with any other pertinent information obtained regarding the applicant at the time. Form P-S-76, Applicant List, an OPM certificate, or both, are returned to HRMD.

(3) Appointment to certain positions within ~~the Department~~ OKDHS requires the completion of a background check. [OAC 340:2-1-56]

(c) **Notice of appointment.** Since ~~the Department~~ OKDHS administers a statewide program, staff are assigned in accordance with the particular needs of ~~DHS~~ OKDHS. Form OPM-14, Request for Personnel Action, showing the OPM position identification number, job family descriptor and code, place of assignment, pay band and salary, is issued provided to the new employee as notice of his or her appointment.

(d) **Financial disclosure statement.** State law requires all state officials and certain state employees to file the appropriate financial disclosure statement with the Ethics Commission (EC). The law requires the members of the Oklahoma Commission for Human Services and the ~~DHS~~ OKDHS Director to file. ~~DHS~~ In addition, OKDHS has determined that the duties of all chief officers, the general counsel, senior administrators and all division directors require each of them to file. Other employees who must file financial disclosure statements are those who have been designated by the Director, general counsel, any chief officer senior administrator, or any division director as having responsibility for taking or recommending official action regarding contracting or procurement.

(1) Financial disclosure statements must be filed upon initial employment in a position requiring the statement and no later than April 30 each year ~~thereafter~~ as long as the employee continues in the position.

(2) ~~The Department has provided a list of positions which require filing a financial disclosure statement to the Ethics Commission.~~

(3) Failure to file the financial disclosure statement by the deadline may result in the employee being charged a late filing fee of up to \$100 per day for each day it is late, up to a maximum of \$1,000. Any person who fails to file a financial disclosure statement, knowingly gives false information in the financial disclosure statement, or ~~who~~ knowingly omits required information is considered guilty of a misdemeanor.

340:2-1-27. Report of entrance on duty

(a) **Required documents.** On the day a new employee enters on duty, the supervisor of the unit of assignment completes Form ADM-68, Report of Accession, and forwards it to the Human Resources Management Division (HRMD). Documents attached to Form ADM-68 ~~are~~ include:

(1) a copy of the employee's Social Security card. The employee's name on all personnel and payroll records is shown exactly as it appears on the Social Security card;

(2) Secretary of State (SOS) Form 100, Loyalty Oath. A signed, written loyalty oath, is required for each new employee ~~to sign~~. A new SOS Form 100 is submitted with each appointment following a consecutive ~~30-day~~ 30-day break in service;

- (3) Form W-4, Employees Withholding Allowance Certificate, or Form W-5, Earned Income Advance Payment Certificate;
- (4) Form 515-01-97R, Enrollment Application in State Retirement, except for temporary appointments. It is mandatory that each employee enrolls in the Oklahoma Public Employee's Retirement System, except for temporary appointments;
- (5) Notice of Employee's Right to Continue Group Health Coverage, Consolidated Omnibus Budget Reconciliation Act (COBRA), except for temporary appointments;
- (6) Form P-1-D, Application Supplement;
- (7) Form F-23, Employee Longevity Service Worksheet, except for temporary appointments;
- (8) Form I-9, Employment Eligibility Verification, Immigration and Naturalization Service, United States Department of Justice. Pursuant to the Immigration Reform and Control Act of 1986, Form I-9 is completed by the employer employing unit on the first day of employment. If the employee is unable to provide the required, original document(s), the employee must present a receipt for the application for the document(s) within three business days, ~~Monday through Friday~~, of entering on duty. The required document(s) must be presented within 21 calendar days of entering on duty. Failure to comply with these the employment verification eligibility requirements results will result in the employee's immediate separation from duty;
- (9) verification of tribal affiliation, if the employee wishes designation as Native American; insurance benefits enrollment forms, except for temporary appointments; ~~and~~
- (11) Form ADM-133, Employee Acknowledgment of Confidentiality of Computer Accessible Case Records and Computer and Internet Usage Restrictions; and
- (12) a written employee acknowledgement that the employee is serving a probationary period when entering the classified service as a direct hire, reinstatement, or any other hire that does not utilize the Office of Personnel Management (OPM) certificate.

(b) **Missing documents.** If all documents are not available on the date of entry on duty, ~~the all available ones documents~~ are submitted. ~~The other~~ Missing documents are submitted as soon as possible, but no later than required by law. All of the documents listed in (a)(1)- through (11) of this Section are required in accordance with state and federal laws.

340:2-1-28. Probationary or trial period, classified service

(a) **Probationary period upon initial appointment.** The probationary period for any appointed employee ~~lasts is~~ is for a one-year period or until one year, unless the length of the probationary period is waived after the employee has served six months. The probationary period may not be extended beyond one year but may be adjusted, per Merit Rule OAC 530:10-11-30. Employees in a leave without pay status in excess of 40 working hours will have their probationary period

adjusted. Office of Personnel Management (OPM) Form OPM-111, Performance Management Process (PMP), is submitted no later than opened within 30 days prior to the end of entering on duty in the probationary period status. The complete Form OPM-111 contains all pertinent recommendations concerning the probationary employee's status encompasses the accountabilities (task and performance standards) and behaviors to be achieved for success in the probationary employee's job family and level.

(1) The probationary period is a working test period during which a classified employee is required to demonstrate fitness for the job family and level to which appointed. The decision to grant a probationary employee permanent status is based upon written evaluations, recommendations, or other pertinent information. When permanent status is granted, the employee receives and OPM receive confirmation from the Human Resources Management Division (HRMD).

(2) Services of an employee on probationary status may be terminated at any time.

(3) Employee benefits are available to probationary employees in accordance with specific benefit policies. A change in shift assignment of a probationary employee, in excess of 30 calendar days, requires prior approval of the ~~Office of Personnel Management (OPM)~~. Probationary employees:

- (A) are not eligible for promotion or demotion;
- (B) ~~are not~~ cannot be transferred to a position in another job family;
- (C) cannot be transferred from a the original locality where appointed ~~from an OPM local certificate~~; and
- (D) cannot be changed from part-time to full-time.

(b) **Trial period upon promotion or lateral transfer.** ~~Current classified Human Resources Management Division (DHS) Classified~~ employees who are promoted may or laterally transferred will serve a ~~six month~~ six-month trial period in the class job family and level to which they are promoted or laterally transferred. The supervisor may waive the trial period may be waived in writing at any time. During the trial period, if an employee does not prove satisfactory in the new job, the employee is reinstated to the former position or another in the same job family and level, at the salary the employee would have received if the promotion or lateral transfer had not taken place. However, the reason for denying permanent status in the promotional or lateral transfer position is submitted in writing to the individual before the end of the trial period and a copy is filed with OPM. During the trial period, the supervisor may return the employee to the job family and level from which the employee was promoted upon written notification to the employee of the reason for the action. The employee has no right of appeal.

(c) **Trial period upon voluntary demotion or inter-agency transfer.** ~~Demotions~~ Voluntary demotions of ~~current~~ classified ~~DHS~~ OKDHS employees may will utilize a ~~six month~~ six-month trial period ~~at the request of the supervisor. The voluntarily demoting employee is notified in writing of a trial period prior to the effective date of the~~

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voluntary demotion. The trial period may be cancelled at any time. During the trial period, if the employee does not prove satisfactory in the new job, the employee is reinstated to the former position or another in the same job family. The employee is provided written notice of the reason for failure to allow the employee to acquire permanent status in the job to which demoted. A copy is filed with OPM. Inter-agency transfers, including inter-agency demotions and inter-agency promotions, may utilize a six-month trial period at the request of the supervisor, provided DHS utilizes the previously held job family and level of the employee. The supervisor may waive the trial period in writing at any time.

(d) **Interagency transfer.** Interagency transfers, including demotions, promotions, and lateral transfers, utilize a six-month trial period, provided OKDHS utilizes the employee's previously held job family and level. A six-month trial period is utilized for interagency in-class transfers, as well. The employee must be notified in writing prior to entering on duty that a trial period is required. The trial period may be waived in writing at any time. If the employee does not prove satisfactory in the new job, the employee is reinstated to a position within the receiving agency in the former job family in the same pay band for which the employee is qualified at the salary the employee would have received if the promotion, demotion, or lateral transfer had not taken place. The employee is provided written notice of the reasons for denying the employee permanent status in the job, and a copy is filed with OPM.

340:2-1-29. Appointments

(a) **Types of appointments.** All appointments are made either to the classified service or to specific positions in the unclassified service. Appointments are made in accordance with applicable Oklahoma Administrative Code (OAC) Rules, Merit System of Personnel Administration Rules (Merit Rules), and Oklahoma Department of Human Services (~~DHS~~OKDHS) policy.

(1) **Classified service.** Classified service refers to those employees and positions under the jurisdiction of the Oklahoma Merit System of Personnel Administration (Merit System) by constitutional amendment or state statute.

(2) **Unclassified service.** Unclassified service refers to employees and positions excluded from coverage of the Merit System, by constitutional amendment, state statute, or executive order and approved by the ~~DHS~~ OKDHS Director. Employment in the unclassified service is considered employment-at-will.

(b) **Reinstatement.** A former employee, having had permanent status in the classified service, is eligible to be considered for reinstatement in accordance with ~~DHS~~ OKDHS policy and procedures. A former employee is eligible for reinstatement for a period of time Reinstatement eligibility may equal up to the period of service in probationary and subsequent permanent classified status. If a permanent, classified employee leaves a permanent, classified position to accept for an unclassified position with no break in service, [OAC 530:10-15-10(c)(1)(G)] the period of time during which the person is eligible for

reinstatement; begins on the date of separation from the unclassified position rather than on the date of separation from the classified position. The unclassified service does not add to the period of time eligible for reinstatement. Break in service as used in this subsection is defined in Merit Rule OAC 530:10-15-10. Prior to the effective date of reinstatement, the Human Resources Management Division (HRMD) obtains verification from the Office of Personnel Management (OPM) of the applicant's eligibility for reinstatement. Reinstatements to the classified service are probationary under the terms outlined in OAC 340:2-1-28 for new employees, unless waived by the appropriate local administrator. The If a probationary period is utilized, the reinstated employee and OPM are is notified of the probationary period and acknowledges the notification in writing prior to his or her entry on duty if a probationary period is utilized.

(c) **Temporary appointments.** When the Department OKDHS requires the service of persons on a temporary basis, an individual may be appointed into the unclassified service without regard to other provisions governing appointments. Such appointments are in the unclassified service. In no case, is the same No person is appointed under this provision for more than a total of 999 hours in a 12-month 12-month period from the date of initial hire with any or all state agencies. Temporary appointment does appointments do not confer any privilege privileges, right rights of appeal, or right rights of position, transfer, reinstatement, or nor any other right rights to any classified position under the Merit System, nor is any temporary employee entitled to any employee benefits. Local administrators and supervisors are responsible for assuring ensuring that temporary employees do not work more than 999 hours within a 12-month 12-month period from the date of initial hire. [74 O.S. § 840-5.5(A)(8)]

(d) **Related employees.** Placement in a position which that results in relatives occupying positions within a division, office, facility, or area wherein where one such relative occupies a senior administrative position must be approved in writing by the DHS OKDHS Director or designee. DHS OKDHS reserves the right to make placements and work assignments of personnel as necessary to eliminate or prevent such situations of this nature. DHS OKDHS policy prohibits, unless waived by the DHS OKDHS Director or designee, the employment of any person in a position which that results in:

- (1) immediate supervision by a relative. Relative is defined to include wife, husband as spouse, children, parents, stepparents, parents-in-law, grandchildren, grandparents, brothers, sisters, stepchildren, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, aunts, uncles, nieces, nephews, first cousins, or foster relationships;
- (2) placement in a position within a relative's line of authority or chain of command; or
- (3) two or more relatives reporting to the same immediate supervisor.

(e) **Other employment, prohibition against use of position for personal gain and avoidance of conflicts of interest.** According to Rules of the Ethics Commission, employees Employees are subject to appropriate corrective or disciplinary

action if they fail to comply with the Rules of the Ethics Commission. [74 O. S. Ch. 62]

(1) Under these provisions, each employee must, during office hours, devote full time, attention, and effort to ~~DHS OKDHS~~ business. He or she does not use office hours for private gain, including activities involved in a business enterprise, such as livestock or crop farming, sale of real estate, or other business which involves self-employment. Likewise, ~~DHS OKDHS~~ employees do not use paid time, state offices, telephones, or supplies and equipment to further the programs or activities of private, non-profit organizations, even when the objectives of the private organization are compatible with those of ~~DHS OKDHS~~. Exceptions may occur ~~only when~~ as authorized by the division director and only for ~~those~~ activities in which ~~DHS OKDHS~~ can legitimately expend Agency dollars, ~~for example such as~~, when ~~DHS itself OKDHS~~ is a member of an organization, or in situations ~~in which the Agency where~~ OKDHS has responsibility as a member of a board or commission by law or by appointment of the executive or legislative branch of government.

(2) An employee may accept other employment outside ~~the Department's OKDHS'~~ regular office hours ~~as long as~~ provided such ~~other~~ employment is approved in advance and does not interfere with or is not in conflict with the employee's work ~~with DHS within OKDHS~~.

(3) It is vitally important that ~~DHS OKDHS~~ employees avoid both actual conflicts of interest and activities ~~which that~~ have a strong likelihood of appearing to the general public to be conflicts of interest. Outside employment that would give the appearance of a conflict of interest would be employment with a provider who contracts with ~~DHS OKDHS~~. The employment or other activities of a spouse or other close family member ~~can may~~ create the appearance of a conflict of interest and cause members of the general public to question the objectivity of ~~DHS OKDHS~~ decision making.

(4) ~~To help protect employees and DHS against problems which actual and apparent conflicts of interest can cause, any employee who is involved in activities about which questions may be raised, or has a close relationship with someone whose activities may lead to such questions must write a brief explanatory memorandum to his or her supervisor.~~

(5) ~~No DHS OKDHS employee shall can~~ be employed by another state agency or any provider contracting with ~~DHS OKDHS~~ without the prior written approval of his or her division director ~~prior to the acceptance of secondary employment.~~

(f) **Client relationships.** ~~DHS, in~~ In keeping with its mission to serve and protect its clients, ~~and OKDHS employees~~ assist them in developing independence and self-sufficiency; ~~recognizes general and recognize their rights of clients.~~ Client A client is defined as a program applicants applicant, recipients recipient, patients patient, residents resident of ~~DHS OKDHS~~ facilities, and any other persons person receiving or making application for ~~DHS OKDHS~~ services. Rights of clients include, but are not limited to:

- (1) privacy and the expectation that information obtained by ~~DHS OKDHS~~ employees in the course of their duties is held confidential;
- (2) treatment ~~which that~~ conveys dignity, respect, courtesy, fairness, and good faith ~~by DHS employees;~~
- (3) expectation of high standards of personal conduct from ~~DHS OKDHS~~ employees ~~in their capacity or identity as employees;~~
- (4) freedom from discrimination on the basis of race, sex, age, color, creed, national origin, religion, or disability ~~by DHS employees;~~
- (5) freedom from sexual harassment ~~by DHS employees;~~
- (6) freedom from coercion to give gifts or services of value; and
- (7) freedom from interference by ~~DHS OKDHS~~ employees with regard to matters of individual belief or faith.

(g) **Processing applications for ~~DHS OKDHS~~ benefits or services on behalf of an employee's relative or for persons living in the employee's home.** In performing their official duties, employees are impartial and perform their duties so as to neither endanger their impartiality nor provide occasion for distrust of their impartiality. Improper client ~~relationship~~ relationships by employees, as referenced in this Section, is subject to appropriate corrective or disciplinary action.

(1) No employee may process, certify, or approve an application for benefits, payments, or services for any relative as defined in subsection (d) of this Section, or for any unrelated person living in the employee's household. This includes relationship to the relatives which has been terminated by death, divorce, or for other reasons. In addition, ~~DHS~~ employees may not act as authorized representatives for clients receiving ~~DHS OKDHS~~ program benefits without the specific written approval of the local administrator after a determination has been made that no one else is available to serve. ~~This includes relationship to the relatives listed in subsection (d) of this Section which has been terminated by death, divorce, or for other reasons.~~

(2) In those offices with limited staff, it may be necessary for an employee to take an application for ~~one of the persons a person(s)~~ listed in subsection (d) of this Section. The employee does not certify ~~such persons the person(s)~~ for benefits, payments, or services.

340:2-1-31. Classification plan

The classification plan is composed of job classes used by the Oklahoma Department of Human Services (~~DHSOKDHS~~). Each job class covers positions similar in skills, duties, and responsibilities and are grouped together into job family descriptors (JFDs). The Human Resources Management Division (HRMD), Classification and Compensation Section, maintains ~~the Agency OKDHS~~ classification plan and the JFDs for each job family used by ~~the Agency OKDHS~~. HRMD, Classification and Compensation Section, is responsible for making revisions to existing JFDs or developing descriptions for new ~~JFD's JFDs~~ as needs are identified. The Office of

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Personnel Management has the final approval for JFDs in the classified service.

340:2-1-32. Salary Administration Plan (SAP) and Agency Compensation Guidelines

The Salary Administration Plan (SAP) is based on the standard that employees performing similar work receive similar pay and that variation in the requirements are is reflected equitably in the pay band. ~~The plan is directly related to the classification plan and, like the classification plan, is a part of the DHS personnel plan.~~ The salary range established for each job family and level provides a minimum and maximum salary rate.

(1) **Computation of salary payments - general.** Ok-~~lahoma~~ Department of Human Services (~~DHS~~OKDHS) employees are paid on a monthly basis in accordance with applicable salary schedules. The pay period extends from the 16th of ~~one~~ the month through the 15th of the following month.

(2) **Entrance salary.** The entrance salary for positions in the classified service is the entry salary identified in the SAP, except as provided in the Merit System of Personnel Administration Rules (Merit Rules). The entrance salary for positions in the unclassified service is normally a comparable salary. Requests to establish salary above the minimum may be processed in accordance with ~~OAC 340:2-1-87~~ the Special Entrance Rate/Salary Exception Process (P-17) as described in the Agency Compensation Guidelines. The salary of a new employee is effective on the first working day.

(3) **Salary increase.** Salary increases are not automatic but are granted in accordance with the SAP and applicable legislation.

(4) ~~**Longevity payment.** The longevity payment is a lump sum payment to all classified and unclassified service employees having two or more years of continuous state service in full time status or in part time status working more than 1,000 hours a year. Longevity is paid each year in the month following the employee's annual longevity anniversary date. In accordance with applicable legislation, payment is based upon the number of years of state service according to a schedule adopted by the Legislature. The employee's longevity date is affected when an employee has 30 consecutive days or more leave without pay. An employee receiving temporary total disability due to a work related illness or injury is eligible for longevity payment only for 12 months. If an employee remains on leave without pay after one year due to a Worker's Compensation injury, his or her longevity payments will be discontinued. [74 O.S. § 840 2.21] An employee leaving the state service before his or her anniversary date does not receive any proration of the longevity benefit. Exception is made for employees who retire or are separated from DHS due to a reduction in force. A prorated longevity benefit is paid to the spouse, surviving dependents, or the estate of employees who die while employed.~~

(5) ~~**Salary Equity and salary adjustments.** For em-~~
~~ployees in the classified service~~ employees, a salary an equ-
ity pay adjustment is a pay movement mechanism as a re-
sult of legislation or salary adjustments made ~~authorized~~ in
accordance with appropriate Merit Rules and ~~DHS policy~~
the Agency Compensation Guidelines. For employees in
the unclassified service, ~~a salary adjustment is a change in~~
salary is in accordance with ~~DHS policy~~ the Agency Com-
ensation Guidelines or applicable legislation.

(6) ~~**Overtime pay for Fair Labor Standards Act**~~
~~(FLSA) exempt employees.~~ FLSA exempt employees
are not authorized to receive overtime compensation. In
cases where prevailing market conditions make overtime
payment necessary in order to compete with practices
in private industry, justification for payment of overtime
is submitted to the Director of Human Resources Man-
agement Division for review and submission to the DHS
Director and the Office of Personnel Management for
consideration.

340:2-1-34. Employment verifications and references

(a) **Responses to employment verification inquiries.** Ok-
lahoma Department of Human Services (~~DHS~~OKDHS)
responses to employment verification inquiries, such as credit
references, work status inquiries, and employment references
on employees or former employees are made either by the
~~DHS~~ OKDHS Finance Division or the ~~DHS~~ Human Resources
Management Division (HRMD).

(1) Finance Division or HRMD provides only the
employee's or former employee's correct name, dates of
employment, and the current or last job family descriptor
(JFD) and level held.

(2) ~~Employee's~~ An employee's or former employee's
~~addresses~~ address, Social Security number, or other infor-
mation ~~are is~~ not provided.

(3) Only ~~confirming~~ salary confirmation information is
provided.

(4) Additional information may be released only upon
Finance Division's or HRMD's receipt of a notarized au-
thorization from the employee or former employee.

(b) **Individual or personal references.** Employees or
former employees frequently ask administrators, managers,
supervisors, or co-workers for personal references. Such
references do not express ~~the Department's~~ OKDHS' official
position. Individuals providing references are cautioned that
they may be liable and subject to discipline for providing incor-
rect, inappropriate, or exaggerated references or information
which that could place ~~the Department~~ OKDHS at risk.

PART 5. ADMINISTRATIVE PROCEDURES

340:2-1-55. Individual personnel records

A local personnel file is set up in each office aside from
the file in Human Resources Management Division (HRMD).
Included in the file are official communications, documents,
supervisory memoranda, and similar material relating to the
employee. The divisions and units housed at the ~~State Office~~

state office may use the records maintained by HRMD in place of the files required in the outlying offices. The employee and any individual in the line of authority above the employee may review the employee's personnel file either in the local office or in the ~~State Office~~ state office. Local administrators or selecting officials may review personnel files for employees who are seeking assignment within their offices. Other officials of ~~DHS~~ OKDHS may review an employee personnel file when there is an administrative need. Any other requests to review employee personnel files ~~must be~~ are handled in accordance with the provisions of the Open Records Act. Section 840-2.11 of Title 74 of the Oklahoma Statutes prohibits public inspection or disclosure of state employees' home addresses, home telephone numbers, and Social Security numbers.

340:2-1-56. Criminal history checks

Criminal history checks are completed for all employees appointed to or transferring to positions ~~which that~~ are sensitive or critical in nature, or to positions ~~which that~~ work directly with children.

- (1) Personnel handling restricted data are considered, for purposes of this Section, to be in a sensitive position. Criminal history checks are completed on designated positions within the Field Operations Division, Children and Family Services Division, Office Support Services Division, and the Developmental Disabilities Services Division. Applicants for positions requiring criminal history checks are advised that, if selected for the position, a criminal history check is required.
- (2) Divisions are responsible for designation of positions ~~which that~~ require criminal history checks. Divisions must consistently obtain criminal histories on any individual selected to fill ~~positions a~~ position requiring criminal history checks.
- (3) Criminal history checks are obtained prior to employment for staff of child care facilities ~~where 24-hour~~ when 24-hour supervised care is provided, as in group homes, and include a search of Department of Corrections files maintained pursuant to the Sex Offenders Registration Act. [10 O.S. § 404.1]
- (4) Criminal history checks are required only on the applicant who is being recommended for the position.
- (5) Criminal history checks are also obtained on any Oklahoma Department of Human Services (~~DHS~~OKDHS) employee selected for transfer to a position ~~which that~~ requires a criminal history check.
- (6) Criminal history checks are considered restricted information and are protected accordingly. The results of these investigations are maintained in a separate file and are not made a part of the local or Human Resources Management Division personnel files. The history check ~~must be~~ is maintained for the duration of employment of the individual and for one year from the date of the report for employees who separate from ~~the Agency~~ OKDHS.
- (7) Certain ~~DHS~~ OKDHS volunteers and health care providers are required to have history checks. ~~{OAC 340:115-9-4(b)}~~

340:2-1-57. Smoking policy

~~All~~ In all buildings, offices, and facilities owned, leased, or otherwise occupied by the Oklahoma Department of Human Services (OKDHS) ~~are considered as "non-smoking"~~ smoking is not permitted except in designated areas if available.

- (1) **Outside smoking.** Possession of lighted tobacco in any form within 25 feet of the entrance or exit of any building, office, or facility owned, leased or otherwise occupied by OKDHS is prohibited.
- (~~4~~2) **Designation of smoking areas.** Administrators if adequate space exists, the Office Support Services Division (OSSD) director may designate at least one smoking areas area in each office building or facility. Smoking areas must be adequately vented to the outside to eliminate smoke in both smoking and non-smoking nonsmoking areas. Office Support Services Division (OSSD) determines if adequate space exists and whether ventilation is sufficient to allow an area to be designated for smoking. Smoking areas shall not be used for public business.
- (3) **State vehicles.** All state vehicles owned, leased, or otherwise utilized by OKDHS are considered nonsmoking.
- (~~2~~4) **Responsibilities.** Administrators and supervisors are responsible for the enforcement of this policy. Appropriate signs such as "Non-Smoking Area No Smoking Within 25 feet of Building" and "Smoking Area" are obtained by contacting the Departmental Services Unit, OSSD, State Office.

340:2-1-58. Reduced services or office closures

(a) **Absences due to hazardous weather conditions.** Reduction of services and authorized absences may be granted to Oklahoma Department of Human Services (~~DHS~~OKDHS) employees designated not responsible for staffing essential functions during periods of hazardous weather, which may threaten the safety of employees. [OAC 530:10-15-72]

- (1) **Reduction of services due to hazardous weather conditions.** Decisions concerning reduction of services ~~will be~~ is based on information obtained from the Office of Personnel Management (OPM) and the Department of Public Safety (DPS) and authorized by the Secretary of Safety and Security.
 - (A) **Employees responsible for staffing essential ~~DHS~~ OKDHS functions.** ~~DHS~~ OKDHS is responsible for maintaining essential functions and client services regardless of weather conditions. Employees designated as responsible for staffing essential ~~DHS~~ OKDHS functions are not eligible for enforced leave for absences due to hazardous weather conditions; and ~~must be~~ are charged either annual leave or leave without pay as appropriate. Neither are ~~DHS~~ OKDHS Fair Labor Standards Act (FLSA) non-exempt employees responsible for staffing essential functions authorized to use compensatory time or a ~~work week~~ workweek adjustment for absences during hazardous weather conditions. Employees designated as staffing essential ~~DHS~~ OKDHS functions and who are to report for duty are:

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- (i) all employees of all institutions, shelters, group homes, and other residential care facilities;
- (ii) all supervisory employees for county and area offices, unless otherwise designated by the division director;
- (iii) all ~~DHS~~ OKDHS Executive Team members;
- (iv) senior staff for state office locations, unless otherwise designated by the division director; and
- (v) other employees as designated in writing by the ~~DHS~~ OKDHS Director or appropriate ~~chief officer~~ senior administrator or division director.

(B) **Employees not responsible for staffing essential ~~DHS~~ OKDHS functions.** All other employees not specifically identified in (a)(1)(A)(i) - ~~through~~ (iv) of this Section or designated to report for duty by their division director are encouraged to report to work if possible. Employees are approved for automatically excused absences when an official announcement has been made to reduce ~~DHS~~ OKDHS services due to hazardous weather conditions.

- (2) **Reduction of services in the Oklahoma City metropolitan area.** Decisions concerning reduction of services due to hazardous weather conditions in the ~~seven county~~ seven-county Oklahoma City metropolitan area, Canadian, Cleveland, Lincoln, Logan, McClain, Oklahoma, and Pottawatomie counties, are announced by ~~the~~ OPM.
 - (3) **Late arrivals to work or early departures from work.** Due to hazardous weather conditions, the Secretary of Safety and Security may authorize the delayed arrival to work or the early departure of employees from work ~~of employees~~.
- (b) **Temporary office closings due to imminent peril or other unsafe working conditions.**
- (1) **Offices closed due to imminent peril.** If a ~~DHS~~ an OKDHS office must be closed because of an imminent peril threatening the public health, safety, or welfare of ~~state~~ employees, or the public, ~~DHS~~ OKDHS employees scheduled to work in the closed area may be either placed on paid administrative leave or assigned to work in another location.
 - (2) **Institutions and residential care facilities closed due to imminent peril.** If all or a portion of a ~~DHS~~ an OKDHS institution or residential care facility must be closed because of an imminent peril threatening the health, safety, or welfare of residents, clients, ~~state~~ employees, or the public, residents or clients are relocated to other institutions or facilities as appropriate.
 - (3) **Applicable policies upon reopening of closed location.** Paid administrative leave is accorded affected employees only when a state office is closed in accordance with OAC 530:10-15-70 and this policy. Upon the reopening of a closed office, institution, or residential care facility, normal ~~DHS~~ OKDHS policies governing leave and ~~Agency~~ OKDHS procedures apply.

PART 7. RECRUITMENT, SELECTION, AND PLACEMENT POLICY AND PROCEDURES

340:2-1-75. Policy

(a) The Oklahoma Department of Human Services (~~DHS~~OKDHS) is an equal opportunity employer and has as its employment goal the recruitment, selection, and placement of persons most likely to become productive, motivated employees. To accomplish this goal, procedures designed to meet the hiring process objectives ~~are to include:~~

- (1) ~~recruit~~ recruiting qualified candidates who have the general knowledge, skills, and abilities to perform the variety of work available in ~~DHS~~ OKDHS;
- (2) ~~select~~ selecting individuals who meet minimum qualifications and can perform the essential functions and who are or will become successful employees of ~~DHS~~ OKDHS;
- (3) ~~place~~ placing employees in positions suited to their qualifications where they ~~may be~~ are successful in providing a variety of services to the citizens of Oklahoma;
- (4) ~~ensure~~ ensuring that all employment decisions are based on job-related qualifications and consistent with applicable laws, rules, policies, procedures, and regulations governing such actions; and
- (5) ~~provide~~ DHS providing OKDHS employees career development and advancement opportunity consistent with this policy.

(b) In the administration of the employment policies and practices, ~~DHS~~ OKDHS does not discriminate against employees or applicants for employment because of race, creed, color, religion, sex, age, national origin, disability, or political affiliation or opinion. ~~DHS~~ OKDHS takes affirmative action to ensure that applicants and employees are treated in a non-discriminatory way. Such employment actions include, but are not limited to, hiring, promotion, demotion, or transfer, recruitment, or recruitment advertising, layoff, or termination, rates of pay, or other forms of compensation, and selection for training.

(c) The policies in this Part apply throughout ~~DHS~~ OKDHS, except where a separate policy has been issued, or a pilot is being tested as provided in OAC 340:2-1-76(10).

340:2-1-76. Appointments and changes in employee job family descriptor (JFD) and level or position ~~which that~~ are not subject to the vacancy posting provisions of the rules in this Part

Unless otherwise indicated, the local administrator submits Form P-31-A, Announcement Requisition, to the Human Resources Management Division (HRMD) to effect personnel vacancies. Appointments and changes in employee job family descriptor (JFD) and level or position not subject to the vacancy notice posting provisions of the policies in this Part are:

- (1) temporary appointments;
- (2) detail to special duty or other temporary assignments ~~which that~~ do not affect an employee's base JFD and level or classification;

- (3) intra-agency lateral transfer of a permanent employee from one position to another position in the same JFD and level, in-class, or another JFD ~~at in~~ the same pay band, ~~lateral~~;
- (4) voluntary and involuntary demotion to a vacant position;
- (5) direct reclassification made when a new JFD is adopted ~~which that~~ better describes an incumbent's job;
- (6) position reallocation;
- (7) classified service noncompetitive job level;
- (8) career progression promotions;
- (9) positions limited to the prescribed length of time of the course of training or extension study;
- (10) positions ~~for which DHS~~ where OKDHS has elected to establish separate policies or to test pilot rules within specific organizational units, and where such policies are publicized prior to implementation;
- (11) positions converted from the classified to the unclassified service, or from the unclassified to the classified service ~~via by~~ appointment, reinstatement, or position reallocation of an incumbent; in accordance with applicable Merit System of Personnel Administration Rules (Merit Rules) and ~~DHS OKDHS~~ policy and procedures;
- (12) transfer of an employee, position, or both, from one work organization to another; and
- (13) positions in the unclassified service. The ~~DHS~~ OKDHS Director may waive the vacancy posting provisions of this policy for positions in the unclassified service. Approval of a waiver request may not be delegated, except for unclassified lawyer positions exempt from OKDHS vacancy posting procedures.

340:2-1-77. Vacancy posting procedures

- (a) **Vacancy posting decision.** All vacant positions in the classified service are posted in accordance with the rules in this Section prior to the filling of such vacancies except as provided in OAC 340:2-1-76.
- (b) **Vacancy posting for positions in the classified service.**
 - (1) Each posting is posted for ~~at least six~~ a minimum of ten working days excluding holidays and weekends with the exception that positions that generally have a satisfactory pool of candidates may be posted for a minimum of six working days.
 - (2) Listings of recruitment announcements are posted on the Oklahoma Department of Human Services (~~DHS~~OKDHS) Infonet under Employee Self-Service, or the external www.okdhs.org Web site and upon request.
 - (3) Within a given job family descriptor (JFD) and level where continuous multiple vacancies occur throughout ~~DHS~~ OKDHS or within specific organizational units, multiple continuous announcement (MCA) vacancies may be posted for 12 calendar months. An MCA includes all required information in paragraph (1) of this subsection. Persons applying in response to MCAs identify each county of interest. The Human Resources Management Division (HRMD) maintains applications of candidates for each JFD posted for MCAs.

- (c) **Vacancy posting for positions in the unclassified service.** Positions in the unclassified service are posted for application, except as provided in OAC 340:2-1-76(13). The process outlined in this Section may be used or, at the discretion of the appointing authority, applications may be solicited through newspapers, journals, or other recruiting methods.
- (d) **Trial period upon interagency promotion or demotion.** A ~~non-DHS~~ non-OKDHS employee selected for ~~inter-agency~~ interagency promotion or demotion ~~may be~~ is required to serve a trial period in accordance with ~~DHS~~ OKDHS policy OAC 340:2-1-28(b), (c), and (d) and the Merit System of Personnel Administration Rules (Merit Rules) governing such actions. The determining factor is whether the former job held by the new employee is within ~~DHS'~~ OKDHS' existing JFDs.
- (e) **Notification of cancellation.** A vacancy posting may be canceled at any time by the ~~DHS-OKDHS~~ Director, ~~chief officer~~ senior administrator, division director, area director, local administrator, or HRMD. Notice of cancellation is provided to HRMD. If the cancellation occurs before Form P-S-76, Applicant List, is issued, then HRMD notifies all applicants of the cancellation. If the cancellation occurs after Form P-S-76 is issued, the local administrator notifies all applicants on Form P-S-76 and any other contacted candidates from the Office of Personnel Management (OPM) certificate.
- (f) **Vacancy posting extension of application period.** If a decision is made to extend the posting period beyond the initial request, a new announcement number is not required. The requesting official coordinates the extension of the announcement with HRMD. All requests to extend the announcement period are made to HRMD while the announcement is still open.
- (g) **Reposting of an announcement.** To repost a position, a new vacancy posting is issued by HRMD.
- (h) **Review procedure.** Employees who apply for a promotion or transfer in accordance with these procedures ~~shall be~~ are free from restraint, interference, coercion, discrimination, and reprisal.

340:2-1-78. Method of application

- (a) To be eligible to compete for a position, applicants must submit two copies each of a completed Form P-12, Personal Data Summary Sheet, and Form P-12A, Application Cover Memo, to the designated location before the closing date and time specified on the vacancy posting.
- (b) ~~DHS~~ OKDHS employees interested in intra-agency transfer or demotion for a specific position must submit a written request, which may be an e-mail message or Form P-12 to the local administrator of the position.

340:2-1-79. Eligibility to compete for positions in the classified service

- (a) ~~To be eligible to compete for positions in the classified service, applicants must have permanent status.~~ Eligible applicants must possess the required minimum education and

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experience for the job family descriptor and level and any announced selective qualifications within 30 days of the closing date of an announcement.

(b) If the vacancy posting indicates Oklahoma Department of Human Services (DHS) OKDHS employees only, then applicants must be a:

- (1) current permanent, classified ~~DHS~~ OKDHS employee;
- (2) former permanent, classified ~~DHS~~ OKDHS employee with current permanent, classified status with another state agency;
- (3) current unclassified, ~~DHS~~ OKDHS employee with reinstatement eligibility to the classified service; or
- (4) former permanent, classified ~~DHS~~ OKDHS employee with reinstatement eligibility to the classified service.

(c) If the vacancy posting indicates all sources, then applicants must:

- (1) meet any of the criteria listed in subsection (b) of this Section;
- (2) be a current permanent, classified employee with another state agency; or
- (3) be a former permanent, classified employee with another state agency with reinstatement eligibility to the classified service.

(d) If the vacancy posting indicates all sources, the selecting official may consider:

- (1) candidates from an Office of Personnel Management (OPM) certificate of eligibles (certificate);
- (2) candidates whose names are added to an OPM certificate for a noncompetitive class in accordance with Merit System of Personnel Administration Rules;
- (3) candidates entitled to benefits under the Special Disabled Veterans Employment Act, exempt from OPM examination and minimum qualification requirements; [72 O.S. § 403]; or
- (4) persons with severe disabilities, exempt from OPM examination requirement. [74 O.S. § 840-4.12]

340:2-1-80. Eligibility to compete for positions in the unclassified service

(a) If the vacancy posting indicates Oklahoma Department of Human Services (DHS) OKDHS employees only, applicants must be current or former employees ~~with the Department of Human Services (DHS) of OKDHS.~~

(b) If the vacancy posting indicates all sources, any person may be recruited and compete.

340:2-1-81. Issuing DHS OKDHS Form P-S-76, Applicant List, and Office of Personnel Management (OPM) certificate of eligibles (certificate)

(a) The Human Resources Management Division (HRMD) prepares Form P-S-76, Applicant List, for the announced position. Applicants are screened to determine eligibility.

(b) If the position is in the classified service and announced as such, and applicants are considered from all sources, the

local administrator may request that HRMD issue an Office of Personnel Management (OPM) certificate for the announced job family descriptor and level and authorized announced alternate hiring level, as applicable. For positions ~~which that~~ have been identified as underutilized in the current fiscal year in the ~~Department of Human Services (DHS) OKDHS~~ Affirmative Action Plan, a special OPM certificate is requested by the local administrator under the provisions of the Fair Employment Practices Act (FEPA) for which a goal has been established. The selecting official must work Form P-S-76 and has the option of working the regular OPM certificate, working only the FEPA list, or working both.

340:2-1-82. Job-related selection criteria and other selection procedures

(a) At the time a decision is made to fill a ~~vacant~~ position, the supervisor of the position is responsible for reviewing ~~the position~~ and determining job-related selection criteria based on the duties of the position. These job-related selection criteria are ~~then~~ used to develop interview questions and any other selection procedures, such as skill assessments, simulations, or case studies. The Human Resources Management Division (HRMD) is available to assist with development of interview questions.

(b) The selecting official is ~~normally an administrator in the program's upper organizational structure~~ or the reviewing supervisor for the position being filled. The selecting official is identified on Form P-S-76, Applicant List, when it is returned to HRMD.

(c) The selecting official ~~shall be~~ is aware of the local affirmative action goals and reviews the ~~job-related~~ job-related information in paragraphs (1) - through (2) of this subsection in selecting applicants for interview and making the selection decision. ~~Job-related~~ Job-related information is ~~the~~:

- (1) Form P-1, Application for Employment, Form P-12, Personal Data Summary Sheet, or resume; and
- (2) the employee's most recent Form OPM-111, Performance Management Process (PMP), which must be considered. Selection advisory committees may also review earlier Forms OPM-111 ~~but this is only when~~ done consistently for all applicants.

(d) Work histories, if available, ~~job-related~~ job-related references, and other ~~job-related~~ job-related documents may be considered if done consistently for all candidates.

340:2-1-83. Selection advisory committee ~~(committee)~~ for positions in the classified and unclassified service

(a) A committee is established by the selecting official or ~~their~~ designee to provide assistance in the ~~candidate~~ consideration, interview, and selection process of candidates for any classified supervisory or managerial position. Upon request, the requirement for a committee may be waived. A waiver request, including justification, must be submitted to the Human Resources Management Division (HRMD) director for consideration. If there is only one candidate, a committee is not required.

- (b) Initial and any subsequent committees must have at least three members, one of whom must be from outside the program or division of the vacant position.
- (c) The selecting official does not serve as a member of any committee.
- (d) The requirements of this subsection are waived for non-mandated committees convened at the discretion of the local administrator.
- (e) This procedure may be utilized when filling an unclassified position, although it is not a requirement.

340:2-1-84. Interviews for positions in the classified service

- (a) At least five candidates from Form P-S-76, Applicant List, are ~~interviewed~~ contacted for an interview. Once a decision is made on the five candidates to be interviewed, if one or more applicants declines an interview, they do not need to be replaced. The minimum interview requirement applies only to current Oklahoma Department of Human Services (~~DHS~~OKDHS) employees. If five or fewer candidates are on Form P-S-76, all are ~~interviewed~~ offered an interview. However, candidates interviewed within the last six months for the same job family descriptor and level, by the same selecting official or identical selection advisory committee, need not be interviewed again. Such prior interviews ~~may be~~ are considered toward meeting the minimum interview requirement.
- (b) The selecting official may ~~elect to~~ fill the position, cancel, or reannounce the position at his or her discretion.
- (c) The selecting official ensures that the interview time, date, and location are conveyed to candidates selected for interviews.
- (d) ~~A DHS~~ An OKDHS employee interviewed through these procedures is considered on duty when prior supervisory notification is given and he or she is currently a permanent status employee. Travel expenses are the responsibility of the employee.

340:2-1-85. Final selection

- (a) The local administrator is responsible for completing Form P-S-76, Applicant List, obtaining reviews or approvals from higher management levels, and forwarding the completed Form P-S-76 immediately to the Human Resources Management Division (HRMD) upon the employee's acceptance of a job offer. In a county office, the county director is responsible for reviewing Form P-S-76 to ensure compliance with the Oklahoma Department of Human Services (~~DHS~~OKDHS) policy and Merit System of Personnel Administration Rules governing the selection process and signing the form to indicate the review has taken place.
- (b) The salary approved for the selection ~~must be~~ is in compliance with OAC 340:2-1-87.

340:2-1-86. Delegation of responsibility for vacancy posting and selection procedures to divisions, facilities, and local offices

The Human Resources Management Division (HRMD) director or designee may approve the delegation of responsibility for vacancy posting and procedures to divisions, facilities,

or local offices. Such delegation must comply with all applicable Oklahoma Department of Human Services (~~DHS~~OKDHS) policy and Merit System of Personnel Administration Rules.

- (1) Local administrators may delegate authority to recommend the final selection of candidates.
- (2) If the local administrator approves the selection, he or she obtains the required clearances through all supervisory channels prior to submission of the selection to HRMD for finalization.
- (3) All dates are tentative until the local personnel office is notified by HRMD of finalization of Form P-31-A, Announcement Requisition. Employee transfers and effective dates are in compliance with OAC 340:2-1-85.

340:2-1-88. Alternate hiring levels

- (a) Alternate hiring levels are authorized by the Office of Personnel Management (OPM) where there are bona fide trainee levels for full performance jobs, or where the Oklahoma Department of Human Services (~~DHS~~OKDHS) experiences recruiting difficulties for a specific job family descriptor (JFD) and level.
- (b) Hiring at the alternate hiring level may be ~~as~~ a result of a position reallocation decision, vacancy announcement, or actions exempt from the announcement process. Position reallocation alternate hiring level is authorized if the position incumbent is ineligible for reclassification due to qualifications, status, examination, or if the employee is in a trainee status and has not completed a prescribed training program and is performing duties below the full performance level.

340:2-1-89. Office of Personnel Management (OPM) certificate of eligibles (certificate) - classified service

- (a) **General provisions.** This Section provides basic information regarding Office of Personnel Management (OPM) certificates. For assistance, consult Merit System of Personnel Administration ~~Rule Rules~~ (Merit Rule Rules) OAC 530:10-9 or contact the Human Resources Management Division (HRMD).
- (b) **Required forms to be completed by OPM certificate applicants.**
 - (1) All applicants interviewed from an OPM certificate for a competitive classification complete a Form P-1, Application for Employment, for a competitive or non-competitive classification.
 - (2) ~~An Form P-1-D, Application Supplement, is completed by the~~ The individual selected for appointment from an OPM certificate completes Form P-1-D, Application Supplement.
 - (3) For placement of their names on ~~an~~ the OPM certificate, individuals complete Form OPM-4, State of Oklahoma Employment Application, and submit the completed forms to OPM.
 - (4) ~~Form P-1-D and~~ Selecting officials return Form OPM-4, State of Oklahoma Employment Application, ~~when applicable,~~ for direct hire individuals selected for

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appointment ~~are returned~~ to HRMD with the OPM certificate.

(c) **Submission of OPM certificate and support documentation to personnel.**

(1) Form P-1-D, Form OPM-4 for noncompetitive appointment only, and one copy of the properly coded OPM certificate must be returned to HRMD for finalization of the personnel transaction.

(2) Interview notification letters sent to candidates on the OPM certificate must be postmarked no later than seven calendar days before the void date of the OPM certificate.

(3) If an applicant is not selected from the OPM certificate, the OPM certificate must be returned to HRMD before another OPM certificate ~~may be~~ is issued.

(d) **Review of returned OPM certificate.**

(1) HRMD retains the ~~DHS~~ OKDHS file copy of the OPM certificate.

(2) OPM audits certificates for compliance with Merit Rules after the selected candidate enters on duty. OPM has the authority to void any appointment ~~which that~~ does not comply with Merit Rules.

[OAR Docket #03-991; filed 5-20-03]

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

[OAR Docket #03-994]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Office of Client Advocacy

Part 1. Administration

340:2-3-1 through 340:2-3-2 [AMENDED]

340:2-3-12 [AMENDED]

Part 3. Investigations

340:2-3-32 through 340:2-3-38 [AMENDED]

Part 5. Grievances

340:2-3-45 through 340:2-3-46 [AMENDED]

340:2-3-50 through 340:2-3-53 [AMENDED]

340:2-3-55 [AMENDED]

Part 7. Grievance And Abuse Review Committee

340:2-3-61 [AMENDED]

340:2-3-63 through 340:2-3-64 [AMENDED]

Part 9. Ombudsman Programs

340:2-3-71 through 340:2-3-75 [AMENDED]

(Reference APA WF # 03-08)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Section 1025.1 et seq. of Title 56 of the Oklahoma Statutes; and OAC 340:75-3-8.3; Section 7004-3.4(A)(2)(d)(3) of Title 10 of the Oklahoma Statutes; and Section 10-101 et seq. of Title 43A of the Oklahoma Statutes.

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n/a

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n/a

ANALYSIS:

Office of Client Advocacy (OCA) rules are revised to: (1) add definitions to clarify rules relating to OCA investigations; (2) add e-mail contact information for OCA programs; (3) correct phone numbers for contacting OCA and fax contact information; (4) add in-home supports investigations conducted by OCA pursuant to Section 7004-3.4(A)(2)(d)(3) of Title 10 of the Oklahoma Statutes; (5) add OCA's processing for the Community Services Workers Registry (CSW Registry) the allegations substantiated by Adult Protective Services (APS) involving community services workers and Medicaid personal care assistants, pursuant to Section 1025.1 et seq. of Title 56 of the Oklahoma Statutes; (6) add investigations conducted by OCA pursuant to OAC 340:75-3-8.3 involving the denial of medically beneficial treatment to handicapped infants; (7) clarify incidents to be reported to OCA intake; (8) clarify the dissemination of OCA investigation reports when a confirmed finding results in processing the case for the CSW Registry; (9) require providers serving Hissom class members to respond to OCA investigation reports directly rather than through Developmental Disabilities Services Division (DDSD); (10) clarify which allegations reported to OCA intake may be referred to a facility for a caretaker conduct review; (11) add a reference to the client resolution process provided by OAC 340:75-1-12.1; (12) limit application of OCA grievance system to providers and facilities that provide services to clients living in Oklahoma; (13) clarify that grievances can be filed verbally or in writing; (14) add a requirement that the name of a facility or provider's local grievance coordinator (LGC) be posted in a place conspicuous to clients; (15) clarify which Notice of Grievance Rights forms are available for use as applicable; (16) provide the option for submitting quarterly reports by e-mail; (17) provide a timeframe within which grievants decide whether to accept the proposed resolution to a grievance; (18) clarify who is the second-level decision maker for responding to a grievance; (19) provide for expediting grievances when time is of the essence; (20) provide for the county director to serve as the LGC for foster parent grievances; (21) clarify that Grievance and Abuse Review Committee (GARC) takes under advisement matters reviewed and informs interested parties of the results of its review by means of a written report; (22) specify a time frame for grievants to indicate whether they accept a proposed resolution to a grievance; (23) clarify the services OCA provides to residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer); (24) clarify the meaning of short-term advocacy services; and (25) correct spelling and grammatical errors and non-substantive revisions to improve clarity and readability.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003.

**SUBCHAPTER 3. OFFICE OF CLIENT
ADVOCACY**

PART 1. ADMINISTRATION

340:2-3-1. Purpose

The purpose of this Subchapter is to outline the rules governing the operation of the Office of Client Advocacy (OCA). Policies relating to:

- (1) administrative investigations conducted by OCA are in OAC 340:2-3-32 through 340:2-3-37 and 340:2-3-39;
- (2) investigations of alleged retaliation or discrimination against a foster parent are in OAC 340:2-3-38;
- (3) disciplinary options regarding Oklahoma Department of Human Services (OKDHS) employees in response to OCA investigation findings are in OAC 340:2-3-12;
- (4) grievance systems maintained by OCA are in OAC 340:2-3-45 through 340:2-3-55; ~~and~~
- (5) ~~provisions relating to~~ the Grievance and Abuse Review Committee (GARC) are in OAC 340:2-3-61 through 340:2-3-65; ~~and~~
- (6) OCA Ombudsman Programs are in OAC 340:2-3-72 through 340:2-3-75.

340:2-3-2. Definitions

The following words and terms when used in this Subchapter shall have the following meanings, unless the context clearly indicates otherwise.

"**Abuse**" means, with regard to:

- (A) minors and youth, the causing or permitting of harm or threatened harm to the health, safety, or welfare of the minor or youth by a caretaker responsible for the minor's or youth's health, safety, or welfare, including but not limited to sexual abuse, sexual exploitation, and the intentional use of excessive or unauthorized force aimed at hurting or injuring the minor or youth; or
- (B) vulnerable adults, abuse as defined by Section 10-103(8) of Title 43A of the Oklahoma Statutes.

~~"Abuse Registry" means the Community Services Worker Registry established by the Department in accordance with Section 1025.3 of Title 56 of the Oklahoma Statutes.~~

"**Administrator**," including the person designated by an administrator to act on the administrator's behalf, means, with regard to:

- (A) minors in Oklahoma Department of Human Services (OKDHS) custody who live in a private residential facility, the chief administrative officer of the facility;
- (B) minors in OKDHS custody in a an OKDHS operated shelter or group home, the director of the shelter or group home;

- (C) minors in OKDHS custody and youth in voluntary care of OKDHS who live in any other setting, including any type of out-of-home placement, the applicable OKDHS county director;
- (D) foster parents, the applicable OKDHS county director or area director, whichever is appropriate;
- (E) minors and youth in residential care facilities operated by Office of Juvenile Affairs (OJA) or Department of Rehabilitation Services (DRS), facilities which contract with or are licensed by OJA, Department of Mental Health and Substance Abuse Services (DMHSAS), the J.D. McCarty Center, or OKDHS, and other residential care facilities, the superintendent, director, chief administrative officer or head of the facility regardless of the person's working title;
- (F) day treatment programs, the person charged with responsibility for administering the program;
- (G) adults and minors who are in Developmental Disabilities Services Division (DDSD) specialized foster care and DDSD specialized foster parents, the applicable DDSD area manager;
- (H) residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the facility director;
- (I) providers of residential services, vocational services, or in-home paraprofessional supports to individuals with developmental disabilities living in the community, the chief executive officer of the provider; and
- (J) residents of group homes for persons with developmental disabilities, the director of the group home.

"Adult Protective Services" or "APS" means the Adult Protective Services Unit of OKDHS.

"**Advocate**," ~~formerly also~~ known as "ombudsman" or "ombuds," means an Office of Client Advocacy (OCA) employee who provides assistance to OCA clients in exercising their rights, ~~listens~~ listening to their concerns, ~~encourages~~ encouraging them to speak for themselves, ~~seeks~~ seeking to resolve problems, ~~helps~~ helping protect their rights, and ~~seeks~~ seeking to improve the quality of their life and care.

"**Advocate general**" means the chief administrative officer of the OCA designated in Section 7004-3.4(B)(1) of Title 10 of the Oklahoma Statutes. The e-mail address for the advocate general is *OCA.advocategeneral@okdhs.org.

"Authorized use of physical force" by a caregiver with regard to minors and youths residing outside their homes, other than minors and youth in foster care:

- (A) means the use of physical contact to control or contain a person when the caregiver reasonably considers that person to:
 - (i) pose a risk of inflicting harm to self or others; or
 - (ii) be in the process of leaving a facility without authorization.
- (B) When the use of physical force is authorized, the least force necessary under the circumstances is

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employed. In determining whether excessive force has been used, all of the circumstances surrounding the incident are taken into consideration, including:

- (i) the grounds for belief that force was necessary;
- (ii) the age, gender and strength of the parties involved;
- (iii) the nature of the force employed;
- (iv) the availability of alternative means of force or control; and
- (v) the extent of the harm inflicted.

"Caretaker" means, with regard to:

- (A) minors and youth, an agent or employee of:
 - (i) a public or private residential home, institution, or facility above the level of foster family care; or
 - (ii) a day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes; and
- (B) vulnerable adults, caretaker as defined in Section 10-103(6) of Title 43A of the Oklahoma Statutes.

"Caretaker misconduct":

- (A) means an act or omission that:
 - (i) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;
 - (ii) is not found to be abuse or neglect; and
 - (iii) results in or creates the risk of injury to a minor or vulnerable adult.
- (B) includes, but is not limited to:
 - (i) acts or omissions that contribute to the delinquency of a minor;
 - (ii) unintentional excessive or unauthorized use of force not rising to abuse or neglect;
 - (iii) unintentionally causing mental anguish; ~~and~~
 - (iv) other acts exposing a client to harm or threatened harm to the health, safety or welfare of the client; and
 - (v) use of abusive or professionally inappropriate language not rising to the level of verbal abuse.

"Case manager" means the person assigned by DDS who has the responsibility for ensuring that services to an individual are planned and provided in a coordinated fashion.

"Child placing agency" means an agency which provides social services to children and their families that supplement, support, or substitute parental care and supervision for the purpose of safeguarding and promoting the welfare of children. The agency may provide full time placement services for children away from their own homes, such as adoptive homes, foster family homes, group homes, and transitional or independent living programs.

"Client" means, with regard to:

- (A) OCA's investigation services, those individuals listed in OAC 340:2-3-32(a)(2); ~~and~~
- (B) OCA's grievance services, those individuals listed in OAC 340:2-3-45(a)(2); and

(C) OCA's ombudsman program, those individuals listed in OAC 340:2-3-71(b).

"Community services worker" or **"CSW"** means any person not a licensed health professional who is employed by or under contract with a community services provider to provide, for compensation or as a volunteer, health-related services, training, or supportive assistance as those terms are defined in Section 1025.1 of Title 56 of the Oklahoma Statutes.

"Community Services Worker Registry" or **"Abuse CSW Registry"** means the Community Services Worker Registry established by the Department OKDHS in accordance with Section 1025.3 of Title 56 of the Oklahoma Statutes.

"Day treatment program" means a non-residential, partial hospitalization program, day treatment program, or day hospital program in which minors are ~~placed for~~ provided intensive services, psychiatric, or psychological treatment.

"DDSD" means the Developmental Disabilities Services Division of the ~~Department of Human Services for the State of Oklahoma~~ OKDHS.

"Demonstrable injury" ~~means clear evidence of a physical injury, for example, a laceration, bruise, burn, or fracture, or an injury which is confirmed by a physician, dentist, nurse, or other health care professional.~~

"DHS" and or "Department" or "OKDHS" means the Oklahoma Department of Human Services ~~of the State of Oklahoma.~~

"DMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services ~~of the State of Oklahoma.~~

"DRS" means the Oklahoma Department of Rehabilitation Services ~~of the State of Oklahoma.~~

"E-mail" means:

- (A) with regard to the advocate general, an e-mail sent to *oca.advocategeneral@okdhs.org;
- (B) with regard to OCA grievance matters, an e-mail sent to *sto.oca.grievances@okdhs.org;
- (C) with regard to OCA investigation matters, an e-mail sent to *sto.oca.investigations@okdhs.org.

"Emergency" means a significant risk of death or serious physical harm.

"Excessive use of force" by a caretaker, with regard to minors and youths residing outside their homes, other than minors and youth in foster care, means the failure to employ the least amount of physical force necessary under the circumstances, taking into consideration all of the circumstances surrounding the incident, including:

- (A) the grounds for belief that force was necessary;
- (B) the age, gender and strength of the parties involved;
- (C) the nature of the force employed;
- (D) the availability of alternative means of force or control;
- (E) the extent of the harm inflicted; and
- (F) the method(s) of restraint and intervention approved for use with the person against whom the force was used.

"**Exploitation**" or "**exploit**" with regard to vulnerable adults, means exploitation or exploit as defined in Section 10-103(9) of Title 43A of the Oklahoma Statutes.

"**Facility**" means:

- (A) a public or private agency, corporation, partnership, or other entity which:
 - (i) operates a residential child care center; or
 - (ii) contracts with or is licensed or funded by ~~the Department~~ OKDHS, OJA, or DMHSAS for the physical custody, detention, or treatment of minors;
- (B) ~~a Department~~ an OKDHS operated shelter;
- (C) ~~a~~ an OKDHS, OJA, DMHSAS, or DRS operated residential child care center;
- (D) a community-based youth services shelter or community intervention center;
- (E) the J.D. McCarty Center;
- (F) a day treatment program;
- (G) a private psychiatric facility for minors;
- (H) sanctions programs certified by OJA to provide programming for minors who are court ordered to participate in that program; or
- (I) SORC, NORCE, and Greer.

"**Foster care**" or "**foster care services**" means continuous ~~24-hour~~ 24-hour care and supportive services provided for a child in a foster placement, including but not limited to the care, supervision, guidance, and rearing of a foster child by the foster parent.

"**Foster child**" means a child placed in a foster family placement.

"**Foster parent**" means an individual maintaining a foster family home, who is responsible for the care, supervision, guidance, rearing, and other foster care services provided to a foster child.

"**GARC**" means the Grievance and Abuse Review Committee described in OAC 340:2-3-61.

"**Guardian**" means a person appointed by a court to ensure that the essential requirements for the health and safety of an incapacitated or partially incapacitated person, the ward, are met, to manage the estate or financial resources of the ward, or both. As used in this Subchapter, guardian includes: a general or limited guardian of the person; a general or limited guardian of the estate; a special guardian; and a temporary guardian. The term does not include a person appointed as guardian ad litem.

"**Guardian ad litem**" or "**GAL**" means a person appointed by a court, pursuant to Section 1415 of Title 10 of the Oklahoma Statutes, to represent the interests of an individual as specified in the court order.

"**Harm or threatened harm to the health, safety, or welfare**" includes but is not limited to:

- (A) non-accidental physical injury or mental anguish;
- (B) sexual abuse;
- (C) sexual exploitation;
- (D) failure to provide protection from harm or threatened harm;
- (E) the unauthorized use of force; or

- (F) the use of excessive force.

"**Hissom class member**" means an individual certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in *Homeward Bound, et al. v. The Hissom Memorial Center, et al.*, Case No. 85-C-437-E.

"**Hotline**" means the statewide, toll free hotline (1-800-522-3511) maintained by OKDHS for the purpose of receiving reports of abuse, neglect, or exploitation of children and adults. The hotline is in operation 24 hours a day, 7 days a week.

"**ICF/MR**" or "**Intermediate Care Facility for the Mentally Retarded**," also known as a "specialized facility for the mentally retarded," means a private or public residential facility, licensed in accordance with state law and certified by the federal government as a provider of Medicaid services, for mentally retarded persons as that term is defined in Title XIX rules and regulations of the Social Security Act.

"**Incapacitated person**" means:

- (A) any person 18 years of age or older who is impaired by reason of mental or physical illness or disability, dementia, or related disease, mental retardation, developmental disability, or other cause, and whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person lacks the capacity to manage financial resources or to meet essential requirements for mental or physical health or safety without assistance from others; or
- (B) a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act.

"**Indecent exposure**" means indecent exposure as defined by Section 10-103(12) of Title 43A of the Oklahoma Statutes.

"**In-home supports**" and "**IHS**" means services funded through Medicaid Home and Community-Based Waivers (HCBW) as defined in Section 1915(c) of the Social Security Act and administered by OKDHS, DDSD, which are provided in the service recipient's home and are not residential services as defined in OAC 340:100-5-22.1 or group home services as defined in Title 10, Section 1430 of the Oklahoma Statutes.

"**Injury**" means any hurt, harm, appreciable physical pain, or mental anguish.

"**Maltreatment**" is used collectively in this Subchapter to refer to abuse, neglect, verbal abuse, exploitation, caretaker misconduct, sexual abuse, and sexual exploitation as defined in this Section.

"**Medicaid personal care assistant**" or "**MPCA**" means a person who provides Medicaid services funded under Oklahoma's personal care program who is not a certified nurse aide or a licensed professional.

"**Mental anguish**" means mental damage evidenced by distress, depression, withdrawal, severe anxiety, or unusually aggressive behavior toward self or others.

"**Minor**" means any person under the age of 18 years except any person convicted of a crime specified in Section 7306-1.1 of Title 10 of the Oklahoma Statutes or any person

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who has been certified as an adult pursuant to Section 7303-4.3 of Title 10 and convicted of a felony.

"Minor physical injury" means a demonstrable injury reasonably expected to be treated with the administration of first aid, over the counter remedies, or both. A demonstrable injury includes damage to bodily tissue caused by non-therapeutic conduct, illness, new or an increased impairment of physical or cognitive functioning, evidence of a physical injury (for example, a laceration, bruise, burn, or fracture), and an injury which is confirmed by a physician, dentist, nurse, or other health care professional.

"Neglect" means, with regard to:

(A) minors and youth, the failure of a caretaker to provide:

- (i) adequate food, clothing, shelter, medical care, ~~and~~ or supervision which includes, but is not limited to, lack of appropriate supervision which results in sexual activity between minors; or
- (ii) special care made necessary by the physical or mental condition of the minor or youth; ~~and~~ or

(B) vulnerable adults, neglect as defined in Section 10-103(10) of Title 43A of the Oklahoma Statutes.

"OCA" means the Office of Client Advocacy of ~~the Department of Human Services~~ OKDHS.

"OCA intake" means the centralized intake system maintained by OCA in its Oklahoma City office that receives referrals of alleged abuse, neglect, verbal abuse, and financial exploitation.

"OJA" means the Oklahoma Office of Juvenile Affairs ~~of the State of Oklahoma~~.

"Ombudsman" and **"ombuds,"** ~~now known as "advocate," means an OCA employee who provides assistance to OCA clients in exercising their rights, listens to their concerns, encourages them to speak for themselves, seeks to resolve problems, helps protect their rights, and seeks to improve the quality of their life and care means "advocate" as defined in this Subsection.~~

"Personal support team" or **"team,"** formerly known as the "interdisciplinary team," means the decision-making body for service planning, implementation, and monitoring of the individual plan, as more fully described in OAC 340:100-5-52.

"Problem resolution" means verbal or written communications which seek to resolve concerns, complaints, service inadequacies, or issues identified by the client; or members of the client's team, including the client's guardian, the OCA advocate for the client, a volunteer advocate for the client, or other persons interested in the welfare of the client.

"Provider" means a program, corporation, partnership, association, individual, or other entity that contracts with, or is licensed or funded by, OKDHS to provide community-based residential or vocational services to persons with mental retardation or developmental disabilities, or which contracts with the Oklahoma Health Care Authority to provide residential or vocational services or in-home supports to individuals with mental retardation through the Home- and Community-Based Waiver.

"Residential child care center" means a 24-hour-a-day residential group care facility at which a specified number of minors, normally unrelated, reside with adults other than their parents.

"Self-neglect" means self-neglect as defined in Section 10-103(13) of Title 43A of the Oklahoma Statutes.

"Serious physical injury" means a physical injury to a person's body determined to be serious by a physician, dentist, or nurse, ~~and~~. It includes, but is not limited to, death, fracture, dislocation of any major joint, internal injury, concussion, head injury with loss of consciousness, ingestion of foreign substances and objects that are harmful; near drowning, lacerations involving injuries to tendons or organs and those for which complications are present, lacerations requiring four or more stitches or staples to close, heat exhaustion or sunstroke, heatstroke, injury to an eyeball, irreversible loss of mobility, avulsion of teeth, permanent damage to or loss of a tooth, and a second or third degree burn and other burns for which complications are present. It also includes multiple abrasions, bruises, and minor physical injuries on the body of a person, identified around the same time or over a period of several weeks, that are unlikely to be the result of normal daily living activities.

"Sexual abuse" means, with regard to:

(A) minors and youth, rape, incest, and lewd or indecent acts or proposals, as defined by state law, by a caretaker responsible for the health, safety, or welfare of the minor or youth; or

(B) vulnerable adults, sexual abuse as defined by Section 10-103(11) of Title 43A of the Oklahoma Statutes.

"Sexual exploitation" means, with regard to:

(A) minors and youth:

(i) allowing, permitting, or encouraging a minor or youth to engage in sexual acts with others or prostitution, as defined by state law, by a caretaker responsible for the minor's or youth's health, safety, or welfare; or

(ii) allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a minor or youth in those acts as defined by the state law, by a caretaker responsible for the minor's health, safety, or welfare; or

(B) vulnerable adults, sexual exploitation as defined by Section 10-103(14) of Title 43A of the Oklahoma Statutes.

"Specialized foster care" means foster care provided to a minor or adult in a specialized foster home or agency-contracted home which has been certified by DDS, is monitored by DDS, and is funded through the Home- and Community-Based Waiver Services Program administered by DDS.

"State office" means the administrative offices of ~~the Department~~ OKDHS in Oklahoma City.

"State office administrator," including the person designated by a state office administrator to act on the state office administrator's behalf, means, with regard to:

- (A) grievances of minors, youths, and foster parents regarding the substance or application of any policy, rule or regulation, written or unwritten, of OKDHS or ~~a~~ an OKDHS operated shelter or residential facility, or of an agent or contractor of OKDHS, or a child placement agency, the director of OKDHS Children and Family Services Division (CFSD);
- (B) grievances regarding a decision, behavior, or action by ~~a~~ an OKDHS employee, agent, contractor, foster parent, or by any person residing in the same placement setting, the associate director of the OKDHS Field Operations Division;
- (C) DDS clients, the director of DDS; and
- (D) other OKDHS clients, the appropriate associate director or division director.

"Suspicious injury" means an injury for which there is no credible explanation that makes it unlikely to be the result of client maltreatment.

- (A) It includes but is not limited to an injury that:
 - (i) appears inconsistent with the offered explanation(s) for the injury;
 - (ii) is unusual;
 - (iii) cannot be explained as the result of an accident, self-injurious behavior (for example, bruising on the buttocks, or well-defined bruising), or normal activities of daily living activities;
 - (iv) is a minor injury located on or near a private part of the body or on a part of the body that makes it unlikely to have been the result of self-injury or an accident during the course of daily living activities; and
 - (v) involves multiple abrasions, bruises, and minor injuries on the body of a person, identified around the same time or over a period of several weeks, which are unlikely to be the result of normal daily living activities.
- (B) The determination whether an injury is suspicious is made from the point of view of an independent skeptical reviewer. An injury is suspicious if there is no credible explanation for it consistent with the injury not being the result of maltreatment.

"Unauthorized use of force" means, with regard to minors and youths residing outside their homes, other than minors and youth in foster care, a use of force that is not an authorized use of physical force as defined in this Subsection. It includes unacceptable physical handling of and contact with clients including, but not limited to, slapping, kicking, punching, poking, pulling hair or an ear, pinching, using a choke hold, smothering, spitting, head butting, and tugging.

"Unexplained injury" means an injury for which there is no known credible origin or cause, even though a possible explanation for the injury may be offered.

"Verbal abuse" means verbal abuse as defined in Section 10-103(15) of Title 43A of the Oklahoma Statutes.

"Vulnerable adult" means vulnerable adult as defined by Section 10-103(5) of Title 43A of the Oklahoma Statutes.

"Ward," with regard to vulnerable adults, means a person over whom a guardianship has been given by the court.

"Youth" means, with regard to:

- (A) OCA's investigation programs, a person over the age of 18 in OJA custody and residing in an OJA operated facility or a facility which contracts with OJA; or
- (B) OCA's grievance programs, a person over the age of 18 in OJA custody or voluntary care of OKDHS.

340:2-3-12. Disciplinary options regarding Oklahoma Department of Human Services (OKDHS) employees

(a) **Application.** This Section applies to a final finding in an administrative investigation conducted by the Office of Client Advocacy (OCA) in accordance with OAC 340:2-3-32 through 340:2-3-37 that ~~a Department~~ an OKDHS employee has engaged in abuse, sexual abuse, neglect, verbal abuse, caretaker misconduct, or exploitation. A finding is final when:

- (1) OCA has disseminated its final report and the time for requesting review by the Grievance and Abuse Review Committee (GARC) in accordance with OAC 340:2-3-62(b) has expired without a timely request having been ~~made~~ received by OCA; or
- (2) a timely request for GARC review has been received and has been processed to conclusion in accordance with OAC 340:2-3-62.

(b) **Supplemental investigations.**

- (1) Upon receipt of an OCA investigation report, if the applicable state office administrator or designee determines a need for specific additional information necessary to make a determination whether to request review by GARC or what personnel action to initiate, the state office administrator or designee may request OCA to conduct a supplemental investigation. A request for a supplemental investigation is made within 30 calendar days of receipt of the OCA report and it sets out the specific information needed. No more than one such request may be made in an individual case. OCA conducts a prompt supplemental investigation, commencing it within 30 calendar days and completing it within 60 calendar days of receipt of a request for a supplemental investigation, unless these time periods are extended for good cause as determined by the advocate general or the OKDHS Director.
- (2) Within 30 calendar days of receipt of the OCA supplemental investigation, the state office administrator or designee can request the case be submitted to GARC in accordance with OAC 340:2-3-62.

(c) **Disciplinary guidelines.** These guidelines are used by state office administrators and their designees to determine appropriate personnel action, based on the nature of the abuse, sexual abuse, neglect, caretaker misconduct, or exploitation and consistent with OKDHS corrective discipline policies.

(1) **Abuse, sexual abuse, or neglect.**

- (A) **First offense.** The first offense can result in discharge, demotion, suspension without pay, or such other discipline deemed reasonable, depending on the severity of the incident.

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- (B) **Second offense.** Unless the OKDHS Director approves a less severe disciplinary action, the second offense results in discharge.
- (2) **Caretaker misconduct resulting in physical injury or mental anguish.**
- (A) **First offense.** The first offense can result in discharge, demotion, suspension without pay, or written reprimand, depending on the severity of the incident.
- (B) **Second offense.** The second offense can result in discharge, demotion, or suspension without pay.
- (3) **Caretaker misconduct not resulting in physical injury or mental anguish.**
- (A) **First offense.** The first offense can result in suspension without pay, written reprimand, verbal reprimand, or corrective action plan, depending on the severity of the incident.
- (B) **Second offense.** The second offense can result in discharge, demotion, suspension without pay, or written reprimand and corrective action plan.
- (4) **Second offense.** The term second offense as used in this Section means an offense occurring after any other act of abuse, neglect, or caretaker misconduct. Nothing in this Section limits disciplinary actions based in part on acts of abuse, neglect, or caretaker misconduct and based in part on other cause. The imposition of any demotion, suspension without pay, or reprimand must be accompanied by a corrective action plan.
- (d) **State office administrator's report.** OAC 340:2-3-36(q) requires a state office administrator to report personnel actions resulting from an OCA investigation. When a an OKDHS operated facility has conducted a caretaker conduct review pursuant to OAC 340:2-3-37, within 60 calendar days of the finding becoming final the state office administrator informs the advocate general in writing of: any personnel action taken or to be taken, and any corrective action taken or to be taken, and for each worker found to have engaged in caretaker misconduct whether there have been any prior confirmations by OCA or the facility for client maltreatment by the worker, the basis for each finding, and the personnel action taken in response. If a personnel action is involved, the state office administrator also notifies the state office administrator of OKDHS Human Resources Management Division. If a caretaker conduct review has not resulted in a confirmed finding, no information or material pertaining to the allegation or the investigation is placed in the employee's personnel file.

PART 3. INVESTIGATIONS

340:2-3-32. Office of Client Advocacy (OCA) investigation protocols

(a) Legal authority, scope, and purpose.

(1) Legal authority.

(A) Section 7004-3.4(B)(2) of Title 10 of the Oklahoma Statutes gives OCA the responsibility to investigate allegations of caretaker abuse and neglect of minors:

(i) residing outside their own homes regardless of custody, other than minors in foster care; and

(ii) in a day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes.

(B) Section 7306-2.11 of Title 10 of the Oklahoma Statutes accords youthful offenders in the Office of Juvenile Affairs (OJA) custody the same rights and services available to minors in OJA custody. This includes maltreatment investigations conducted by OCA in facilities operated by or contracting with OJA. OCA also conducts maltreatment investigations involving youths in those facilities when the juvenile court has extended its jurisdiction and OJA custody until the youth reaches age 19.

(C) Section 10-105 of Title 43A of the Oklahoma Statutes gives the Oklahoma Department of Human Services (OKDHS) responsibility to investigate allegations of caretaker abuse, neglect, verbal abuse, and exploitation of vulnerable adults. ~~The Department OKDHS~~ confers on OCA the responsibility to conduct those investigations ~~which that~~ involve Hissom class members and residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer), OKDHS operated facilities for persons with developmental disabilities.

(D) OCA investigates, pursuant to OAC 340:75-3-8.3(3), reports alleging denial of medically beneficial treatment by a medical provider to a handicapped infant.

(2) **Scope.** OCA conducts administrative investigations of allegations of caretaker maltreatment listed in this subsection. All of the individuals listed, who are clients of the facilities and providers which provide them residential care, vocational services, or day treatment, are referred to as the "client" throughout this Section and OAC 340:2-3-33 through 340:2-3-37. OCA investigates allegations of:

(A) abuse and neglect of minors, and caretaker misconduct with regard to minors, in residential care above the level of foster care regardless of custody, including but not limited to:

(i) minors in ~~Department operated~~ OKDHS operated or licensed shelters and group homes;

(ii) minors and youth in facilities operated by, licensed by, or contracting with OJA;

(iii) minors in community-based youth services shelters and community intervention centers which contract with OJA pursuant to Section 7302-3.5 of Title 10 of the Oklahoma Statutes;

(iv) minors in facilities operated by or contracting with Department of Mental Health and Substance Abuse Services (DMHSAS);

(v) minors in facilities operated by the J.D. McCarty Center ~~of the State of Oklahoma; and~~

(vi) minors residing in facilities operated by the Department of Rehabilitation Services(DRS); the Oklahoma School for the Blind and the Oklahoma School for the Deaf; and

(vii) minors receiving services from a community services worker as that term is defined in Section 1025.1 of Title 56 of the Oklahoma Statutes;

(B) abuse and neglect of, and caretaker misconduct with regard to, minors in day treatment programs as defined in Section 175.20 of Title 10 of the Oklahoma Statutes, including sanctions programs certified by OJA to provide programming for minors who are court ordered to participate in that program;

(C) abuse, neglect, and verbal abuse of, and caretaker misconduct with regard to, residents of SORC, NORCE, and Greer; ~~and~~

(D) abuse, neglect, verbal abuse, and exploitation of Hissom class members who live in Oklahoma and who do not reside in a private intermediate care facility for the mentally retarded (ICF/MR); and

(E) abuse, neglect, verbal abuse, and exploitation of vulnerable adults receiving services from a community services worker or a Medicaid personal care assistant as those terms are defined in Section 1025.1 of Title 56 of the Oklahoma Statutes on request of the Adult Protective Services unit of OKDHS.

(3) **Purpose.** OCA conducts independent and objective administrative investigations of suspected maltreatment of clients by caretakers in order to:

- (A) protect clients from further maltreatment;
- (B) deter and prevent maltreatment;
- (C) provide relevant evidence in administrative and judicial proceedings;
- (D) rule out unfounded allegations; and
- (E) hold violators accountable.

(b) **Confidentiality.** State and federal statutes and regulations, including but not limited to Section 183 of Title 56 of the Oklahoma Statutes and OAC 340:65-1-2, require confidentiality for many OKDHS records. Information about clients is confidential and is protected from unauthorized use. Only authorized individuals are given access to case records or provided information from those records.

(1) **OCA investigations involving minors and youth.** Statutes and policies regarding the confidentiality of OCA's files, records, and reports relating to investigations involving minors and youth include, but are not limited to, the confidentiality provisions of the statutes and policies listed in (A) through (C) of this paragraph.

(A) Sections 7307-1.2 through 1.5 of Title 10 of the Oklahoma Statutes apply to OCA investigations involving minors and youth in OJA custody and in facilities ~~which that~~ contract with OJA.

(B) Sections 7005-1.2, 7107, 7108, and 7109 of Title 10 of the Oklahoma Statutes apply to investigations involving minors, regardless of custody, residing outside their own homes.

(C) OAC 340:75-1-42 through 46 apply to OCA investigations involving minors in OKDHS custody, including information regarding placement.

(2) **OCA investigations involving vulnerable adults.** Statutes and policies regarding the confidentiality of OCA's files, records, and reports relating to investigations involving vulnerable adults, include but are not limited to (A) through (C) of this paragraph.

(A) When consulting persons knowledgeable of the circumstances of an alleged victim of abuse, neglect, or exploitation, or when making other contacts as part of the investigation or service planning process, ~~the OCA investigator staff~~ may disclose information necessary to ensure that the client is protected and the client's needs are met. Information may be disclosed without a court order to specific persons acting in an official capacity with regard to the investigation, including:

- (i) a district attorney or employees of the district attorney's office;
- (ii) the attorney representing an alleged victim in the matter under investigation;
- (iii) staff of an Oklahoma law enforcement agency or a law enforcement agency of another state;
- (iv) physical or mental health care professionals involved in the evaluation or treatment of the vulnerable adult;
- (v) the guardian of the vulnerable adult;
- (vi) the provider for a vulnerable adult; and
- (vii) other public or private agencies or persons authorized by ~~the Department~~ OKDHS to diagnose, or provide care, treatment, supervision, or other services to a person who is the subject of an OCA investigation.

(B) District attorneys, their staff, the attorney representing the alleged victim, and law enforcement agencies may receive information from or review the entire case record. All other disclosures are limited to summaries of information provided for a specific purpose. Case information from OCA records is not released for research purposes without the prior approval of the advocate general.

(C) In other situations, OCA investigative information is considered confidential under Section 10-110(A) of Title 43A of the Oklahoma Statutes and may be disclosed only by court order. Confidentiality applies to members of the news media as well as the general public. News media representatives requesting information on a specific case are referred to the advocate general, the OCA programs manager for investigations, or the OKDHS Public Information Office of Communications for a detailed explanation of ~~the Department's~~ OKDHS' confidentiality rules.

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340:2-3-33. Procedure for reporting suspected abuse, neglect, verbal abuse, caretaker misconduct, and exploitation

- (a) **Reporting requirements and reportable incidents.**
- (1) Persons having reason to believe that a minor is a victim of abuse or neglect are required by Section 7103 of Title 10 of the Oklahoma Statutes to promptly report it to the Oklahoma Department of Human Services (OKDHS).
- (2) Persons having reason to believe that a vulnerable adult is a victim of abuse, neglect, verbal abuse, or exploitation are required by Section 10-104 of Title 43A of the Oklahoma Statutes to promptly report it to OKDHS. This reporting requirement applies to providers, as defined in OAC 340:2-3-2, and their employees and agents.
- (3) In addition, employees of OKDHS, Department of Rehabilitation Services (DRS), Department of Mental Health and Substance Abuse Services (DMHSAS), Office of Juvenile Affairs (OJA), and the J.D. McCarty Center who have reason to believe that caretaker misconduct, as defined in OAC 340:2-3-2, with regard to a client has occurred promptly report it to OCA intake. This reporting requirement also extends to employees of private facilities which contract with OKDHS, DRS, DMHSAS, and OJA to provide residential services to these clients.
- (4) A person can have reason to believe that maltreatment has occurred based on information they have learned directly or indirectly, including information provided by the alleged victim or witnesses to an incident. When an allegation of maltreatment is made by the alleged victim or the guardian or parent of the alleged victim, it is reported to OCA intake. Persons unsure of what to report call OCA intake (1-800-522-8014) during business hours, and after hours call the Abuse Hotline (1-800-522-3511).
- (5) Knowledge of circumstances which may constitute maltreatment is reported even if the person reporting it cannot substantiate the information.
- (6) In addition to the reportable incidents in paragraphs (1), (2), and (3) of this subsection, employees and agents of OKDHS, DRS, DMHSAS, OJA, the J.D. McCarty Center, facilities, and providers report to OCA events listed in (A) - through (E) of this paragraph involving a person listed in OAC 340:2-3-32(a)(2). Events that require a report to OCA are:
- (A) a violent death, whether apparently homicidal, suicidal, or accidental;
- (B) a death under suspicious, unusual, or unnatural circumstances;
- (C) the death of a resident of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer);
- (D) the death of a Hissom class member;
- (E) a serious physical injury, as defined in OAC 340:2-3-2, of a resident of NORCE, SORC, or Greer;
- (i) ~~as a result or in the course of the use of physical force by another person;~~
- (ii) ~~as a result of an assault by another person;~~
- ~~or~~

(iii) ~~under unexplained, suspicious, or unusual circumstances; or~~

(F) a physical injury, as defined in OAC 340:2-3-2, if it is:

(i) unexplained; or

(ii) suspicious; and

(D) ~~G~~ a rape, sodomy, or other sexual activity prohibited by state law.

(7) "Promptly" reporting as used in this Subchapter means the same day or the next working day.

(8) The reporting obligations under this section are individual. Employers, supervisors, and administrators do not impede or inhibit the reporting obligations of any employee or other person.

(b) Reporting responsibilities.

(1) **Reportable incidents.** Reportable incidents are defined in subsection (a) of this Section.

(2) **Minors and youth.** ~~A~~ An OKDHS employee with knowledge of a reportable incident involving a minor or youth who is an OCA client, as defined in OAC 340:2-3-32(a)(2), is required to make an immediate referral to OCA intake. Any other person who has knowledge of this type of reportable incident involving an OCA client is required by law to make a prompt report to OCA intake or the OKDHS office in the county where the alleged incident took place. Referrals to OCA intake are made in accordance with subsection (e) of this Section.

(3) **Vulnerable adults.** ~~A~~ An OKDHS employee who has knowledge of a reportable incident involving a vulnerable adult who is an OCA client, as defined in OAC 340:2-3-32(a), is required to make an immediate referral to OCA intake. Any other person who has knowledge of this type of reportable incident is required by law to make a report as soon as possible to OCA intake, the office of the district attorney in the county in which the alleged incident happened, or the local municipal police or sheriff's department. ~~Oklahoma law also provides that any person exercising good faith and due care in making a report of alleged abuse, neglect, verbal abuse, or exploitation of a vulnerable adult shall have immunity from any civil or criminal liability the person might otherwise incur.~~

(4) **Immunity from liability.** Oklahoma law provides that any person exercising good faith and due care in making a report of alleged abuse, neglect, verbal abuse, or exploitation pursuant to the Oklahoma Child Abuse Reporting and Prevention Act or the Oklahoma Protective Services for Vulnerable Adults Act shall have immunity from any civil or criminal liability the person might otherwise incur.

(5) **Questions about reporting.** A person who is uncertain if a particular incident is reportable contacts OCA intake (1-800-522-8014) during business hours, and after hours call the Abuse Hotline (1-800-522-3511).

(c) **Failure to report.** Any person who knowingly and willfully fails to promptly report a reportable incident as provided for in this Section may be subject to administrative action or criminal sanctions. Section 10-104(C) of Title 43A and Section 7103(C) of Title 10 of the Oklahoma Statutes makes

failure to report a misdemeanor, upon conviction. In addition, failure to report by a an OKDHS employee can result in disciplinary action.

(d) **False reporting.**

(1) Any person who knowingly and willfully makes a false report regarding alleged maltreatment of a minor, or a report that the person knows lacks factual foundation, may be reported by OKDHS to local law enforcement for criminal investigation and, upon conviction, is guilty of a misdemeanor.

(2) With regard to vulnerable adults, any person who willfully or recklessly makes a false report may be liable in a civil action for any actual damages suffered by the person(s) being reported and for any punitive damages set by the court or jury.

(e) **Method of reporting.**

(1) Any person obligated to report an allegation of suspected abuse, neglect, verbal abuse, or exploitation of an OCA client, or caretaker misconduct towards an OCA client, contacts OCA intake in Oklahoma City by telephone (~~1-405-521-3491~~1-405-522-4850 or 1-800-522-8014) between 8:00 a.m. and 5:00 p.m. on normal business days. At all other times, the Statewide Abuse Hotline (1-800-522-3511) accepts referrals on behalf of OCA. Referrals also are made by completing Form OCA-1, Office of Client Advocacy Intake Referral, and transmitting it by fax (~~1-405-521-2743~~1-405-525-4855) to OCA, Attn: OCA intake.

(2) Allegations of exploitation of residents of SORC, NORCE, and Greer are reported to the person designated by the facility administrator to receive and investigate reports of those allegations.

(3) In lieu of contacting OCA intake, employees of ~~Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center (NORCE), and Greer Center Facility (Greer)~~ also have the option of contacting OCA's ombuds staff assigned to those facilities or the quality assurance staff at those facilities. OCA employees and facility staff who receive information about a reportable incident promptly contact OCA's intake to transmit that information.

(f) **Confidentiality of reporting party's identity.** OCA keeps confidential the identity of a person who reports an incident involving a vulnerable adult in accordance with Section 10-105(2) of Title 43A of the Oklahoma Statutes, and of a person who reports an incident involving a minor or youth in accordance with Section 7005-1.2(G)(7) of Title 10 of the Oklahoma Statutes. OCA accepts anonymous referrals.

(g) **Retaliation prohibited.** Section 10-104(G) of Title 43A of the Oklahoma Statutes states that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Vulnerable Adults Act, Section 10-101 et seq. of Title 43A of the Oklahoma Statutes.

(h) **Staff training.** All administrators ensure their employees receive relevant training regarding their reporting

responsibilities detailed in this Section. Except for employees of a DDS provider, employees receive this training within 30 calendar days of initial employment and subsequent training annually. The training for employees of Developmental Disabilities Services Division (DDSD) providers is in accordance with OAC 340:100-3-38.

340:2-3-34. Administrator's responsibilities regarding allegations reportable to Office of Client Advocacy (OCA)

(a) **Immediate protection for safety, health, and welfare.** If OCA intake receives an allegation of caretaker maltreatment involving an OCA client from anyone other than the administrator of the facility or provider responsible for the client, OCA intake promptly notifies the applicable administrator of the allegation.

(1) Upon becoming aware of an allegation of caretaker maltreatment involving an OCA client, an administrator ensures the safety, protection, and needed medical attention of any client named in the allegation and other clients receiving services from the facility or provider.

(2) When criminal activity is alleged, other than caretaker abuse or neglect unless it involves a serious physical injury, the administrator immediately notifies the appropriate local law enforcement authority. The types of criminal activity which are reported to law enforcement involve illegal drugs, domestic abuse, illegal sexual activity, illegal use of alcohol, theft of money or property, and when someone other than a caretaker is believed to have committed the allegation.

(3) The administrator takes necessary personnel actions to ensure the protection and safety of the alleged victim(s) and other clients. OCA does not determine or approve personnel actions taken by an administrator in response to allegations reported to OCA.

(4) In the event of alleged abuse or neglect of a Hissom class member by a provider's employee or subcontractor, the administrator ensures the protection and medical attention for any class member named in an allegation or other individual served. In the event of alleged abuse or neglect by an individual serving as a provider, it is the responsibility of the class member's case manager to ensure protection, medical attention, or both for the class member. OCA intake notifies the case manager assigned to the class member and the applicable Developmental Disabilities Services Division (DDSD) area manager by e-mail within one working day of accepting for investigation, in accordance with OAC 340:2-3-34, a referral of abuse or neglect by an individual serving as provider for the class member.

(b) **Preliminary assessment.** Upon learning of an incident reportable to OCA, the administrator:

(1) immediately ensures the safety of any client named in the referral and of other clients;

(2) secures any physical evidence and gathers documents within their possession, custody, or control which may be relevant to the allegation;

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(3) immediately takes ~~photos~~ photographs of any potentially relevant injuries. Photographs are taken by someone who was not involved in the incident that is the subject of the allegation relating to the injuries; and

(4) coordinates activities with OCA and any other agency or law enforcement authority involved in investigating the referral.

(c) **Collecting pertinent reports and documents.** The administrator determines which employees were present when the alleged incident occurred and requires each employee to submit a written account of the alleged incident. The administrator collects medical records, other documents and reports which pertain to the alleged incident, written statements, and other documentary evidence within their possession, custody, or control and places them in a holding file for investigative use by OCA and any other investigative authority. The administrator securely maintains any documents collected during the preliminary assessment.

(d) **OCA access to documents and evidence.** Upon request, an OCA investigator is provided a copy of and access to the original of written statements, incident reports, relevant documents and ~~agency~~ records, and other reports, photos, and other evidence collected during the preliminary assessment.

(e) **Prohibition from interviewing during preliminary assessment.** Employees of the facility or provider do not conduct an investigation of an alleged incident pending OCA's decision to accept the referral for investigation or during a pending OCA investigation. To avoid the consequences of over-interviewing parties involved in an alleged incident, the preliminary assessment is limited to inquiries about who was involved, obtaining written statements, and clarifying information needed to take appropriate action to ensure client safety. Determining if a staff member engaged in maltreatment is not the goal of a preliminary assessment and is avoided until the OCA disposition is determined. This prohibition does not extend to interviews and investigations conducted by law enforcement when responding to a report of criminal activity. OCA coordinates activities with local, state, and federal law enforcement entities to seek the most appropriate investigative response to the referral.

(f) **Facility and provider contact person.** Each administrator of a facility or provider responsible for the care of any of the individuals listed in OAC 340:2-3-32(a)(2) designates a contact person to receive the notice described in Subsection (a) of this section. The administrator informs the advocate general of the name, phone number and e-mail address of the designated contact person, and immediately notifies the advocate general in writing, by mail or e-mail, of any changes in this information. The designated contact person is reasonably available by telephone, pager or e-mail between 8:00 a.m. and 5:00 p.m. weekdays, except holidays.

340:2-3-35. Processing referrals received by the Office of Client Advocacy (OCA)

(a) **Disposition options.** OCA intake records on Form OCA-1, Office of Client Advocacy Intake Referral, or its electronic equivalent, the specifics of each referral received and makes an appropriate disposition regarding how the referral is

to be handled. Consideration is given to all known information to determine an appropriate disposition and course of action. The disposition options and criteria include, but are not limited to, the options described in (1) - through (7) of this subsection.

(1) **OCA investigation.** This disposition means OCA opens an investigation of an allegation of caretaker maltreatment.

(2) **Assign for caretaker conduct review.** This disposition means the facility named in the referral is given responsibility to conduct an internal caretaker conduct review in accordance with OAC 340:2-3-37. Within one working day of receiving a referral given this disposition, OCA intake notifies the administrator or designated contact person. OCA intake documents the notification on Form OCA-1, or its electronic equivalent. This disposition does not apply to allegations involving Developmental Disabilities Services Division (DDSD) clients other than residents of Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer).

(3) **Refer to advocate.** This disposition is made when the referral involves a Hissom class member or a resident of SORC, NORCE or Greer, and involves a concern which, based on the information provided, does not rise to the level of abuse, neglect, verbal abuse, caretaker misconduct, or exploitation. Within one working day of receipt of the reported incident, the applicable OCA advocate and his or her supervisor are notified of the matter by e-mail or telephone for appropriate follow-up inquiry. If the advocate knows or learns of facts which indicate a more appropriate disposition, the advocate immediately notifies OCA intake.

(4) **Refer to another administrative entity for handling.** This disposition means OCA intake forwards the information to another state agency or OKDHS division or office for handling. This disposition is appropriate when information provided by the reporting party does not include an allegation of caretaker maltreatment within the purview of OCA, but rather involves complaints about employee performance or allegations within the scope of another administrative entity. When this disposition is made, OCA intake makes the referral within one working day of receipt of the reported incident. These referrals are not assigned to OCA investigators for handling or intervention.

(5) **Refer to law enforcement.** This disposition is used when the referral involves possible criminal activity and it is not within OCA's investigative authority as described in OAC 340:2-3-32(a) ~~such that OCA does not open an investigation~~. This disposition is not used when OCA opens an investigation on a referral even though a law enforcement agency also is investigating the matter.

(6) **Refer for grievance.** When a referral to a grievance system is made, OCA intake notes the specifics of that referral on Form OCA-1, or its electronic equivalent. The referral is directed to the appropriate entity for handling as a grievance when the content of the referral is not caretaker maltreatment, but a complaint or concern

which that can be addressed by a grievance. Indicators that a referral is appropriate for handling as a grievance include complaints about:

- (A) conditions which do not endanger residents;
- (B) staff improprieties which do not constitute abuse, neglect, verbal abuse, caretaker misconduct, or exploitation; and
- (C) privileges and restrictions not involving the use of isolation, force, or restraints.

(7) **No action required.** This disposition is made when OCA takes no action in response to the referral because the information provided is for notification purposes only and does not include an allegation, complaint, or concern appropriate for another disposition.

(8) **Refer to administration.** This disposition means the matter is not within the purview of OCA, another OKDHS unit, or another state agency but is relevant to the operations of a facility or provider. When this disposition is used, OCA intake contacts the administrator of the facility or provider to inform the administrator of relevant information relating to the referral.

(b) **Notifying law enforcement.** If a referral opened as an OCA investigation involves possible criminal activity on the part of a caretaker, OCA intake determines from the reporting party or the designated contact person for the facility or provider whether law enforcement was notified. If law enforcement has already been notified, OCA intake documents that information on Form OCA-1, or its electronic equivalent. If law enforcement has not been called or it is unclear if the matter has been reported to law enforcement, OCA intake requests the contact person at the facility or provider to notify law enforcement immediately. If acceptable assurances are not given that law enforcement has been or will be notified by the end of the business day, OCA intake notifies the appropriate law enforcement authority and notes the specifics on Form OCA-1, or its electronic equivalent.

(c) **Assignment process for referrals opened for investigation.** A referral accepted for investigation is assigned to a specific OCA investigator. Investigations involving Hissom class members are assigned within one working day of making a disposition to investigate the allegation. When urgent circumstances exist in a case opened for investigation, an assignment is made and the investigation commenced immediately.

340:2-3-36. Investigation procedures

(a) **Initiation of Office of Client Advocacy (OCA) investigation.** The assigned OCA investigator conducts a prompt investigation of the referral. The investigator contacts the applicable administrator to arrange for document production, site visits, and interviews.

(1) The administrator for the facility or provider who employed an accused caretaker at the time of the alleged incident informs that employee of:

- (A) the name and telephone number of the OCA investigator;
- (B) the investigative process described in this Section;

(C) the employee's rights and responsibilities relating to the investigation described in subsection (d) of this Section; and

(D) the allegation made against the accused caretaker without divulging the identity of the reporting party or the substance of the evidence.

(2) In cases involving Hissom class members and minors receiving in-home supports, the rights and responsibilities of accused community services workers are found in OAC 340:100-3-39. The administrator completes Form DDS-59, Rights and Responsibilities of Accused Community Services Worker in an Investigation of Abuse, Neglect, or Exploitation, in accordance with OAC 340:100-3-39(d)(2). The administrator mails Form DDS-59 to the worker when it is not possible to personally give it to a worker who is no longer employed by the provider.

(3) On request and for good cause shown, OCA expedites the time frames contained in this subsection for conducting an investigation.

(b) **Access.** The applicable administrator arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a client of the facility or provider. During an OCA investigation, Oklahoma Department of Human Services (OKDHS), Office of Juvenile Affairs (OJA), Department of Rehabilitation Services (DRS), Department of Mental Health and Substance Abuse Services (DMHSAS), the J.D. McCarty Center, providers, and facilities, and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation. Denial of access may be grounds for termination of a contract between OKDHS and a contractor.

(c) **Interference prohibition.**

(1) Section 7103 of Title 10 of the Oklahoma Statutes prohibits discrimination or retaliation against a person who in good faith provides information about a reportable incident or testifies in a proceeding, provided the person did not perpetrate or inflict the abuse or neglect at issue.

(2) Section 455 of Title 21 of the Oklahoma Statutes makes it a felony to interfere with a child abuse investigation or a vulnerable adult investigation under Title 43A. A An OKDHS employee who interferes with an OCA investigation also may be subject to administrative action. Interference includes but is not limited to:

- (A) intimidating, harassing, or threatening a party to the investigation;
- (B) retaliation against an employee for reporting an allegation; or
- (C) denial of access to clients, employees, facilities, witnesses, records, or evidence.

(3) Section 10-104(G) of Title 43A of the Oklahoma Statutes states that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to

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the Vulnerable Adults Act, Section 10-101 et seq. of Title 43A of the Oklahoma Statutes.

(d) **Rights and responsibilities of accused caretakers.** The rights and responsibilities of an accused caretaker during an OCA investigation are outlined in this subsection. The rights and responsibilities of a community services worker ~~in a case involving a Hisson class member~~ are found at OAC 340:100-3-39.

- (1) **Rights.** During the investigation process, an accused caretaker has the right to:
 - (A) be advised by the administrator of the nature of the allegation(s) made against him or her in the referral;
 - (B) be advised by OCA of the investigative process involving caretaker maltreatment;
 - (C) be interviewed by the investigator and allowed to give his or her position regarding the referral;
 - (D) be advised by the investigator of the substance of the evidence against him or her, but not the identity of the person reporting the allegation;
 - (E) submit or supplement a written statement relating to the allegations;
 - (F) seek advice from other parties concerning a caretaker's rights and responsibilities in OCA investigations;
 - (G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and
 - (H) be notified in writing by his or her employer of the outcome of the investigation.

- (2) **Responsibilities.** During the investigative process, an accused caretaker has the responsibility to:
 - (A) prepare written statements and reports relevant to the investigation upon request;
 - (B) be available for interviews and accommodate the investigator in scheduling of interviews;
 - (C) refrain from any action which interferes with the investigation, including any action which intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and
 - (D) provide pertinent information and respond fully and truthfully to questions asked.

(e) **Educational employees.** This subsection applies to an employee of a school district providing contract educational services on-site at a facility, as defined in OAC 340:2-3-2, who is either a witness or an accused caretaker in an investigation opened by OCA.

- (1) The administrator of the facility where the incident took place notifies the principal of the school of the nature of the allegation and the name of the assigned OCA investigator.
- (2) The principal of the school is responsible for notifying the school employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification

and coordination of the investigative process and does not extend to ensuring the protection of the alleged victim(s) or other clients at the facility where the educational services are provided. The administrator of the facility where the alleged incident took place is responsible for protection of clients.

(3) OCA investigates educational employees who meet the definition of a caretaker in OAC 340:2-3-2.

(f) **Contractor's employees.** This ~~section~~ subsection applies to an employee of a contractor of a provider or facility when the employee is an accused caretaker in an investigation opened by OCA.

(1) The administrator of the provider agency or facility where the incident took place notifies the chief administrative officer of the contractor of the nature of the allegation against the contractor's employee and the name of the assigned OCA investigator.

(2) The chief administrative officer of the contractor is responsible for notifying the contract employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process. The administrator of the provider agency or facility where the alleged incident took place is responsible for protection of clients.

(g) **Document collection and review.**

(1) The investigator gathers and reviews relevant documents including, but not limited to:

- (~~1~~A) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;
- (~~2~~B) medical records;
- (~~3~~C) photos; and
- (~~4~~D) facility or provider logs, activity and tracking documents.

(2) If the OCA investigator is denied access to records, documentation or other information relevant to an investigation, OKDHS Adult Protective Services is contacted for assistance in petitioning the court for an order allowing access.

(h) **Investigative interviews.** The investigator interviews or attempts to interview persons known or identified to have information about the referral. If an injury is alleged, the investigator or other appropriate person observes, notes, and documents apparent injuries, and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person other than the investigator and the person being interviewed is allowed to attend an interview except a person necessary to facilitate communication. An attorney or other representative of the person being interviewed attends an interview only as a silent observer with prior permission of the advocate general.

(i) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who

allegedly were directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each caretaker accused of the maltreatment. When possible, all other witnesses are interviewed prior to interviewing the accused caretaker(s).

(1) **Tape recording of interviews.** OCA investigators tape record every interview. To maintain confidentiality of the information provided in an interview, no tape recording by the person being interviewed or by anyone else in attendance is permitted. Tape recordings of interviews remain with the OCA investigative file. OCA files and tape recordings are not public documents.

(2) **Explanation of the process.** The investigator informs persons interviewed of the investigative process.

(3) **Presentation of the allegation.** The OCA investigator verbally informs each accused caretaker of the substance of the allegation(s) and evidence learned during the investigative process. In general, the investigator discloses only the nature and substance of information learned during the investigation and does not identify the persons who provided information. The identity of the reporter of the allegation is never disclosed during the investigation. If during the course of an investigation a witness is identified as a potential accused caretaker, the investigator interviews the witness again to inform the witness that he or she is a potential accused caretaker. At that time, the witness is informed of the substance of the evidence and relevant information learned during the investigation and provided an opportunity to respond.

(4) **Opportunity for accused caretakers to respond.** During the interview with an accused caretaker, the OCA investigator provides the caretaker an opportunity to respond to the allegation(s) and to supplement any information previously provided in written statements. Following the initial interview of the accused caretaker, if the investigator obtains information to which the accused caretaker did not have an opportunity to respond, the investigator conducts another interview with the caretaker. The investigator advises the accused caretaker of the substance of the new information and provides an opportunity to present a response.

(5) **Interpreter services for persons who are deaf or hard of hearing.** If the investigator needs to interview a person who is deaf or hard of hearing, the facility or provider agency who employed the person at the time of the alleged incident provides, at no cost to OCA, oral or sign language interpreter services by an independent and qualified interpreter. Interpreter services for OKDHS employees and clients are provided in accordance with OAC 340:1-11-10.

(6) **Scheduling interviews.** To schedule an interview with an accused caretaker, the investigator contacts by phone or regular mail the administrator of the facility or provider that employs the caretaker. If a reasonable time has passed without being able to schedule an interview, the investigator contacts the administrator of the facility or provider to request the administrator to compel the employee to participate. If unsuccessful, the investigator

sends both a certified letter and a letter by regular mail to the caretaker's last known address notifying the caretaker of the investigation and offering an opportunity to be interviewed, setting a date and time for a response. The letter informs the caretaker that the consequence of failure to participate is for the OCA investigative report to be completed without the caretaker's statement and a finding is made based on available information. For other persons needing to be interviewed, the investigator follows the same sequence as for an accused caretaker, but the certified letter only requests their participation in an interview.

(7) **Failure to appear.** If a person fails to appear for a scheduled interview without good cause, as determined by the advocate general, the investigator completes the investigative report without interviewing that person. The investigative report includes an explanation of why the interview was not conducted, including documentation of efforts to interview the person.

(j) **Exit conference.** Within 30 calendar days of assignment of a referral to an investigator, the ~~OAC OCA~~ investigator ~~conducts an exit conference, either~~ contacts in person, by e-mail, or by telephone, with the applicable administrator, or the administrator's designee, when the information gathering portion of the investigative process is completed.

(1) Except in cases involving Hissom class members or caretakers subject to the Community Services Worker (CSW) Registry, the investigator informs the administrator of the preliminary investigative finding and any areas of concern identified, and that a written report will be ~~sent~~ prepared with the final finding.

(2) In cases involving Hissom class members or caretakers subject to the CSW Registry, the investigator informs the administrator or the OKDHS long-term care nurse, whichever is applicable, that the investigation process has concluded in accordance with OAC 340:2-3-36, ~~and advises~~ When the investigation report has been approved in accordance with subsection (k) of this Section, the investigator notifies in writing the administrator or the OKDHS long-term care nurse, whichever is applicable, of areas of concern identified during the investigation.

(k) **The written investigative report.** After completing the ~~information gathering~~ information gathering portion of the investigative process the investigator prepares a written investigative report containing:

(1) the allegation(s) contained in the referral investigated including the date, time, and location of the alleged incident(s), the date the allegation was reported to OCA, and the assigned OCA case number;

(2) a statement of any physical injuries sustained by the alleged victim(s);

(3) information regarding any involved law enforcement entities;

(4) a recommendation for the district attorney whether to consider further investigation;

(5) the applicable definition(s) of the type of maltreatment at issue such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;

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- (6) the finding(s) in accordance with subsection (l) of this Section;
 - (7) a list of the involved parties, their titles and role in the matter, if they were interviewed and, if so, when, and whether interviewed ~~face-to-face~~ face-to-face or by telephone;
 - (8) the name, address, and telephone numbers of any interpreter used during the investigation;
 - (9) an explanation of the basis for the finding(s);
 - (10) in cases involving a confirmed finding, a summary of relevant information obtained during each interview conducted during the investigation;
 - (11) any areas of concern relating to the referral identified during the investigation regarding facility, provider, or OKDHS practices or procedures which have implications for the safety, health, or welfare of clients but which do not rise to the level of abuse or neglect;
 - (12) a list of relevant documents and records reviewed during the investigation;
 - (13) a list of attachments to the report; and
 - (14) an explanation for any delays in meeting the time frames for completing the investigation report contained in this Section.
- (l) **Investigative findings.** The OCA investigator determines the appropriate finding for each allegation contained in the referral investigated. Findings are made based on a preponderance of the evidence. The finding options are:
- (1) **"confirmed"** means that the available evidence establishes that it is more likely than not that the alleged maltreatment occurred;
 - (2) **"not confirmed"** means there was insufficient evidence to find that it is more likely than not that the alleged maltreatment occurred; or
 - (3) **"not confirmed/ruled out"** means the available evidence established that it is unlikely that the alleged maltreatment occurred.
- (m) **Identification of the responsible caretaker.** When a confirmed finding is made, the investigator determines the caretaker(s) responsible for the maltreatment. The administration can be named as responsible when the policies, procedures, or practices adopted by the administration of a facility, provider, or day treatment program are the primary factor resulting in the maltreatment of individual clients.
- (n) **Dissemination of the OCA investigative report.** Within 60 calendar days from the assignment of a referral to be investigated, the OCA written investigative report is completed.
- (1) Except in cases involving Hissom class members, a copy of the final OCA investigation report is sent to the administrator of an affected facility or provider agency. If the referral alleged abuse, neglect, or exploitation, a copy also is sent to the applicable district attorney. A copy is sent to the Office of the Attorney General if the report involves a minor as the alleged victim. A copy also is sent to the appropriate OKDHS state office administrator, executive director of OJA, the director of DRS, the director of DMHSAS, or the director of the J.D. McCarty Center, whichever is applicable. When an administrator is named

as an accused caretaker in the allegation, OCA forwards the investigative report to the chair of the board of directors of the facility or provider agency, or to the director of the state agency operating the facility. The administrator is responsible for notifying the client or the client's legal representative of the OCA finding.

(2) A copy of OCA's report is sent to ~~the commissioner~~ of the Oklahoma State Department of Health if the investigation involved a day treatment program.

(3) The administrator of ~~a~~ an OKDHS operated facility provides accused OKDHS employees who work at the facility a letter which summarizes the allegation and states the OCA finding.

(4) If an accused caretaker is a certified nurse aide (CNA) and the OCA report includes a confirmed finding, the facility which employed the CNA at the time of the incident at issue sends a copy of the report to the ~~commissioner~~ of the Oklahoma State Department of Health.

(5) If client maltreatment by a licensed nurse is confirmed, a copy of OCA's report is submitted to the Oklahoma State Board of Nursing.

(o) **Dissemination of reports involving Hissom class members; and caretakers subject to the Community Services Worker (CSW) Registry.**

(1) Section 1025.2 of Title 56 of the Oklahoma Statutes requires ~~the Department~~ OKDHS to establish a ~~registry listing~~ community services workers registry ~~notating the against whom a final OKDHS investigative finding of abuse, neglect, verbal abuse, or exploitation, as defined in Section 10-103 of Title 43A of the Oklahoma Statutes, involving a person with a developmental disability has been made by DHS or an administrative law judge~~ by a community services worker or a Medicaid personal care assistant. All OCA investigations involving a confirmed finding against a community services worker, or a Medicaid personal care assistant employed by a Medicaid Personal Care Services Provider are processed in accordance with OAC 340:100-3-39 and OAC 317:35-15.

(2) After the OCA investigation report has been finalized, an e-mail notice of the areas of concern in the report is sent to the administrator, the Developmental Disabilities Services Division (DDSD) director, the applicable DDSD area manager, and the OKDHS long-term care nurse, whichever are applicable.

(3) When the OCA finding does not confirm an allegation, OCA sends a copy of the report pursuant to section 10-110(B) of Title 43A of the Oklahoma Statutes, to the administrator, ~~the director of DDSD~~ director or the APS programs manager, whichever is applicable, the assigned OKDHS long-term care nurse when applicable, and the applicable district attorney.

(4) When the OCA finding confirms an allegation against an accused caretaker who is not a community services worker, OCA sends a copy of the report to the administrator, ~~the director of DDSD~~ director, and the applicable district attorney.

(5) When the OCA finding confirms an allegation against a caretaker who is a community services worker or

a Medicaid personal care assistant, OCA submits a copy of the report to the applicable district attorney and processes the report in accordance with OAC 340:100-3-39. When the due process procedures relating to the ~~Community Services Worker~~ CSW Registry have been completed, OCA sends a copy of the report to the applicable administrator, ~~and the director of DDS~~ director or the APS programs manager, whichever is applicable, and the assigned OKDHS long-term care nurse if applicable, ~~and the applicable district attorney.~~

~~(5) Within 60 working days of receipt of a final OCA report, the director of DDS or designee informs the advocate general in writing if any personnel action has or will be taken with regard to each caretaker confirmed to have engaged in maltreatment and any corrective action taken or to be taken regarding areas of concern noted in the report. OCA reports confirmed findings to the Oklahoma Commission for Human Services during executive session.~~

(6) The Hissom class member's assigned OCA advocate notifies the client class member and the client's class member's guardian or close family member of the result of the investigation when the investigative finding has become final.

(7) If maltreatment by a guardian is confirmed, a copy of OCA's investigation report is submitted to the applicable guardianship court.

(p) **Confidentiality of OCA investigative reports.** Persons receiving copies of OCA investigative reports are bound by the confidentiality provisions of Sections 7005-1.2 through 1.4 and 7107 et seq. of Title 10, and Section 10-110 of Title 43A of the Oklahoma Statutes, whichever is applicable.

(q) **Confirmed findings involving OKDHS operated facilities.** When the Children and Family Services Division (CFS), the DHS Field Operations Division, or DDS receives a copy of a final OCA investigative report, within 60 working days of the receipt of the report, the applicable division director notifies the advocate general in writing ~~if~~ of any personnel action ~~has or will be taken or to be taken~~ with regard to each accused caretaker named in the referral report, and of any corrective action taken or to be taken regarding areas of concern noted in the report, and for each worker found to have engaged in maltreatment whether there have been any prior confirmations by OCA or the facility for client maltreatment by the worker, the basis for each such finding, and the personnel action taken in response. If personnel action has or will be taken, the division director also notifies the ~~director of the OKDHS Human Resources Management Division~~ director. If the final OCA finding does not confirm maltreatment, no information or material pertaining to the allegation or the investigation is placed in the personnel file of an accused caretaker. OCA reports information regarding confirmed findings to the Oklahoma Commission for Human Services (Commission) during executive session.

(r) **Findings involving a Hissom class member.** This Subsection applies to the administrator of the residential provider who employed, or contracted with a contractor who employed, an accused caretaker named in an OCA investigation report.

Within 60 working days of receipt of a final OCA investigation report, the administrator or designee notifies the advocate general in writing if any personnel action has or will be taken with regard to each accused caretaker named in the report, and of any corrective action taken or to be taken regarding areas of concern noted in the report. OCA reports information regarding confirmed findings to the Commission during executive session.

(s) **Storage and retention of OCA investigative records.** OCA maintains the original report, supporting documents, and pertinent recorded tapes in locked file cabinets in accordance with the applicable OKDHS records management and disposition plan. Access to investigative files and records is limited to OCA employees on a need to know basis. Requests by OKDHS employees for access to or copies of OCA investigative reports are made to the advocate general on a need to know basis.

340:2-3-37. Caretaker conduct reviews

(a) **Application.** This Section applies to referrals received by the Office of Client Advocacy (OCA) which OCA refers to a facility for an internal caretaker conduct review in accordance with OAC 340:2-3-35(a)(2). This Section does not apply to allegations involving maltreatment of a Hissom class member or person receiving Developmental Disabilities Services Division (DDS) waiver services.

(b) **Assignment to a facility to conduct a caretaker conduct review.**

(1) When OCA receives a referral which indicates possible caretaker misconduct, in lieu of an investigation OCA intake may refer it to the facility where it allegedly occurred for handling as a caretaker conduct review if:

(A) ~~there is no serious physical injury occurred and no facts are alleged which are likely to rise to the level of abuse or neglect or evidence that the client might have been exposed to a significant risk of harm;~~

(B) ~~there is a minor alleges excessive or unauthorized use of force with either no injury or only minor physical injury and it is not a suspicious injury; or~~

(C) ~~the allegation involves a minor injury and circumstances that make it likely that the minor injury was the result of an accident. there is a serious physical injury and the known credible information makes it unlikely that the serious injury was the result of abuse or neglect; or~~

(D) excessive or unauthorized use of force is alleged and there is no injury or only a minor injury.

(2) In addition to the referrals in subsection (b)(1), at Oklahoma Department of Human Services (OKDHS) operated facilities a referral indicating possible maltreatment may be referred to the facility for handling as a caretaker conduct review if the allegation involves a serious physical injury which occurred under unexplained or unusual circumstances.

(c) **Protocol for conducting a caretaker conduct review.** When OCA intake assigns a facility responsibility to conduct a caretaker conduct review, the administrator or designee takes necessary steps to ensure the safety of all clients and to protect

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the integrity of all evidence. A facility employee designated to conduct a caretaker conduct review follows the investigative procedures described in OAC 340:2-3-36, with the exception of tape recording the interviews in OAC 340:2-3-36(i)(1), including:

- (1) reviewing pertinent documentation, records, and evidence collected;
 - (2) viewing any injuries and photos of injuries, and obtaining photos of injuries;
 - (3) obtaining written statements and conducting interviews with:
 - (A) each alleged victim;
 - (B) each eyewitness;
 - (C) other persons with knowledge relevant to the allegation; and
 - (D) each accused caretaker;
 - (4) reviewing statutes, policies, directives, standards, rules, or practices relevant to the allegation;
 - (5) analyzing the accused caretaker's actions in relation to relevant statutes, policies, directives, standards, rules and practices; and
 - (6) determining the appropriate finding(s) in accordance with OAC 340:2-3-36(1).
- (d) **Returning the investigation responsibility to OCA.** If at any time during the caretaker conduct review information is learned that gives cause to believe that a client was the victim of ~~abuse, neglect, or~~ caretaker misconduct resulting in a serious injury, abuse or neglect, the administrator immediately discontinues the caretaker conduct review and contacts OCA intake to report the new information warranting an OCA investigation. OCA intake notes the ~~reported~~ new information and changes the disposition on Form OCA-1, Office of Client Advocacy Intake Referral, or its electronic equivalent, and ~~The~~ the case is ~~then~~ assigned to an OCA investigator for investigation in accordance with OAC 340:2-3-35(c).
- (e) **Written report of caretaker conduct review.** After completion of the caretaker conduct review process and determination of the appropriate finding, the person conducting caretaker conduct review prepares a written report. The written report contains:
- (1) the allegation(s), including the dates, times, and location of the alleged incident(s), the date the allegation was reported to OCA, and the OCA case number;
 - (2) a statement of any injury sustained by the alleged victim(s) and, in cases involving an injury, a statement whether photographs were taken of the injury and if so, the date they were taken;
 - (3) the finding(s), whether caretaker misconduct did or did not occur, in accordance with OAC 340:2-3-36(m);
 - (4) a list of the involved parties, their titles and role in the matter, whether they were interviewed and, if so, when;
 - (5) citation to pertinent statutes, policies, directives, standards, rules, and practices, when applicable;
 - (6) an explanation of the basis for the finding(s);
 - (7) a summary of pertinent information obtained in interviews conducted during the review;
 - (8) a list of relevant documents and records reviewed;

- (9) a list of attachments to the report; ~~and~~
- (10) a list of areas of concern identified during the course of the investigation regarding facility or OKDHS practices or procedures which have implications for the safety, health, or welfare of clients but which do not rise to the level of abuse or neglect; and
- (11) either on a cover ~~sheet~~ memo or at the end of the report, the signature and date signed by the person who conducted the caretaker conduct review, and the signature of the person who reviewed and approved the report.

(f) **Time for completion of report.** The final written report is submitted to the advocate general within ~~ten working~~ 30 calendar days from the date that OCA intake notified the administrator that an allegation is referred for caretaker conduct review. ~~With regard to caretaker conduct reviews conducted at the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center (NORCE), and the Greer Center Facility (Greer), the final written report is submitted within 30 calendar days.~~

(g) **OCA processing of caretaker conduct review reports.** The administrator transmits the completed caretaker conduct review to the advocate general. The advocate general or designee reviews the caretaker conduct review report for completeness and appropriateness of the finding. If a report is incomplete or the finding is questionable, OCA contacts the administrator to request further inquiry into the allegation. OCA opens an investigation if a report indicates the need.

(h) **Review by ~~director~~ of Developmental Disabilities Services Division (DDSD) director.** Within five working days of completion of a caretaker conduct review report at the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the facility administrator or designee informs the client and the client's guardian or parent of the result of the caretaker conduct review. If the client or the guardian or parent does not concur with the finding(s), the facility administrator or designee notifies the advocate general in writing by e-mail or letter. The advocate general refers the matter to OCA's grievance coordinator for processing for review by the DDSD director as a contested grievance in accordance with OAC 340:2-3-46 and 340:2-3-51(g) and the client or guardian or parent who did not concur with the finding(s) is considered the grievant for purposes of that review. If the grievant does not concur with the proposed resolution of the division director or designee, the matter is reviewed by the Grievance and Abuse Review Committee (GARC) in accordance with OAC 340:2-3-62 and 340:2-3-64.

340:2-3-38. Investigation of foster parent complaints of retaliation and discrimination

(a) **Application.** This Section describes processes relating to allegations of retaliation and discrimination against a foster parent by an employee of the Oklahoma Department of Human Services (OKDHS) or a child placing agency. The Office of Client Advocacy (OCA), ~~formerly known as the Office of Advocate Defender~~, is designated by Sections 7003-3.4(D) and 7204.1 of Title 10 of the Oklahoma Statutes to conduct administrative investigations into these allegations.

(b) **Definitions.** The following words and terms when used in this Section shall have the following ~~meaning~~ meanings unless the context clearly indicates otherwise:

- (1) **"Administrator"** with regard to a child placing agency means the chief administrative officer of the agency.
- (2) **"Child placing agency"** means a private agency licensed to place children in foster family homes, group homes, adoptive homes, transitional or independent living programs, or family child care homes or other out-of-home placements, and which approves and monitors such placements and facilities in accordance with the licensing requirements established by the Oklahoma Child Care Facilities Licensing Act. [10 O.S. § 401 through 415]
- (3) **"Child Welfare division"** means the OKDHS Field Operations Division (FOD) and the Children and Family Services Division (CFSD).
- (4) **"Discrimination"** means knowing and willful application of a different standard to a particular foster parent which negatively affects the foster parent.
- (5) **"Harassment"** means a knowing and willful course of conduct, statements, or behaviors serving no legitimate purpose directed at a foster parent that a reasonable person in the same or similar circumstances would find intimidating or substantially distressing.
- (6) **"Retaliation"** means threatening a foster parent with removal of a child in the foster parent's care, harassing a foster parent, refusing or failing to place a child in a licensed or certified foster home, or disrupting a child placement in reprisal for the foster parent engaging in protected activity listed in (b)(2) of this Section.
- (7) **"State office administrator"** means the ~~director of FOD~~ director of FOD, ~~the director of CFSD~~ director of CFSD, or both, or their designees.

(c) **Scope.** A foster parent has the right, without fear of reprisal or discrimination, to lodge concerns and complaints with respect to the providing of foster care services. OCA initiates investigations of allegations that:

- (1) an employee of ~~the Department~~ OKDHS or a child placing agency has:
 - (A) threatened a foster parent with removal of a child in the foster parent's care;
 - (B) harassed a foster parent;
 - (C) refused or failed to place a child in a licensed or certified foster home; or
 - (D) disrupted a child placement; and
- (2) for the purpose of retaliation or discrimination against a foster parent who has:
 - (A) filed a grievance with ~~the Department's~~ OKDHS Child Welfare division;
 - (B) provided information regarding foster care services to any state official or ~~Department~~ OKDHS employee; or
 - (C) testified, assisted, or otherwise participated in an investigation, proceeding, or hearing against ~~the Department~~ OKDHS or a child placing agency.

(d) **Exclusions.** The provisions of this Section do not apply to a complaint by a foster parent regarding the result of a

criminal, administrative, or civil proceeding for a violation by that foster parent of a law, rule, or contract provision, or an action taken by ~~the Department~~ OKDHS or a ~~child placing~~ child placing agency in conformity with the result of any such proceeding.

(e) **What is reportable.** Section 7204.1 of Title 10 of the Oklahoma Statutes provides that any foster parent who has reasonable cause to believe he or she has been improperly treated by an employee of ~~the Department~~ OKDHS or a child placing agency, as outlined in subsection (b) of this Section, may file a complaint with OCA. The law provides that persons making a report in good faith under this Section may not be adversely affected solely on the basis for having made such report. The law also provides that any person who knowingly and willfully makes a false or frivolous report or complaint or a report that the person knows lacks factual foundation may be subject to loss of foster parent approval or licensure status.

(f) **Reporting procedure.** Foster parents may file complaints by contacting:

- (1) the Foster Parent Hotline, 1-800-376-9729; or
- (2) OCA's offices in Oklahoma City, ~~1-405-521-3491~~ 1-405-525-4850 or 1-800-522-8014.

(g) **Confidentiality.** At the request of the reporter, OCA maintains confidential the identity of the reporter until the advocate general reports the results of the investigation to the Commission for Human Services (Commission) in accordance with subsection (m) of this Section. OCA maintains written records regarding the reporting source to provide information to the extent known at the time the report is received, including:

- (1) the names and addresses of the foster child and the person(s) responsible for the child's welfare;
- (2) the nature of the complaint; and
- (3) the names of the persons and agencies responsible for the allegations contained in the complaint.

(h) **Interference prohibition.**

- (1) ~~A Department~~ An OKDHS employee who interferes with an OCA investigation may be subject to administrative action for misconduct under ~~the Department's~~ OKDHS personnel policy relating to cause for disciplinary action if the employee attempts to intimidate a witness, foster parent, or other OKDHS employee, or threatens any of them with physical or mental harm.
- (2) Interference includes, but is not limited to:
 - (A) intimidating, harassing, or threatening a party to the investigation;
 - (B) retaliation against an employee for cooperating during an OCA investigation; ~~and~~
 - (C) denial of access to clients, employees, facilities, witnesses, records, or evidence; ~~and~~
 - (D) causing or influencing another person to provide false information during the investigation.

(i) **Initiation of OCA investigation.** Upon acceptance of a report of retaliation or discrimination against a foster parent, OCA assigns an investigator to investigate the allegations in accordance with this Section. OCA's investigation does not duplicate and is separate from any investigation mandated by the Oklahoma Child Abuse Reporting and Prevention Act or

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other investigations having formal notice or hearing requirements.

(j) **Rights and responsibilities of employees.** The rights and responsibilities of ~~Department OKDHS~~ employees in an OCA foster parent investigation are listed in (1) through (7) of this subsection.

(1) Employees make themselves available for interviews and accommodate the investigator in scheduling of interviews.

(2) Employees provide pertinent information and respond fully and truthfully to questions asked.

(3) In addition to being interviewed, employees may submit written statements relating to the events in question.

(4) Employees may seek advice concerning their rights and responsibilities from other parties within or outside ~~the Department~~ OKDHS.

(5) Employees prepare written statements or reports relevant to the investigation upon request.

(6) Employees, who reasonably believe answers to official inquiries regarding the events in question may incriminate them in a criminal prosecution, may decline to answer those questions.

(7) Employees interviewed do not discuss their interviews with anyone outside of ~~the Office of Client Advocacy~~ OCA.

(k) **Access.** OCA at all times is granted access to any foster home which is approved, authorized, or funded by ~~the Department OKDHS~~ or a child placing agency.

(l) **Investigation procedures.** Investigations are conducted in accordance with OAC 340:2-3-36 unless otherwise provided in this Subchapter.

(1) **Notifying administrators and accused caretakers.** The assigned investigator notifies the applicable administrator or state office administrator of the investigation and arranges for document production, site visits, and interviews. The administrator or state office administrator who employed any accused employee at the time of an alleged incident informs the accused employee of:

(A) the name and telephone number of the OCA investigator;

(B) the investigative process;

(C) the employee's rights and responsibilities relating to the investigation described in OAC 340:2-3-36(d)(1) and (2); and

(D) the nature of the allegation(s) made against the employee; however, at this time the employee is not provided the details of the allegations or the substance of the evidence.

(2) **OCA access to evidence.** Applicable administrators and state office administrators facilitate and cooperate with the OCA investigation by:

(A) providing access to requested information;

(B) producing relevant documents, files, and records, accompanying the investigator on foster home visits when requested by OCA; and

(C) providing access to accused employees and others who have knowledge of relevant information.

(3) **Document review and interviews.** The OCA investigator conducts a prompt investigation in accordance with OAC 340:2-3-36(g), (h), and (i) unless otherwise provided in this Section.

(4) **Exit conference.** The OCA investigator conducts an exit conference, either in person or by telephone, with the applicable administrator or state office administrator when the ~~information-gathering~~ information gathering portion of the investigative process is completed. The investigator informs the administrator or state office administrator of the preliminary investigative finding and that a written report is forthcoming.

(5) **The written investigation report.** After completing the ~~information-gathering~~ information gathering portion of the investigative process, the OCA investigator prepares a written report containing:

(A) the allegations investigated, including the date, time, and location of the alleged incidents, the date the allegation was reported to OCA, and the assigned OCA case number;

(B) a list of the involved parties, their titles and role in the matter, whether they were interviewed and, if so, when and where;

(C) the applicable definition of the type of misconduct at issue such as discrimination, retaliation, or both;

(D) whether the foster parent engaged in an activity listed in (b)(2) in this Section and, if so, a description of the activity;

(E) the findings in accordance with OAC 340:2-3-36(1);

(F) an explanation of the basis for the finding;

(G) in cases involving a confirmed finding, a summary of relevant information obtained during each interview conducted during the investigation;

(H) any areas of concern relating to the allegations that were identified during the investigation regarding practices or procedures of ~~the Department~~ OKDHS or the child placing agency;

(I) a list of relevant documents and records reviewed during the investigation; and

(J) a list of attachments to the report.

(6) **Dissemination of the OCA investigative report.**

(A) In cases involving allegations against a ~~Department~~ an OKDHS employee, the advocate general submits a copy of the final OCA investigative investigation report to the OKDHS Director and the state office administrators.

(B) In cases involving an employee of a child placing agency, the advocate general sends a copy of the OCA report to the administrator of the agency and the appropriate state office administrator. If the administrator of the child placing agency is the subject of the report, the report is sent to the agency's board of directors.

(C) OCA sends the foster parent and each accused ~~Department~~ OKDHS employee a letter that summarizes the allegation and states OCA's finding.

(D) All parties receiving copies of the investigative reports are bound by the confidentiality provisions of Sections 7005-1.2 and 7107 of Title 10 of the Oklahoma Statutes and Section 10-110 of Title 43A of the Oklahoma Statutes.

(m) **OKDHS Director's request for review by the Grievance and Abuse Review Committee (GARC).** Within 20 calendar days of receipt of a final OCA investigative report, the OKDHS Director can request GARC to review the allegations and submit a report of its findings in accordance with OAC 340:2-3-63.

(n) **State office administrator's response to a confirmed finding.**

(1) When a state office administrator receives a copy of an OCA investigation report containing a finding that ~~a~~ an OKDHS employee has engaged in retaliation or discrimination against a foster parent, within 30 calendar days of receipt of the OCA report the state office administrator notifies the advocate general in writing of any personnel action taken or to be taken with regard to the employee, and any corrective action taken or to be taken regarding areas of concern noted in the OCA report.

(2) If the OKDHS Director has referred the matter for review by GARC in accordance with subsection (1) of this Section, the state office administrator's response is due within 45 calendar days of GARC's written report to the OKDHS Director.

(3) When an administrator of a child placing agency receives a copy of an OCA investigation report containing a finding that an employee of the child placing agency has engaged in retaliation or discrimination against a foster parent, within 30 calendar days of receipt of the report the administrator notifies the advocate general in writing ~~if~~ of any personnel action ~~has taken~~ will to be taken with regard to each employee named in the report as having engaged in misconduct, and the status of any areas of concerns noted in the report.

(4) The advocate general reports confirmed allegations and corrective action taken to the ~~Oklahoma~~ Commission for ~~Human Services.~~

PART 5. GRIEVANCES

340:2-3-45. Grievance system protocols

(a) **Legal authority, scope, and purpose.**

(1) **Legal authority.**

(A) Section 7004-3.4 of Title 10 of the Oklahoma Statutes confers on the Office of Client Advocacy (OCA) the responsibility to establish and maintain a fair, simple, and expeditious grievance system for complaints filed by or on behalf of children in the custody of the Oklahoma Department of Human Services (OKDHS).

(B) Section 1415.1(A)(2) of Title 10 of the Oklahoma Statutes requires OKDHS to establish an ombudsman program for each institution and residential facility for the mentally retarded operated

by OKDHS, including an appeals procedure for the resolution of grievances and complaints of residents, their parents, and their court-appointed guardians. OKDHS has conferred this responsibility on OCA.

(C) OKDHS also has conferred on OCA the responsibility for grievance systems for other clients listed in paragraph (2) of this subsection.

(2) **Scope.** OCA administers and monitors grievance programs for the individuals listed in (A) through (H) of this paragraph, all of whom are collectively referred to as the "client" throughout this Section and OAC 340:2-3-46. Further detail about grievances for:

(A) minors who are in the custody of ~~the Department~~ OKDHS regardless of placement refer to OAC 340:2-3-47 through 340:2-3-49;

(B) youth in voluntary care of ~~the Department~~ OKDHS, refer to OAC 340:2-3-49;

(C) foster parents approved by ~~the Department~~ OKDHS, refer to OAC 340:2-3-50;

(D) residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer), refer to OAC 340:2-3-51;

(E) Hissom class members, refer to OAC 340:2-3-52;

(F) other clients receiving services in the community from the Developmental Disabilities Services Division (DDSD) of ~~the Department~~ OKDHS, refer to OAC 340:2-3-53;

(G) residents of group homes for persons with developmental or physical disabilities due to a developmental disability that are subject to Section 1430.1 et seq. of Title 10 of the Oklahoma Statutes, refer to OAC 340:2-3-54; and

(H) clients receiving OKDHS services who want to file a grievance about a problem, concern, or complaint for which there does not exist another grievance system within ~~the Department~~ OKDHS, refer to OAC 340:2-3-55.

(3) **Purpose.** The purpose of OCA's grievance policies and procedures is to provide clients a fair, simple, effective, and timely system of problem resolution with access to procedures through which clients can obtain a thorough review, fair consideration, and correction when appropriate. These policies also ensure that persons filing grievances are free from restraint, coercion, reprisal, or discrimination. To further this purpose, OCA independently reviews and monitors the implementation of grievance programs subject to this Section.

(4) **Informal problem resolution.** Clients have the right to file grievances. However, resolving problems and concerns informally before filing a grievance is encouraged. Not all client inquiries and requests for explanation are considered grievances, ~~most.~~ Most can be handled within the regular relationship between clients and OKDHS, provider, and facility staff. Efforts are made at the local level to resolve issues and reach a consensus with the client on a plan of action to resolve the problem

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informally unless the client desires to proceed with the grievance process.

(b) **Definitions.** In addition to the definitions in OAC 340:2-3-2, the following words and terms when used in this Part shall have the following meanings, unless the context clearly indicates otherwise:

(1) **"Area director"** means a director of one of the six service delivery areas designated by ~~the~~ OKDHS Field Operations Division (FOD).

(2) **"Area manager"** means a manager of one of the three service delivery areas designated by ~~the~~ OKDHS DDS.

(3) **"CFSD"** means the Children and Family Services Division of ~~the Department of Human Services for the State of Oklahoma~~ OKDHS.

(4) **"Client"** means any of the individuals listed in subsection (a) of this Section on whose behalf OCA maintains a grievance system.

(5) **"E-mail" communication with OCA or with the advocate general** means an e-mail sent to the e-mail address: *STO.OCA.grievances@okdhs.org.

(6) **"FOD"** means the Field Operations Division of ~~the Department of Human Services for the State of Oklahoma~~ OKDHS.

(7) **"Grievance"** is defined in subsection (c) of this Section.

(8) **"Grievant"** means a client or the person who files a grievance on behalf of a client.

(9) **"Local grievance coordinator"** or **"LGC"** means with regard to:

(A) minors in OKDHS custody who live in a residential facility, the individual designated by the facility as its grievance coordinator;

(B) minors in OKDHS custody who do not live in a residential facility, including minors in foster care and foster parents, the individual designated as grievance coordinator in the OKDHS county office where the grievant resides;

(C) DDS clients who are residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the OCA advocate staff assigned to each facility;

(D) foster parents approved by ~~the Department~~ OKDHS, the LGC county director in the OKDHS county office where the grievant resides;

(E) DDS clients who are pursuing a grievance with a provider of residential, vocational, or in-home supports, the individual designated by the provider as its grievance coordinator; and

(F) all other DDS clients, the applicable DDS area manager or designee.

(10) **"OCA grievance coordinator"** means the individual(s) designated by the advocate general to coordinate and monitor contested grievances.

(11) **"Placement grievance"** means a complaint about a present or proposed placement of ~~a~~ an OKDHS custody minor.

(c) **Grievance defined.**

(1) **"Grievance"** means a problem or concern which an individual needs assistance resolving, including a complaint of unfair treatment. At the request of a client, an unresolved problem, concern, complaint, or dispute is processed as a grievance. When a client verbally communicates a complaint to an OKDHS employee or a facility or provider employee that is not resolved, the client is informed of the right to have the problem or concern processed as a grievance. At the request of the client, the employee prepares a written statement of the client's complaint or refers the client to the local grievance coordinator to assist in doing that.

(A) **Facility or provider grievances.** The subject of a facility grievance or a provider grievance is:

(i) the substance or application of any policy, rule or regulation, written or unwritten, of ~~a~~ an OKDHS operated shelter or residential facility for minors, or a facility, agency, or provider which contracts with ~~the Department~~ OKDHS, or a child placing agency; or

(ii) a decision, act, or omission of an employee, agent, or contractor of such a facility, or any client residing in the same placement setting.

(B) **Department OKDHS grievances.** The subject of ~~a Department~~ an OKDHS grievance is:

(i) the substance or application of any policy, rule or regulation, written or unwritten, of ~~the Department~~ OKDHS, but this does not include policies, rules and regulations of OKDHS operated shelters and residential facilities for minors;

(ii) a decision, act, or omission of an employee of ~~the Department~~ OKDHS other than an employee in ~~a~~ an OKDHS operated facility; this includes a case manager, a child welfare specialist, and county office employees; or

(iii) a facility grievance filed by a resident of SORC, NORCE, or Greer.

(C) **Placement grievances.** A placement grievance is defined in subsection (b) of this Section.

(2) **Summary dispositions.** If a grievance is submitted and it falls into one of the categories listed in (A) - through (K) of this paragraph, the LGC meets with the client to provide assistance to the client in rewriting the grievance to state the problem(s) or concern(s) the client wants to grieve. If it is determined the client is asking to grieve a problem or concern covered by any of the categories below, the LGC informs the client why the grievance is not being processed, writes the reason on the bottom of ~~the grievance form~~ Form OAC-GR-1, Grievance Form, and then dates and signs the form. The grievance is logged on the grievance tracking log, a copy of the form is sent within two working days to the advocate general for review, and the original is filed in the appropriate grievance file. Within five working days of receipt, the advocate general reviews the grievance. If the advocate general determines the grievance was improperly given a summary

disposition, the advocate general informs the LGC who immediately processes the grievance. If the advocate general concurs with the summary disposition, the advocate general informs the LGC who within two working days informs the grievant and documents it.

(A) **Untimely grievances.** A grievance which is not timely filed in accordance with OAC 340:2-3-45(g) can be accepted and processed when good cause exists for the delay in filing the grievance.

(B) **Discrimination based on race, color, national origin, sex, age, religion, or disability.** If a grievance alleges discrimination or other civil rights matters, the client is referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the grievance to the OKDHS civil rights administrator and so informs the grievant.

(C) **A problem which is moot.** A moot problem is one that already has been decided or settled.

(D) **Duplicative grievances.** This is a grievance which duplicates another pending grievance in the same grievance system by or on behalf of the client involving the same incident or problem.

(E) **Requests to violate laws.** This is a grievance which requests an action which violates state or federal law.

(F) **Collateral complaint.** A collateral complaint does not involve a problem concerning the client who filed or on whose behalf the grievance was filed.

(G) **Remote grievances.** The grievance requires action by a private or public individual or entity over which OKDHS does not have authority or control such as a grievance about the action of a public school teacher, a guardian, or a physician in private practice. However, in these situations, the LGC assists the grievant in using any grievance or complaint system which may be available regarding the subject of the grievance.

(H) **Pending proceedings.** The grievance involves a matter which is the subject of a pending civil, criminal, or administrative proceeding, or a decision of a court or administrative hearing, or the subject of a pending OCA, Office of Inspector General (OIG), or Child Welfare investigation.

(I) **Investigative findings.** The results of an investigation regarding abuse, neglect, verbal abuse, caretaker misconduct, or exploitation cannot be grieved.

(J) **Fair hearing decisions.** The results of a fair hearing cannot be grieved.

(K) **Frivolous grievances.** A frivolous grievance does not state a complaint or problem of any substance. Before declining to process a grievance of this nature, the LGC contacts the grievant to inquire if the grievant needs assistance in submitting a substantive grievance.

(L) Client resolution process. If the subject of the proposed grievance is appropriate for handling by means of the Child Welfare client resolution process,

OAC 340:75-1-12.1, the LGC forwards it to the appropriate county director.

(3) **Documenting exclusions.** If a grievance is submitted and it falls into an excluded category listed in the preceding paragraph, the LGC dates and signs Form OCA-GR-1, ~~Grievance Form~~, as received, and notes on the form the reason the LGC does not process it. The grievant is informed of this decision and the reason. The grievance is logged in the grievance tracking log and the form is filed in the client's grievance file.

(4) **Who may file a grievance.** A grievance may be filed by any client listed in subsection (a) of this Section. A grievance may also be filed by or on behalf of a client by any person who knows the client and is interested in the client's welfare, including, but not limited to, a parent, guardian, relative, foster parent, court appointed special advocate, guardian ad litem, case manager, personal support team member, job coach, and others. This includes OKDHS employees, employees of residential, in-home supports, and vocational providers.

(5) **Group grievances.** Grievants whose complaints address the same issue(s) may together file a group grievance. At any time during the processing of a group grievance, an individual grievant can withdraw from the group grievance. If separate grievances are filed by two or more grievants regarding an identical issue, the interests of each grievant is identical, and the grievants do not object, a LGC can combine them for processing as a group, provided this does not unduly delay the processing of any particular grievance. When multiple grievances are grouped for processing, the LGC informs each grievant of that action. When a group grievance is filed, the LGC can ask the grievants to designate in writing a spokesperson for the group.

(6) **Grievances involving reportable incidents.** When a grievance alleges a reportable incident, including but not limited to, facts which constitute abuse, neglect, exploitation, or caretaker misconduct, as defined in OAC 340:2-3-2, the LGC immediately reports it to OCA intake pursuant to OAC 340:2-3-33. A grievance involving a reportable incident may be processed during a pending investigation provided the grievance does not interfere with the investigation and as needed is held in abeyance pending the conclusion of the investigation. If the grievance alleges additional facts which do not constitute abuse, neglect, exploitation, or caretaker misconduct, the grievance is processed as to those facts. The LGC contacts OCA and any other law enforcement agency investigating the matter to coordinate processing the grievance.

(d) **Grievance policies required.** Every provider and facility providing services to a client listed in OAC 340:2-3-45(a)(2) who is living in Oklahoma is required to operate a system for resolution of grievances by clients using policies and procedures meeting the requirements of this Part.

(1) **Designation of LGC.**

(A) Every public and private facility and provider subject to this Part, OKDHS county office, and DDS area office designates an employee to serve as LGC to

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carry out the responsibilities described in this Section. Facilities and providers inform the advocate general of the name, phone number, mailing address, and e-mail address of their LGC, and inform the advocate general of any changes within 30 calendar days of the effective date of a change. OCA's advocates assigned to SORC, NORCE, and Greer serve as the LGC at those facilities. The LGC is an individual who:

- (A*i*) implements grievance policies and procedures;
- (B*ii*) has experience with the programs and functions of the facility, provider, county office, or DDS area office;
- (C*iii*) functions impartially and independently in the processing of grievances;
- (D*iv*) reports directly to the administrator with regard to the LGC's grievance duties and functions; and
- (E*v*) within 60 calendar days of being designated LGC, receives ~~training from the Office of Client Advocacy~~ OCA or substantially equivalent training that provides the LGC with a working knowledge of applicable grievance policies, forms, procedures, time frames, and the LGC's responsibilities under this subchapter, and yearly training thereafter from the ~~Office of Client Advocacy~~ OCA.

(B) Each facility and provider subject to this Part, each OKDHS county office, and each DDS area office displays in a place conspicuous to its clients a poster notifying clients of its grievance system and the name of its local grievance coordinator, using Form OCA-GR-9, Grievance Poster-Child Welfare Contracted Facilities, Form OCA-GR-9-A, Grievance Poster-OKDHS County Offices, or Form OCA-GR-9-B, Grievance Poster-DDSD Providers, whichever is applicable.

(2) **Advocate general review of grievance programs.** The grievance system operated by each facility and provider subject to this Part is subject to the approval of the advocate general. Each provider and facility other than ~~a~~ an OKDHS operated facility is required to submit to the advocate general for approval its grievance policies and procedures, and any revisions which are adopted, along with proof that the policies or revisions have been approved by the applicable approving authority.

(3) **Notifying clients of their grievance rights.** Each client covered by these grievance policies is notified of his or her right to and how to access the grievance resolution procedures using Form OCA-GR-2, Notice of Grievance Rights: Minors in OKDHS Custody, OCA-GR-2-A, Notice of Grievance Rights: Minors in OKDHS Custody - Youth in Voluntary OKDHS Care, Form OCA-GR-3, Notice of Grievance Rights: DDS Clients (General), Form OCA-GR-3-A, Notice of Grievance Rights: Hissom Class Members, or Form OCA-GR-4, Notice of Grievance Rights: Foster Parents, whichever is applicable. Hissom class members are provided notice in accordance with

OAC 340:2-3-52. In addition, providers are encouraged to provide a simplified version of their grievance policies using language appropriate to the age level and cognitive functioning of its clients.

(4) **Monitoring and evaluation.** OCA ensures the quality of grievance systems by establishing minimum standards and through an ongoing monitoring program. The advocate general and OCA staff have immediate and unlimited access to clients, staff, and facility files, records, and documents relating to grievance procedures and practices.

(5) **Reporting deficiencies.** An LGC who becomes aware of a deficiency in a grievance system, including a failure to follow or implement the grievance policy, must report it to the advocate general by phone (~~1-405-521-3491~~ 1-405-525-4850 or 1-800-522-8014), fax (~~1-405-521-2743~~ 1-405-525-4855), or e-mail.

(6) **Advocate general deficiency report.** If the advocate general determines a deficiency exists in the grievance system of a facility or provider, the advocate general sends a report of deficiency to the administrator and, where applicable, to the state office administrator.

(7) **Advocate general grievance.** The advocate general may, on behalf of any or all clients served by the grievance policy in this Section, originate a grievance. An advocate general grievance is filed with the administrator or the state office administrator.

(8) **Advocate general report.**

(A) The advocate general may initiate an inquiry on behalf of any client as defined in subsection (a) of this Section regarding:

- (i) any aspect of the care of a client which affects the quality of the client's life;
- (ii) the substance, application, or interpretation of any policy, rule or regulation, written or unwritten, of ~~a~~ an OKDHS operated shelter or residential facility, or a facility or agency which contracts with OKDHS, or a placement provider; or
- (iii) any decision, behavior, or action of an employee, agent, or contractor of OKDHS, or of any client residing in the same placement setting.

(B) The advocate general issues a report which sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the state office administrator. A copy is submitted to the OKDHS Director.

(e) **The grievance form.** A grievant files a grievance by obtaining from the LGC Form OCA-GR-1, filling it out, and turning it in to the LGC or to any facility ~~of~~ or OKDHS staff for the purposes of the staff immediately transmitting it to the LGC.

(1) LGCs obtain copies of this form from the ~~Office of Client Advocacy~~ OCA in Oklahoma City (~~1-405-521-3491~~ 1-405-525-4850 or 1-800-522-8014).

(2) Any person who needs assistance in completing the grievance form is given assistance by the LGC coordinator or any other staff member.

(3) A grievance received on paper other than Form OCA-GR-1 is attached to a Form OCA-GR-1 filled out by the LGC on behalf of the grievant.

(f) **Retaliation prohibited.** No person filing a grievance shall be retaliated or discriminated against or harassed, solely or in part, for having asserted a grievance, or sought advice or inquired about filing a grievance. Clients are encouraged to use available grievance systems. Clients are not discouraged from filing a grievance.

(g) **Grievance time limits.** Except for DDS clients, in order to be processed for action and resolution, a grievance must be filed within 15 working days of the date of the incident, decision, act, or omission complained about in the grievance, or within 15 working days of the date the grievant becomes aware of or, with reasonable effort, should have become aware of a grievable issue. The time limit for filing a grievance may be extended by the LGC.

(1) The filing time and all other time periods contained in this Section are counted in working days unless otherwise specified. In computing any period of time, the day of the incident, decision, act, or omission at issue is not included. The next calendar day is the first day of the time period. If the last day of the time period is a Saturday, Sunday, or legal holiday, the period is extended to the next business day.

(2) If the LGC or any decisionmaker fails to meet any time limit for processing a grievance without obtaining an extension, the LGC processes the grievance to the next step within two working days of the grievant's request.

(3) Responses, notices, and other documents issued during the processing of a grievance are delivered to the grievant in person or by mail at the last known address of the grievant. A grievance is considered administratively resolved when a correctly addressed letter sent to the last known address of the grievant with proper postage is returned undeliverable with no forwarding address.

(4) There is no time limit on allegations of abuse, neglect, verbal abuse, exploitation, or caretaker misconduct. If a grievance, timely or untimely, consists of such an allegation, OCA intake is immediately notified in accordance with OAC 340:2-3-33.

(h) **Grievance records, logs, and quarterly reports.** The LGC maintains an accurate and complete record of each grievance filed as well as summary information about the number, nature, and outcome of all grievances filed. Records of grievances are kept separate and apart from other client records and files. Grievance records relating to DDS clients are retained in accordance with OAC 340:100-3-40. ~~Department~~ OKDHS grievance records and files are retained in accordance with state and federal laws governing retention and destruction of records.

(1) Each LGC tracks grievances as they progress through the system and keeps a log of every numbered grievance form issued by OCA. Form OCA-GR-5, Grievance Tracking Log, can be used for this purpose. For grievances submitted by a client, the tracking log includes: the grievance number; the name of the grievant given the form; the date the form was submitted by the

grievant; the nature and outcome of the grievance; the date of final resolution; and the level where it was resolved. If a grievance form is provided to a client and not turned in, the facility tracks only the number on the form, the name of the client to whom the form was given, and the date it was given to the client.

(2) Each LGC submits to the advocate general a quarterly grievance report, Form OCA-GR-6, Quarterly Grievance Report. The quarterly report is transmitted to OCA the advocate general no later than the 21st day following the end of each calendar quarter. Quarterly reports are submitted by mail, fax, or e-mail. In the event no grievance activity occurred or was pending during a particular calendar quarter, the LGC can inform the advocate general this by e-mail in lieu of submitting Form OCA-GR-6. The e-mail address is: *sto.oca.grievances@okdhs.org.

(3) If a grievance becomes moot at any point during the processing of the grievance, the LGC can stop the grievance process and declare the grievance "administratively resolved." The LGC informs the grievant, notes it on the applicable Form OCA-GR-1 and the tracking log, and sends a copy of ~~the Form~~ Form OCA-GR-1 to OCA with the next quarterly grievance report.

(i) **Processing the grievance form.** After completing Form OCA-GR-1, the grievant submits the form directly to the LGC or any other employee of the facility or OKDHS. Form OCA-GR-1 is printed in duplicate sets with a carbonless yellow copy. The grievant submits the white copy and keeps the yellow copy. If someone other than the LGC receives a grievance, that person submits it directly to the LGC within 24 hours of receipt.

(j) **Informal resolution of grievance.** If the LGC is able to promptly resolve the grievance to the grievant's satisfaction without further processing, the LGC fills out the bottom of Form OCA-GR-1, signs it, and files it in the appropriate grievance file.

(k) **First level problem resolution.** Within two working days of receipt of Form OCA-GR-1, if the grievance has not been resolved to the grievant's satisfaction, the LGC fills out Form OCA-GR-1-A, Local Grievance Coordinator Worksheet.

(1) The LGC identifies who has the authority to provide the quickest and surest resolution to the problem at the lowest level in the organizational structure.

(A) For ~~Departmental~~ OKDHS grievances of minors in OKDHS custody and youths in voluntary OKDHS care, the decisionmaker is the supervisor of the grievant's child welfare specialist.

(B) For grievances regarding placements above the therapeutic foster care level made by Children and Family Services Division (CFSD) placement services, the decisionmaker is the applicable CFSD programs manager.

(C) For placement grievances regarding a specific foster child, the decisionmaker is the applicable ~~county~~ county director.

(D) If the minor also is a DDS client, this may be the DDS case manager supervisor.

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- (2) The LGC completes the first box in the first level section on Form OCA-GR-1-A, attaches the corresponding Form OCA-GR-1 and other relevant documentation and information, and submits it to the first level decisionmaker, by the most efficient means practicable, within two working days of receipt of the grievance from the grievant.
- (3) The first level decisionmaker responds to the grievance within five working days of receipt of Form OCA-GR-1-A by completing the second box in the first level section on Form OCA-GR-1-A. If the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action. The grievant may contest the target date by taking the grievance to the next level of problem resolution.
- (4) The LGC monitors the timely response by the first level decisionmaker. If a complete response is not timely received by the LGC, the LGC notes this on Form OCA-GR-1-A and the grievance immediately proceeds to the second level of problem resolution.
- (5) Within two working days of receipt of the first level response, the LGC or designee meets with the grievant to inform the grievant of the proposed resolution and the right to take the grievance to the second level problem resolution, and determines if the grievant is satisfied with the proposed resolution. The first level decisionmaker may meet with the grievant along with the LGC. If the grievant needs time to decide whether to accept the proposed resolution, the grievant has two working days within which to make a decision. If no decision is communicated to the LGC within two working days, the grievant will be deemed to have accepted the proposed resolution.
- (6) If the grievant is satisfied with the proposed resolution, the LGC indicates the grievant's acceptance on Form OCA-GR-1-A, notifies the individuals responsible for resolution of the grievance, and places the form in the appropriate grievance file.
- (7) If the proposed resolution has been accepted by the grievant but involves a target date in the future, the LGC monitors compliance with the target date. If the LGC determines that the resolution has not been achieved by the target date, the LGC immediately reopens the grievance and processes it for second level problem resolution.
- (8) If the grievant does not accept the proposed resolution and desires to take the grievance to the second level of problem resolution, the LGC processes the grievance for the second level problem resolution in accordance with subsection (l) of this Section.
- (1) **Second level problem resolution.**
- (1) If the grievance is not resolved at the first level of problem resolution, the LGC processes it in accordance with this subsection within two working days of the grievant requesting second level problem resolution pursuant to subsection (k) of this Section.
- (2) The LGC fills out the first box in the ~~Second Level~~ second level section on Form OCA-GR-1-A, ensures the corresponding Form OCA-GR-1 and other relevant documents are attached, and submits it immediately to the ~~administrator~~ second level decisionmaker. For facilities and providers subject to these rules, the administrator or designee is the second level decisionmaker. For OKDHS grievances, the OKDHS county director or the DDS area manager, whichever is applicable, is the second level decisionmaker. If the administrator, county director, or DDS area manager was the first level decisionmaker, then the second level of problem resolution is skipped and the grievance is processed as a contested grievance pursuant to subsection (m) of this Section.
- (3) The administrator or designee responds to the grievance within seven working days of receipt of Form OCA-GR-1-A by completing the applicable box in the ~~Second Level~~ second level section on Form OCA-GR-1-A. If the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action.
- (4) The second level decisionmaker for a placement grievance regarding a specific foster child is the applicable area director.
- (5) The LGC monitors the timely response by the administrator. If a complete response is not timely received by the LGC, the LGC notes this on Form OCA-GR-1-A and the grievance immediately is processed as a contested grievance. A contested ~~Department~~ OKDHS grievance is processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.
- (6) Within two working days of receipt of the second level response, the LGC meets with the grievant to inform the grievant of the proposed resolution and the right to contest the response to the grievance, and determines if the grievant is satisfied with the proposed resolution. If the grievant needs time to decide whether to accept the proposed resolution, the grievant has two working days within which to make a decision. If no decision is communicated to the LGC within two working days, the grievant will be deemed to have accepted the proposed resolution.
- (7) If the grievant is satisfied with the proposed resolution, the LGC indicates the grievant's acceptance on Form OCA-GR-1-A, notifies the individuals responsible for resolution of the grievance, and places the form in the appropriate grievance file.
- (8) If the proposed resolution has been accepted by the grievant but involves a target date in the future, the LGC monitors compliance with the target date. If the LGC determines that the resolution has not been completed by the target date, the LGC immediately reopens the grievance and processes it as a contested grievance.
- (9) If the grievant does not accept the proposed resolution and indicates a desire to contest the response, a contested ~~Department~~ OKDHS grievance is processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.
- (m) **Contested facility or provider grievances.** If the grievant does not accept the proposed resolution, the target date of the second level ~~decision-making~~ decision-making,

or both, a facility or provider grievance, with the exception of grievances of Hissom class members, is appealed to the chair of the board of directors of the facility or provider or an appeals committee designated by the board. However, grievances at ~~DHS-operated~~ OKDHS-operated facilities are appealed as a contested grievance in accordance with OAC 340:2-3-46.

(1) The LGC transmits a contested facility or provider grievance to the chair of the board of directors of the facility or provider, or an appeals committee designated by the board, within one working day of learning that the grievant does not accept the proposed resolution and is contesting the proposed resolution.

(2) In reviewing the contested grievance, the board of directors, or appeals committee if applicable, is not required to hold a hearing to hear evidence or arguments. In the event the board determines that hearing evidence would assist it in resolving the grievance, the board has the option of holding a hearing. If it does so, the hearing does not require the formalities of a fair hearing.

(3) Within ten working days of receiving a contested grievance, the chair of the board of directors or the appeals committee responds to the grievant by submitting a written decision to the LGC.

(34) Within two working days of receiving the written decision of the chair of the board of directors or the appeals committee, the LGC informs the grievant of that decision and provides the grievant with a copy of the board's written decision. This concludes the grievance process and the grievant's administrative remedies have been exhausted.

(n) **Fast track grievances.** When the subject of an OKDHS grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to the facility director or to the OCA grievance coordinator for processing as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance coordinator can shorten the time for responding as warranted by the circumstances.

(o) **Communications with OCA.** Any notices, forms or other information that facilities, providers or OKDHS county offices are required to submit to OCA or the advocate general can be submitted by means of e-mail using the e-mail address [*sto.oca.grievances@okdhs.org](mailto:sto.oca.grievances@okdhs.org).

340:2-3-46. Contested grievances appealed to the state office

(a) **Application.** This Section describes the processes for contesting the second level response to Oklahoma Department of Human Services (OKDHS) grievances, facility grievances at OKDHS operated facilities, and provider grievances of Hissom class members.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Initiating the contested grievance.** When a grievant asks to appeal a grievance to the state office administrator, within one working day of being informed of that request, the local grievance coordinator (LGC) transmits to the Office of

Client Advocacy (OCA), Attn. OCA grievance coordinator, Form ~~OCA-GR-1A~~ OCA-GR-1-A, Local Grievance Coordinator Worksheet, which has attached the corresponding Form OCA-GR-1, Grievance Form, and other documents and information relevant to the subject matter of the grievance.

(d) **Documentation requirements.** When Form ~~OCA-GR-1A~~ OCA-GR-1-A is submitted to OCA, it has attached:

- (1) the corresponding Form OCA-GR-1;
- (2) supporting facts relating to the proposed resolution by the ~~second level~~ second level decisionmaker, including documentation relating to the first level and second level problem resolution processes; and
- (3) any written rule, policy, procedure, regulation, and other information relevant to the subject matter of the grievance.

(e) **OCA processing of grievance.** Within two working days of OCA's receipt of a contested grievance, OCA reviews the contested grievance and accompanying documentation and determines if any additional information is necessary for disposition of the appeal. When any information appears to be missing, OCA contacts the person(s) in possession of the needed information and sets deadlines for submission of the information by the most efficient means to avoid delays in processing of the contested grievance.

(f) **Rejected grievances.** If OCA determines the subject matter of a grievance falls in one of the categories listed in OAC 340:2-3-45(b)(2), OCA returns the grievance to the LGC with a cover letter indicating the reason the grievance has not been accepted for processing as a contested grievance. Within two working days of receipt of OCA's letter, the LGC meets with the grievant to inform the grievant of the status of the grievance.

(g) **OCA transmittal to state office administrator.** Within three working days of OCA's receipt of a contested grievance and all documents required by subsection (d) of this Section, the advocate general or designee prepares and sends Form OCA-GR-7, Contested Grievance Transmittal, to the state office administrator with decision-making authority to respond to the subject of the grievance.

(h) **State office administrator's response.** The state office administrator who receives a contested grievance responds to the grievant within ten working days. The advocate general may grant an extension when good cause is shown, such as the complexity of the issues. The state office administrator sends his or her response directly to the LGC after completing the middle portion of the Form OCA-GR-7, ~~Contested Grievance Transmittal~~. A copy is sent to the advocate general. The state office administrator attaches his or her response to Form OCA-GR-7 and includes:

- (1) the proposed resolution and how it is to be implemented;
- (2) the person(s) responsible for implementing the proposed resolution;
- (3) the target date for the proposed resolution;
- (4) facts which support the appropriateness of the proposed resolution by the facility, including relevant documentation; and

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(5) any written rule, policy, procedure, regulation, and other information relevant to the subject matter of the grievance and the proposed resolution.

(i) **Timely response required.** The OCA grievance coordinator monitors the timely response by the state office administrator. If a complete response is not timely received by the OCA grievance coordinator and an extension has not been granted, the OCA grievance coordinator immediately processes the grievance for review by the Grievance and Review Committee (GARC) in accordance with OAC 340:2-3-64(b). In that event, OCA notifies the grievant and affected state office administrator that the grievance is being processed for GARC.

(j) **Presentation of proposed resolution.** The LGC or designee meets with the grievant within two working days of receipt by the LGC of the state office administrator's response. If the grievant accepts the proposed resolution, the LGC notes this on the OCA transmittal memo and then files it in the client's grievance file.

(k) **Request for GARC review.** If the grievant does not accept the response of the state office administrator, the LGC completes the bottom portion of Form ~~OAC-GR-7~~ OCA-GR-7 and returns it to the OCA grievance coordinator within two working days. Upon receipt by OCA of Form ~~OAC-GR-7~~ OCA-GR-7, the grievance is processed for review by GARC in accordance with OAC 340:2-3-64.

340:2-3-50. Grievances of foster parents

(a) **Application.** This Section describes processes relating to grievances of foster parents approved by the Oklahoma Department of Human Services (OKDHS). Section 7213 of Title 10 of the Oklahoma Statutes confers on OKDHS the responsibility to establish grievance procedures for foster parents with whom state agencies or ~~child placing~~ child placing agencies contract.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Form OCA-GR-4, Notice of Grievance Rights: Foster Parents, is given to each foster parent when approved as ~~a~~ an OKDHS foster parent and at reassessment. It is given to the foster parent by the Child Welfare (CW) worker assigned to the foster home within two working days of the approval or the reassessment. This form is used to identify the local grievance coordinator (LGC) and to explain the foster parent's right to grieve. After the foster parent signs the form, a copy is given to the foster parent and the original is maintained in the permanent record for the foster parent.

(d) **Grievance defined.** Foster parents may file grievances with respect to the provision or receipt of services.

(1) **Grievable issues.** Except for the limitations listed in subsection (d)(2) of this Section, matters which can be the subject of a grievance include:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of ~~the Department~~ OKDHS; or

(B) a decision, act, or omission of an employee of ~~the Department~~ OKDHS.

(2) **Summary dispositions.** In addition to the categories in Section OAC: 340:2-3-45(c)(2), situations which are not grievable by foster parents under this grievance system are:

(A) a decision of a court;

(B) findings of a child abuse and neglect investigation or assessment in a foster home; ~~the.~~ The process for appealing these findings is found at OAC 340:75-1-12.2;

(C) disposition of a fair hearing regarding closure of a foster home; ~~the.~~ The fair hearing process regarding closure of a foster home is found at OAC 340:75-7-92;

(D) disputes with other foster parents;

(E) written plans of compliance; The foster parents provide their written input on the compliance documentation; and

(F) replacement of a child in a foster home after removal due to a child abuse or neglect investigation; ~~the.~~ The fair hearing process regarding replacement in foster care is found at OAC 340:75-7-87(c).

(3) **Grievances alleging retaliation.** Grievances alleging retaliation or discrimination, as those terms are defined in OAC 340:2-3-46(c), are processed in accordance with that Section.

(4) **Grievances alleging discrimination.** If a grievance alleges discrimination based on sex, age, national origin, religion, color or disability, the grievant is referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the grievance to the OKDHS civil rights administrator, and so informs the grievant.

(e) **Filing and processing of grievance.** A grievance filed by a foster parent is processed as ~~a Department an~~ OKDHS grievance in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(1) The county ~~grievance coordinator~~ director serves as the LGC for grievances filed by foster parents. For grievances involving specialized foster care, the applicable Developmental Disabilities Services Division (DDSD) area manager or designee serves as the LGC.

(2) Foster parent grievances must be filed within 45 calendar days of the occurrence.

(3) After the grievance procedure has been completed, a foster parent or former foster parent has a right of access to the grievance record of grievances the foster parent filed.

(f) **Contested grievances.** Contested grievances are processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section.

340:2-3-51. Grievances of residents of DDSD Facilities: Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer)

(a) **Application.** This Section describes processes relating to grievances of residents of Oklahoma Department of Human Services (OKDHS) operated facilities listed in Sections

1406 and 1414.1 of Title 10 of the Oklahoma Statutes, the "residents," who want to file a grievance. Section 1415.1 of Title 10 of the Oklahoma Statutes confers on ~~the Department OKDHS~~ the responsibility for establishing an ombudsman program which includes a grievance system at each ~~Department OKDHS~~ operated facility for persons with developmental disabilities.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Form OCA-GR-3, Notice of Grievance Rights: DDS/D Clients (General), is given by the Developmental Disabilities Services Division (DDS/D) facility to a resident and his or her guardian within 24 hours of the resident's admission to a facility and yearly thereafter at the annual individual planning meeting. This form is used to identify the local grievance coordinator (LGC) and to explain the resident's right to grieve. After the resident or guardian signs the form, a copy is given to the resident or to the resident's guardian, or close family member if the resident does not have a guardian, or both, and the original is maintained in the permanent record for the resident.

(d) **Filing and processing of grievance at the facility.** Grievances of residents are processed in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(1) The Office of Client Advocacy (OCA) maintains an ombuds office on campus at ~~Southern Oklahoma Resource Center (SORC) and Northern Oklahoma Resource Center (NORCE)~~. OCA assigns advocates to its ombuds offices at the facilities who serve as the LGC at those facilities and ~~Greer Center Facility (Greer)~~ and provide provides assistance to residents, their guardians, and persons interested in their welfare who want to file a grievance. [OAC 340:2-3-71(h)(4)]

(2) The OCA advocates at a facility send a copy of a grievance to the guardian or guardian ad litem of the resident and to the parent, unless contraindicated.

(3) If a grievance involves a decision of a resident's team, the first level decisionmaker is the applicable unit coordinator.

(e) **Time limits on filing grievances.** The time limit in OAC 340:2-3-10(g) does not apply to grievances filed by or on behalf of residents.

(f) **Second level problem resolution.** The facility director is the second level decisionmaker.

(g) **Contested grievances.** When a resident asks to contest the administrator's response to a grievance, the contested grievance is processed in accordance with OAC 340:2-3-46. The ~~director~~ of DDS/D director or designee is the state office administrator responsible for responding to contested grievances of residents.

(h) **Request for review by Grievance and Review Committee (GARC).** When a resident requests review by GARC of the DDS/D director's response to a grievance, the OCA grievance coordinator prepares a request for GARC review using a format prescribed by OCA which includes the information listed in subsection (i) of this Section.

(i) **Advocate inquiry.** An OCA advocate may file a formal inquiry to request information relating to: the treatment of one or more residents; the substance, application or interpretation of any policy, rule or regulation, written or unwritten, of ~~the Department OKDHS~~ or an agent or contractor of ~~the Department OKDHS~~; or any decision, behavior or action of a ~~Department an OKDHS~~ employee, agent or contractor, or of another resident.

(1) An advocate formal inquiry is submitted directly to the facility director or any other ~~Department OKDHS~~ employee believed to have the knowledge to respond to the inquiry. The person to whom the inquiry is submitted has seven working days from receipt of the inquiry to respond in writing. The advocate general can grant an extension.

(2) If the response does not resolve the concern which prompted the formal inquiry, or if a response is not timely received, the matter may be treated as a formal grievance and be processed as a contested grievance pursuant to OAC 340:2-3-46.

(3) The advocate general issues a report which sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the state office administrator. A copy is submitted to the OKDHS Director.

(j) **Advocate grievance.** An OCA advocate can file a grievance on behalf of a resident even when a grievance has not been filed by or on behalf of a resident.

(1) At the discretion of the advocate general or designee, an advocate grievance is filed directly with the facility director. The facility director has seven working days to respond in writing. The advocate general can grant an extension for the facility director's response.

(2) If the facility director's response is not acceptable or is not timely submitted, it is processed as a contested grievance pursuant to OAC 340:2-3-46.

(k) **Fast track grievances.** When the subject of a ~~Department an OKDHS~~ grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to the facility director or to the OCA grievance coordinator for processing as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance coordinator can shorten the time for responding as warranted by the circumstances.

340:2-3-52. Grievances of Hissom class members

(a) **Application.** This Section describes processes relating to grievances of Hissom class members. The ~~Department's Oklahoma Department of Human Services' (OKDHS)~~ legal basis and authority for grievances grievance policies and procedures for Hissom class members includes orders of the United States District Court for the Northern District of Oklahoma in Homeward Bound, et al., vs. The Hissom Memorial Center, Case No. 85-C-437-E.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-46(b) apply to this Section unless the context clearly indicates otherwise.

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(c) **Notice of grievance rights.** The Office of Client Advocacy (OCA) advocate assigned to a Hissom class ~~members~~ member gives Form OCA-GR-3-A, Notice of Grievance Rights: Hissom Class Members, at least yearly to each class member or his or her guardian(s), close family members, and volunteer advocates. This form is used to identify the OCA advocate assigned to the class member and to explain the class member's right to grieve. After the class member, guardian(s), or both, sign the form, the advocate documents this in a contact sheet and provides copies to the client or the client's guardian, the assigned Developmental Disabilities Services Division (DDSD) case manager, and the program coordinator of the applicable provider for placement in the client's home record. The original is maintained in OCA's record for the class member.

(d) **Filing and processing of grievances.** Grievances of class members are processed in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(1) OCA assigns an advocate to represent each class member. The assigned advocate serves as the grievance advisor for the class member and provides assistance to class members and persons interested in their welfare who want to file a provider or a ~~Department~~ OKDHS grievance. [OAC 340:2-3-71(h)(4)] When an advocate files a provider or ~~Department~~ OKDHS grievance on behalf of a class member, the advocate contemporaneously provides a copy of the grievance to the DDSD case manager assigned to the class member and to the DDSD programs administrator for community services.

(2) Class members, their guardians, ~~OCA~~ volunteer advocates and other advocates, case managers, personal support team members, and persons interested in their welfare also can file a ~~Department~~ an OKDHS grievance by submitting Form OCA-GR-1, Grievance Form, to the local grievance coordinator (LGC) in the appropriate DDSD area office. When the LGC receives a grievance which has not been submitted by the OCA advocate representing the class member, the LGC promptly informs the advocate of the grievance by e-mail, fax, or telephone.

(3) If a grievance involves a decision of a class member's team, the first level decisionmaker is the supervisor of the client's DDSD case manager.

(e) **Provider grievances.**

(1) Each residential and vocational provider that contracts with DDSD to provide services to Hissom class members has a grievance system for resolution of grievances. Their written grievance policies, forms, and procedures are in compliance with OAC 340:2-3-45.

(2) Provider grievances are initiated by the class member, the assigned OCA advocate, or a person interested in the welfare of the class member by using Form OCA-GR-1 or the provider's grievance form. The completed grievance form is submitted to the provider's grievance coordinator. Upon receipt of a provider grievance by or on behalf of a Hissom class member by anyone other than the OCA advocate or the DDSD case manager for the class member, the LGC promptly informs the DDSD case manager and the advocate assigned to the class member by ~~email~~

e-mail, fax, or phone. If a ~~Department~~ an OKDHS employee initiates a grievance on behalf of a class member, at the time the grievance is filed the employee sends a copy to the DDSD case manager and the OCA advocate assigned to the class member.

(3) If the subject matter of a grievance can be submitted for resolution as a provider grievance or a ~~Department~~ an OKDHS grievance, the class member has the option to file it as a provider grievance, a ~~Department~~ an OKDHS grievance, or both.

(f) **Time limits on filing grievances.** The time limit in OAC 340:2-3-45(g) does not apply to grievances filed by or on behalf of Hissom class members.

(g) **Fast track grievances.** When the subject of a ~~Department~~ an OKDHS grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to the OCA grievance coordinator for processing as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance coordinator can shorten the time for responding as warranted by the circumstances.

(h) **Second level problem resolution.** The area manager of the appropriate DDSD area office is the individual responsible for responding to a ~~Department~~ an OKDHS grievance at the second level of problem resolution.

(i) **Contested grievances.** When the response to a ~~Department~~ an OKDHS or provider grievance is contested by a class member or a grievant on behalf of a class member, the contested grievance is processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section. The director of DDSD is the state office administrator responsible for responding to contested grievances of class members.

(j) **Request for review by the Grievance and Abuse Review Committee (GARC).** When a Hissom class member requests review by ~~the Grievance and Abuse Review Committee~~ (GARC) of the DDSD director's response to a grievance, the OCA grievance coordinator prepares a request for GARC review using the format prescribed by OCA which includes the information listed in subsection (i) of this Section.

(k) **Formal inquiry.** The advocate general or any OCA advocate staff may file a formal inquiry to request information relating to: the treatment of a client; the substance or application of any policy, rule, or regulation, written or unwritten, of ~~the Department~~ OKDHS or an agent or contractor of ~~the Department~~ OKDHS; or any decision, behavior or action of a ~~Department~~ an OKDHS employee, agent or contractor, or of another client.

(1) A formal inquiry is submitted directly to the administrator of a community services provider or the appropriate DDSD area manager. An advocate general formal inquiry is submitted to the director of DDSD. The person to whom it is submitted has seven working days to respond in writing. The advocate general can grant an extension.

(2) If the response to the formal inquiry does not resolve the concern which prompted the formal inquiry, the matter may be treated as a formal grievance and be processed as a contested grievance.

(3) The advocate general issues a report which sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the state office administrator. A copy is submitted to the OKDHS Director.

(l) **Advocate grievances.** An OCA advocate may file a grievance on behalf of a class member even though a grievance has not been filed by or on behalf of the class member.

(1) At the discretion of the advocate general or designee, an advocate grievance is submitted directly to the administrator of a provider or the appropriate DDS area manager.

(2) An advocate general grievance is submitted directly to the director of DDS or the administrator of the provider agency, whichever is applicable.

(3) The person to whom it is submitted has seven working days to respond in writing. The advocate general can grant an extension.

(4) If the response to a grievance is not acceptable, or is not timely submitted, it is processed as a contested grievance pursuant to OAC 340:2-3-46.

(m) **Monitoring of grievance programs.** Providers submit their policies for review and approval by the advocate general. OCA provides training and technical assistance to providers, at their request, in the development of grievance forms and procedures. OCA, in cooperation with other monitoring entities to avoid unnecessary duplication, monitors provider grievance programs in accordance with OAC 340:2-3-45(d) through (h).

340:2-3-53. Grievances of clients receiving services from the Developmental Disabilities Services Division (DDS)

(a) **Application.** This Section describes processes relating to grievances of clients receiving services from the Developmental Disabilities Services Division (DDS) who are not residing in a an Oklahoma Department of Human Services (OKDHS) operated facility and are not a Hissom class member. This Section includes minors and adults in specialized foster care.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** The DDS case manager gives Form OCA-GR-3, Notice of Grievance Rights: DDS Clients (General), to the service recipient, or guardian if applicable, at the initial plan of care meeting and at each annual plan of care meeting thereafter. If the service recipient does not have a DDS case manager, the provider gives Form OCA-GR-3 to the service recipient within 30 calendar days of service initiation and annually thereafter. Form OCA-GR-3 is used to identify the local grievance coordinator and to explain the client's right to grieve. After the client or guardian signs the form, the original is maintained in the permanent record for the client.

(d) **Filing and processing of grievance.** Provider and ~~Department~~ OKDHS grievances are filed and processed in

accordance with OAC 340:2-3-45. If a grievance involves a decision of a resident's team, the ~~first level~~ first level decision-maker is the supervisor of the client's case manager.

(e) **Time limits on filing grievances.** The time limit in OAC 340:2-3-45(g) does not apply to grievances filed by or on behalf of these clients.

(f) **Contested grievances.** When a grievant asks to appeal a ~~Department an~~ OKDHS grievance, the appeal is processed in accordance with OAC 340:2-3-46.

(g) **Monitoring grievance programs.** OCA, in cooperation with other monitoring entities to avoid unnecessary duplication, monitors provider grievance programs in accordance with OAC 340:2-3-45(d) through (m).

340:2-3-55. Grievances of ~~Department~~ OKDHS clients not covered by another grievance system

(a) **Application.** This Section describes the grievance policy for persons receiving Oklahoma Department of Human Services (OKDHS) services not covered by another grievance system or issues not specifically addressed by ~~the Department's~~ OKDHS fair hearing process. A grievance or complaint is not processed under this Section if ~~the Department~~ OKDHS has a formal administrative appeal or review process in place which addresses the grievance or complaint.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of client bill of rights.** The OKDHS Client Bill of Rights poster, OKDHS Pub No. 92-06, is posted in predominate view of the public in all ~~Department~~ OKDHS offices and facilities. Applicants and recipients of benefits and services administered by OKDHS have the right to:

- (1) be treated with courtesy and dignity;
- (2) receive prompt service;
- (3) receive clear explanations of the laws and rules which determine eligibility for benefits and services;
- (4) have benefits and services explained in native language, if not able to understand English;
- (5) have benefits and services explained by an interpreter for the deaf, if unable to hear well;
- (6) to have forms read and explained, if unable to read forms because of limited eyesight, or other inability to read;
- (7) receive fair and consistent considerations of any application for benefits or services;
- (8) have the opportunity for an appeal and a fair hearing in case of denial or reduction of benefits or services;
- (9) discuss with a local OKDHS supervisor any complaint regarding OKDHS benefits or services or treatment by OKDHS staff;
- (10) contact the OKDHS Office of Client Advocacy (OCA) (1-800-522-8014) on any complaint which has been discussed with, but not resolved by, the local office supervisory staff; and
- (11) receive, upon request, a further explanation of applicant or client rights.

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(d) **Filing a grievance.** Recipients of benefits and services administered by ~~the Department~~ OKDHS, and persons acting on behalf of recipients, have the right to talk with a local OKDHS supervisor if they have a complaint about the way they were treated by ~~Department~~ OKDHS staff. Supervisory staff promptly seek to resolve the matter with the client. Clients have the right to contact ~~the Office of Client Advocacy (OCA)~~, Attn. Grievance Coordinator, P.O. Box 25352, Oklahoma City, OK 73125 (1-405-~~521-3491~~ 525-4850 or 1-800-522-8014, fax 1-405-525-4855) regarding any complaint which has been discussed with but not resolved by the local office supervisory staff.

(e) **Allegations of discrimination.** If a grievance or complaint alleges discrimination based on sex, age, national origin, religion, color or disability, the client is referred to the OKDHS Office for Civil Rights for appropriate handling and resolution of the complaint. The local grievance coordinator immediately forwards the grievance to the OKDHS civil rights administrator and so informs the grievant.

(f) **Processing a grievance.** When a client contacts OCA for assistance in resolving a complaint, OCA contacts ~~the Department~~ OKDHS supervisory staff who have the authority to resolve the grievance to request a response to the grievance within seven working days.

(1) The advocate general may grant an extension for good cause, such as an unusually complex matter.

(2) If a complete response is not timely received by OCA, the grievance may be considered unresolved and processed as a contested grievance.

(3) After receiving a response to the grievance, OCA contacts the grievant to inform the grievant of the proposed resolution and the right to contest the response to the grievance. If the grievant is not satisfied with the outcome and requests to appeal the decision, the grievance is processed as a contested grievance. If OCA does not obtain a reply from the grievant within ten working days of actual notice to the grievant of the proposed response, the grievance may be deemed resolved.

(g) **Contested grievances.** Contested grievances of clients are processed in accordance with OAC 340:2-3-46.

PART 7. GRIEVANCE AND ABUSE REVIEW COMMITTEE

340:2-3-61. Grievance and Abuse Review Committee (GARC)

(a) **Legal basis and authority.** The legal basis and authority for the rules in this ~~Subchapter~~ Part are found in Section 7004-3.4 of Title 10 of the Oklahoma Statutes.

(b) **Definitions.** The definitions in OAC 340:2-3-2, 340:2-3-32, and 340:2-3-38 apply to this ~~Section~~ Part.

(c) **Purpose.** This Section establishes an administrative review committee to review:

(1) findings regarding allegations of abuse, neglect, verbal abuse, caretaker misconduct, and exploitation investigated by the Office of Client Advocacy (OCA) in accordance with OAC 340:2-3-32 through 340:2-3-37;

(2) findings regarding allegations of discrimination and retaliation brought by foster parents pursuant to Section 7204.1 of Title 10 of the Oklahoma Statutes and investigated by OCA in accordance with OAC 340:2-3-38;

(3) unresolved contested grievances of Oklahoma Department of Human Services (OKDHS) clients listed in OAC 340:2-3-45(a)(2) and processed in accordance with OAC 340:2-3-46 through 340:2-3-49 and 340:2-3-51 through 340:2-3-55;

(4) unresolved grievances of foster parents filed pursuant to Sections 7213 of Title 10 of the Oklahoma Statutes and processed in accordance with OAC 340:2-3-50; and

(5) an issue affecting the care and treatment of:

(A) a client in a ~~Department~~ OKDHS operated facility; or

(B) a OKDHS custody minor placed in a private facility, a public facility not operated by ~~the Department~~ OKDHS, or in a foster home.

(d) **GARC composition.**

(1) GARC is composed of at least three voting members appointed by the OKDHS Director. The OKDHS Director designates one member to serve as chair. ~~The DHS Director~~ and appoints substitute members as needed.

(2) The advocate general is an ex officio member of GARC. The advocate general designates a member of his or her staff to attend GARC meetings in the advocate general's absence.

(e) **GARC responsibilities.** GARC meets as needed. The advocate general or designee establishes the date and time of each meeting. At least three working days before a meeting, the advocate general provides each GARC member with materials relevant to matters to be considered at the meeting. GARC members review the agenda material prior to the GARC meeting.

(f) **GARC meetings.**

(1) The advocate general or designee coordinates GARC meetings. This includes:

(A) arranging the dates for GARC meetings;

(B) establishing the agenda for GARC meetings;

(C) ten calendar days prior to a GARC meeting, notifying all involved administrators and state office administrators of the date of the GARC meeting;

(D) transmitting agenda material to GARC members three working days prior to a meeting;

(E) recording the findings and recommendations of GARC;

(F) preparing GARC reports in consultation with GARC members;

(G) granting extensions of time for good cause shown; and

(H) distributing GARC reports.

(2) The GARC chair conducts a GARC meeting in the manner that in his or her discretion furthers the purposes of the meeting.

(3) At the conclusion of the GARC meeting, the matter is taken under advisement and the GARC chair informs

interested parties of the results by means of its written report.

340:2-3-63. Grievance and Abuse Review Committee (GARC) review of Office of Client Advocacy (OCA) investigation reports regarding foster parent complaints

(a) **Application.** At the request of the Oklahoma Department of Human Services (OKDHS) Director, GARC reviews an OCA investigation report involving allegations of discrimination and retaliation investigated by OCA in accordance with OAC 340:2-3-38.

(b) **Scope of GARC review.** GARC conducts a *de novo* paper review of the alleged incident(s) investigated by OCA.

(1) GARC does not consider prior unsubstantiated allegations.

(2) The foster parent, the applicable administrator, affected state office administrators, or their designees may attend the GARC meeting.

(3) If a foster parent or an administrator wants to submit additional evidence not considered during the OCA investigation, it is submitted to the advocate general contemporaneously with the request for GARC review. For good cause ~~show~~ shown, evidence can be submitted to the advocate general no later than seven working days before the GARC meeting.

(4) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a case until its next meeting. GARC may request additional information from OCA, an administrator, or a state office administrator.

(c) **GARC report contents.** Within 15 working days of a GARC meeting to review a case, GARC prepares a report which includes:

(1) GARC's opinion whether the evidence is sufficient based on a preponderance of the evidence standard to confirm retaliation or discrimination occurred and the basis for GARC's opinion;

(2) GARC's opinion whether the evidence is sufficient to confirm retaliation or discrimination, the report specifies whether retaliation, discrimination, or both occurred and the specific acts constituting the retaliation or discrimination; and

(3) areas of concern identified by GARC during its review of the case regarding practices or procedures of the child placing agency or ~~the Department~~ OKDHS.

(d) **OKDHS Director's response.** The advocate general submits to the OKDHS Director the GARC report, the corresponding OCA investigation report, and other pertinent documents.

(1) Within 15 working days of receipt of GARC's report, the OKDHS Director decides whether to:

- (A) adopt GARC's findings;
- (B) adopt GARC's findings with modifications;
- (C) return the matter to GARC for further consideration; or
- (D) reverse GARC's finding.

(2) If the OKDHS Director does not respond within 15 working days of receipt of a GARC report, GARC's opinion with regard to the finding(s) becomes final.

(e) **Notification of final result.**

(1) The advocate general provides notice of the final result of the OKDHS Director's request for GARC review to affected state office administrators and the applicable foster parent(s).

(2) Within two working days of receipt of this notification, a state office administrator responsible for an employee named in the allegation informs each such employee of the final result of GARC's review.

(3) Within 20 working days of receipt of this notification in a report which confirms retaliation or discrimination, the state office administrator informs the advocate general in writing if any personnel action has or will be taken with regard to an employee, and of any corrective action taken or to be taken with regard to areas of concern noted in the GARC report.

340:2-3-64. Grievance and Abuse Review Committee (GARC) review of unresolved contested grievances

(a) **Application.** GARC reviews unresolved contested grievances when the advocate general receives a proper request for GARC review in accordance with OAC 340:2-3-46(k).

(b) **The GARC worksheet.** If the grievance was filed by or on behalf of a Developmental Disabilities Services Division (DDSD) client who receives Office of Client Advocacy (OCA) ombuds services, including residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the OCA advocate prepares a GARC worksheet using a format prescribed by OCA which includes:

(1) the grievance number, the names of the resident, the grievant, the guardian, the parent(s), the case manager, and the OCA advocate;

(2) what efforts were made to resolve the problem by means of informal problem resolution;

(3) the applicable statutes, policies, and other authorities;

(4) the resolution sought by the grievant;

(5) relevant documentation;

(6) the OCA advocacy position with regard to the subject of the grievance; and

(7) a copy of Form OCA-GR-1, Grievance Form, and Form ~~OCA-GR-1A~~ OCA-GR-1-A, Local Grievance Coordinator's Worksheet are attached.

(c) **Scope of GARC review.** GARC conducts a *de novo* paper review of the grievance.

(1) Within three working days of receiving a proper request for GARC review pursuant to OAC 340:2-3-46(k), the advocate general or designee informs the affected state office administrator and administrator of the date of the GARC meeting.

(2) The grievant, administrators, state office administrators, and their designees may attend the GARC meeting to answer questions. If a grievance involves a Hissom

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class member, the OCA programs administrator for the community ombuds program also attends.

(3) If the grievant wants to submit additional evidence not considered during the processing of the grievance, it is submitted to the advocate general contemporaneously with the request for GARC review. If the administrator or affected state office administrator wants to submit additional evidence not considered during the processing of the grievance, or when GARC review is the result of an untimely response in accordance with OAC 340:2-3-46(I), or for good cause shown, evidence can be submitted to the advocate general seven working days before the GARC meeting.

(4) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a grievance until its next meeting. GARC may request additional information from OCA, an administrator, or a state office administrator.

(d) **GARC report contents.** Within 15 working days of a GARC meeting to review an unresolved grievance, GARC prepares a report to the Oklahoma Department of Human Services (OKDHS) Director which includes:

(1) the subject matter of the grievance and identifying information about the grievant, the administrator, and the state office administrator;

(2) the procedural history of the grievance, identifying proposed resolutions and responses at each step in the grievance process prior to the GARC review;

(3) the resolution sought by the grievant and the resolution proposed by the state office administrator;

(4) GARC's recommended resolution of the grievance;

(5) the facts on which GARC bases its recommendation;

(6) the information GARC considered in making its recommendation; and

(7) areas of concern identified by GARC during its review of the case regarding facility or ~~Department~~ OKDHS practices or procedures.

(e) **Distribution of GARC report.** The advocate general forwards GARC's report to the applicable local grievance coordinator (LGC). Within two working days of receipt of GARC's report, the LGC contacts the grievant to inform the grievant of GARC's recommended resolution, and determines if the grievant is satisfied with it.

(1) If the grievant needs time to decide whether to accept the proposed resolution, the grievant has two working days within which to make a decision. If no decision is communicated to the LGC within two working days, the grievant is deemed to have accepted the proposed resolution.

(2) If the grievant is satisfied, the LGC notifies the advocate general, and the advocate general then notifies interested parties.

(3) If the grievant is not satisfied with GARC's recommended resolution and desires to contest it, the LGC notifies the advocate general within four working days of receipt of the GARC report. The advocate general processes GARC's report for review by the OKDHS Director.

(f) **OKDHS Director's review of GARC recommendation.**

(1) Within 15 working days of receipt of GARC's report, the OKDHS Director decides whether to:

(A) adopt GARC's recommended resolution;

(B) adopt GARC's recommendation with modifications;

(C) return the matter to GARC for further consideration; or

(D) direct another resolution of the grievance.

(2) If the OKDHS Director does not respond within 15 working days, the grievance is deemed resolved in accordance with GARC's recommended resolution.

(3) The advocate general notifies the grievant and other interested parties of the result of the OKDHS Director's review. The grievant is informed that this concludes the grievant's administrative remedies. If the grievant is a minor, a copy of the grievance and related materials are forwarded to the Office of Juvenile Systems Oversight in the Oklahoma Commission for Children and Youth.

(g) **Monitoring of resolution.** If the final resolution of the grievance involves an action to be taken by a ~~Department~~ an OKDHS employee at a future date, the advocate general or designee identifies the target date and monitors compliance with that deadline. In the event of non-compliance, the advocate general notifies the OKDHS Director in writing.

Part 9. OMBUDSMAN PROGRAMS

340:2-3-71. Advocacy services of the Office of Client Advocacy (OCA) in general

(a) **Legal authority.**

(1) Section 1415.1(A)(2) of Title 10 to the Oklahoma Statutes requires the Oklahoma Department of Human Services (OKDHS) to establish an ombudsman program for each institution and residential facility for the mentally retarded operated by ~~the Department~~ OKDHS. OKDHS has conferred this responsibility on the Office of Client Advocacy (OCA).

(2) Orders of the United States District Court for the Northern District of Oklahoma in *Homeward Bound et al. v. The Hissom Memorial Center, et al.*, Case No. 85-C-437-E, require OKDHS and OCA to provide ombudsman and advocacy services to individuals certified by the court as members of the plaintiff class, known as Hissom class members.

(3) OKDHS also has conferred on OCA other advocacy responsibilities as outlined in this Part of this Subchapter.

(b) **Scope.** OCA provides advocacy services to clients of the OKDHS Developmental Disabilities Services Division (DDSD) listed in this subsection, who are collectively referred to as "clients" in this Part of this Subchapter.

(1) OCA's advocacy services for residents of the Northern Oklahoma Resource Center of Enid (NORCE), the Southern Oklahoma Resource Center (SORC), and the Greer Center Facility (Greer) are outlined in greater detail in Section 72 of this Subchapter.

(2) OCA's advocacy services for former residents of SORC, NORCE, and Greer for whom the director of the

facility is guardian ad litem (GAL) are outlined in greater detail in Section 73 of this Subchapter.

(3) OCA's advocacy services for Hissom class members are outlined in greater detail in Section 74 of this Subchapter.

(4) OCA provides advocacy services on a short-term or emergency basis for other DDS clients who have a special advocacy need pursuant to Section 75 of this Subchapter.

(c) **Mission statement and guiding principles.**

(1) **Mission statement.** OCA's advocacy programs advance the capacity and recognition of individual choice, the realization of rights and responsibilities of citizenship, and the personal well-being of recipients of DDS services.

(2) **Guiding principles.** In addition to those listed in OAC 340:100-1-3-3.1, the guiding principles for OCA's advocacy on behalf of clients are listed in (A)- through (D) of this paragraph.

(A) **Self-determination.** Advocates promote the individual as the driving force of life choices and decisions.

(B) **Meaningful choice.** Advocates promote the development of meaningful choices for persons with developmental disabilities consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, and interests.

(C) **Active citizenry.** Advocates promote the inclusion and involvement of persons with developmental disabilities in the social and political structures of the community.

(D) **Well-being.** Advocates promote access to physical and emotional supports necessary for a healthy life-style.

(d) **Definitions.** In addition to the definitions in Section 2 of this Subchapter, the following words and terms when used in Sections 71 through 75 shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Behavior Review Committee" or "BRC"** means the BRC established pursuant to OAC 340:100-3-5 and 100-3-5.1 and defined in OAC 340:100-1-2.

(2) **"Guardianship assessment"** means the process of determining an individual's capacity to make informed decisions and the need for assistance with decision-making regarding personal and financial matters, in accordance with OAC 340:100-1-2.

(3) **"Human Rights Committee" or "HRC"** means the HRC created pursuant to ~~by~~ OAC 340:100-3-6 and defined in OAC 340:100-1-2.

(4) **"Individual plan" or "IP" or "plan"** means an individual plan established pursuant to OAC 340:100-5-51.

(5) **"Informed consent"** means informed consent as defined in OAC 340:100-1-2.

(6) **"Program coordinator" or "PC"** means a program coordinator as defined in OAC 340:100-1-2.

(7) ~~"QMRP" or~~ **"Qualified Mental Retardation Professional" or "QMRP"** means a QMRP as defined in OAC 340:100-1-2.

(8) **"Service review"** means an assessment by an OCA advocate of a client's health, living circumstances, and the delivery of supportive services. The service review documents the extent of services provided to an individual client and identifies problem areas in service delivery. Each service review is a snapshot of the life of an individual at the time the review is completed.

(9) **"Unit coordinator"** means a team leader as defined in OAC 340:100-1-2.

(e) **Confidentiality.** Information in OCA's records relating to advocacy services provided to the clients listed in subsection (b) ~~above of this Section~~ is confidential and protected from unauthorized use. Only authorized individuals are given access to client records or provided information from those records.

(1) The confidentiality provisions of OAC 340:100-3-2 apply to OCA's client files.

(2) The confidentiality provisions of OAC 340:105-3-34 apply to information in OCA records regarding allegations of abuse, neglect, and exploitation of a vulnerable adult as those terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes.

(3) A breach of confidentiality may result in a criminal prosecution. Violations by OKDHS employees can also result in personnel action.

(f) **Training requirements for advocates.** New and tenured OCA advocates receive appropriate training consistent with their background and experience. This includes training on the rights of DDS clients under Oklahoma and federal law.

(g) **Client representation.**

(1) OCA maintains offices on campus at SORC and NORCE, and assigns advocates to represent residents of SORC, NORCE, and Greer.

(2) OCA assigns advocates, in accordance with this Part of this Subchapter, to represent specific DDS clients living in community residential settings, including Hissom class members living in Oklahoma and former residents of SORC, NORCE, and Greer for whom the facility director is the ~~guardian ad litem (GAL).~~

(3) An OCA advocate is knowledgeable about the clients represented by him or her and seeks to understand each client's specific challenges and communication styles, needs, interests, and goals. An advocate ascertains the preferences and choices of a client. An advocate becomes familiar with a client by:

- (A) reviewing relevant client records and files;
- (B) visits and other contacts with the client at home, at work, and in other contexts; and
- (C) communication with the client's relatives, loved ones, guardians, program coordinator and other provider staff, case manager, and others in the client's circle of support.

(h) **OCA ombuds and advocacy services.**

(1) **Advocacy.** Advocacy is the function of assisting an individual in voicing his or her interests. Clients are encouraged to engage in self-determination, and are assisted to the extent they need and desire. When a client has a limitation in voicing his or her own interests, needs, and

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preferences, an advocate seeks to speak on behalf of the client. Advocacy services provided by OCA's advocates include:

- (A) supporting the implementation of the least restrictive alternative in residential, ~~vocation~~ vocational, therapeutic, and medical settings;
 - (B) supporting the most appropriate living environment for each client consistent with the client's needs and objectives;
 - (C) encouraging the development of natural supports, including friends, coworkers and neighbors in the community in which an individual lives; and
 - (D) advocating for those responsible for providing services for a client to fulfill their responsibilities by bringing performance issues to the attention of those who are responsible for correcting the situation.
- (2) **Monitoring.** OCA monitors the well-being and provision of services to a client by means of: visits and other forms of contact with the client, staff, family members, and others who know the client; review of records, documentation, contracts, and financial agreements between clients and providers of services, incident reports, and professional assessments; and attendance at IP and other team meetings. OCA's advocates cooperate with and render assistance to outside monitoring and advocacy entities as provided for by federal and state laws, in accordance with the laws and rules relating to client confidentiality and release of information protocols. The monitoring role of an OCA advocate is to ensure that:
- (A) individual needs, preferences, and choices are identified and met appropriately and consistently;
 - (B) health, safety, and welfare standards and safeguards are maintained; and
 - (C) problems and issues are addressed at the earliest juncture by appropriate persons and entities in a prompt manner.
- (3) **Informal problem resolution.** An advocate seeks to resolve issues and client concerns by means of informal problem resolution at the lowest level of administrative responsibility or decision-making. Informal problem resolution seeks to resolve issues and reach a consensus with the client on a plan of action to resolve the problem informally. An advocate uses the problem resolution activity consistent with the nature and imminence of the problem. An advocate assists a client in development of problem resolution skills and self-advocacy.
- (4) **Grievances.** As needed, an OCA advocate files grievances on behalf of clients in accordance with Part 5 of this Subchapter. OCA also advises clients and assists them with filing grievances on their own behalf when they so desire.
- (5) **Protection and safety.** OCA staff take appropriate action under the circumstances to protect the health, safety, and well-being of clients, including reporting allegations of abuse, neglect, mistreatment, and exploitation in accordance with Part 3 of this Subchapter.
- (A) OCA advocates assist OCA and Adult Protective Services investigators and law enforcement

officers in obtaining information necessary for completion of investigations in which a client is an alleged victim.

- (B) Advocates engage in appropriate follow-up activity in response to receiving a referral from OCA's intake unit in accordance with Section 35(a)(7) of this Subchapter.
 - (C) When an advocate has a concern related to a client's health, safety, well-being, or program implementation, the advocate advises the client's case manager or designated QMRP, ~~as the case may be~~ as applicable, and others (for example, DDS staff, provider or facility staff, treatment staff, and health care professionals) as the circumstances warrant.
 - (D) Immediately upon becoming aware of any concerns regarding imminent risk of harm, an advocate advises the applicable residential or vocational provider as well as the client's case manager.
 - (E) An OCA advocate ensures that allegations of abuse, neglect, mistreatment, and exploitation of which the advocate becomes aware are reported to OCA intake in accordance with Section 33 of this Subchapter.
- (6) **Promoting informed choice.** An OCA advocate promotes informed decision-making, consistent with a client's unique strengths, resources, priorities, concerns, abilities, capabilities, and interests, through provision of necessary information and assisting a client in understanding options and potential consequences of a decision. If a client is unable to make an informed choice, the advocate seeks to provide the client's legal guardian, GAL, volunteer advocate, and other representative(s) with access to information to make an informed decision on behalf of the client. The advocate general does not provide legal advice to clients, but may provide information about the law.
- (7) **Protection of rights.** An OCA advocate promotes the full exercise of legal rights guaranteed clients under federal and state laws. An advocate takes appropriate steps to protect a client's rights, including ensuring those rights are considered in team decisions and in the manner with which team decisions are carried out. An advocate seeks to ensure the application of due process in administrative, quasi-judicial, and judicial proceedings involving a client which might result in a rights restriction. When a rights restriction is absolutely necessary, OCA supports the least restriction necessary for the shortest period of time possible and a plan to remove the restriction as soon as possible.
- (8) **Access to services.** An OCA advocate promotes client access to the full range of supports in accordance with the requirements of state and federal programs. Although an advocate takes a position with regard to services needed by a client, an advocate does not have authority to approve services.
- (9) **Guardianship issues.** The Oklahoma Guardianship Act promotes the participation of persons as fully

as possible in the decisions which affect them, development of maximum self-reliance and independence, and appointment of guardians and others only to the extent necessitated by the mental and adaptive limitations or other condition of individuals. [30 O.S. § 1-103] Because a full guardianship of the person and estate of a client is the most restrictive intrusion on an individual's decision-making, OCA advocates for the least restrictive alternative to a full guardianship that is feasible under the circumstances, including but not limited to: limited guardianship; representative payee for financial benefits; volunteer advocate; supportive friends and family; health care proxy; durable power of attorney; and advance directives.

(10) **Promoting inclusion.** An advocate promotes the realization of active citizenship and inclusion in the community. This includes but is not limited to encouraging clients to: learn the rights and responsibilities of good citizenship, vote, take classes, participate in volunteer service organizations, attend religious services of the client's choice, attend recreational, cultural and social events, and join citizen advocacy organizations that promote inclusion in the community. An advocate encourages the development of friends who can serve as natural supports for a client. An advocate assists a client in locating relatives who are not currently active in the client's life and encourages relationship building between the client and family members.

(11) ~~End-of-life~~ **End-of-life issues.** ~~End-of-life~~ End-of-life issues for an individual with a developmental disability do not differ from those of the community at large. Regardless of the medical circumstance which bring these issues to the forefront, an OCA advocate seeks to have physicians, guardians, and loved ones of a client adhere to Oklahoma laws relating to do-not-resuscitate orders, withdrawal or denial of nutrition or hydration, and withdrawal or termination of medical treatment. In the absence of clear and convincing evidence of a client's wishes, an advocate presumes the client would choose life sustaining measures.

(i) **On-call advocate.** OCA advocates carry pagers or cell phones during office hours. If an advocate is not available during office hours, his or her supervisor serves as a back-up to the advocate and can be contacted. Information about the name of the advocate assigned to a client, the advocate's phone and pager numbers, and the name of the advocate's supervisor can be obtained from OCA's offices in Oklahoma City (405-521-3494, 1-405-525-4850, 1-800-522-8014) and Tulsa (918-732-7543). After hours, weekends, and holidays, an advocate is assigned to serve as the on-call advocate 24 hours a day. The on-call advocate can be contacted by cell phone (1-405-203-6056).

(j) **OCA access to client records and information.** OCA staff are provided access to all records, files, documents, and information needed to fulfill OCA's responsibilities regarding a client. DDS case managers and employees and staff of provider agencies send to the assigned OCA advocate a copy of documents and notices sent to the client.

340:2-3-72. Advocacy services for residents of Northern Oklahoma Resource Center of Enid (NORCE), the Southern Oklahoma Resource Center (SORC), and the Greer Center Facility (Greer)

(a) **Application.** This Section describes ombudsman and advocacy services the Office of Client Advocacy (OCA) provides to residents of SORC, NORCE, and Greer ("the facilities"). Section 1415.1(A)(2) of Title 10 to the Oklahoma Statutes requires the Oklahoma Department of Human Services (OKDHS) to establish an ombudsman program for each institution and residential facility for the mentally retarded operated by ~~the Department~~ OKDHS. OKDHS has conferred on OCA this responsibility. Ombudsman and advocacy services are provided to residents of the facilities consistent with Section 71 of this Subchapter.

(b) **Grievance coordination.** OCA's advocates serve as grievance coordinators for resident grievances in accordance with Section 51 of this Subchapter.

(c) **Abuse and neglect reporting.**

(1) OCA's advocates provide training to new employees of SORC, NORCE, and Greer regarding their obligation to report suspected incidents of abuse, neglect, verbal abuse, and caretaker misconduct in accordance with Section 33 of this Subchapter.

(2) OCA's advocates receive referrals of suspected abuse, neglect, and mistreatment, and immediately transmit that information to OCA intake in accordance with Section 33 of this Subsection.

(d) **Advocacy and monitoring.** OCA's advocates provide advocacy and monitoring to ensure compliance with policies, rules, and regulations applicable to the health, safety, and well-being of residents. In addition to the activities described in Section 71 of this Subchapter, advocacy and monitoring activities at the facilities include:

(1) a face-to-face visit with each resident at least annually, and more frequently as indicated, to assess the resident's advocacy needs; ~~and a face-to-face visit with each resident within five to seven months of the yearly assessment;~~

(2) periodic site visits to facility buildings frequented by residents, including residential units, vocational programs, canteen, and therapy departments, ~~on a routine basis at least quarterly~~ and more frequently as needed warranted to monitor compliance with health and safety requirements and protection of client rights, including but not limited to privacy rights;

(3) a visit with a resident at the request of the resident, the resident's ~~legal~~ guardian, or other person concerned about the well-being of the resident unless contraindicated;

(4) ~~review of documents relevant~~ documentation within seven calendar days of receipt, including but not limited to: ~~assessments~~, individual plan (IP) and interim ~~IP documents~~ IPs; accident and incident reports; OCA investigation findings; and behavior data collection forms, guardianship assessments, and other professional reports and assessments;

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- (5) serving as a ~~consultant to a member of~~ a resident's personal support team;
- (6) ~~attendance at~~ attending team meetings when it can reasonably be anticipated that a significant ~~issues are being~~ issue will be addressed, including ~~when a~~ any rights issue and in particular a rights restriction or an intrusive behavior intervention strategy is ~~contemplated or recommended~~;
- (7) participating in Guardianship Assessment meetings and annual reviews;
- (8) attending facility Behavior Review Committee (BRC) and Human Rights Committee (HRC) meetings as required or indicated;
- (8) attending Death Review meetings pursuant to OAC 340:100-3-35;
- (9) promoting team discussion of alternatives to living in the facility, and consulting with teams regarding community supports and community residential alternatives;
- (10) participation in discharge planning meetings;
- (11) when a resident who has been discharged from the facility is not eligible for assignment of an OCA advocate in the community, providing transition advocacy assistance for 90 calendar days from the date of discharge the resident moves out of the facility. The 90 ~~days~~ days can be extended by the advocate general or designee as warranted; and
- (12) reporting, for administrative action and correction, policy violations to the facility director or quality assurance designee.

340:2-3-73. **Advocacy services for former residents of the Northern Oklahoma Resource Center of Enid (NORCE), the Southern Oklahoma Resource Center (SORC), and the Greer Center Facility (Greer)**

- (a) **Application.** This Section describes advocacy services the Office of Client Advocacy (OCA) provides to former residents of SORC, NORCE, and Greer ("the facilities") for whom the facility director is the guardian ad litem (GAL). Oklahoma Department of Human Services (OKDHS) has conferred on OCA responsibilities for each of these individuals until the court relieves the facility director of GAL responsibilities. Ombudsman and advocacy services are provided to former residents of the facilities consistent with Section 71 of this Subchapter.
- (b) **Representation.** Each person eligible for OCA services pursuant to this Section is assigned to an OCA advocate to represent the client's interests. An advocate is assigned 30 days calendar days prior to the discharge date of identified to transition the client. Clients are provided choices with regard to the advocate assigned to represent them to the extent feasible, taking into consideration the geographic location of the client's residence and the caseloads of OCA advocates. Requests for a change in the advocate representing an individual are made to the advocate general or designee.
- (c) **Team membership.** As a representative of a Developmental Disabilities Services Division (DDSD) client living in a

community residential placement, an OCA advocate is a member of the client's personal support team. As a team member, the advocate receives from the client's DDSD case manager timely notice of all team meetings, including emergency team meetings. Within the team context, the advocate assists the client and represents the client's interests without relinquishing priority to client safety and rights.

(d) **Guardianship issues.** The OCA advocate ensures a client has a current guardianship assessment and attends guardianship assessment meetings. If a client has sufficient capacity to require no guardian or only a limited guardian, the advocate promotes the filing of a petition with the guardianship court to terminate the GAL appointment or limit it, as the case may be. If the current guardianship assessment for the client recommends a guardian, volunteer advocate, or both, the OCA advocate participates with the team in identifying persons who might serve as guardian or advocate for the client. An advocate encourages the development of friends in the community who might become a guardian or advocate for the client. When a guardian is needed and a suitable guardian has been identified, the advocate promotes the filing of a petition with the guardianship court to terminate the GAL appointment and to appoint a guardian.

(e) **Advocacy and monitoring.** OCA advocates provide advocacy and monitoring to ensure compliance with policies, rules, and regulations applicable to the health, safety, and well-being of clients. In addition to the services described in Section 71(h) of this Subchapter, advocacy and monitoring activities on behalf of each client include:

- (1) verifying a Form DDS-34, Residential Pre-service Checklist, has been completed and everything on the list is in place prior to the resident moving out of the facility;
- (2) a home visit with the client within 30 calendar days of the client's discharge from the facility;
- (3) verifying a Form DDS-34 has been completed prior to any subsequent changes in residence, and making a home visit with the client within 30 calendar days after the client moves into a new residence;
- (4) a face-to-face visit with the client at least quarterly and more frequently as indicated, which includes:
 - (A) site visits to a client's residence at least twice a year, every five to seven months, at a time when the client is present in the home; and
 - (B) visits with the client outside the home setting at least twice a year, every five to seven months;
- (5) visits with the client at the request of the client, the client's legal guardian, or other person concerned about the well-being of the client;
- (6) completion of a service review twice a year, every five to seven months;
- (7) in connection with each service review, verifying that direct contact staff have completed required training;
- (8) participating as a member of a resident's personal support team;
- (9) attending annual ~~Individual~~ individual plan (IP) meetings, interim meetings, and follow-up planning meetings;
- (10) attending emergency team meetings;

- (11) attending other team meetings when significant issues are being addressed, including when a rights restriction or an intrusive behavior intervention strategy is contemplated or to be recommended;
- (12) attending guardianship assessment meetings of the client's team;
- (13) attending other team meetings at the request of the client, guardian, or involved family or friend;
- (14) requesting DDS Quality Assurance to conduct an administrative inquiry of suspected provider contract violations in accordance with OAC 340:100-3-27;
- (15) assisting the client and the client's guardian or representative with the review of proposed financial agreements and contracts between the client and the provider;
- (16) review of documents, including but not limited to: assessments, IP and interim IP documents; incident reports; Adult Protective Services (APS) and OCA investigation findings; and behavior data collection forms;
- (17) attending Behavior Review Committee (BRC) and Human Rights Committee (HRC) meetings as required or indicated;
- (18) attending Death Review meetings held pursuant to OAC 340:100-3-35;
- (19) attending legal proceedings involving the client, including guardianship proceedings, as warranted by the circumstances;
- (20) monitoring semi-annually the hot water in homes where anti-scald devices have been installed, using a thermometer to ensure the water at the faucet where the device is located does not exceed 114 degrees and does not exceed 120 degrees when a tank device is used; and
- (21) at least twice a year, every five to seven months, verifying that appropriate records are kept with regard to an individual's personal finances.

340:2-3-74. Advocacy services for Hissom class members

- (a) **Application.** This Section describes Office of Client Advocacy's (OCA's) advocacy services for Hissom class members who reside in ~~the state of~~ Oklahoma. Advocacy services are provided to Hissom class members consistent with Section 71 of this Subchapter. Orders of the United States District Court for the Northern District of Oklahoma in *Homeward Bound et al. v. The Hissom Memorial Center, et al.*, Case No. 85-C-437-E, require the Oklahoma Department of Human Services (OKDHS) and OCA to provide independent advocacy services to individuals certified by the court as members of the plaintiff class, known as Hissom class members. This includes but is not limited to:
- (1) independently advocating for class members rights and interests regarding: their daily lives, proposed movements, medical and behavioral emergencies including hospitalizations, appropriate consents, their financial interests, and meetings held on their behalf;
 - (2) appealing disagreements with a class member's individual plan through ~~Department—OKDHS~~ grievance procedures, Sections 45, 46, and 52 of this Subchapter; and

- (3) referral to protection and advocacy agencies in Oklahoma to obtain legal counsel and legal advocacy services.
- (b) **Assignment of advocate.** OCA assigns an advocate to each Hissom class member living in ~~the state of~~ Oklahoma. Clients are provided choices with regard to the advocate assigned to represent them to the extent feasible, taking into consideration the geographic location of the client's residence and the caseloads of OCA advocates. Requests for a change in the advocate representing an individual are made to the advocate general or designee.
- (c) **Team membership.** As a representative of a Hissom class member living in a community residential placement, an OCA advocate is a member of the client's personal support team. As a team member, the advocate receives from the client's Developmental Disability Services Division (DDSD) case manager timely notice of all team meetings, including emergency team meetings. Within the team context, the advocate assists the client and represents the client's interests without relinquishing priority to client safety and rights.
- (d) **Guardianship issues.** The OCA advocate ensures the client has a current guardianship assessment and attends guardianship assessment meetings. If a client with a full guardianship has sufficient capacity to require no guardian or only a limited guardian, the advocate promotes the filing of a petition with the guardianship court to limit or terminate the guardianship. If the current guardianship assessment of a client who does not have a guardian recommends a guardian, volunteer advocate, or both, the OCA advocate participates with the team in identifying persons who might serve as guardian or advocate for the client. This includes encouraging the development of friends in the community who might become a guardian or volunteer advocate for the client. The OCA advocate monitors the implementation of the recommendations in the guardianship assessment and advocates for their timely achievement. When a guardian is needed and a suitable guardian has been identified, the advocate promotes the filing of a petition with the guardianship court to appoint a guardian.
- (e) **Advocacy and monitoring services for class members in residential community settings.** OCA advocates provide advocacy and monitoring to class members living in community residential settings, including group homes, to ensure compliance with policies, rules, and regulations applicable to the health, safety, and well-being of clients. In addition to the activities described in Section 71(h) of this Subchapter, advocacy and monitoring activities on behalf of each client include:
 - (1) verifying a Form DDS-34, Residential Pre-service Checklist, is completed prior to any change in residence, and making a home visit with the client within 30 calendar days after the client moves into a new residence;
 - (2) a face-to-face visit with the client at least quarterly and more frequently as indicated, including:
 - (A) site visits to a client's residence at least twice a year, every five to seven months, at a time when the client is at home; and
 - (B) visits with the client outside the home setting at least twice a year, every five to seven months;

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- (3) visits with the client at the request of the client, the client's legal guardian, or other person concerned about the well-being of the client;
- (4) completion of a service review twice a year, every five to seven months;
- (5) in connection with each service review, verifying that direct contact staff have completed required training;
- (6) participating as a member of a resident's personal support team;
- (7) attending annual ~~Individual~~ individual plan (IP) meetings, interim meetings, and follow-up planning meetings;
- (8) attending emergency team meetings;
- (9) attending other team meetings when significant issues are addressed, including when a rights restriction or an intrusive behavior intervention strategy is contemplated or recommended;
- (10) attending guardianship assessment meetings of the client's team;
- (11) attending other team meetings at the request of the client, guardian, or involved family or friend;
- (12) requesting DDS Quality Assurance to conduct an administrative inquiry of suspected provider contract violations in accordance with OAC 340:100-3-27;
- (13) assisting the client and the client's guardian or representative with the review of proposed financial agreements and contracts between the client and the provider;
- (14) prior to and during a hospitalization, advocating for the provision of adequate staff to be present in the hospital with the client as circumstances warrant;
- (15) review of documents, including but not limited to: assessments, IP and interim IP documents; incident reports; behavior data collection forms; and Adult Protective Services (APS) and OCA investigation findings;
- (16) attending Behavior Review Committee (BRC) and provider and Human Rights Committee (HRC) meetings as required or indicated;
- (17) attending Death Reviews conducted in accordance with OAC 340:100-3-35;
- (18) communicating to the client, the client's guardian, and the client's family as appropriate the final finding of an OCA investigation in which the client was named as an alleged victim;
- (19) attending legal proceedings involving the client, including guardianship proceedings, as warranted by the circumstances;
- (20) monitoring semi-annually the hot water in homes where anti-scald devices have been installed, using a thermometer to ensure the water at the faucet where the device is located does not exceed 114 degrees, and does not exceed 120 degrees when a tank device is used;
- (21) at least twice a year, every five to seven months, verifying that appropriate records are being kept with regard to an individual's personal finances; and
- (22) annually provide each client or guardian a copy of ~~OCA~~ Form OCA-GR-3A, Notice of Grievance Rights: Hissom Class Members.

(f) **Advocacy services for Hissom class members in a private intermediate care facility for the mentally retarded (ICF/MR).** Advocacy and monitoring services for class members who reside in a private ICF/MR ~~in the state of~~ Oklahoma are contained in this subsection.

- (1) The assigned OCA advocate personally visits a client living in a private ICF/MR at least semi-annually, and more frequently as warranted.
- (2) The OCA advocate maintains a helping relationship with the client, assessing the realization of desired and targeted outcomes, and initiating change through referral or grievance as needed. During contacts with the client, the advocate inquires about individual satisfaction with current supports and provides information regarding options available to clients for community supports.
- (3) The OCA advocate annually contacts the guardian of the client if one has been appointed. The OCA advocate also contacts the guardian in response to an expression by the client of dissatisfaction with the current residential arrangements. These contacts reaffirm the availability of service options to clients for support in community settings. Contacts with the guardian occur in person, by phone or by mail as the circumstances warrant.
- (4) The OCA advocate contacts the private ICF/MR case manager, generally a Qualified Mental Retardation Professional, responsible for yearly care planning for the client. The advocate informs the facility case manager of the advocate's intent to attend yearly planning meetings. The advocate asks to be notified in advance of yearly planning meetings and emergency meetings. The advocate checks periodically to ensure meetings have not been held without notice to the advocate.
- (5) The OCA advocate participates in annual planning meetings at the private ICF/MR. The advocate provides advocacy assistance regarding expressed desires of the individual. The advocate brings to the attention of the care team concerns expressed by the client or guardian. The advocate participates in interim meetings addressing any significant change in residence, work, health, or important relationships.
- (6) The OCA advocate develops a working knowledge of the facility's grievance procedure as well as other problem resolution processes and resources for change, for example, the Long-Term Care Ombudsman Program and licensing agencies. The advocate uses these services, either directly or through referral, as needed for the benefit of the individual.
- (7) The OCA advocate assesses the welfare of the client and determines if advocacy assistance is needed which OCA can provide. The advocate provides assistance, either directly or through referral, with resolving concerns identified by the client or by others on behalf of the client. This includes contacting the OKDHS Aging Services Division, long-term care ombudsman. The advocate also informs the Long-Term Care Ombudsman Office of concerns involving non-clients living in an ICF/MR which come to the attention of the OCA advocate.
- (8) Service reviews are not completed.

(9) The ICF/MR case manager is responsible for needed assessments, including the guardianship assessment. The DDS case manager can assist during the guardianship assessment. The OCA advocate requests a guardianship assessment on behalf of the client when there has been a substantial change in circumstances regarding the individual's need for a guardian.

(10) The OCA advocate provides information and encouragement to consider community residential settings.

(g) **Advocacy services for Hissom class members who are in custody.** Advocacy and monitoring services for class members who are in custody of the Department of Corrections or a county sheriff, except those who are detained pre-trial in a facility ~~pre-trial~~, are contained in this subsection. The assigned OCA advocate contacts the client at least semi-annually. The advocate assesses the welfare of the client and determines if advocacy assistance is needed that the advocate can provide. The advocate provides assistance, either directly or through referral, with resolving concerns identified by the client or by others on behalf of the client. Advocacy assistance is provided with regard to enforcing the rights of clients under the Americans with Disabilities Act and other state and federal laws to the extent they are applicable to persons who are in custody. When the client has less than a year remaining to serve in custody, the OCA advocate provides advocacy assistance with the DDS case manager to commence transition planning. The advocate participates in and monitors transition planning, representing the client's interests.

(h) **Services for Hissom class members who decline DDS services.** Pursuant to OAC 340:100-3-11, class members and their legal representatives have the right to refuse services from OKDHS. The OCA advocate for a class member who has declined DDS services, contacts the individual periodically and remains available to assist with advocacy regarding non-specialized assistance when desired by the individual.

340:2-3-75. Advocacy services for clients with a special advocacy need

(a) **Application.** This Section describes advocacy services the Office of Client Advocacy (OCA) provides to Developmental Disability Services Division (DDS) clients who are not otherwise eligible for OCA's advocacy services but who have a special short-term need for advocacy assistance.

(b) **Requests for services.** Any DDS client or the client's guardian, case manager, or next of kin can request short-term advocacy services for the client by contacting the advocate general or designee. Written requests which explain the nature of the advocacy need are encouraged, but verbal requests are accepted. Factors considered in granting requests include:

- (1) whether the advocacy need is a matter within OCA's jurisdiction;
- (2) the existence of other resources to meet the client's need; and
- (3) the urgency of the need.

(c) **Advocacy provided.** When a request for short-term advocacy has been granted, the assigned advocate provides

the support and advocacy appropriate given the nature of the problem and any imminent harm.

(1) The advocate, in consultation with his or her supervisor, prepares a time-limited plan for achieving the goals of the advocacy need.

(2) Short-term advocacy assistance is provided for up to three months. The OCA ombuds programs administrator can extend this for an additional three-month period.

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

[OAR Docket #03-993]

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340:2-28-1 through 340:2-28-4 [AMENDED]

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340:2-28-13 through 340:2-28-15 [AMENDED AND RENUMBERED TO 340:2-28-4.1 through 340:2-28-4.3]

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340:2-28-16.1 through 340:2-28-16.2 [NEW]

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340:2-28-33 through 340:2-28-34 [AMENDED]

340:2-28-35 through 340:2-28-47 [REVOKED]

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n/a

ANALYSIS:

The Office Of Administrative Hearings: Child Support (OAH) proposed new rules and rules revisions will assist both attorneys and those who appear before the OAH without legal representation to have meaningful participation in that they will be aware of how OAH functions and what is required of all parties. Several sections have been renumbered to locate them in a more logical order. OAH proposed rules: clarify the purpose of OAH; remove obsolete definitions and add definitions currently used; remove obsolete language; address the function of OAH; add rules to explain the areas OAH covers; clarify the location of OAH; add rules to delineate the duties of the clerk of OAH; revoke rules that are obsolete, unnecessary, or included in other sections; clarify the necessary qualifications of an administrative law judge (ALJ); clarify the powers of an ALJ; clarify the procedures to utilize when seeking the disqualification of an ALJ; add rules to explain how cases are docketed; add rules to explain the requirement of providing orders to parties; add rules to assist in providing secure hearing rooms; add rules to provide guidance to parties practicing before the OAH and assist parties who are not represented by attorneys to understand the filing of documents; clarify that the Oklahoma Discovery Code applies to proceedings before the OAH; address what constitutes evidence; explain that disruptive behavior is a basis for being excluded from an administrative hearing; clarify that appropriate dress is required at proceedings; clarify what constitutes the record in a case before the OAH; clarify the administrative record to be utilized in an appeal of an OAH administrative proceeding; explain the assignment of case numbers; clarify the procedure for requesting a continuance; clarify the basis for obtaining a default order; specify the requirements placed on ALJs to submit administrative orders and provide a mechanism to be used by parties when an order is not filed in a timely manner by the ALJ; clarify the effect of the administrative order; and provide the statutory citation of authority for an appeal.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003.

SUBCHAPTER 28. CHILD SUPPORT ADMINISTRATIVE HEARINGS OFFICE OF ADMINISTRATIVE HEARINGS: CHILD SUPPORT

340:2-28-1. Purpose

The purpose of this Subchapter ~~in compliance with Title 56, Oklahoma Statutes, Section 237 (B) (2), the Department of Human Services, hereinafter referred to as "Department" or "DHS", in order to administer its statewide plan for child support enforcement in accordance with Title IV, Part D of the Federal Social Security Act, as amended, Title 42, United States Code, Section 651 et. seq.; Title 45, Code of Federal Regulations, 301 et. seq.; Title 56, Oklahoma Statutes, Section 237 et. seq.; Titles 10, 43, and 68 of the Oklahoma Statutes and all other relevant state and federal laws, does is~~ to provide rules

~~and regulations for all administrative hearings and proceedings of child support and other matters under its jurisdiction, as defined in this Subchapter. This Subchapter complies with Section 237 of Title 56 of the Oklahoma Statutes to administer the Oklahoma Department of Human Services' statewide plan for child support enforcement under Title IV, Part D, of the Social Security Act, Sections 651 through 669B, of Title 42 of the United States Code, Chapter III of Title 45 of the Code of Federal Regulations, Sections 237 through 240.23 of Title 56 of the Oklahoma Statutes, applicable provisions of Titles 10, 43 and 68 of the Oklahoma Statutes, and all other relevant state and federal laws. Nothing in this Subchapter shall be construed to limit the rights of persons who are not represented by counsel to submit pleadings on their own behalf.~~

340:2-28-2. Definitions

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

"ALJ" means an administrative law judge in the Office of Administrative Hearings: Child Support.

"Arrearage" ~~means the total amount of unpaid support obligations.~~

"Authorized representative" means a person designated under law to act for another person or an entity, such as a guardian of a child or an executor of an estate.

"Child Support Enforcement Division" or "CSED" means the Child Support Enforcement Division of the Oklahoma Department of Human Services (OKDHS). District offices of CSED may be administered by OKDHS or through contract or cooperative agreements with district attorneys, Community Action Program (CAP) agencies, Native American tribal organizations, and others. As used in this Subchapter, CSED includes all of these district offices and their employees and agents.

"Custodian" means the person who has primary physical custody of the child(ren).

"Delinquency" means any payment under an order for support which becomes due and remains unpaid.

"Department or DHS" means the Department of Human Services.

"Discovery" means a prehearing procedure used by either party to obtain from the other party facts, documents, information or other items in his possession or knowledge and which are necessary to the party seeking discovery as a part of the cause of action to assist the party's preparation for the hearing or other administrative proceeding. Discovery procedures permitted include interrogatories, depositions, production of documents or items, physical examinations or requests for admission, or other procedures.

"Earnings or income" means any form of periodic payment to an individual regardless of source, including but not limited to wages, salary, commission, compensation as an independent contractor, worker's compensation, disability, annuity and retirement benefits, and any other payment made by any person, private entity, federal or state government, any unit of local government, school district or entity created by law.

"In camera" means before the ALJ without spectators.

"Income assignment" means a provision of a support order which directs the obligor to assign a portion of the monies, income, or periodic earnings due and owing to the obligor to the person entitled to the support or to another person or entity designated by the support order or assignment for payment of support or arrearage or both. An income assignment may be initiated when the obligor has failed to make child support payments required by a child support order in an amount equal to the child support payable for one month. The assignment shall be in an amount which is sufficient to meet the periodic child support arrearage or other maintenance payments or both imposed by the court order or administrative order. The income assignment shall be made a part of the support order. In all Child Support Orders, income assignment will be effective as provided by law.

"In forma pauperis affidavit" means a sworn declaration or statement of facts made by an indigent person seeking waiver of transcription costs and fees.

"IV-D" means Title IV, Part D, of the Social Security Act generally relating to child support. Title IV appears in the United States Code as Sections 601 through 687, Subchapter IV, Chapter 7, Title 42.

"IV-D case" means a child support case receiving IV-D services.

"Local Child Support Office" means one of the district offices established and maintained under or through agreement with DHS to provide services for the enforcement and collection of child support obligations under Part D of Title IV of the Federal Social Security Act, 42 U.S.C.A. Sections 651 et. seq. and Title 56, O.S., Section 237 et. seq.

"Natural person" means a human being as opposed to an entity created by law.

"Noncustodial parent" means a parent who does not have primary care, custody, or control of the child(ren).

"Notice of Delinquency" means a notice mailed to an obligor which informs the obligor:

- (A) he/she is alleged to be delinquent under a support order in a specified amount;
- (B) an income assignment will become effective against his/her income within 15 days of the date of mailing the notice unless obligor requests a hearing;
- (C) he/she may contest the claimed delinquency with regards to mistaken identity or the existence or amount of delinquency; and
- (D) the duration of the assignment.

"Notice of job finding and training programs" means a notice to an unemployed or underemployed obligor that states:

- (A) the name of the child for whom support is ordered and the custodian of the child;
- (B) the obligor is not complying with the support order and is delinquent in a certain amount;
- (C) it appears that the obligor is underemployed or unemployed so that he/she cannot meet his/her support obligation;
- (D) the obligor shall appear for a conference in his/her county of residence on a date certain to show

cause why he/she should not be ordered to participate in job finding or training programs and to accept available employment; and

(E) if it is determined that the obligor is underemployed or unemployed or if the obligor fails to appear, an order will be entered requiring him/her to participate in job finding and training programs and accept available employment and that such order may be docketed with the District Court in the county of residence of the obligor and shall be enforced as any other order of the District Court by indirect civil contempt proceedings.

"Notice of release of information to consumer reporting agency" means a notice to an obligor that the Department intends to release child support arrearage information to consumer reporting agencies if the arrearage exceeds \$1,000.00 and the information is requested by a consumer reporting agency and providing obligor an opportunity to be heard to the accuracy of the information.

"Notice of support debt" means a written notice to be served upon and to inform the obligor of the support debt accrued or accruing that he/she is obligated to repay and that a hearing may be requested to determine the amount of the support debt due or if there is an obligation to repay the state.

"OAH" means the Office of Administrative Hearings: Child Support within the Legal Division of OKDHS. [56 O.S. § 237.7]

"Obligor" means the natural or adoptive parent(s) responsible for support of a dependent child or children, except as otherwise provided by law. An obligor is also the person who is required to make payments under an order of for support. [12 O.S. § 1170 and 56 O.S. § 237.7]

"Payor" means any person or entity paying monies, income or earnings to an obligor. In the case of a self-employed person, the payor and obligor may be the same person. *means any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person.* [12 O.S. § 1170 and 56 O.S. § 237.7]

"Person entitled" means the person or entity to whom a duty of support is owed.

"Pleading" means a formal document that contains statements or allegations that constitute a cause of action or defense.

"Pro se" means without a lawyer.

"Recipient" means an applicant for or recipient of Aid to Families with Dependent Children (AFDC) or the person or entity to whom a duty of support is owed.

"Support debt" means any payment of public assistance money by DHS to or for the benefit of any dependent child/children which constitutes, or is determined administratively to be, a debt due and owing to the State of Oklahoma by the natural or adoptive parent(s) responsible for the support of such child/children in an amount equal to the amount of public assistance paid.

"Support order" means an order for the payment of support issued by the District Court, a court of competent jurisdiction, or the Administrative Court through the Department.

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"Writ of mandamus" means a written order issued by a court to compel a lower court or government officer to perform mandatory or ministerial duties correctly.

340:2-28-3. Scope of rules

The rules of procedure govern the practice for all matters presented to an Administrative Law Judge administrative law judge (ALJ) in the Office of Administrative Hearings: Child Support (OAH), including hearing and proceedings afforded by the Department to an obligor, pursuant to the state and federal laws referenced under the "purpose" and elsewhere. All matters presented to an ALJ shall be are conducted in accordance with applicable law and these rules and regulations the rules in this Subchapter. These rules and regulations shall be cited as Administrative Rules and Regulations for the Office of Administrative Hearings: Child Support.

340:2-28-4. Office of Administrative Hearings: Child Support

The Child Support Hearing Unit, whose functions were formerly provided by the Parole, Review and Hearing Board, is known as the Office of Administrative Hearings: Child Support, located at Oklahoma City, Oklahoma. The Office of Administrative Hearings: Child Support (OAH), conducts child support enforcement hearings pursuant to Section 237.7(3) of Title 56 of the Oklahoma Statutes. All hearings are conducted by administrative law judges assigned to OAH.

340:2-28-4.1. Districts

The chief administrative law judge (ALJ) assigns the ALJs to the various child support districts within the state.

340:2-28-4.2. Terms and location of Office of Administrative Hearings: Child Support

(a) The Office of Administrative Hearings: Child Support (OAH), is in session at the district child support offices on days docketed for administrative hearings at the offices. Pleadings, other documents, and orders may be filed with, or presented to, the administrative law judge (ALJ) at the district child support office on administrative hearing docket days. On days when OAH is not in session at the district child support office, pleadings, other documents, and orders must be filed at OAH located in the Sequoyah Building in Oklahoma City, OK. The mailing address is P.O. Box 53025, Oklahoma City, OK 73105 and the finding address is 2400 N. Lincoln Blvd., Oklahoma City, OK.
(b) All proceedings are commenced by filing pleadings at OAH. The OAH file is maintained at OAH located in the Sequoyah Building unless otherwise designated by the chief ALJ of OAH.
(c) All pleadings filed and exhibits introduced are kept in OAH unless otherwise directed by an ALJ, and are not removed except upon order of an ALJ. In that event, a receipt specifying the record or document removed must be submitted to OAH by the party obtaining the record or document. The receipt must be legible and state the date and the name, business address,

and telephone number of the person removing the document. Any party who obtains an order for the removal of a transcript made by the official court reporter or as directed by the ALJ or makes a copy in the OAH office may be required to pay the copying costs according to OAC 340:2-21-16.

340:2-28-4.3. Clerk of Office of Administrative Hearings: Child Support

The clerk of the Office of Administrative Hearings: Child Support (OAH), is designated and fully empowered to perform the functions of:

- (1) maintaining the records of OAH;
- (2) docketing all hearing dates from pleadings, orders, continuances, or prior docket sheets;
- (3) preparing the dockets for hearing, and gathering files for docket;
- (4) certifying the official transcripts;
- (5) transmitting the record to the district court;
- (6) designating a court reporter for preparation of a hearing transcript; and
- (7) performing any functions delegated by the chief administrative law judge for the implementation of rules in this Subchapter and the administration of OAH.

340:2-28-5. Seal [REVOKED]

The seal of the OAH shall be of a circular design within the outer edge of which will be the words "State of Oklahoma, Department of Human Services" and within the inner circle, the words "Office of Administrative Hearings".

340:2-28-6. Public records [REVOKED]

The following factors apply to public records:

- (1) All pleadings in proceedings and matters presented to an ALJ will be filed with the Clerk of the Office of Administrative Hearings, in an original and with copies as specified in this Subchapter. These pleadings will be filed prior to any administrative proceedings.
- (2) All documents in the proceedings shall be served on all parties in the same manner as prescribed for service in civil actions. Service on a party's designated attorney will be deemed service upon the party.
- (3) A proof of service shall be filed in the Office of Administrative Hearings for each service made. The ALJ determines whether service is satisfactory.
- (4) The person serving the process or notice will state in the proof of service the name of the person served and whether that person is 15 years of age or older, the date, place and method of service, identify the paper served and whether the defendant/obligor resides in the same household as the person served.
- (5) Parties or attorneys filing motions or pleadings after the filing of the notice initiating the action shall file the original with the Clerk of the Office of Administrative Hearings and deliver or mail a copy to the opposing party or counsel of record and certify its delivery.

**340:2-28-7. The Administrative Law Judge (ALJ)
[REVOKED]**

An Administrative Law Judge ALJ shall conduct all matters presented, including hearings and other procedures pertaining to matters within the jurisdiction of the Office of Administrative Hearings, pursuant to state and federal laws referenced in OAC 340:2-18-1. And these rules and regulations in this Subchapter.

340:2-28-8. Qualifications of Administrative Law Judge administrative law judge

(a) An Administrative Law Judge administrative law judge (ALJ) will must be admitted to the practice of law by the State of Oklahoma and be a member in good standing of the Oklahoma Bar Association. An ALJ must meet any other requirements prescribed by the Office of General Counsel-Legal Division, DHS Oklahoma Department of Human Services.

(b) All OAH ALJs, whether full-time or part-time, are subject to the requirements of the Code of Judicial Conduct.

340:2-28-9. Power of the Administrative Law Judge administrative law judge

The administrative law judge (ALJ) is empowered by statute and these rules and regulations authorized pursuant to state and federal laws referenced in OAC 340:2-28-1 and the rules in this Subchapter. The duty duties of the ALJ is are to conduct a fair hearing hearings, avoid delay delays, maintain order, and make a record of all proceedings arising under his/her the ALJ's jurisdiction. The ALJ shall have has all powers necessary to accomplish these ends, including, but not limited to:

- (1) Presiding presiding at all hearings of the Office of Administrative Hearings: Child Support (OAH);
- (2) Setting a docket to conduct all hearings in conformance with pertinent statutes and the rules and regulations which relate to all matters coming before him/her and to schedule and hear all dockets, including but not limited to default, settlement and disposition dockets;
- (3) Determining the dates, times and places for hearings on matters within his/her jurisdiction, set dockets and provide each local Child Support Office with a copy of his/her monthly docket at a time sufficient for each local Child Support Office to notify obligors of the hearing dates and times;
- (42) Changing changing the date, time and place of the hearing or continue matters previously scheduled upon the timely request of either party or his/her the ALJ's own motion, with notice to the parties where when required. The ALJ has the power to continue a hearing in whole or in part;
- (53) Scheduling scheduling prehearing conferences to at the discretion of the ALJ, either before the ALJ or outside the ALJ's' presence to consider matters that may aid in the prompt disposition of the proceeding, including but not limited to:
 - (A) settle, simplify or clarify settling, simplifying, or clarifying issues;

- (B) discuss discussing evidentiary matters;
- (C) exchange exchanging documents;
- (D) accept accepting stipulations; and
- (E) confer conferring on any matter pertinent to a specific case; or
- (F) consider other matters that may aid in the expeditious disposition of the proceeding.

(64) Order ordering any party, his/her the party's attorney, or other lawfully authorized representative, or to be personally physically present at the a hearing or a prehearing conference. The ALJ may impose sanctions for failure to appear and/or comply, including dismissal, default judgment, or other sanctions reasonably necessary to ensure compliance;

(75) Regulating requiring participation of parties and require requiring parties to state their position positions with respect to the various issues in the proceeding;

(86) Administering administering oaths and affirmations;

(97) Ruling ruling on motions or other procedural items on matters pending before him/her, including issuance of protective orders or other relief to a party against whom discovery is sought pursuant to the Oklahoma Discovery Code, Chapter 41 of Title 12 of the Oklahoma Statutes;

(108) Regulating regulating the course of the hearing and conduct of counsel, witnesses, and the parties. This includes the mode and order of interrogation and presentation to:

- (A) make the interrogation and presentation effective for ascertainment determination of the truth;
- (B) avoid needless consumption of time; and
- (C) protect witnesses and parties from harassment or undue embarrassment;

(119) Examining examining witnesses whether called by the ALJ or a party;

(1210) Reviewing reviewing evidence and receive receiving, rule ruling on, exclude excluding, or limit limiting evidence or discovery;

(1311) Fixing setting the time for filing motions, petitions, briefs, or and other items;

(1412) Making making a final decision, including but not limited to: on all issues presented that are within OAH's jurisdiction;

(A) Determining support debt accrued or accruing for children receiving public assistance in Oklahoma and/or other states where the sister state requests DHS assistance in establishing and enforcing the support debt created through payment of public assistance under the AFDC program, pursuant to the provisions of Title IV D of the Social Security Act, as amended;

(B) In the absence of a court order, determining the amount of periodic support payments due from an obligor to the non AFDC custodian or guardian of minor children who has made application for services to establish and enforce the child support obligation whether application was made in this or another state;

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- ~~(C) Granting an immediate income assignment to the person or entity entitled to support payments as provided by law;~~
- ~~(D) Enforcing a support payment of a spouse or former spouse pursuant to a court or administrative order requiring such support if a child support obligation is being enforced under the state plan of the department authorized by the Federal Social Security Act;~~
- ~~(E) Determining whether the obligor owes more than \$1,000.00 child support pursuant to a court or administrative order and whether the arrearage information has been requested by a consumer reporting agency prior to the release of such information to the consumer reporting agency by the Department;~~
- ~~(F) Determining whether an obligor is underemployed or unemployed to defeat compliance with his/her support obligations and whether he/she should be ordered to participate in job finding and training programs and accept available employment;~~
- ~~(G) In the absence of a court order, fixing the amount of periodic support payments;~~
- ~~(H) Modifying child support orders; and~~
- ~~(I) Ordering state and federal tax offsets.~~
- (1513) Compelling compelling by subpoena the appearance of witnesses, the production of papers or other evidence, or the issuing of subpoenas upon proper application made by either party with the understanding that nothing in this paragraph precludes the issuance of subpoenas by someone other than the ALJ when permitted by law;
- (1614) Taking taking matters under advisement;
- (1715) Holding holding hearings or and prehearing conferences by telephone conference or other electronic means;
- (1816) Substituting copies of permitting the substitution of original documents with copies for filing;
- (17) permitting the filing of facsimile or electronic documents;
- (18) requiring announcements for all cases listed on the docket;
- (19) ordering, at the request of a party or on the ALJ's own motion, the exclusion of witnesses from the hearing room so they cannot hear the testimony of other witnesses, except a party who is a natural person or an officer or employee of a party that is not a natural person designated as its representative by its attorney;
- (20) disposing of any matter by stipulation, agreed settlement, consent order, or default;
- (21) recessing the hearing for a brief period of time, if a recess is necessary to facilitate the hearing process, at the request of any party, upon the ALJ's own motion, or for other good cause shown;
- (22) directing either party to prepare the proposed journal entry for the ALJ's review. The journal entry must contain both findings of fact and conclusions of law. The ALJ may:
 - (A) approve the proposed order as submitted;

- (B) require revisions to the proposed order; or
- (C) personally redraft the proposed order, in whole or in part;
- (23) directing either party to prepare other orders, including, but not limited to, orders for continuance, and orders for prehearing motions;
- (24) requesting the district child support enforcement office to provide assistance to the ALJ to expedite proceedings; and
- (25) imposing appropriate sanctions as provided in the Code of Civil Procedure, Chapter 1 of Title 12 of the Oklahoma Statutes, and the Oklahoma Discovery Code, Chapter 41 of Title 12 of the Oklahoma Statutes.

340:2-28-10. Empowered duties of the Administrative Law Judge [REVOKED]

- ~~(a) An ALJ is empowered to perform the following duties (including but not limited to):~~
 - ~~(1) At the request of a party or on the ALJ's motion, may order witnesses excluded so they cannot hear the testimony of other witnesses, except a party who is a natural person or an officer or employee of a party which is not a natural person designated as its representative by its attorney;~~
 - ~~(2) Make disposition of any matter by stipulation, agreed settlement, consent order or default;~~
 - ~~(3) At the request of any party or upon the ALJ's motion, recess the hearing for a brief period of time if a recess is necessary to facilitate the hearing process or for other good reason shown;~~
 - ~~(4) Specify the forms to be used in all administrative proceedings under these rules and regulations;~~
 - ~~(5) Direct either party to prepare the proposed journal entry for the ALJ's consideration including, but not limited to, findings of fact, conclusions of law, orders for continuance, orders on prehearing motions, etc.;~~
 - ~~(6) Require the local child support enforcement office to provide clerical assistance; direct any party, party's attorney or other representative to assist the ALJ with the proceedings, such as copying documents for the ALJ or any party, filling out the hearing and default docket form, mailing documents and orders, preparing certificates of acknowledgement or mailing; and preparing certified copies; and~~
 - ~~(7) Impose appropriate sanctions.~~
- ~~(b) Matters in which the same issues of fact involving minor children are pending before the district court and the ALJ will be decided and relief granted by the district court unless the issues are remanded for determination to the ALJ by the district court [56 O.S. §238.6A].~~

340:2-28-11. Disqualification of an Administrative Law Judge (ALJ) administrative law judge

- Pursuant to statutory provisions and district court rules:
- ~~(a) Before before filing any motion to disqualify an administrative law judge (ALJ), an in camera in camera~~

request must first be presented to the ALJ asking ~~him/her~~ the ALJ to disqualify or to transfer the matter to another ALJ. If the request is not satisfactorily resolved, a motion to disqualify the ALJ or transfer the case to another ALJ may be filed ~~in~~ with the Office of Administrative Hearings: Child Support (OAH) and a copy delivered to the ALJ. A copy of the motion must also be sent to the ALJ and all parties. The motion must be filed ~~no later~~ not less than ten (10) days ~~before~~ prior to the hearing or it ~~will be~~ is considered waived. Parties may request permission of OAH to extend this time period; and

~~(b2) Any~~ any interested party who ~~deems himself~~ ag-grieved by ~~wishes to~~ contest the refusal of the ALJ to grant the motion to disqualify or transfer the case to another ALJ may re-present a motion within ~~three~~ five days of the date of refusal to the ~~Chief Administrative Law Judge~~ chief ALJ of the ~~Office of Administrative Hearings~~ OAH. If the motion is to disqualify the ~~Chief Administrative Law Judge~~, the party will appeal the denial of the motion to the ~~General Counsel, Department of Human Services, State of Oklahoma~~ within the same three day time limit. A copy of the motion must also be sent to the ALJ who entered the original order and all interested parties. If the motion is to disqualify the chief ALJ, the party must re-present the motion, within the same five day limit, to OAH with a request to the general counsel, Oklahoma Department of Human Services, to assign an ALJ who is not the chief ALJ. A copy of this motion must be sent to the chief ALJ and to the opposing party. If the hearing before a second ALJ results in an adverse order, the moving party is granted five days in which to institute a proceeding in district court for a writ of mandamus. An order favorable to the moving party may not be reviewed by appeal or other method.

(e) An order favorable to the moving party may not be re-viewed by appeal or other method. An order denying disqual-ification may be appealed to the District Court following the hearing in the manner provided for appeals, as set forth in Ti-tle 56, O.S. Sections 238.4(C) and 240.3, and elsewhere.

(d) An ALJ shall withdraw from any individual proceeding in which he/she cannot give a fair and impartial hearing.

340:2-28-12. Judges Judges' conferences

The second Tuesday of each month, ~~unless otherwise des-ignated, will be reserved on all dockets for a conference of all ALJ's. Matters will not be set for hearing or conference on any dockets of ALJ's on that date is reserved for Office of Admin-istrative Hearings: Child Support, staff meetings. Dockets are not set on that date; matters are not set for hearings or confer-ences on that date.~~

340:2-28-13. Districts [AMENDED AND RENUMBERED TO 340:2-28-4.1]

The ~~Chief Administrative Law Judge~~ shall assign the ~~ALJ's~~ to the various districts within the state.

340:2-28-14. Terms and location of Court [AMENDED AND RENUMBERED TO 340:2-28-4.2]

~~(a) This Court shall be in continuous session at the local Child Support Offices and elsewhere as prescribed by the Of-fice of Administrative Hearings, for the transaction of judicial business on all business days, except as otherwise noted herein.~~

~~(b) All proceedings will be commenced at the Clerk's office, Office of Administrative Hearings: Child Support and main-tained there unless otherwise designated by the Chief Admin-istrative Judge of the OAH.~~

~~(c) All pleadings filed and exhibits introduced will be kept in the Office of Administrative Hearings: Child Support, unless otherwise directed by an ALJ, and will not be removed except upon order of an ALJ. In that event, a receipt specifying the record or paper removed will be given by the party obtaining it. The receipt will be legible and state the date and the name, business address, and telephone number of the person remov-ing the document. Any party who obtains an order for the re-moval of a transcript made by the official court reporter or as directed by the OAH or makes a copy of same in the Clerk's office may be required to pay the copying costs.~~

340:2-28-15. Clerk of Office of Administrative Hearings [AMENDED AND RENUMBERED TO 340:2-28-4.3]

The Clerk of the Office of Administrative Hearings is des-ignated and fully empowered to perform the following func-tions:

- ~~(1) Maintain the records of the OAH;~~
- ~~(2) Certify the official transcripts;~~
- ~~(3) Transmit the record to the District Court;~~
- ~~(4) Designate a court reporter for preparation of a hear-ing transcript; and~~
- ~~(5) Any functions delegated by the Chief Administra-tive Law Judge for the implementation of these rules and regulations and the administration of the OAH.~~

340:2-28-16. Rights of parties [REVOKED]

All parties may:

- ~~(1) Appear by counsel, pro se, or other representative if authorized by the ALJ prior to the hearing;~~
- ~~(2) Participate in any prehearing conference held by the ALJ;~~
- ~~(3) Agree to stipulations as to facts which will be made a part of the record;~~
- ~~(4) Make opening and oral arguments and closing statements at the hearings;~~
- ~~(5) Present relevant testimonial and documentary evi-dence on the issues at the hearing;~~
- ~~(6) Present witnesses for direct and cross examination by all other parties;~~
- ~~(7) Present affidavits under such circumstances as may be approved by an ALJ;~~
- ~~(8) Submit written briefs, proposed findings of fact and conclusions of law after the hearing or upon request of the ALJ;~~

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- (9) Apply for the issuance of subpoenas duces tecum or ad testificandum;
- (10) Conduct a reasonable discovery;
- (11) Confront and cross-examine witnesses; and
- (12) To be notified of these rights in writing.

340:2-28-16.1. Docketing cases

District child support offices must submit copies of their dockets to the Office of Administrative Hearings: Child Support (OAH), a minimum of 14 days prior to the docket date. Failure to submit the docket to OAH may result in a case not being held on the docket. Cases not on the docket may be heard at the discretion of the assigned administrative law judge.

340:2-28-16.2. Service of orders

Orders prepared by the administrative law judge (ALJ) must be mailed or hand-delivered to the parties within three business days by the ALJ, unless the ALJ directs the mailing or delivering of an order by one party upon another. Copies of all orders must be mailed or hand-delivered to opposing parties by the preparer within three business days from the filing of the order.

340:2-28-17. Local Child Support Office [REVOKED]

It is the responsibility of the local Child Support Office to:

- (1) Work with the Office of Administrative Hearings: Child Support to provide a suitable room for holding administrative hearings;
- (2) Provide clerical assistance to the ALJ, when requested;
- (3) Prepare any pleadings or orders as directed by the OAH or an ALJ;
- (4) Present each case on behalf of the State, sister state or private party or entity at hearings and other proceedings. The case will be presented by a licensed attorney or other representative previously certified by the OAH who is thoroughly familiar with relevant law and the particular facts of the case and fully prepared for hearing, e.g. pre-marking exhibits, copies of exhibits made for distribution to the ALJ and opposing party. Upon failure to provide adequate representation, the ALJ may impose sanctions including, but not limited to, dismissal of the case;
- (5) Establish and maintain a certification program effective May 1, 1992 that adheres to certification guidelines established by the OAH;
- (6) Sound the docket for the ALJ and report to the ALJ the status of each case set for hearing on a particular day prior to the hearings unless otherwise directed by the OAH or an ALJ assigned to the CSED; and
- (7) Complete a Hearing and Default Docket, Form OAH 1, for each hearing.

340:2-28-17.1. Hearing room

(a) Each district child support office must provide the administrative law judge (ALJ) with a hearing room designated for the exclusive use by the ALJ on hearing days. The use of

the hearing room must not be preempted for any purpose on hearing days. The room provided must be large enough to accommodate the ALJ and required computer equipment as well as a minimum of six additional people during the hearing.

(b) No person shall carry a firearm or other weapon into the hearing room, except for law enforcement officers or security personnel in their official capacity for the purpose of providing security in the hearing room or law enforcement officers having a prisoner in custody.

(c) Other than those items belonging to the ALJ, briefcases, boxes, bags, purses, and any and all containers of any type are not permitted in the hearing room without permission of the ALJ. The owners of those items are solely responsible for providing for the safekeeping of the items during the hearing.

340:2-28-17.2. Pleadings and motion practice

(a) Signatures on documents.

(1) **Signing of pleadings.** Every pleading and motion filed with the Office of Administrative Hearings: Child Support (OAH), must be signed by an attorney of record, whose Oklahoma Bar Association (OBA) identification number must be stated, or, if the party is not represented by an attorney, must be signed by the party. Each pleading and motion must include the address of the signer and telephone number, if any. Except as provided by rule or statute, pleadings need not be supported by affidavit. A pleading is any document that contains statements or allegations that constitute a cause of action or defense.

(2) **Signing of other documents.** Other documents such as legally mandated administrative notices issued by the Child Support Enforcement Division (CSED) to notify obligors of proposed enforcement actions to be taken by CSED do not require an attorney's signature.

(b) Practice.

(1) Form, filing, and service.

(A) The original and copies of all pleadings in proceedings and matters presented to an administrative law judge (ALJ) must be filed with OAH. All originals are retained by OAH. All pleadings must be filed prior to any administrative proceedings being docketed.

(B) Pleadings and motions filed in OAH must be typewritten or legibly hand-written on white paper, size 8 $\frac{1}{2}$ by 11 inches. Pleadings and motions must have the proper style of the case indicating the parties' names, OAH number, and IV-D case number, or family group number (FGN). If filed by an attorney, the name, OBA number, address, and telephone number must be shown on the last page of the instrument. If filed by a party not represented by a lawyer, that party must sign his or her name and type or legibly print his or her name, mailing address, zip code, and telephone number on the last page of the instrument filed.

(C) All documents in a proceeding must be served as required by rule or statute. Proof of service must be filed with OAH for each service made and must

establish on its face that regulatory and statutory requirements for service are satisfied.

(D) Parties or attorneys filing motions or pleadings after the filing of the notice initiating the action must file the original with OAH and deliver or mail a copy to the opposing party or counsel of record. A certificate of mailing or service must be filed with OAH.

(E) Upon failure to comply with the requirements in this Section, the ALJ may, among other sanctions, continue the cause of action until satisfactory compliance or deny the requested relief.

(F) Requests that do not comply with the requirements of (A) through (E) of this paragraph are considered only at the discretion of the ALJ.

(2) Motions.

(A) An original motion must be filed with OAH with copies served upon opposing parties. Motions must be in writing, stating the legal basis for the motion, relief requested, and whether the opposing party objects, if known. The name, OBA identification number, address, and phone number of the attorney must be shown on the last page of the instrument. If a person filing the pleading is not represented by a lawyer, that party must sign his or her name and type or legibly print his or her name, address, business and home telephone numbers and zip code.

(B) The ALJ determines whether oral argument is necessary on a motion and if so, provides pro se parties and all attorneys of record with notice of the specific hearing date, time, and place.

(C) Briefs or responses that do not comply with this paragraph are considered only at the discretion of the ALJ.

(D) This paragraph does not prohibit oral motions.

(3) Briefs. Briefs and responses must comply with applicable statutes and deadlines. Reply and response briefs must be delivered to the ALJ at least three working days prior to any hearing. Each brief must be clearly styled to show whether it is in support of a motion, in opposition of a motion, or a reply brief. It must also clearly show the particular application or proceeding to which it relates, and the party or parties on whose behalf it is presented. Briefs, if required, must not exceed 20 pages in length without prior permission of the ALJ. Reply briefs must be limited to five pages in length. No further briefs may be filed without permission of the ALJ. Briefs and responses that do not comply with this paragraph are considered only at the discretion of the ALJ.

(4) Extensions of time. Except at the discretion of the ALJ, all requests for extensions of time must contain:

- (A) the original due date for the response;
- (B) the amount of additional time requested;
- (C) the reason for the request;
- (D) the current status of the case, including the next hearing date, if a hearing has been scheduled; and
- (E) a statement that the opposing party or the opposing party's counsel has been contacted regarding

the extension and either consents or objects to the extension; or in the alternative, a statement that good faith effort was made to comply but the opposing party or the opposing party's counsel was unavailable.

(5) Discovery not to be filed. Depositions, interrogatories, requests for admissions, requests for production of documents, and responses must not be filed with OAH unless the discovery document accompanies the administrative notice, or is an attachment to a motion or response to a motion, or is ordered by the ALJ. A motion to compel discovery or discovery motion for protective order must include either a verbatim recitation or a copy of the interrogatory, question, request, answer, response, or objection which is the subject of the motion.

(6) Disputed discovery motions. No hearing on a discovery dispute may be set unless the moving party or counsel advises the ALJ in the motion that the party or counsel has conferred with the opposing party or opposing party's counsel, in good faith about the dispute, but has been unable to resolve the dispute.

(7) Withdrawal of counsel. When submitting an application or motion to withdraw and a proposed order allowing withdrawal, counsel must comply with the requirements in this paragraph.

(A) Every application to withdraw as counsel must contain:

- (i) a statement of grounds for withdrawal;
- (ii) the current status of the case, including the next hearing date, if a hearing has been scheduled;
- (iii) whether new or substitute counsel has been obtained by the client and entered an appearance; and
- (iv) a certificate of mailing to the party or custodian showing the last known mailing address and to all other attorneys of record in the case.

(B) No application to withdraw may be considered unless it is submitted to the ALJ at least ten days prior to the date on which a hearing is scheduled.

(C) Every proposed order allowing withdrawal must contain a statement of the case's current status, including the next hearing date, if a hearing has been scheduled, and a certificate of mailing to the party or custodian, showing the last known mailing address, and to all other parties.

340:2-28-18. Discovery

DHS and any party named in any administrative notice has the right to conduct discovery. Upon written motion, the ALJ shall promptly rule upon any objection to such discovery action initiated pursuant to this rule. The ALJ also has the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the ALJ may, in his discretion, issue any order and impose any sanction other than a contempt order [Title 12, Oklahoma Statutes, 320 et. seq.]. Parties to an action before an administrative law judge (ALJ) of the Office of Administrative Hearings: Child Support, have

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the right to conduct discovery under the Oklahoma Discovery Code, Chapter 41 of Title 12 of the Oklahoma Statutes. ALJs may enter orders for discovery as necessary.

340:2-28-19. Evidentiary purpose

The hearing is directed to receiving factual evidence related to issues in the proceeding as follows:

(1) **Argument.** ~~Argument will is not be received presented~~ in evidence, but ~~should be presented~~ in statements, memoranda, or briefs, as determined by the administrative law judge (ALJ). Brief opening statements, ~~which shall be limited to statements~~ of the party's position and what ~~he/she the~~ party intends to prove, may be made at the hearing.

(2) **Testimony.** Testimony ~~shall be~~ is given orally, under oath or affirmation, by witnesses at the hearing. Witnesses ~~will must~~ be available for ~~cross-examination~~ cross-examination by all parties at the hearing. The ALJ may conduct hearings telephonically or by other electronic means when requiring a party or witness to physically attend would create a hardship.

(3) **Stipulation and exhibits.** Two or more parties may agree to stipulations of fact. ~~Such stipulations, Stipulations of fact or exhibits proposed proposed~~ by any party, ~~shall must~~ be exchanged at the prehearing conference or otherwise prior to the hearing if the ALJ so requires. The ALJ may substitute copies for original documents. Unless otherwise ordered, all exhibits ~~which are~~ to be introduced into evidence or presented at the hearing must be marked in numerical order for identification and shown to opposing ~~counsel parties~~ prior to the prehearing conference or, where a conference is not held, prior to the hearing on the matter.

(4) **Rules of evidence; exceptions.** Technical rules of evidence do not apply to the hearing. Rules ~~or and~~ principles designed to assure production of the most credible evidence available and to subject testimony to test by ~~cross examination will be~~ cross-examination are applied by the ALJ where reasonably necessary. A witness may be ~~cross-examined~~ cross-examined on any matter material to the proceeding without regard to the scope of ~~his~~ direct examination of the witness. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record ~~will be~~ are open to examination by the parties and opportunity given to refute facts and arguments ~~advanced presented~~ on either side of the issues.

(5) **Evidence of payments.** A report of payments made by the obligor or payor with a certification of authenticity executed by the Oklahoma Department of Human Services or a ~~Court~~ district court clerk is admissible in evidence as self authenticated.

(6) **Judicial notice.** The ALJ may take judicial notice at any stage of the proceeding of the common law, constitutions, and public statutes in force in every state, territory, and jurisdiction of the United States, including tribal courts and the Court of Indian Offenses, and of adjudicative facts whenever:

(A) the adjudicative fact is generally known within the territorial jurisdiction of the administrative court;

(B) the adjudicative fact is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned; or

(C) a party requests the taking of judicial notice and supplies the ALJ with the necessary information ~~{Title 12 Oklahoma Statutes, Sections 2201-2203}~~.

340:2-28-20. Entry of appearance

(a) All attorneys ~~or other representatives authorized by an ALJ to appear on behalf of a party shall must~~ execute an entry of appearance by filing a:

(1) formal entry of appearance with the Office of Administrative Hearings: Child Support (OAH); or

(2) signed pleading or motion with OAH that contains the attorney's name, Oklahoma Bar Association number, address, and telephone number.

(b) ~~All Entries of Appearance shall be in writing and must be filed with the clerk of the OAH. Forms for the Entry of Appearance may be obtained from the Clerk of the OAH, the ALJ assigned to the case, the Child Support Office where the hearing is situated, or as the ALJ may direct. Every attorney of record must continue representation in the matter until final disposition by the administrative law judge (ALJ), unless permitted by the ALJ to withdraw for good cause shown. However, attorneys representing the Child Support Enforcement Division (CSED) who enter appearances on behalf of the State of Oklahoma may be replaced as attorneys of record by other attorneys representing the CSED without permission of the ALJ.~~

(c) ~~Every attorney accepting employment by a defendant shall continue representation through the hearing unless permitted by the ALJ to withdraw for good cause shown.~~

340:2-28-21. Exclusion from hearing for misconduct

Disrespectful ~~or~~ disorderly, or contumacious language or contemptuous conduct, ~~disrespectful or offensive language,~~ refusal to comply with directions, or continued use of delay tactics by any person at the hearing before an administrative law judge (ALJ) ~~shall constitute~~ constitutes grounds for immediate exclusion of ~~such the~~ person from the hearing by the ALJ.

340:2-28-22. Courtroom decorum Professional conduct and dress requirements

(a) Attorneys practicing ~~in this Court before the Office of Administrative Hearings: Child Support (OAH)~~ are expected to conduct themselves in accordance with the Model Rules of Professional Conduct of the American Bar Association, as adopted by the Oklahoma Supreme Court as the standard of conduct of all members of the Oklahoma Bar Association.

(b) Appropriate dress is required for all persons attending an OAH hearing or prehearing conference. Professional attire is required for all attorneys and the State's witnesses appearing before an administrative law judge.

340:2-28-23. Official transcript

(a) ~~The Office of Administrative Hearings: Child Support (OAH), will prepare or direct~~ prepares or directs the preparation of the official transcript by a licensed court reporter. The party seeking a copy of the transcript of the hearing ~~shall must~~ pay a reasonable deposit or adequate indemnity prior to the preparation of the transcript and prepay all costs of transcription and ~~pay a reasonable deposit or adequate indemnity prior to the preparation of the transcript.~~ The transcript ~~will is~~ not be furnished prior to:

- (1) full payment of all transcription costs; or
- (2) issuance of an order from OAH finding that OAH is to bear the transcription costs.

(b) Upon application by means of an affidavit, for "in forma pauperis" status, the administrative law judge (ALJ) must determine whether to grant the application. Upon granting the application, OAH provides a transcript, at its own expense, to the applicant for the purpose of appeal.

~~(c)~~ Upon notice to all parties, the ALJ may authorize corrections to the transcript. The official transcript of testimony ~~taken together with any stipulations, exhibits, briefs, memorandums or briefs of law filed there with~~ will be filed in the OAH.

~~(ed)~~ The official transcript ~~will be is~~ certified by the ALJ presiding at the hearing, the chief ALJ of OAH, or the ~~Clerk~~ clerk of the OAH.

340:2-28-24. Record for decision

(a) The audio or video tape, transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except for correspondence, including rulings and any recommended or initial decision constitutes the exclusive record for decision by the administrative law judge (ALJ).

(b) Audio or video tapes of the hearings are the property of the Office of Administrative Hearings: Child Support (OAH), and are not available for copying, review or transcription except as described in OAC 340:2-28-23, which pertains to official transcripts.

(c) OAH manages and disposes of case records according to the Oklahoma Statutes as interpreted in Subchapter 21 of this Chapter.

340:2-28-25. Record for Appeal appeal

The certified transcript, exhibits, briefs, memorandum of law, and any written orders ~~shall constitute the Record for Appeal record for appeal~~ to the ~~District Court~~ district court.

340:2-28-26. Case numbering

(a) ~~Effective January 1, 1992, upon the filing of a notice with the Clerk of the Office of Administrative Hearings, the clerk shall assign a case number to each case, beginning with the designation "OAH", the last two digits of the year in which the case is filed, a chronological number of the case, designation of the ALJ initially assigned to the case, and the location of the local child support office. Every case to be heard by an administrative law judge (ALJ) with the Office of Administrative Hearings: Child Support (OAH), must be assigned an OAH case number prior to the case being placed on the docket. OAH~~

~~numbers are assigned within three working days after the request is submitted to OAH by the district child support office. The case is assigned a number starting with the year the case is opened with OAH, a chronological number of the case within OAH, and the two digit county designation of the child support office requesting the number. To transfer a case from one child support office to another, an ALJ must sign a transfer order so that the county designation may be changed on OAH records.~~ (b) Documents are not accepted for filing by OAH unless the OAH number is clearly written on the document.

340:2-28-27. Pleadings [AMENDED AND RENUMBERED TO 340:2-28-17.2]

(a) ~~Pleadings filed in the Office of Administrative Hearings must be typewritten on a good grade of white paper, size 8 1/2 by 11 inches, double spaced in legible print. The name, bar number, address and phone number of the attorney or person filing the pleading shall be shown on the last page of the instrument. If a party is not represented by a lawyer, that party must sign his name and type or legibly print his name, address, business and home telephone numbers, and zip code.~~

~~(b) Upon failure to comply with this Section, the ALJ may, among other sanctions, continue the cause until satisfactory compliance, dismiss the case or motion, or permit the filing of same.~~

340:2-28-28. Forms [REVOKED]

~~Effective February 1, 1992, the OAH may specify the forms to be used in all administrative proceedings or matters under its jurisdiction, including but not limited to entry of appearance, docket sheets, notices, report of payments, mailing certificates, discovery, etc.~~

340:2-28-29. Dismissals

All motions for dismissals or partial dismissals ~~shall must~~ be filed ~~in writing and recorded by the Clerk of the OAH with the Office of Administrative Hearings: Child Support.~~ The ~~administrative law judge (ALJ) shall determine~~ determines whether a dismissal ~~should be is~~ granted according to relevant statutory and common law.

340:2-28-30. Continuance Continuances

(a) A party seeking a continuance must request a motion for the continuance from the assigned administrative law judge (ALJ). The motion must include the reason for the continuance and be made ten days prior to the scheduled hearing date. A motion for continuance filed within ten days prior to the scheduled hearing date or orally requested at the hearing may be approved at the discretion of the assigned ALJ. The ALJ must include the reason(s) for a continuance in the order granting the continuance.

~~(b) The parties do~~ A party does not have the authority to continue a matter set on a regularly or specially scheduled docket of an ALJ. A party seeking a continuance must apply to the ALJ assigned to his case for a continuance. Said application must be made ten days prior to the hearing date unless

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~~circumstances exist which would justify a later application. Parties may agree to continue a docketed matter with the approval of the assigned ALJ. Without an agreement, the motion is heard by the assigned ALJ.~~

~~(c) In the event an assigned ALJ is unavailable for a docket, another ALJ may be assigned or may direct that the unresolved matters be continued without a hearing.~~

~~(d) After one continuance has been granted for each party, further motions for continuances are heard by an ALJ assigned to the case and are not granted, except for good cause.~~

340:2-28-31. Objections to service and venue

Objections to jurisdiction over ~~the~~ a person, the issuance of service of notice, or the venue of the action are waived if a party submits ~~himself~~ to a scheduled hearing or pretrial conference without written objection.

340:2-28-32. Prehearing conference [REVOKED]

~~(a) A prehearing conference may be held if the ALJ determines it is in the interests of the parties. Unless the ALJ directs otherwise, a prehearing conference will not be held if the defendant is in default or has waived his right to appear. An ALJ may hold more than one prehearing conference. The scheduling and conduct of a prehearing conference shall be designed to:~~

- ~~(1) Expedite the disposition of the action;~~
- ~~(2) Improve the quality of the hearing through more thorough preparation and issue clarification; and/or~~
- ~~(3) Facilitate the settlement of the case.~~

~~(b) The ALJ shall determine the location of a prehearing conference and may schedule the conference in the county of residence of either of the parties, or elsewhere, and may hold the conference by telephone conference.~~

~~(c) At least ten days notice of the setting of a case for an initial prehearing conference will be given to the parties and the attorneys of record by the Clerk of the OAH. Notice of a prehearing conference is not necessary whenever both parties are present and one or both of the parties request a conference or the ALJ deems it necessary.~~

340:2-28-33. Default judgment

(a) A default judgment or administrative order may be entered if:

- (1) after being served with notice to appear, an obligor a party fails to:
 - (A) timely appear for a set hearing date; or
 - (B) request a hearing within the statutory time allotted; or
- (2) having requested a hearing, the obligor fails to make an appearance at the hearing; or
- (3) otherwise provided by statute.

(b) Under the circumstances described in this Section, notice of taking default is not required.

340:2-28-34. Matters taken under advisement

~~(a) A decision shall be rendered within 90 days of the date any matter is taken under advisement or, if briefs are to be submitted, within 90 days of the date the final brief is filed.~~

~~(b) If the decision is not timely rendered, the parties may inquire of the ALJ why it has not been rendered and what action, if any, will be taken. If satisfactory arrangement cannot be made, any party may then contact the Chief Administrative Law Judge for resolution of the matter. If the case was initially assigned to the Chief ALJ, any party may contact the General Counsel, Department of Human Services, State of Oklahoma, for resolution of the matter.~~

~~(c) When an ALJ takes a matter under advisement, the ALJ shall specify the date by which a decision will be rendered. If briefs are to be submitted, the dates for filing such, shall be specified. A decision must be rendered within 20 days after the date the hearing is concluded. [56 O.S. § 237.8] In the event the record is left open by order of the administrative law judge (ALJ) after a hearing is concluded, a decision must be rendered 20 days after the last evidence, brief, or memorandum of law is received into the record or the ALJ determines that the record is closed. If the decision is not rendered within this time, the chief ALJ may be advised by either party so that appropriate measures may be taken by the chief ALJ.~~

340:2-28-35. Uniformity of rulings [REVOKED]

When a question of law, fact or procedure has been presented to an ALJ, the same question, as it relates to the same case, will not knowingly be presented to another ALJ sitting in the district without apprising the second ALJ of the first ALJ's ruling. If a ruling has not been made, the second ALJ shall be notified that such question has already been presented to the first ALJ. Where this rule has been violated, an order issued by the second ALJ may be vacated by him at any time before the entry of a final judgment or before the judgment is filed of record with the District Court.

340:2-28-36. Determining the amount of payments [REVOKED]

In determining a payment plan for repaying the state, the custodial parent, or another entity entitled to arrearage, the ALJ shall take into consideration:

- ~~(1) All earnings, income and resources of the obligor, including real and personal property;~~
- ~~(2) The earnings potential of the obligor;~~
- ~~(3) The reasonable necessities of the obligor;~~
- ~~(4) The ability of the obligor to borrow;~~
- ~~(5) The needs of the child for whom the support is sought;~~
- ~~(6) The amount of assistance which would be paid to the child under the full standard of need;~~
- ~~(7) The existence of other dependents;~~
- ~~(8) The current support ordered by the District Court or Administrative Court;~~
- ~~(9) The interest on the delinquent court ordered child support, as provided in Title 43, O.S. Section 114;~~

- (10) Any criteria established by the State under 43, Oklahoma Statutes, Section 118 et. seq. and the Federal Government, 45 CFR Section 302.53; and
- (11) Other reasonable criteria which the ALJ may choose to incorporate.

340:2-28-37. Fraud [REVOKED]

Whenever, during the course of a hearing, there is evidence that a fraud may have been perpetrated in obtaining or receiving financial assistance on behalf of a dependent child, the plaintiff shall notify the Department of Human Services Fraud Unit, in conformance with existing DHS rules and regulations.

340:2-28-38. Notice of support debt [REVOKED]

(a) The Notice of Support Debt accrued shall be prepared by the district in which the action arises and shall include:

- (1) A statement of the support debt accrued, if any, based on payment of public assistance to or for the benefit of any dependent child and support debt accruing, if any, based on the payment of public assistance for the benefit of said child;
- (2) A statement of the amount of monthly public assistance payment or if a payment is not made, the amount of monthly child support required by the custodian of the minor child as determined by the Department;
- (3) A statement that the obligor will be required to maintain health insurance for the child whenever the obligor has such insurance available through his employment or other group insurance plan;
- (4) A statement containing the names of the children and of the custodian of the children;
- (5) A statement that the obligor may object to all or any part of the notice of support debt and, within 20 days of the date of service, may request a hearing to show cause why said obligor should not be determined liable for the support requested in the notice and for any or all of the debt accrued or accruing and the amount to be paid thereon;
- (6) A statement that if no hearing is requested on or before 20 days from the date of service, the support debt shall be made an administrative order subject to collection action and may be docketed with the District Court in the county of residence of the custodian of the child. If the custodian resides out of state, the action may be docketed with the District Court in the Obligor's county of residence;
- (7) A statement that if an administrative order is entered and filed in the District Court, it will be enforced in the same manner as an order of the District Court;
- (8) A statement that the obligor may make a voluntary acknowledgement of support liability and stipulated support amounts; and
- (9) Whether the amount requested will accrue until the date of adjudication.

(b) The Notice of Support Debt shall be served upon the obligor in the same manner prescribed for the service of summons in a civil action.

340:2-28-39. Notice of delinquency [REVOKED]

(a) The Notice of Delinquency accrued shall be prepared by the district in which the action arises and shall include:

- (1) A statement that the obligor is alleged to be delinquent under a support order in a specified amount;
- (2) A statement that an assignment will become effective against the obligor's earnings unless within 15 days of the date of mailing of the delinquency notice the obligor requests a hearing;
- (3) A statement specifying the date of mailing the notice;
- (4) A statement that at the hearing, the obligor may contest the claimed delinquency only with regards to mistakes of identity or to the existence or the amount of the delinquency;
- (5) A statement that the assignment shall remain in effect for as long as the order for support upon which it is based and payment of any arrearage will not prevent an income assignment from taking effect; and
- (6) A statement that the amount specified may include such amounts as may accrue until date of adjudication.

(b) The Notice of Delinquency shall be served upon the obligor in the same manner prescribed for the service of summons in a civil action.

340:2-28-40. Notice of Job Finding and Training Programs [REVOKED]

(a) The Notice of Job Finding and Training Programs is prepared by the district in which the action arises and shall include:

- (1) A statement that the obligor is required by law to obtain and maintain gainful employment sufficient to meet his support obligation;
- (2) That the obligor is underemployed or unemployed so that he cannot meet his support obligation.
- (3) That the obligor is not complying with the court or administrative order for support and is delinquent in a certain amount;
- (4) The name of the child for whom support is ordered and the custodian of the child;
- (5) That the obligor shall appear for a conference in his county of residence on a date certain to show cause why he should not be ordered to participate in job finding or training programs and accept available employment;
- (6) If it is determined that the obligor is unemployed or under employed or fails to appear, an order will be entered which will require the obligor to participate in job finding and training programs and accept available employment. Such order may be docketed with the District Court in his county of residence and enforced as any other court order of the District Court by indirect civil contempt proceedings.

(b) The notice may also contain, but is not required to contain, the following information:

- (1) That the obligor may show good cause why an administrative order should not be entered requiring him to participate in job finding and training programs and accept available employment; and

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(2) That good cause is defined as establishing by expert medical opinion that the person is mentally or physically unable to work or such other grounds as may constitute good cause.

(e) The Notice of Job Finding and Training Programs shall be served upon the obligor in the same manner prescribed for the service of summons in a civil action.

340:2-28-41. Voluntary acknowledgement of debt [REVOKED]

An obligor may voluntarily acknowledge support liability and stipulate to support amounts at any time prior to the hearing. A voluntary acknowledgement must be in writing, filed in the Office of Administrative Hearings and shall include the following:

- (1) The date of the acknowledgment;
- (2) The dates of arrearage or support debt that is due;
- (3) The dates arrearage or support debt accrued;
- (4) The payment plan for paying the arrearage and/or support debt, including when payment will begin;
- (5) The amount of current support based on guidelines or deviations from, if any, which the obligor agrees to pay, if the child is not emancipated and there is not a prior order of current support;
- (6) Whether the payment will be through income or wage assignment; and
- (7) The signature of the obligor witnessed by a notary public.

340:2-28-42. Visitation [REVOKED]

The ALJ may issue orders concerning visitation as authorized by law.

340:2-28-43. Modification [REVOKED]

Pursuant to Title 43 OSA Section 118.1, either parent may request a review of an administrative or court order of child support to determine compliance with child support guidelines. Upon request, the modification issue will be set for hearing and all parties notified.

340:2-28-44. Hearings [REVOKED]

(a) If the obligor, local Child Support Office or ALJ, requests a hearing on a notice of support debt it shall be scheduled at the earliest available time in the custodial parent's or guardian's county of residence. If the custodian resides out of state, the hearing of obligor shall be scheduled in the the obligor's county of residence. The hearing shall be conducted according to these rules and regulations.

(b) Gainful employment hearings shall be held in the obligor's county of residence.

(c) If both parties agree, and under circumstances which protect the rights of the parties to a fair hearing, the ALJ may hold a hearing by telephone conference.

340:2-28-45. Notice of the hearing [REVOKED]

(a) The Notice of the Hearing will be served by the plaintiff upon the obligor or his attorney of record by personal delivery or by mailing the notice, certified mail, return receipt requested, at his last known address. Return of service shall be filed in the OAH, Oklahoma City, Oklahoma.

(b) The Notice of the hearing on the delinquency shall be served by plaintiff sending written notice of the hearing to all parties. Return of service shall be filed in the OAH, Oklahoma City, Oklahoma.

340:2-28-46. Issues [REVOKED]

The following issues regarding child support are considered:

- (1) **Income Assignment.** The issues are:
 - (A) whether the defendant is the proper party;
 - (B) whether the defendant is delinquent in an amount equal to the amount payable for the time period provided by law; and
 - (C) whether there is a current District Court support order or an administrative order.
- (2) **Income tax refund interception.** The issues are:
 - (A) whether the defendant is the proper party;
 - (B) for federal, whether the obligor is delinquent in an AFDC amount equal to or greater than \$150.00 and the amount has been delinquent for three months or longer or, in non-AFDC cases, whether the defendant is delinquent in an amount equal to or greater than \$500.00; and
 - (C) for state, whether the defendant is delinquent in an amount equal to or greater than \$50.00.
- (3) **Credit bureau referrals.** The issues are:
 - (A) whether the defendant is the proper party or the one ordered to pay support;
 - (B) whether the arrearage exceeds \$1,000.00; and
 - (C) whether a financial reporting agency has requested the information.
- (4) **Administrative Support Obligation.** The issues are:
 - (A) whether there is a valid court order establishing support;
 - (B) whether the defendant is the proper party; and
 - (C) the amount of child support or other support to be ordered under the child support guidelines.
- (5) **Order for Support Debt.** The issues are:
 - (A) whether the defendant is the proper party;
 - (B) whether DHS or another state's equivalent agency paid public assistance money to or for the benefit of the dependent child or children of the obligor;
 - (C) whether the obligor was a recipient of public assistance monies for the benefit of minor dependent children for the period public assistance monies were paid;
 - (D) whether the obligor is currently receiving public assistance so as to suspend the collection of the support debt until such time as the obligor is no longer receiving public assistance; and

(E) if there has been a court order, the amount provided for in said order for the period of time public assistance monies were paid.

(6) ~~Order for job finding and training.~~ The issues are whether:

- (A) the defendant is the proper party;
- (B) the obligor is not complying with a court or administrative order for support and is delinquent; and
- (C) the obligor is unemployed or underemployed so that he cannot meet his support obligation.

(7) ~~Visitation.~~ The issue is specification of period of time that a noncustodial parent may spend with his/her child and restrictions and conditions, if any.

(8) ~~Modification.~~ The issues shall be determined as required by law.

340:2-28-47. Administrative orders [REVOKED]

After the ALJ renders a decision on a support debt, the ALJ may direct any attorney or party to draw up the order. The order shall be in writing and contain findings and conclusions as to each contested issue of fact and law as well as the order based on said findings and conclusions. Copies of the order shall be submitted to the parties by certified mail, return receipt requested within 20 days after the conclusion of the hearing.

340:2-28-48. Temporary orders

If, during the hearing, the administrative law judge (ALJ) finds the issues presented will require further disposition, either administratively or through the Court district court, the ALJ may enter a temporary order for child support, pending resolution of the reserved issues during a subsequent administrative or district court hearing. The temporary order shall must be docketed and enforced as a final order until superseded by a final administrative or district court order.

340:2-28-49. District Court [REVOKED]

Any decision of the ALJ as to the amount of support owed or to be owed in the future by the obligor will be superseded by the decision of the District Court, if the matter is brought before the District Court.

340:2-28-50. The effect Effect of the Administrative administrative order

If an appeal is not made by the obligor, the Administrative Order shall be final, subject to collection action, and may be docketed with the District Court in the county of residence of the custodian of the child. If the custodian resides out of state, the Administrative Order may be docketed with the District Court of the obligor's county of residence. The order shall be enforced in the same manner as an order of the District Court. If an administrative order of the Office of Administrative Hearings: Child Support, is not appealed under OAC 340:2-28-55, the administrative order is final unless stayed by the district court pending appeal. An administrative order is docketed with the district court in the county of residence of the custodian of

the child. If neither the custodian or the child reside in Oklahoma, the administrative order must be docketed with the district court in the county of residence of the noncustodial parent. [56 O.S. § 237.10] The order must be enforced in the same manner as an order of the district court.

340:2-28-51. Child support guidelines [REVOKED]

The amount of child support and other support shall be ordered and reviewed in accordance with the child support guidelines provided in Sections 118 and 119 of Title 43, Oklahoma Statutes.

340:2-28-52. Income assignment [REVOKED]

(a) The Administrative Order providing for the support of a minor child may contain an income assignment as provided by law. An income assignment may be initiated when the obligor has failed to make child support payments required by the order in an amount equal to the child support payable for the time period provided by law. The income assignment shall take effect after service upon the payor. Income assignment may be effective immediately unless one of the parties can show there is good cause not to require immediate income withholding.

(b) Unless the obligor successfully shows there is a mistake of identity, or to the existence or the amount of a delinquency, the ALJ shall order that the assignment of earnings take effect against the nonexempt earnings of the obligor.

(c) Pursuant to Title 56, Oklahoma Statutes, Section 240.2 (B)(2)(b), the ALJ may order an obligor to pay all costs involved in an income assignment proceeding.

340:2-28-53. Modification [REVOKED]

A final administrative order providing for payment of child support which has not been set aside on appeal by the District Court shall not be modified retroactively or payment of all or a portion of the past due amount waived, except by mutual agreement of the obligor and obligee or, if the child support rights have been assigned to the Department or other entity, by agreement of the Department or entity.

340:2-28-54. Reconsideration, re-examination, rehearing or vacation of a judgment or final order [REVOKED]

A motion to reconsider, re-examine, rehear or to vacate a judgment or final order must be filed with the Clerk of the OAH within 10 days after the date of such judgment or final order and must contain and separately state with specificity every ground on which the moving party intends to rely.

340:2-28-55. Appeal from a hearing on support debt administrative order

(a) If any party feels aggrieved by the findings and judgment, within 10 days of receipt of notice of the rendition of a final judgment, if judgment was orally announced at the conclusion, the party may give written notice to the Department by mailing a copy of the notice to the Clerk of the OAH and to the

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local CSEU of his intention to appeal the decision to the District Court of the county in which the child resides. The appeal must be filed in the District Court within 15 days after the date of the notice and reviewed pursuant to the provisions of Sections 318 through 323 of Title 75, Oklahoma Statutes and Title 56, Oklahoma Statutes, Section 238.4(C). Appeals from an administrative order must be in accordance with Section 240.3 of Title 75 and Sections 318 through 323 of Title 75 of the Oklahoma Statutes. Specifically, only final orders of the Office of Administrative Hearings: Child Support (OAH), may be appealed to the district court. Orders of OAH are not stayed pending an appeal unless the district court orders.

(b) Notice of the appeal must be filed with OAH and sent to the child support district office that handled the case at the time the order being appealed was issued.

340:2-28-56. Appeal from an order for income assignment [REVOKED]

(a) Final orders may be appealed to the District Court pursuant to Title 56, Oklahoma Statutes, Section 240.3 and Sections 318 through 323 of Title 75, Oklahoma Statutes, by any party directly affected and showing aggrievement by the order.

(b) An appeal shall be commenced by filing with the Clerk of the District Court, within 15 days from the date of the order or decision, a petition in error with a copy of the order or decision appealed from with copies to the Clerk of the OAH and the local Child Support Office. The time limit prescribed may not be extended. The manner of perfection of the record of the proceedings to be reviewed and the time for its completion shall be in accordance with rules prescribed by the District Court [Title 56, Oklahoma Statutes, Section 240.3].

(c) The appeal shall not stay the execution of any order or decision unless the District Court, for cause shown, orders the decision or order be stayed pending such appeal, pursuant to Section 319 of Title 75, Oklahoma Statutes.

[OAR Docket #03-993; filed 5-20-03]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 40. CHILD CARE SERVICES

[OAR Docket #03-992]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Eligibility
340:40-7-9 through 340:40-7-13 [AMENDED]
Subchapter 9. Procedures Relating to Case Changes
340:40-9-2 through 340:40-9-3 [AMENDED]
Subchapter 13. Child Care Rates and Provider Issues
340:40-13-1 through 340:40-13-2 [AMENDED]
340:40-13-5 [AMENDED]

(Reference APA WF # 02-27 and 03-06)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Public Law 104-193]; the Balanced Budget Act of 1997 [Public Law 105-33]; and 45 CFR Parts 98 and 99.

DATES:

Comment period:

February 18, 2003 through March 20, 2003

Public hearing:

None requested

Adoption:

March 25, 2003

Submitted to Governor:

March 25, 2003

Submitted to House:

March 25, 2003

Submitted to Senate:

March 25, 2003

Gubernatorial approval:

May 9, 2003

Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on May 19, 2003.

Final adoption:

May 19, 2003

Effective:

July 1, 2003

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 7. Eligibility
340:40-7-11 [AMENDED]
Subchapter 13. Child Care Rates and Provider Issues
340:40-13-5 [AMENDED]
(Reference APA WF# 02-27)

Gubernatorial approval:

December 20, 2002

Register publication:

20 Ok Reg 530

Docket number:

03-90

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Child Care Services proposed rules revisions: clarify household composition; add working or looking for a job away from home as a reason for temporary absence; clarify that court-ordered child support must be explored as a potential source of income; better explain the process when the client does not cooperate in pursuing potential income; clarify rules regarding past income; change the method for computing self-employment income; insert references for the Workforce Investment Act; add language to clarify that recurring lump sum payments include income from earnings; eliminate as countable income, educational grants and subsistence allowances paid to veterans or their dependents for educational purposes; exclude specific sources of income in determining income eligibility; require a minimum of 30 rather than 60 days of income to average to better align with food stamp policy; add clarifying information about when to divert income; require two-day processing of changes involving adding children or changing providers; add rules for making changes when clients do not report changes timely; add rules regarding the reopening process for child care authorizations; add language that requires sending a notice when an additional co-payment is paid by someone other than the client directly to the child care provider; add language to clarify that a parent can choose an in-home provider even when an out-of-home provider is available; remove some caregiver qualifications for in-home providers to better reflect current licensing requirements; require a search of the computer system for prior Child Welfare involvement; add language stipulating that child care center providers must have a status of one star plus, two star, or three star before a contract is submitted for Oklahoma Department of Human Services (OKDHS) approval; describe when a new contract can be approved for a one star child care center; specify that the provider completes all identifying information on the contract; change title of social services specialist to worker; and correct citation references.

CONTACT PERSON:

Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003.

SUBCHAPTER 7. ELIGIBILITY

340:40-7-9. Exploration and development of potential income

(a) ~~The social services specialist worker~~ explores all potential sources of income such as court-ordered child support from a ~~non-custodial~~ noncustodial parent(s), Social Security benefits, Supplemental Security Income (SSI), unemployment benefits, and veterans' benefits ~~with the applicant or recipient at the time of application and at each review.~~ Initial and continued eligibility for Oklahoma Department of Human Services (OKDHS) subsidized child care requires the ~~applicant or recipient~~ client to pursue all potential sources of income within 90 days of the application or review approval. SSI does not need to be pursued unless the ~~applicant or recipient~~ client wishes to apply.

(1) If the client refuses to pursue available income at the time of request and good cause as described in (b) of this Section does not exist, the worker denies the child care request.

(2) If the client agrees to pursue all available income within 90 days and then fails to do so, the worker closes child care benefits for the next negative action deadline.

(3) If the client reapplies after child care services were closed because of non-cooperation regarding pursuit of potential income, the client must verify pursuit of such income or that such income is no longer potentially available prior to child care being approved.

(b) When there is the possibility of physical or emotional harm to the child or the custodial parent or caretaker, pursuit of child support services may not be in the best interest of the family and is not pursued.

340:40-7-10. General provisions regarding income

(a) All available income, except that required to be disregarded by law or Oklahoma Department of Human Services (OKDHS) policy, is taken into consideration in determining a client's eligibility for child care services.

(b) ~~The client is responsible for reporting~~ must report all sources of income at the time of application.

(c) Income is considered available after it has actually been received. Anticipated income from a new source is never considered until it is actually in hand and under the control of the individual.

(d) Past income is not used to anticipate future income for any month in which a change in income has occurred or employment has been terminated.

(~~e~~) ~~The client is responsible for reporting~~ must report any changes in the amount or source of income within ten days of ~~receipt~~ the date the change occurs. Income changes reported timely are considered available for the next effective date shown on OKDHS Appendix B-2, Deadlines for Case Actions.

(~~ef~~) When an individual's income is reduced due to garnishment, the gross amount before the garnishment is counted as income.

(~~fg~~) Payments not considered as income are:

(1) monies withheld from any income source to repay a prior overpayment received from that same source;

(2) monies voluntarily or involuntarily returned to repay a prior overpayment received from that same income source; or

(3) child support payments received by Temporary Assistance for Needy Families (TANF) recipients which must be sent to the Child Support Enforcement Division to maintain TANF eligibility.

(~~gh~~) Monies withheld or returned to repay overpayments in federal, state, or local means tested assistance programs are not excluded when they are withheld or returned to repay overpayments resulting from intentional program violation as established by the agency administering the program.

340:40-7-11. Sources of income considered

(a) **Sources of income considered.** Income may be received periodically or at irregular intervals. All income unless specifically excluded in OAC 340:40-7-12 is considered in determining monthly gross income.

(b) **Earned income.** The term "earned income" refers to total money 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.

(1) **Wages.** Wages include total money received for work performed as an employee including armed forces pay, commissions, tips, piece-rate payments, longevity payments, and cash bonuses before any deductions are made such as taxes, bonds, pensions, union dues, credit union payments, and cafeteria plans.

(A) Only the portion of the cafeteria plan the client controls is counted as income.

(B) Reimbursements for expenses such as a uniform allowance or transportation costs, other than daily commuting, are subtracted from gross income.

(C) Payments made for annual leave, sick leave, or severance pay are considered as earned income during the month such income is received whether paid during employment or at termination of employment.

(D) Wages that are garnished or diverted and paid to a third party are also ~~included~~ counted as income.

(E) An earned income deduction is allowed for each employed person in the household unit.

(2) **Self-employment.** Earnings derived from a business enterprise owned by the individual ~~is~~ are considered as self-employment income. Gross income is determined by calculating total gross receipts or sales, subtracting the costs of producing the income listed in this Section and allowing the earned income deduction listed on Oklahoma Department of Human Services (OKDHS) Appendix C-4, Child Care Eligibility/Rates Schedule.

(A) **Costs of producing self-employment income.** Allowable costs of producing self-employment income include, but are not limited to, the identifiable

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cost of labor, stock, raw material, seed and fertilizer, and ~~interest payments to purchase~~ payments on the principal of the purchase price of income producing property real estate and capital resources, equipment, machinery, and other durable goods, interest paid to purchase income producing property, insurance premiums, and taxes paid on income producing property. Items not considered as a cost of producing self-employment income are:

- (i) ~~payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery, and other durable goods;~~
- (ii) net losses from previous periods;
- (iii) federal, state, and local income taxes, money set aside for retirement purposes, and other work related personal expenses, such as meals and necessary transportation which are accounted for by the appropriate amount of earned income deduction listed on OKDHS Appendix C-4; ~~and~~
- (iv) depreciation;
- (v) penalties and fines; and
- (vi) charitable contributions.

(B) **Monthly self-employment income.** ~~Self-employed~~ Self-employment income received on a monthly basis is normally averaged over a 12-month period. If ~~however,~~ the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business, the ~~social services specialist worker~~ calculates the self-employment income based on anticipated earnings.

(C) **Seasonal self-employment.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover.

(D) **Annualized self-employment income.** Self-employment income which represents a household's annual support is averaged over a 12-month period, even if the income is received in a short period of time. If the averaged amount does not accurately reflect the individual's actual monthly circumstances because the individual has experienced a substantial increase or decrease in business, self-employment income is based on anticipated earnings.

(E) **Income from rental property.** Income from rental property is considered income from self-employment. The household is only entitled to the earned income deduction if a member of the household is actively engaged in management of the property an average of at least 20 hours per week.

(F) **Income from room and board.** Payments from roomers or boarders are considered self-employment if the roomer or boarder is paying a reasonable amount.

(G) **Self-employed farm income.** Self-employed farm income is determined ~~just like any~~ other self-employed income except when the business expenses

exceed the self-employment income. When the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, such losses are offset against any other countable income in the household. When the annual net loss has been established, the loss is prorated by dividing by 12 for the monthly amount to be subtracted from the total countable income prior to subtraction of the earned income deduction. For purposes of this exception, to be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of \$1000 or more from the farming enterprise. Farming is defined as cultivating or operating a farm for profit either as owner or tenant. A farm includes stock, dairy, poultry, fish, fruit, and truck farms, and also plantations, ranches, ranges, and orchards. A fish farm is an area where fish are grown or raised and where they are artificially fed, ~~and protected, and the like~~ and does not include an area where they are merely caught or harvested. A plant nursery is a farm for purposes of this definition.

(3) **Training allowances.** Training allowances for vocational and rehabilitative programs recognized by federal, state, or local governments such as the work incentive program and programs authorized by the Comprehensive Employment and Training Act are considered as income, to the extent they are not reimbursement. The individual must be actively involved in some type of work for the training allowances to be considered countable earnings.

(4) **On-the-job training.** Earned income from regular employment for on-the-job training is considered as any other earned income.

(5) **Workforce Investment Act (WIA).** Income earned in on-the-job training positions is considered earned income. This is on-the-job training provided under Section 134 of the Workforce Investment Act for individuals 19 years of age or older. On-the-job training provided must be full-time positions, and there must be a contract between WIA and the employer for each individual position. This does not include classroom training and institutional training or intern assignments sponsored by WIA, even when an hourly amount is paid for such training.

(6) **Title I Payments payments of Domestic Volunteer Services Act.** Payments under Title I of the Domestic Volunteer Services Act of 1973 as amended [P.L. 93-113] are considered income unless they are excluded under OAC 340:40-7-12. This includes income to Volunteers in Service to America, University Year for Action, and similar volunteer payments.

(7) **Earnings of children.** Earned income of a minor parent is treated as adult earned income. Earnings of children 17 years of age and younger who are under the parental control of an adult household member are excluded as long as the child is attending school regularly. This exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment resumes following the break.

(c) **Unearned income.** The term "unearned income" refers to income an individual receives for which he or she does not put forth any daily, physical labor. Types of income listed in paragraphs (1)- ~~through (9)~~ (10) of this subsection are considered unearned income.

(1) **Assistance payments.** Assistance payments include state means tested programs such as Temporary Assistance for Needy Families and State Supplemental Payments to the aged, blind, or disabled, and Refugee Cash Assistance.

(2) **Pensions, disability, and Social Security benefits.** Annuities, pensions, retirement benefits, disability benefits from either government or private sources, or Social Security survivor benefits are considered unearned income.

(3) **Supplemental Security Income (SSI).** SSI is considered as unearned income.

(4) **Unemployment and ~~worker's~~ workers' compensation.** Income from unemployment insurance benefits or ~~worker's~~ workers' compensation is counted as unearned income.

(5) **Child support, ~~court-ordered~~ court-ordered child care, and alimony.** Child support, child care payments, and alimony payments, whether ~~court-ordered~~ court-ordered or voluntary, which are made directly to the household from non-household members are counted as unearned income. If a child care payment is paid directly to the child care provider, it is not considered income for the client. It is considered as an additional co-payment which must be met before OKDHS makes a subsidy payment to the provider. Any other payment made to a third party for a household expense must be considered as income when a court order directs that the payment be made to the household. Payments for medical support are excluded.

(6) **Veterans' compensation, pensions, or military allotments.** Annuities, pensions, disability compensation, military allotments, servicemen dependents' allowances, ~~subsistence allowances paid to veterans or their dependents for educational purposes,~~ and similar payments are considered as unearned income. ~~Subtract any school expenses associated with receipt of this income. Income is averaged over the period it is intended to cover.~~

(7) **Contributions.** Appreciable contributions recurrently received in cash are considered as unearned income except in instances where the contribution is not made directly to the recipient. To be appreciable, a contribution must exceed \$30 per calendar quarter per individual.

(8) **Dividends, interest, minerals, and royalties.** Dividends, interest income, income from minerals, royalties, and ~~the like and similar sources~~ are considered as unearned income. When income from these sources is received irregularly or in varied amounts, it is averaged over 12 months. Income from royalties is treated as unearned, self-employment income.

(9) **Educational grants.** Educational grants which are not covered by Title IV of the Higher Education Act or

~~the Bureau of Indian Affairs Student Assistance programs are considered as unearned income to the extent they are available to meet current living expenses. Subtract any school expenses associated with receipt of this income. Income is averaged over the period it is intended to cover.~~

(10) **Lump sum payments.** Non-recurring lump sum payments which are from a countable income source are considered as income the month they are received. Money not expended within the month of receipt is ~~then~~ considered as a resource. Recurring lump sum payments, including income from earnings, are averaged over the period they are intended to cover.

(11) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments paid to individuals by the Developmental Disabilities Services Division of ~~the Department~~ OKDHS are considered as unearned income.

340:40-7-12. Sources of excluded income ~~not~~ considered

Only the income listed in this Section is excluded in determining a household's eligibility for child care services. No other income is excluded.

(1) **Lump sum payments.** Both one-time and recurring lump sum payments are excluded as income unless they are specifically mentioned in OAC 340:40-7-11.

(2) **In-kind income.** In-kind income is defined as any gain or benefit which is not in the form of money payable directly to the household and is excluded.

(3) **Money received from the sale of property.** Money received from the sale of property such as stocks, bonds, a house, or a car is excluded. This exclusion does not apply if the person is engaged in the business of selling such property.

(4) **Bank or trust account withdrawals.** Money withdrawn from a bank or trust account is excluded as income even if used to meet current living expenses.

(5) **Capital gains.** The proceeds from the sale of capital goods or equipment is excluded.

(6) **Earnings of children.** Earnings of an individual 17 years of age and younger who is considered a child in the case is excluded as long as the child is attending school regularly. This exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment resumes following the break.

(7) **Irregular income.** Any income received too infrequently or irregularly to be reasonably anticipated is not counted unless it is in excess of \$30 per calendar quarter.

(8) **Reimbursements.** Reimbursements for past or future expenses to the extent they do not exceed actual expenses are excluded.

(9) **Tax refunds.** Federal or state income tax refunds, including the state and federal Earned Income Tax Credit (EITC), and advance payment which is received monthly ~~is~~ payments of federal EITC are excluded.

(10) **Money received for third parties.** Money received and used for the care and maintenance of a third

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party beneficiary who is not a household member is ~~not considered excluded~~.

(11) **Loans.** All loans, including loans from private as well as commercial institutions, other than educational loans where repayment is deferred is excluded. Verification that the income is a loan is required.

(12) **Grants.** Grants obtained and used under conditions that preclude their use for current living costs is excluded.

(13) **Educational assistance.** ~~Any grant or loan to an undergraduate student for educational assistance made or insured under any program administered by the Commissioner of Education under the Higher Education Act is not considered. Work study income is also exempt. Scholarship money specifically earmarked for books, tuition, fees, and other education expenses is also excluded. All education grants, work-study, scholarships, and student loans are exempt if receipt is contingent upon the student regularly attending school.~~

(14) **Stipends.** Stipends paid to students participating in the Indian Vocational Education Program through the Carl D. Perkins Vocational and Applied Technology Education Act is excluded.

(15) **IV-E Adoption Subsidy.** Money received for payment of and reimbursement for expenses for the IV-E Adoption Subsidy program is excluded.

(16) **Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE).** Payment for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in SCORE and ACE is ~~not considered excluded~~.

(17) **Government rent or housing subsidies.** Government rent or housing subsidies by government agencies which is received in-kind or in cash for rent, mortgage payments, or utilities is ~~not considered excluded~~.

(18) **Foster care payments.** Foster care payments received for a foster child in state or tribal custody are excluded as income.

(19) **Victims of Crime Act of 1984.** Payments made from the crime victims compensation program as amended in Section 1402 of the Victims of Crime Act of 1984 are excluded. [42 U.S.C. 10602]

(1920) **Income excluded by federal law.** Income excluded by federal law is defined as:

(A) payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970;

(B) payments received under the Alaska Natives Claims Settlement Act [P.L. 92-203, Sec. 21 (a)], under the Sac and Fox Indian Claims Agreement [P.L. 94-189], from the disposition of funds to the Grand River Band of Ottawa Indians [P.L. 94-540], by members of the Confederated Tribes of the Mescalero Reservation [P.L. 95-433], or under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation [P.L. 96-420];

(C) any payment to volunteers under Title II, Retired and Senior Volunteer Program, Foster Grandparents and others, of the Domestic Volunteer Services Act of 1973 [P.L. 93-113] as amended. Payments under Title I of that Act, Volunteers in Service To America, University Year for Action, and Urban Crime Prevention Program, to volunteers are excluded only if the monthly amount, when converted to an hourly rate, is less than the State's minimum wage;

(D) income derived from submarginal land of the United States which is held in trust for certain Indian tribes [P.L. 94-114, Sec. 6];

(E) Indian payments, which include judgment funds or funds held in trust, distributed per capita by the Secretary of the Interior of the Bureau of Indian Affairs 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 judgment funds, trust funds, interest, or investment income accrued on such funds. Any income from mineral leases, from tribal businesses investments, and the like, 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;

(F) 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 is not counted as income. The income exclusion applies to calendar years beginning January 1, 1994. Any remaining disbursements from the trust or restricted lands are considered as income;

(G) allowances, earnings, and payments received by a child(ren) in the household from a program funded by the Job Training and Partnership Act including Job Corps income;

(H) payments, allowances, or earnings to individuals participating in programs under Title I of the National and Community Service Trust Act of 1993. Title I includes three Acts: Serve-America, The Community Service, Schools and Service-Learning Act of 1990, the American Conservation and Youth Service Corps Act of 1990, and the National and Community Service Act. Most of the payments are made as a weekly stipend or for educational assistance. The Higher Education Service-Learning Program and the AmeriCorps Umbrella Program come under this Title. This includes Americorp income;

(I) payments or allowances made under any federal law for the purpose of energy assistance, Low Income Home Energy Assistance Program, and also utility payments and reimbursements made by the Department of Housing and Urban Development and the Farmers Home Administration;

(J) the amount of the mandatory salary reduction of military service personnel used to fund the G.I. Bill;

(K) all funds paid to individuals under the Community Service Employment Program under Title V, [P.L. 100-175]. This program is authorized by the Older Americans Act. Each State and eight organizations receive some Title V funds. These organizations include:

- (i) Green Thumb;
- (ii) National Council on Aging;
- (iii) National Council of Senior Citizens;
- (iv) American Association of Retired Persons;
- (v) U.S. Forest Service;
- (vi) National Association for Spanish Speaking;
- (vii) National Urban League; and
- (viii) National Council on Black Aging;

~~(L) Earned Income Tax Credit (EITC) payments received as part of a tax refund and also EITC advance payments received as part of a paycheck;~~

(ML) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement In Re Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

~~(NM)~~ payments received under the Civil Liberties Act of 1988;

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

(PO) payments for the fulfillment of a Plan for Achieving Self-Support under Title XVI of the Social Security Act;

(QP) payments made to individuals because of their status as victims of Nazi persecution;

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

(SR) allowances paid to a child(ren), including an adult child(ren), of a Vietnam veteran for any disability resulting from spina bifida suffered by such child(ren) made under Title IV of the Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997 [P.L. 104-204, Section 1805(d)];

(FS) 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;

(UT) the value of the food stamp allotment under the Food Stamp Act of 1977; and

(VU) the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food services program for children under the National

School Lunch Act of 1970, both as amended by the Omnibus Budget Reconciliation Act of 1981.

340:40-7-13. Computation of income

(a) Any income that is received regularly but in amounts that vary, or income received irregularly, is averaged over a minimum of ~~60~~ 30 days unless the client has received less than 30 days of representative income. This includes overtime pay, irregular child support, and other occasional increases or decreases in the monthly gross income. When income is received more often than once per month, the income is converted to a monthly amount.

(b) Income of the applicant or recipient is verified by the best available information. With new employment, it is necessary to verify the beginning date, date the first full paycheck is expected to be received, hourly rate, and anticipated number of hours per week.

(c) Once gross income is computed, an earned income deduction is allowed for every person who is working and whose earnings are considered. A deduction is also given for the amount of any verified legally-binding child support payments made to someone outside the child care household.

SUBCHAPTER 9. PROCEDURES RELATING TO CASE CHANGES

340:40-9-2. Case changes

(a) **Case changes.** The client must report any changes in his or her circumstances that would result in an increase or decrease in the level of child care services within ten days. ~~Action is taken~~ The worker acts on changes which increase or decrease child care services regardless of whether the client is a semi-annual reporter or not. Failure to report ~~such~~ changes timely may result in an overpayment assessment against the client or in the client being responsible to pay for increased services for previous time periods. Examples of changes the client must report include:

- (1) ~~any change in~~ household income;
- (2) ~~any change in~~ household composition;
- (3) ~~any change in~~ the names and number of household members in child care;
- (4) ~~a change in~~ the reason child care is needed;
- (5) ~~a change in~~ the parent's or caretaker's work or school schedule ~~which affects~~ affecting the days and hours child care is needed;
- (6) ~~a change in~~ the client's address or telephone number;
- (7) ~~a change in~~ the child care facility the ~~child(ren)~~ child is attending;
- (8) ~~when~~ child care is no longer being used or needed;
- (9) ~~any change in~~ family size; and
- (10) ~~a change in~~ the days and hours child care is needed.

(b) **Additional child request.** When an additional child requires child care, the ~~social services specialist~~ worker completes the request within two working days of the client providing all necessary verification to determine eligibility.

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The client completes a new application page 24 of Form FSS-1, Comprehensive Application and Review, or page four of Form K-2, Application for Child Care Services, only when the days and hours this child needs child care services differs from the current plan of service. If eligible, the child can be approved for child care benefits beginning with the date of request. Family share co-payment increases due to adding an additional child to the case are effective the month after the month the client requests child care services for that child.

(c) **Changes which increase the level of child care services.** Changes that increase the level of child care services are planned as needed between the ~~social services specialist worker~~ and the client when changes are reported timely. When changes are not reported timely, the earliest date the worker increases the level of child care services is the first day of the month the client reports the change.

(d) **Changes that decrease or terminate the level of child care services.** Whenever possible, the ~~social services specialist worker~~ plans changes that decrease the level of child care services with the client before implementing the change. The ~~social services specialist worker~~ also notifies the provider before decreasing services.

(e) **Change in provider.** When a client reports a change in provider, the change is effective the date the change in provider occurs, regardless of whether the client reports this change timely or not. Provider changes are completed by the worker within two working days of the change being reported.

(f) **Reopen action.** When a client's child care benefits close they can be reopened using current eligibility information if policy and procedures were not administered correctly or if new or additional information is received within 30 days of the effective date benefits were terminated. The worker cannot reopen child care benefits when:

- (1) the child care benefit closed due to benefit reporting and food stamps is the driver. See OAC 340:40-9-1(b);
- (2) a 30 day period of job search was given because the client lost his or her job or successfully completed school and the child care benefit was closed. See OAC 340:40-7-8(a)(2);
- (3) expedited eligibility processing is used and requested verification is not returned within 30 days of the application date. See OAC 340:40-3-1(b); or
- (4) the payee for the child care case changes. A new application must be completed in this instance.

340:40-9-3. Notices regarding child care eligibility

(a) **Computer-generated Computer-generated notice required.** The social services specialist must notify the client A computer-generated notice is sent to inform the client of any:

- (1) ~~of the initial eligibility decision;~~
- (2) ~~of the decision regarding continued eligibility if a change occurs that increases or decreases the level of child care services;~~
- (3) ~~of any change that increases or decreases the level of child care services;~~
- (4) ~~if the client is no longer eligible for child care services or requests termination decision to terminate child care services; and~~

(5) ~~of any decision to reopen child care services.~~

(b) **Form FSS-37, Notice Regarding Social Services, required.** The social services specialist worker must send Form FSS-37 when the computer the system does not provide a notice. The worker also sends Form FSS-37 to notify the client and provider when any additional co-payment is being paid by someone other than the client directly to the provider or is being discounted by the child care provider for an employee.

(c) **Notice not required.** A written notice is not required for:

- (1) information and referral services; and
- (2) protective intervention services.

(d) **Returned notices.** When a notice of a proposed case action is returned, the ~~social services specialist worker~~ makes at least one attempt to locate the client.

(e) **Advanced notice required.** Advanced notice is required on case actions that negatively affect a client's eligibility for child care services decrease or terminate the level of child care services when such services are still needed by the client.

(f) **Advance notice not required.** Advance notice is not required on case actions that do not negatively impact the client's eligibility for needed child care services. Non-negative changes are completed as needed and planned between the social services specialist and client that increase the level of child care services or when child care services are no longer being used.

SUBCHAPTER 13. CHILD CARE RATES AND PROVIDER ISSUES

340:40-13-1. Child care arrangements

(a) **Out-of-home care arrangements.** Out-of-home care is care provided outside of the child's home for less than 24 hours. The Oklahoma Department of Human Services (OKDHS) purchases out-of-home child care services only from licensed or permitted child care centers and family child care homes. A list of licensed, contracted out-of-home providers is available upon request.

(b) **In-home child care arrangements.** ~~Department OKDHS purchased in-home child care services are obtained only from approved in-home providers. In-home child care is considered the arrangement of choice when night-time child care is needed or when care is needed for a medically fragile child. In home care may also be used when there is no available licensed provider in the vicinity but there is a qualified person who can provide care in the child's own home. A parent can choose an in-home provider even when an out-of-home provider is available. In no instance is housekeeping service approved. The approval is for the child care plan and the individual giving care.~~

- (1) ~~The social services specialist worker helps the family select a caregiver capable of providing adequate care and supervision of the child(ren). Guidelines for use in approving an in-home provider are found at OAC 340:40-13-2. Upon selection, Form CCDF 2, Notification of Eligibility and Mutual Agreement to Provide In Home Child Care Services, and Form CCDF 2 A,~~

Mutual Agreement Regarding the Plan of Care, are completed by the provider and client. These forms are valid for a maximum of one year from the date the provider and client sign the documents and must be renewed annually effective July 1st of that year. If the caregiver is not approved as an in-home provider, the county director sends a letter to the caregiver advising of the denial. The social services specialist sends Form FSS-37, Notice Regarding Social Services, to the client advising him or her to choose another caregiver.

(2) A member of the child's household, whether relative or non relative, may not be approved for subsidy payment as an in-home provider. An exception is made if the person is employed and if approved as a provider, will quit his or her employment. Upon selection of a caregiver, the client and caregiver complete Form CCDF-2, Notification of Eligibility and Mutual Agreement to Provide In-Home Child Care Services. This form is valid for a maximum of one year from the date the county director signs the document and must be renewed annually. If the chosen caregiver is not approved as an in-home provider, the county director sends a letter to the caregiver advising of the denial. The worker sends Form FSS-37, Notice Regarding Social Services, to the client advising him or her to choose another caregiver.

(3) The parent or caretaker is responsible for advising the provider of known risks of a contagious condition of one or more persons in the household. The disclosure allows for training in the universal precautions against exposure. The client and provider also complete and return Form CCDF-2-A, Mutual Agreement Regarding the Plan of Care. This form serves as a basis for discussion between the parent or caretaker and the in-home provider of the plan of care for the children, duties of the in-home provider, how to handle emergencies, and the family rules.

(4) The provider only gives care to the child(ren) of one family at a time. The provider can give care to more than one family as long as the hours do not overlap and the child(ren) of each family is cared for in his or her own home.

(5) To help ensure the health and safety of the child(ren) in care, the worker gives Form CCDF-2-B, In-Home Provider Health and Safety Checklist, to the provider and the client to complete and return to the worker when the initial contract is signed. The in-home provider must also complete a minimum of six clock hours of training within 90 calendar days of the date the county director signs and dates Form CCDF-2. The training requirement is met through attendance at workshops or formal training programs, viewing videos, or through individual job related reading. The in-home provider must then sign and complete Form FSS-DC-IN-1, Declaration of Completion of In Home Provider Training, and return it to the Family Support Services Division (FSSD) social services specialist. The parent or caretaker is also responsible for advising the provider of known risks of a contagious condition of one or more persons in

the household. The disclosure allows for training in the universal precautions against exposure.

(A) Training is received and the declaration completed yearly. The declaration is valid for one year from the date the provider signs the document.

(B) Training hours earned by the in-home provider are transferable from one family to another during the year for which the declaration is in force.

(6) The in-home provider is required to review the "Contracting with DHS for Child Care Subsidy Payments Handbook" and watch a training video prior to approval of a child care subsidy as an in-home provider.

(6) The in-home provider must complete a minimum of six clock hours of training within 90 calendar days of the date the county director signs and dates Form CCDF-2. The provider can meet the training requirement by attending workshops or formal training programs, viewing videos, or through individual job related readings. The in-home provider must then sign and complete Form FSS-DC-IN-1, Declaration of Completion of In-Home Provider Training, and return it to the worker.

(A) The in-home provider must receive and declare six clock hours of training yearly. The declaration is valid for one year from the date the provider signs the document.

(B) Training hours earned by the in-home provider are transferable from one family to another during the year the declaration is in force.

(7) When an in-home child care provider cares for a child with disabilities, the provider can be approved for the special needs rate in addition to the applicable daily or weekly rate. Prior to receiving this additional rate:

(A) the client, provider, and social services specialist worker must complete Form ADM-123, Certification for Special Needs Child Care Rate, as described in OAC 340:40-7-8(h);

(B) the provider must be currently certified in first aid and infant and child cardiopulmonary resuscitation (CPR). Only training that is OKDHS approved, such as Red Cross, American Heart Association, or First Care is accepted;

(C) the provider must receive on-site consultation regarding the nature of the child's disability and the development of the child care plan detailed on described in Section III of Form ADM-123 which may include how to operate equipment needed by the child and any specialized training needs. This consultation can be provided by a health care professional, a child guidance specialist, a SoonerStart provider if the child is under three years of age, a public school teacher familiar with that child, or from a consultant through the Center for Early Childhood Professional Development. The consultant also provides any available resource materials that might aid the provider in caring for the child. Consultation is received at least annually when the severe special needs rate is approved. For a child designated as "severe," consultation shall be obtained at least annually; and

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(D) the provider must agree to obtain six additional hours of training in areas that address the care of children with disabilities within six months of approval. First aid, CPR, or informal training may not be counted to meet the special training requirement. Recommended training includes Special Care's Unique Environments, Child Care Careers' Helping Children with Special Needs, SoonerStart training, Training Inclusive Child Care Equal Terrific Opportunities for Children (TIC-TOC) training, formal training from an OKDHS approved sponsor training list, or specialized workshops or conferences addressing the care of children with disabilities. This training is also documented on Form FSS-DC-IN-1.

340:40-13-2. Guidelines for use in approving in-home child care

(a) **Purpose.** In-home child care is defined as care given to a child(ren) by a person coming into the child's own home for the express purpose of caring for the child(ren). The purpose of standards for in-home care is to help ensure the safety of children cared for in their own home when the usual responsible adult is temporarily absent due to employment, training, illness, or other valid reason.

(b) **Qualifications of caregiver.** The caregiver:

- (1) must be at least 18 years of age;
- (2) demonstrates the vitality and flexibility needed to care for children as well as the ability to exercise good judgment and appropriate authority;
- ~~(3) must provide a statement by a physician licensed in the State of Oklahoma regarding the general health of the caregiver. A complete physical is required if there is evidence of physical, mental, or emotional problems;~~
- ~~(4) upon initial application, must provide documentation of a Mantoux (PPD) tuberculin skin test conducted within the last 12 months and read by a licensed medical professional. The PPD skin test is repeated every two years;~~
- ~~(5) must present documentation of a chest x ray if he or she has had a new positive skin test reaction to the tuberculin skin test. Individuals with a previous history of a positive skin test are required to present documentation of a chest x ray. Further chest x rays are not required unless signs or symptoms suggestive of tuberculosis develop. However, documentation from a health professional verifying the individual is free from signs and symptoms of tuberculosis must be submitted every two years; and~~
- ~~(6) must provide personal references prior to approval if, in the social services specialist's worker's judgment, they are considered necessary;~~
- (4) cannot be a member of the child's household, whether relative or non-relative. An exception is made if the person is employed and if approved as a provider, agrees to quit his or her employment; and
- (5) can only care for the child(ren) of one family at a time. The provider can give care to more than one family as long as the hours do not overlap and the child(ren) of each family is cared for in his or her own home.

(c) **Background investigations and restrictions for caregivers.** The requirements for background investigations and restrictions for caregivers are contained in paragraphs (1) - ~~through~~ (3) of this subsection.

(1) **Criminal history investigations.** Criminal history investigations:

(A) are required and must be requested by each caregiver and substitute caregiver, prior to caring for children;

(B) are not required for persons who have documentation of a criminal history investigation within the last 12 months;

(C) must be obtained from:

(i) the Oklahoma State Bureau of Investigation (OSBI); and

(ii) the ~~appropriate~~ authorized agency in the previous state of residence if the individual has resided in Oklahoma less than one year; ~~and~~

(D) must include a search of the Oklahoma Department of Corrections' files maintained by the OSBI pursuant to the Sex Offenders Registration Act; ~~and~~

(E) include the worker completing a computer check using the Social Security number of the potential caregiver prior to approval as an in-home provider. When a Child Welfare (CW) case number appears, the worker consults with CW staff to see if concerns exist about this person's ability to care for children.

(2) **Restrictions.** A caregiver whose criminal history report includes a conviction of fiscal mismanagement, such as embezzlement or fraud, or repeated convictions that indicate a pattern of criminal activity is not approved as an in-home provider. Individuals who are convicted of or enter a plea of guilty or nolo contendere, no contest, to certain crimes are not approved to care for children or be a substitute caregiver. These crimes include:

(A) violence against a person;

(B) child abuse or neglect;

(C) possession, sale, or distribution of illegal drugs;

(D) sexual misconduct; or

(E) gross irresponsibility or disregard for the safety of others.

(3) **Alcohol, drugs, medication.** The caregiver must not be under the effects of alcohol, illegal drugs, or medication ~~which~~ that impairs functioning when caring for children.

(d) **Duties of the caregiver.** The caregiver:

(1) provides adequate care and supervision of children at all times, including frequent observations of children in cribs or playpens. He or she must arrange to have a competent adult ~~to~~ provide consistent supervision during his or her absence from the home;

(2) is responsible only for each child specified in Form CCDF-2, Notification of Eligibility and Mutual Agreement to Provide In-Home Child Care Services;

(3) must be aware of adequate safety precautions and take action to correct hazards to children's safety, both indoors and outdoors;

- (4) provides opportunities for learning, indoor and outdoor play, rest periods, and meals. The caregiver ensures that the use of television is age-appropriate and suitable for children;
- (5) must be able to give understanding, consistent, and loving guidance. Discipline is constructive and educational in nature and appropriate to the child's age and circumstances. Loud, profane, and abusive language, corporal punishment, or any technique ~~which that~~ is either humiliating or frightening to children is not used. Discipline is not associated with rest, toilet training, or loss of food;
- (6) seeks emergency medical attention in case of sudden illness or accident. The parent or guardian stipulates who is called in case of an emergency by entering this information on Form OCC-38, Child Information Form, provided by the Oklahoma Department of Human Services (OKDHS). The caregiver has emergency telephone numbers readily available at all times. Emergency telephone numbers include the ~~Fire Department fire department, Police Department police department,~~ ambulance service, and physician or clinic;
- (7) is responsible for preparation and serving of food. ~~Provisions for nutritious snacks and meals are furnished by the child's family. The child's family provides the food used to prepare snacks and meals.~~ The caregiver consults with the child's parent(s) or guardian to ensure a balanced diet suitable to the age and physical development of the child; and
- (8) ensures the child's school attendance in accordance with the requirements of the State Department of Education.

340:40-13-5. Child care provider contracts

- (a) **Criteria.** In order for the Oklahoma Department of Human Services (OKDHS) to purchase out-of-home child care services, a provider must have a current ~~child care provider contract~~ Form CCDF-1-E, Child Care Provider Contract, on file with the ~~State Office,~~ Family Support Services Division (FSSD), Child Care Section. ~~The Department OKDHS~~ assures all persons that ~~the Department OKDHS~~ or any provider of contractual services, does not take into account a person's race, color, religion, sex, national origin, or disability in the selection or eligibility of individuals to receive services and in the manner of providing them. Age may be a factor only to the extent that certain services are designed for a particular age group.
 - (1) Written complaints of noncompliance with the assurance in (a) of this Section may be made to the Director of ~~the Oklahoma Department of Human Services~~ OKDHS or to the Secretary of Health and Human Services, Washington, D.C. 20201.
 - (2) County Division of Child Care (DCC) licensing staff provide initial information about contracts for child care facilities. The provider contacts the county child care liaison to obtain an initial contract.
 - (3) Child care contracts are valid for a maximum of one year. They are automatically renewed for successive one year terms, under the same terms and conditions, unless

either the child care provider or OKDHS gives written notice of its intent not to renew to the other party at least 30 days prior to the expiration of the previous term.

- (b) **Procedure for obtaining child care contracts.** ~~The Department OKDHS~~ enters into contracts only with licensed, out-of-home providers. A child care center provider requesting an initial contract must have a one star plus, two star, or three star status before a contract is submitted. The procedures in (1) - ~~through (76)~~ of this subsection are used to obtain child care contracts.

- (1) ~~Licensing DCC~~ licensing staff give the child care provider a promotional flyer containing information about contracting with ~~the Department OKDHS~~. The provider is instructed to contact the county child care liaison for training and review of the contracting requirements.

- (2) When contacted by the child care provider, the county child care liaison arranges an appointment at which time the provider is required to review the "Contracting with DHS for Child Care Subsidy Payments Handbook" and watch a training video. The provider must fulfill this training requirement before an initial contract may be ~~approved submitted.~~

- (3) If the provider wishes to contract with ~~the Department OKDHS~~ following this training, the county child care liaison provides Form CCDF-1-E, ~~Child Care Provider Contract~~, to the child care provider. ~~The provider completes all identifying information on the contract according to the instructions on the form. The child care liaison explains that the earliest date a contract is valid is the date of approval by the OKDHS Director or designee.~~

- (4) The provider completes all identifying information on Form CCDF-1-E according to the instructions on the form. In the presence of a notary, the provider signs one copy of the contract, has it notarized, and returns the contract to the county child care liaison. Proof of ownership is attached. If the DCC licensing staff provide the county child care liaison with a copy of the provider's Oklahoma State Bureau of Investigation background investigation report, that document is also attached to the contract. ~~After Division of Child Care (DCC) Licensing issues a license or permit to the provider, the liaison enters the proposed effective date of the agreement on the contract document. The proposed effective date cannot be prior to the date the license or permit is issued.~~

- (5) ~~The county child care liaison submits the contract to the DHS Director or designee for disposition.~~

- (65) If approved, the FSSD, Child Care Section assigns a contract number. Information from the contract is entered on the Day Care Contract File which is updated and maintained by the FSSD, Child Care Section.

- (76) If denied, the FSSD Child Care Section returns the original contract to the provider with a letter advising the provider ~~the Department OKDHS~~ has decided it is in the best interest of ~~the Department OKDHS~~ not to contract with the provider.

- (c) **Out-of-state providers.** In some situations it is necessary to contract with a child care facility in another state because a client resides in Oklahoma near the border of another

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state and elects to use an out-of-state facility. When this occurs, the county child care liaison contacts DCC licensing staff and requests verification of the licensed status of the facility. ~~Licensing~~ DCC licensing staff contact the out-of-state agency responsible for licensing. ~~If the facility is licensed and in compliance with the Civil Rights Act, a contract may be executed. A contract may be issued to a child care home if the home is licensed and in compliance with the Civil Rights Act of 1964. Prior to an out-of-state child care center being issued a contract, DCC licensing staff must determine this facility meets OKDHS criteria for a one star plus, two star, or three star status.~~ The same procedures apply as in contracting with in-state facilities except that a contract is renewed with an out-of-state facility only if services are being provided to a ~~Department~~ an OKDHS client when the contract expires.

(d) **Changes in child care contract status.** A new contract is required when the facility changes ownership or has been closed and subsequently reapplies for a child care license. This includes those instances when a child care facility changes status, such as changing from a home to a center or from a center to a home.

(1) When the status of a child care home changes to that of a child care center, it must meet one star plus, two star, or three star status before a new contract is submitted.

(2) A change from a family child care home to a large family child care home does not require a new contract, even though a new application is completed, as long as the same license number is used.

(3) If a child care center is sold or ownership changes, the new owner must meet one star plus, two star, or three star status before a new contract is submitted.

(e) **Change of address.** When the ownership remains the same and the business moves to a new building, the provider must complete a new contract if the facility is required to obtain a new license. If a new contract is required for a one star child care center, it can be approved if a child(ren) already receiving a child care subsidy at the old location wishes to move to the new location.

(f) **Renewal of child care contracts.** Child care provider contracts are effective July 1 through June 30 of each year. They are automatically renewed for successive one year terms, under the same terms and conditions, unless either the provider or OKDHS gives written notice of its intent not to renew to the other party at least 30 days prior to the expiration of the previous term. A contract is not renewed when a provider fails to attend required contract training.

(g) **Contract violations.** ~~The social services specialist worker~~ or the county child care liaison investigates all reports of contract violations by providers. ~~The social services specialist worker~~ or the county child care liaison discusses and participates in planning with the provider to eliminate any apparent violation. The provider is informed that, under the terms of the agreement with ~~the Department~~ OKDHS, all terms of the contract must be met and that ten calendar days are given to correct any violation. If at the end of the ten-day period the provider fails to correct the violation, ~~the social services specialist worker~~ documents and reports the continued violation to ~~the social services~~ his or her supervisor, who is then

responsible for submitting the information by memorandum to FSSD, Child Care Section for a determination of further action. Examples of contract violations include, but are not limited to:

(1) discriminating against persons seeking services either by charging a discriminatory rate or violating a person's rights as listed in the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended, and the Americans with Disabilities Act of 1990;

(2) failing to post all of the facility's rates and fees;

(3) failing to inform ~~the Department~~ OKDHS of a change in address or ownership of the business at least 30 days in advance of the change;

(4) charging a client receiving subsidized child care more than ~~the Department~~ OKDHS rate for days and hours within the client's plan of service;

(5) failing to complete ~~and keep~~ an original Form CCDF-3, Service/Attendance Record, signed by the parent or caretaker for each child claimed by the provider for months care was given before electronic benefit transfer (EBT) is implemented. These records must be kept by the provider for three years or until the resolution of pending legal issues, whichever is longer;

(6) failing to keep an original Form CCDF-3 signed by the parent or caretaker for each child claimed by the provider for the months care was given before EBT is implemented. The provider must keep these records for three years or until the resolution of pending legal issues, whichever is longer;

(~~7~~) moving children the child(ren) from the agreed upon location listed in the contract for reasons other than field trips and claiming for services at this other location;

(~~8~~) subcontracting services to another provider without written prior approval from ~~the Department~~ OKDHS;

(~~9~~) refusing unlimited access by a parent or caretaker to the facility during the hours of operation;

(~~10~~) submitting fraudulent claims and documentation of care to ~~the Department~~ OKDHS;

(~~11~~) failing to maintain a drug-free workplace; and

(~~12~~) refusing to make available to ~~the Department~~ OKDHS all business records which document proper fiscal and program management by the provider within an hour of request by any ~~Department~~ OKDHS representative.

(h) **Additional EBT contract violations.** Once EBT is implemented in a county, examples of EBT contract violations by a provider include:

(1) filing manual claims when they could be filed through the EBT system;

(2) possessing or swiping a client's EBT card;

(3) knowing a client's personal information number (PIN);

(4) failing to ensure accurate time and attendance information was recorded by the parent or caretaker on the point of service (POS) machine. The attendance, not time, of ~~children a child(ren)~~ approved for the part-time or blended rate must be recorded during the school year by the parent or caretaker; and

(5) not maintaining written records for any manual claims filed for at least three years.

(i) **Cancellation of child care provider contracts.** The cancellation is initiated by the ~~State Office, FSSD~~, Child Care Section by issuing a notice to the provider by certified mail. If a provider refuses to accept the certified letter, the notice is remailed by regular mail allowing three calendar days for receipt.

- (1) Contracts may be canceled:
 - (A) with cause. The effective date of cancellation is ten calendar days after the facility's receipt of the notice. Generally, three calendar days are sufficient mailing time. The notice must contain a reference to the grounds for cancellation including the specific contract provision(s) that was violated; or
 - (B) without cause. The effective date of cancellation is 30 calendar days after the facility's receipt of the notice.

(2) The ~~State Office, FSSD~~, Child Care Section communicates with the county child care liaison whenever a contract is being canceled to ensure that county staff ~~has~~ have sufficient time to plan with clients to find another facility, if necessary. When it is necessary to cancel authorizations with a child care provider, the provider is notified by use of a ~~computer-generated~~ computer-generated notice. ~~State Office, FSSD~~, Child Care Section closes all authorizations with the provider whose contract is canceled.

(3) Copies of all correspondence regarding contract cancellation proceedings which are not initiated by the provider are routed by the ~~State Office, FSSD~~, Child Care Section to the:

- (A) ~~Division of Child Care, Licensing Coordinator~~ DCC, licensing coordinator;
- (B) Legal Division;
- (C) Finance Division;
- (D) Office of the Inspector General;
- (E) FSSD, Overpayment Section;
- (F) ~~State Office~~, Commodity Distribution Unit;
- (G) Child Care Resource and Referral Agency serving the area where the provider is located;
- (H) Department of Education, Child Care Food Program;
- (I) Cherokee Nation, if serving the area where the provider is located;
- (J) Creek Nation, if serving the area where the provider is located;
- (K) Choctaw Nation, if serving the area where the provider is located;
- (L) the Field Operations Division ~~Area Office~~ area office where the provider is located; and
- (M) the local county director, county child care liaison, DCC licensing supervisor, and DCC licensing staff where the provider is located.

(4) Copies of all correspondence regarding contract cancellation proceedings which are initiated by the provider are routed by the ~~State Office, FSSD~~, Child Care Section to the:

- (A) Finance Division; and
- (B) local county director, county child care liaison, DCC licensing supervisor, and DCC licensing staff where the provider is located.

[OAR Docket #03-992; filed 5-20-03]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 65. PUBLIC ASSISTANCE PROCEDURES**

[OAR Docket #03-990]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
340:65-1-5 [AMENDED]
 - Subchapter 3. Eligibility for Benefits
340:65-3-4 [AMENDED]
 - Subchapter 5. Procedures Relating to Case Changes
Part. 5. Overpayments [REVOKED]
340:65-5-35 through 340:65-5-44 [REVOKED]
 - Subchapter 9. Overpayments and Fraud in Temporary Assistance for Needy Families and State Supplemental Payment Benefits [NEW]
340:65-9-1 through 340:65-9-8 [NEW]
- (Reference APA WF # 03-03)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Sections 171, 230.62, and 241.1 of Title 56 of the Oklahoma Statutes; and Section 204 of Title 67 of the Oklahoma Statutes.

DATES:

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None requested

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Failure of the Legislature to disapprove the rule(s) resulted in approval on May 19, 2003

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n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Chapter 65 Public Assistance Procedures proposed rule revisions: clarify rules for the destruction of closed case records and replace out-of-date terms; eliminate references concerning purchased data supplied by data brokers; revoke overpayment rules in Part 5 and issue new overpayment rules in Subchapter 9 of Chapter 65 to improve clarity, reflect current procedures, and incorporate overpayment details connected with the electronic benefit transfer (EBT) process.

CONTACT PERSON:

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Permanent Final Adoptions

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003.

SUBCHAPTER 1. GENERAL PROVISIONS

340:65-1-5. Authorization to destroy numbered closed case records

~~Authorization is required for the destruction of all case records. Quarterly, the Oklahoma Department of Human Services (OKDHS) Records Management Coordinator in the State Office sends an administrative memorandum and a list of records authorizing county offices to destroy case records that have been inactive for three years. This memorandum serves as authorization for county offices to pull cases that have been inactive for three years and send them to the DHS OKDHS Records Center for destruction. Authorization to destroy The OKDHS Records Center destroys the case records is received after receiving authorization from the State Records Administrator, as provided by Section 204 of Title 67 of the Oklahoma Statutes, authorizes the Department to destroy records and after notification from the federal agency advises the Department that the audit for that year has been completed. [67 O. S. § 204]~~

SUBCHAPTER 3. ELIGIBILITY FOR BENEFITS

340:65-3-4. Investigation of eligibility conditions and services planning

~~Social services specialist Worker responsibility. The social services specialist worker is responsible for collecting information necessary for determining the client's eligibility for benefits and ensuring all of the client's social services needs are addressed and met. When verification of information from a source other than the client's statement is necessary, the sources described in this Section are used.~~

(1) **Home visits.** Home visits are necessary for ~~Office of Field Operations Division (OFFOD), Family Support Services staff to provide services and benefits and to promote safety and stability for families. All home visits must be planned and coordinated to prevent duplication of efforts.~~

(A) ~~Office of Field Operations FOD, Adult Protective Services staff may make home visits and client contacts outside normal working hours within policy as outlined in OAC 340:105 340:5.~~

(B) ~~Social services specialists Workers may make home visits or other client contacts outside normal working hours when it is in the best interest of the client and approved by appropriate supervisory personnel. If it is necessary for an employee a worker to have contact with a client outside of normal working~~

hours because of an emergency and the ~~employee's~~ worker's immediate supervisor is not available, authorization must be obtained from the county director or designee prior to the contact. If ~~these employees the immediate supervisor and county director or designee~~ are not available, the worker takes care of the client's emergency need is handled. However, the employee is responsible for notifying and notifies appropriate supervisory personnel of the situation immediately after ~~the employee returns returning~~ to duty.

(C) Home visits are made when:

- (i) there is a need to confirm the accuracy of statements and documentation cannot be obtained from other sources;
- (ii) an office visit would create a hardship on the household;
- (iii) a Temporary Assistance for Needy Families (TANF) case is closed due to failure to cooperate according to OAC 340:10-2-2;
- (iv) it is the best method to complete or review the employability plan;
- (v) protective services are needed; or
- (vi) the social services specialist worker deems it necessary.

(2) **Collateral sources.** The client's signature on the application for assistance is the necessary authorization for securing required information or verification from collateral sources. If the collateral source requires written authorization before supplying information to the Agency Oklahoma Department of Human Services (OKDHS), Form ADM-60, Request for Release of Information, is completed. This authorization includes the permission of the client's spouse for information regarding his or her circumstances to be given in connection with the same application, and of the client's parents when he or she is a dependent blind or disabled child. The social services specialist worker is responsible for discussing with the client any inconsistent information related to the client's eligibility obtained from collateral sources.

(A) Persons who are contacted for information related to the client's eligibility are advised of how the information is used and the reason it is needed. If the person is unwilling for the client to know his or her identity, the person's name is not recorded in the case record and is not revealed to the client.

(B) The names of persons who contact ~~the Agency OKDHS~~ with information related to the client's eligibility are not recorded in the case record nor revealed to the client if anonymity is requested.

(3) **Public records.** Sources of information in the form of public records can provide valuable and essential information and are available to anyone without obtaining consent from any individual whose transactions are involved.

(4) **Data exchange.** Automated data exchange with other agencies provides benefit, wage, and tax information that is matched with ~~DHS OKDHS~~ records. The social services specialist worker is responsible for:

(A) reviewing data exchange information at the time of application and redetermination of eligibility. Data exchange information screens available are:

- (i) ~~Beneficiary and Earnings Data Exchange System (BENDEX)~~ Beneficiary and Earnings Data Exchange System (BENDEX);
- (ii) ~~Buy-In Data Exchange (BIL)~~ Buy-In Data Exchange (BIL);
- (iii) ~~SSI/State Data Exchange System (SDX)~~ SSI/State Data Exchange System (SDX);
- (iv) ~~SSA Beneficiary Earnings Exchange Record (BEER/BWG)~~ SSA Beneficiary Earnings Exchange Record (BEER/BWG);
- (v) ~~New Hire Employee list (NHL)~~ New Hire Employee list (NHL);
- (vi) ~~Social Security Number (SSN) Verification~~ Social Security Number (SSN) Verification - SSN Enumeration;
- (vii) ~~Wage Data Exchange~~ Wage Data Exchange;
- (viii) ~~Unemployment compensation~~ Unemployment compensation; and
- (ix) ~~Unearned income report (IEVS-IRS)~~ Unearned income report (IEVS-IRS);

(B) initiating appropriate queries; and
 (C) resolving data exchange discrepancy messages within 30 days of the date the message is posted on the data exchange inquiry screen.

(5) ~~Purchased data.~~ DHS contracts with a data broker to obtain financial and other background information about applicants and recipients. The social services specialist is responsible for initiating data queries at the time of application and redetermination of eligibility.

(6) ~~Systematic Alien Verification for Entitlement (SAVE).~~ All applicants or recipients of TANF, Medicaid, Food Stamp Program, and Child Care Services benefits are required to declare their citizenship status. Persons who declare themselves or their minor child(ren) non-citizens must present documentation of their legal alien status from the Immigration and Naturalization Service (INS) United States Bureau of Citizenship and Immigration Services (BCIS) or other acceptable resource. The status, as determined from the documentation, must be verified through the Alien Status Verification Index (ASVI) maintained by the INS BCIS.

(7) ~~Workers' compensation.~~ Family Support Services Division, State Office, (FSSD) reviews copies of all Workers' Compensation Court documents by matching SSNs with DHS OKDHS records. Any court action that appears to potentially impact eligibility is forwarded to the servicing county office for clearance. A copy of the document is retained in the case record.

(8) ~~Vital Records records verification.~~ Verification of birth records, when not otherwise available, for persons born in Oklahoma may be secured by sending a completed Form ADM-64, Birth Verification Form Letter to Bureau of Vital Records Statistics, in duplicate to Family Support

~~Services Division, FSSD Overpayments Section. Form ADM-64 must be retained in DHS OKDHS case files only and not copied for any individuals individual or agencies agency. Such action violates the agreement between DHS OKDHS and the State Oklahoma Department of Health.~~

(9) ~~Food stamp disqualification (FSD).~~ The FSD transaction is used to determine if a client has been disqualified from the Food Stamp Program due to fraud. If a client has been disqualified, the FSD screen shows the date the disqualification began and the length of the disqualification period. If a client's name appears on the FSD screen without a beginning date, the social services specialist worker starts the disqualification as soon as possible.

SUBCHAPTER 5. PROCEDURES RELATING TO CASE CHANGES

PART 5. OVERPAYMENTS [REVOKED]

340:65-5-35. Definition [REVOKED]

~~Any payment made to a client or in the client's behalf in whatever amount for which he/she was not eligible is an overpayment. The overpayment may be the whole or any part of the grant, or vendor payment made when the client did not meet all conditions of eligibility.~~

(1) ~~A client may request a fair hearing due to termination of or reduction in assistance and request payment be continued pending the hearing decision. If the hearing decision is not in the client's favor when payment is continued, an overpayment results.~~

(2) ~~The Overpayment Section determines if an overpayment exists; if HIB (Health Insurance Benefits) have been incurred and the amount owed by the client; the total amount and period of overpayment; and the type of overpayment. The Overpayment Section notifies the local office by Form Adm S 8, Overpayment Report to the County, of this decision giving the reason for the overpayment, period of overpayment and total amount owed. The Overpayment Section also sends client notification on Form Adm S 20, Notification of Overpayment. This notification informs the client of the decision, i.e., dates and amount of overpayment, classification of the debt(s) and method of repayment. The client has 30 days from the date of Form Adm S 20 in which to request a fair hearing regarding an established overpayment.~~

(3) ~~The Overpayment Section will recover the overpayment, initiate action to locate and/or recover the overpayment from a former recipient, or execute a monthly recovery agreement from a current recipient's grant or income/resources. The appropriate action will be taken by the end of the quarter following the quarter in which the overpayment is first identified or completed.~~

(4) ~~Overpayments are classified as fraud, willful misrepresentation, agency error, inadvertent client error or any combination of these classifications.~~

Permanent Final Adoptions

340:65-5-36. Inadvertent client error [REVOKED]

Inadvertent client error is a type of overpayment in which the client failed to meet reporting responsibilities. Indication of willful concealment of information does not exist.

340:65-5-37. Willful misrepresentation [REVOKED]

Willful misrepresentation is defined as deliberate concealment of information which, had it been known, would have initiated case closure or warrant reduction. An assessment is made to determine whether the client has the capability of understanding his/her responsibilities and actions. Willful misstatements may be oral or written and may include understatement of amount of income or resources or other misinformation. Debts classified as willful misrepresentation may change in the event they are referred for judicial prosecution or administrative disqualification hearing.

340:65-5-38. Fraud [REVOKED]

The term "fraud" has been legally defined as an intentional false representation of a truth or matter of fact, whether by words or conduct, false or misleading allegations, or concealment of that which should have been disclosed, for the purpose of inducing another to part with something valuable or surrender a legal right.

(1) The penalty for fraud is provided in the Oklahoma Social Security Act, Section 185 of Title 56 of the Oklahoma Statutes.

(2) Under the Statutes, only courts can determine guilt and impose a legal penalty as described in 56 O.S., § 185.

(3) Overpayments classified as fraud are intentional program violation debts that have been referred for judicial prosecution or administrative disqualification hearing and as a result have been determined as fraudulent. Clients with overpayments classified as fraud are subject to (A)–(D) of this paragraph.

(A) **Notification.** The Family Support Overpayment Section sends Form ADM S 15, Program Penalty/Disqualification Notice, to the penalized member. Form ADM S 15 informs the client of a 25% payment standard reduction penalty.

(B) **Penalty period.** A person is penalized with a 25% payment standard reduction for 12 months for the first violation, 24 months for the second violation and permanently for the third violation.

(C) **Penalty effective date.** The 25% payment standard reduction penalty begins the first possible effective month following the date of Form ADM S 15. Once the payment standard reduction penalty begins, it will run continuously until the end of the period imposed.

(4) Court-ordered restitution does not relieve the client of any overpayment amount in excess of that judgment. Appendix A of Chapter 10, Acknowledgment of Indebtedness, is signed by the client in the amount of the overpayment in excess of the court's judgment. If the client defaults on court-ordered restitution, the sentence may be accelerated. If the sentence is accelerated and the client

serves a prison term, the overpayment debt is not satisfied. At that point the debt may be subject to civil prosecution. The fact a client is making monthly restitution payments does not relieve the client of the obligation to sign Appendix A, because that document is necessary to protect the remainder of the debt. As there is no statute of limitations on liens, a lien remains in effect until released by authority of the Department.

340:65-5-39. Agency error [REVOKED]

Reimbursement Agency Error is a type of overpayment which occurred because the Department was not diligent in eligibility determination responsibilities.

340:65-5-40. Department's responsibility for diligence [REVOKED]

A determination is made regarding the exercise of diligence by the Department in relation to each overpayment regardless of whether the recipient met reporting responsibilities. The office handling the case situation is responsible for: assuring in every possible way the client's initial and continuing understanding of reporting responsibilities; being alert to evidence of change in circumstances from observation, interviewing, and continuing review of available information; and promptly taking appropriate action within the Department's prescribed time limits. A determination of diligence is based on:

(1) A periodic redetermination of eligibility was completed within the time limits set by the Department for the program involved, and the benefit was discontinued or reduced (when facts substantiate ineligibility or decreased need) at the next possible effective date in accordance with the Department's deadlines or policies.

(2) A decision regarding eligibility was completed within 30 days following receipt of information indicating a change in circumstance, and benefit was discontinued or reduced at the next possible effective date (following substantiation of ineligibility or decreased need) in accordance with the Department's deadlines or policies.

(3) The conditions of eligibility and the kinds and sources of factual information that are acceptable as a basis for establishing eligibility were explained to the client.

(4) The record reflecting the client was advised of his/her reporting responsibilities.

340:65-5-41. Client reporting responsibilities [REVOKED]

It is the responsibility of the client, when informed by the Department of the conditions of eligibility which must be met and of factual information which is necessary to each condition, to report promptly and accurately all facts essential to a correct determination of eligibility. When in the judgement of the worker an overpayment has occurred, a determination is made as to whether there is reason to suspect fraud.

340:65-5-42. Overpayment recovery [REVOKED]

(a) ~~Collection efforts.~~ Collection efforts are initiated against all household members unless they are deceased or cannot be located. Overpaid clients are responsible for repayment of any debt incurred due to client error or agency error. Recovery will be from the overpaid assistance unit, any assistance unit of which a member of the overpaid assistance unit has become a member, or any member of the overpaid assistance unit whether or not currently a recipient. Clients will receive computer-generated monthly statements of their overpayment accounts. These serve as requests for payment and as a receipt for payments which have been made. These statements cannot be appealed. They are for the client's information only. The information contained on these statements is:

- (1) Statement date
- (2) Overpayment account number
- (3) Overpayment case number(s)
- (4) Account name and address
- (5) New overpayment amounts and date established
- (6) Itemized payment amount, payment dates and payment type
- (7) Billing date
- (8) Account balance
- (9) Overpayment balances by program

(b) **Methods of repayment**

(1) **Recoupment.** Any AFDC or ABD overpayment established by the Overpayment Section is subject to recoupment. The recoupment rate for AFDC is 10% of the payment standard if the overpayment is due to willful misrepresentation or inadvertent client error, and 5% if the overpayment is due to agency error. The recoupment rate for ABD is 10% of the warrant amount if the overpayment is due to willful misrepresentation or inadvertent client error, and 5% if the overpayment is due to agency error. This recoupment rate cannot be changed unless the overpayment is less than the recoupment amount or the warrant received by the client is less than this amount. If the grant amount is less than the recoupment amount specified, a warrant will not be issued; however, the case will remain active and a medical card will be issued. The client may request recoupment not be initiated if a fair hearing regarding the overpayment is filed within ten days of the date of the Adm S 20. The county office must immediately notify the Overpayment Section by telephone, 405-556-5102, of the request, to assure recoupment procedures are stopped. In instances of a sustained appeal where recoupment was made during the appeal process, a voucher will be issued by the Office of Finance. The client is notified by a computer-generated notice of the new warrant amount and its effective date. When the debt is paid in full, the appropriate changes are made in the State Office. The client will again be notified by a computer-generated notice of the new warrant amount and its effective date. On active AFDC cases receiving food stamps, the State Office will adjust the food stamp benefits according to the amount of recoupment withheld at the time recoupment is begun and at the time the public assistance debt is paid in full.

(2) **Payment in full.** Repayment of overpayment may be made in one lump sum by personal check, money order, or cashier's check.

(3) **Monthly payments.** Repayment of an overpayment may be made in regular monthly installments. These payments may be made by personal check, money order, or cashier's check.

(4) **Cash.** The clients are instructed not to send cash through the mail. The local office may accept cash if it is impossible for the client to make the transaction by personal check, money order, or cashier's check.

340:65-5-43. Overpayments referred to the Office of Inspector General (OIG) [REVOKED]

The Overpayment Section notifies the county of its decision as to willful misrepresentation and advises the county to not take any action in reference to the overpayment until further notification. If the case is active at the time the overpayment is established, cases are to be handled routinely but the overpayment is not to be discussed at any time with the client. If the case is closed and the client reappplies, the Overpayment Section must be contacted immediately for instructions in handling the application. The Overpayment Section refers the case to the OIG, by Form OIG 1. The OIG investigates the suspected fraud and makes a determination as to whether there is additional information which must be considered in the overpayment; the OIG plans to refer the case to the local district attorney for the possibility of filing criminal charges; and, on those cases whose overpayment is less than the statutory definition of a felony and in other instances where the district attorney declines prosecution, the client is again contacted to obtain an agreement to repay, an administrative disqualification waiver, or recoupment as applicable. The county office and Family Support Services Division Overpayment Section are notified of the decision in writing.

(1) When the State Director's decision is suspected fraud exists, approval is given for referral to the local District Attorney for the possibility of filing charges. The county office and FSSD Overpayment Section are notified of this decision in writing. In the event the District Attorney files charges, the matter is decided in a court of appropriate jurisdiction. If the court finds the client guilty, restitution, fine and/or imprisonment may be ordered. This Agency abides by the court decision.

(2) When the OIG determines the case is not suitable for prosecution, or the district attorney declines prosecution, it is referred to the Overpayment Section which reconsiders the information and notifies the county.

340:65-5-44. Special procedures for overpayments classified as willful misrepresentation [REVOKED]

When the county receives Form Adm S 8, Overpayment Report to the County on debts classified as willful misrepresentation, the county worker requests the client sign Appendix A of Chapter 10, Affidavit of Acknowledgment of Indebtedness.

Permanent Final Adoptions

~~(1) **Non-ownership of real property.** If a client does not own real property, Appendix A of Chapter 10 is signed but is not filed with the county clerk or the District Court Clerk's office. The original and one copy of Appendix A is sent to the Overpayment Section, State Office, and the remaining two copies are filed in the case record. If the client refuses to sign Appendix A, his/her eligibility is not affected.~~

~~(2) **Ownership of real property and/or mineral rights.** If a client owns real property and/or mineral rights, he/she is required to sign Appendix A of Chapter 10 (with a complete description of the property) to remain eligible if he/she is currently receiving assistance. The deed to the property is checked prior to the preparation of Appendix A to ensure the description conforms with the property deed. The affidavit is then filed with the District Court Clerk's office and recorded in the County Clerk's office. The Department then holds a lien on the property. If the client refuses to sign Appendix A, the case is closed the next effective date.~~

~~(3) **Personal property.** Personal property which is a part of the normal reserve is exempt from a claim of restitution.~~

~~(4) **Indian restricted or trust property.** Indian restricted or trust property is handled differently in relation to liens than is non restricted property. Appendix A of Chapter 10 covering the restricted or trust property is not filed either with the County Clerk or the District Court Clerk. The original of the affidavit and one copy is forwarded to the Overpayment Section. A copy is sent to the Bureau of Indian Affairs, Area Field Representative, with a full explanation of the basis for the claim. The local office requests in writing that the Bureau of Indian Affairs assist in liquidating the debt if any money becomes available to the Indian's account and a copy of the letter is forwarded to the Overpayment Section. If both restricted and non-restricted property are involved, a separate Appendix A is signed.~~

~~(5) **Release of lien.** When a restitution debt is paid in full, the State Office executes a "Release of State's Lien" and advises the local office if the office is responsible for filing the release in the office of the District Court Clerk and County Clerk's office.~~

SUBCHAPTER 9. OVERPAYMENTS AND FRAUD IN TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND STATE SUPPLEMENTAL PAYMENT BENEFITS

340:65-9-1. Scope and applicability

An overissuance or overpayment occurs when a household receives more benefits than it is entitled to receive. When the worker determines that an overissuance or overpayment may have occurred, the worker makes a referral to Family Support Services Division (FSSD) Overpayment Section for determination of an overpayment.

(1) Instances which may result in referral for an overpayment determination include, but are not limited to:

(A) the household:

(i) failed to provide the Oklahoma Department of Human Services (OKDHS) with correct or complete information;

(ii) failed to report changes in its circumstances; or

(iii) elected to receive benefits pending a fair hearing decision, which subsequently found the family ineligible or eligible for fewer benefits; or

(B) the worker:

(i) failed to take prompt action on a change reported by the household;

(ii) incorrectly computed the household's income, deductions, or both; or

(iii) incorrectly authorized issuance of benefits to a household; or

(C) any overissuance discovered as a result of a Quality Control Review.

(2) The FSSD Overpayment Section classifies overpayments as inadvertent client error, agency error, willful misrepresentation, or intentional program violation (fraud).

(3) The FSSD Overpayment Section sends Form ADM-S-20, Notification of Overpayment, to the client. The county office receives Forms ADM-S-8, Overpayment Report to the County, ADM-S-20, and ABCD-50, Chart of Temporary Assistance to Needy Families and State Supplemental Payment Overpayments.

(4) The FSSD Overpayment Section postpones notification to the client by Form ADM-S-20 on cases referred for a judicial court decision until a court decision has been made.

(5) Overpayments may cover the entire time the overissuance occurred. However, overpayments classified as fraud in a court of law cannot include periods more than five years prior to the date charges were filed.

(6) When the worker or the FSSD Overpayment Section suspects fraudulent intent, a referral is made to the Office of Inspector General (OIG) for a determination of fraud.

(7) The FSSD Overpayment Section may make a referral to the Legal Division, Appeals Unit, for an administrative disqualification hearing.

340:65-9-2. Overpayments by classification

(a) **Overpayments classified as inadvertent client error.** An overpayment is classified as an inadvertent client error if the overissuance was caused by a misunderstanding or unintended error on the part of the household. Instances of inadvertent client error which may result in an overpayment include, but are not limited to, the household unintentionally:

(1) failed to provide the Oklahoma Department of Human Services (OKDHS) with correct or complete information;

(2) failed to report changes in household circumstances; or

(3) received benefits or more benefits than it was entitled to receive pending a fair hearing decision.

(b) **Overpayments classified as agency error.** An overpayment is classified as an agency error if the overissuance was caused by OKDHS action or failure to take action. Instances of agency error which may result in an overpayment include, but are not limited to OKDHS:

- (1) failed to take prompt action on a change reported by the household;
- (2) incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;
- (3) incorrectly issued benefits to a household, including errors caused by overall updates; or
- (4) incorrectly applied policy or procedures.

(c) **Overpayments classified as willful misrepresentation.** Overpayments classified as willful misrepresentation result from deliberate concealment of information which, had it been reported, would have initiated case closure or benefit reduction. An assessment is made to determine whether the client has the capability of understanding his or her responsibilities and actions. Willful misrepresentation may be oral or written and may include understatements of the amount of income or resources or other pertinent information. Debts classified as willful misrepresentation may change in the event they are referred for judicial prosecution or administrative disqualification hearing.

(1) When the county receives Form Adm-S-8, Overpayment Report to the County, on debts classified as willful misrepresentation, but not referred to Office of Inspector General (OIG), the worker contacts the client and requests the client to voluntarily sign Form ABCD-51, Affidavit of Acknowledgment of Indebtedness. If the client refuses to sign Form ABCD-51, his or her eligibility is not affected.

(2) If the client voluntarily signs Form ABCD-51 and owns real property other than the declared home property, the worker files the signed form with the county clerk of the county in which the real property is located. Filing Form ABCD-51 with the county clerk places a lien on the real property.

(d) **Overpayments classified as intentional program violation (fraud).** An overpayment is classified as intentional program violation when it is determined that a client has intentionally given false information or withheld facts in order to receive benefits. This determination is made through an administrative disqualification hearing, signing Form H-S-13-A, Administrative Disqualification Hearing Waiver, or by judicial court decision.

340:65-9-3. Procedures for referring overpayments

The worker makes referrals for determination of an overpayment if they believe a household received an overissuance of benefits. The worker makes the referral, regardless of whether suspected inadvertent client error, agency error, willful misrepresentation, or intentional program violation (fraud) caused the overissuance. The Family Support Services Division Overpayment Section sends the client ADM-S-20, Notification of Overpayment, and advises the client of the

amount of overpayment, dates of the overpayment, and the reason the overpayment occurred.

340:65-9-4. Fraud

(a) The term fraud is defined as an intentional false representation of a truth or matter of fact, whether by words or conduct, false or misleading allegations, or concealment of that which should have been disclosed, for the purpose of inducing another to part with something valuable or surrender a legal right. The penalty for fraud is provided in the Oklahoma Social Security Act, Section 185 of Title 56 of the Oklahoma Statutes. Under the statutes, only courts can determine guilt and impose a legal penalty.

(b) If the Family Support Services Division (FSSD) suspects the client has committed fraud, FSSD refers the overpayment to the Office of Inspector General (OIG) using Form OIG-1, Referral Form.

(c) If the county office suspects the case needs investigation, the county office makes a referral directly to OIG using Form OIG-1 for determination of fraud. OIG submits their findings to FSSD Overpayment Section for calculation of the overpayment.

(1) Overpayments classified as fraud are intentional program violations that have been referred for judicial prosecution or administrative disqualification hearing and, as a result, have been determined as fraudulent. Clients with overpayments classified as fraud are subject to the actions described (A) through (C) of this paragraph.

(A) **Notification.** The FSSD Overpayment Section sends Form ADM-S-15, Program Penalty/Disqualification Notice, to the penalized Temporary Assistance for Needy Families (TANF) client. Form ADM-S-15 informs the TANF client of a 25% payment standard reduction penalty.

(B) **Penalty period.** A TANF client is penalized with a 25% payment standard reduction for 12 months for the first violation, 24 months for the second violation, and permanently for the third violation.

(C) **Penalty effective date.** The 25% payment standard reduction penalty begins the date shown on Form ADM-S-15. Once the payment standard reduction penalty begins, it runs continuously until the end of the period imposed.

(2) If the case is prosecuted, OIG notifies the county office and the FSSD Overpayment Section of the disposition of the case. If the court finds the client guilty, the court may order a fine, restitution, imprisonment, or any combination of the three. The Oklahoma Department of Human Services (OKDHS) abides by the court decision.

(3) Court-ordered restitution does not relieve the client of any overpayment amount in excess of that judgment. If the client defaults on court-ordered restitution, the sentence may be accelerated. If the sentence is accelerated and the client serves a prison term, serving the prison term does not satisfy repayment of the monetary portion of the debt. At that point the debt may be subject to civil prosecution. The fact that a client is making restitution payments does not relieve the client of the obligation to sign

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Form ABCD-51, Affidavit of Acknowledgment of Indebtedness. Home property and personal property are exempt from this process. A lien may also be filed on declared real property if Form ABCD-51 indicates property is owned.

(4) If OIG releases the case without a court decision or Form H-S-13-A, Administrative Hearing Disqualification Waiver, signed by the client, the FSSD Overpayment Section proceeds to collect the debt. In some instances, OIG discovers additional information that will affect the overpayment. The OIG gives this information to the FSSD Overpayment Section so they can adjust the overpayment.

340:65-9-5. Right to appeal

If there is a disagreement with the overpayment decision, the household may request a fair hearing within 30 days of the date on Form ADM-S-20, Notification of Overpayment.

340:65-9-6. Development of repayment

(a) **Repayment of established overpayments.** Households must make repayment on all established overpayments regardless of the reason for the overpayment. Family Support Services Division (FSSD) Overpayment Section initiates collection efforts against all adult household members except those who are deceased. Collection may be received from two separate households for the same claim. The FSSD Overpayment Section sends the client Form ADM-S-20, Notification of Overpayment, that explains the acceptable methods of repayment for the debt classification.

(b) Repayment options.

(1) **Payment in full.** The client may repay an overpayment in one lump sum by personal check, money order, cashier's check, or electronic benefit transfer (EBT) debit with a signed statement.

(2) **Monthly payments.** The client may repay an overpayment in regular monthly installments by personal check, money order, cashier's check, or approved EBT debits.

(3) Benefit reduction.

(A) Agency error. The FSSD Overpayment Section processes a 5% reduction in the client's monthly allotment.

(B) Inadvertent client error, willful misrepresentation. The FSSD Overpayment Section processes a 10% reduction in the client's monthly allotment.

(C) Fraud. The FSSD Overpayment Section processes a 10% reduction in the client's monthly allotment as well as the 25% payment standard reduction penalty.

(D) Client authorized EBT debits. A household may make a voluntary payment through a debit from the EBT Access Account.

(4) Recoupment.

(A) The recoupment rate cannot be changed unless the overpayment is less than the recoupment amount or the benefit received by the client is less than this amount. If the benefit amount is less than the recoupment amount specified, a benefit is not issued;

however, the case remains active and a medical card is issued. The client may request recoupment not be initiated if a fair hearing regarding the overpayment is filed within 30 days of the date of the Form ADM-S-20.

(B) When recoupment is initiated or terminated the client is notified by a computer-generated notice of the new warrant amount and its effective date.

340:65-9-7. Suspension of collection efforts

(a) The Family Support Services Division (FSSD) Overpayment Section suspends collection action on cases no longer receiving benefits when the:

(1) head of household is deceased and there are no remaining household members responsible for the overpayment;

(2) household cannot be located;

(3) cost of further collection action is likely to exceed the amount that can be recovered; or

(4) FSSD Overpayment Section, is notified that bankruptcy proceedings have been initiated.

(b) FSSD Overpayment Section may reopen debts held in suspension based on changes in household circumstances. The FSSD Overpayment Section initiates reduction in the benefit if the client reapplies and becomes eligible in the future. County staff notify the FSSD Overpayment Section of case transfers.

340:65-9-8. Termination of collection of debt

In the case of repayment in full, the household is notified by a monthly overpayment account statement or Form ADM-S-20, Notification of Overpayment, that the debt has been satisfied.

[OAR Docket #03-990; filed 5-20-03]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 75. CHILD WELFARE

[OAR Docket #03-969]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

Part 1. Scope and Applicability

340:75-1-18.1 [AMENDED]

340:75-1-22 [AMENDED]

Subchapter 6. Permanency Planning

Part 5. Permanency Planning Services

340:75-6-30 through 340:75-6-31 [AMENDED]

Part 7. Case Plans

340:75-6-40.5 [AMENDED]

(Reference APA WF # 03-02)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Senate Bills 1329 and 1661; and Section 7003-5.6g of Title 10 of the Oklahoma Statutes.

DATES:

Comment period:

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None held or requested
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March 25, 2003
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March 25, 2003

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Legislative approval:
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Final adoption:
May 19, 2003

Effective:
June 26, 2003

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:
Subchapter 1. General Provisions
Part 1. Scope and Applicability
340:75-1-18.1 [AMENDED]
Part 7. Case Plans
340:75-6-40.5 [AMENDED]
(Reference APA WF #02-23)

Gubernatorial approval:
October 16, 2002

Register publication:
20 Ok Reg 90

Docket number:
02-1398

INCORPORATION BY REFERENCE:
N/A

ANALYSIS:

The revisions to Subchapters 1 and 6 of Chapter 75 of Chapter 75 incorporate amendments to statute regarding: permanency hearings every 12 months while a child is in out-of-home care; six-month post adjudication review board (PARB) reviews for cases where the child is alleged to be deprived; and the first permanency hearing for children under the age of three is held six months after the child enters out-of-home care. These statutes became effective November 1, 2002 and January 1, 2003. The proposed rules improve readability, eliminate unnecessary language, conform with current formatting guidelines, coordinate with the KIDS system, and correct and update citations.

340:75-1-18.1; 340:75-1-22; 340:75-6-31; and 340:75-6-40.5 are revised to include the requirement that a permanency hearing is held at six months after placement in out-of-home care for any child under the age of three who enters out-of-home care. 340:75-6-30 is revised to improve readability and eliminate unnecessary language.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003.

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. SCOPE AND APPLICABILITY

340:75-1-18.1. Permanency hearings

~~(a) **Court considerations.** The court conducts a permanency hearing to consider the issue of permanency for the child no later than 12 months after placing a child in out of home care and every 12 months thereafter or 30 days after a determination that reasonable efforts are not required. The court conducts a permanency hearing to consider the child's need for a secure and permanent placement in light of any permanency plan or evidence submitted to the court.~~

(a) **Permanency hearing.** Oklahoma statutes comply with federal regulations and set out certain requirements for permanency hearings. The responsibility for conducting the permanency hearing resides with the court. [10 O.S. § 7003-5.6d] The Oklahoma Department of Human Services (OKDHS) Child Welfare (CW) workers are responsible for providing the court with the necessary information to conduct the hearing. Permanency hearings are held for every case regarding a child alleged or adjudicated deprived no later than:

(1) six months from the date of the child's placement in out-of-home care for a child who, on the date of initial removal from the physical custody of the parent(s), was under the age of three years, and at least every 12 months thereafter;

(2) 12 months from the date of the child's placement in out-of-home care for a child who, on the date of initial removal from the physical custody of the parent(s), was three years or older, and at least every 12 months thereafter; or

(3) 30 days after a determination that reasonable efforts are not required and at least every 12 months thereafter.

~~(b) **Permanency meeting.** At least three weeks prior to a permanency hearing, the court-appointed special advocate (CASA) assigned to the case or, if there is no CASA assigned, the Child Welfare (CW) worker arranges for a meeting to prepare a report regarding the child for the court's review. However, this This does not apply to 30-day permanency hearings scheduled when the court makes a finding that reasonable efforts are not required. The CASA or CW worker contacts the current foster parents for the child, the parents of the child or the parents' attorney, a post adjudication review board member, the guardian ad litem appointed to the case, if applicable, and the child's attorney to assist in preparation of the report. The report contains the efforts and progress demonstrated by the child's parent to complete an individual treatment and service plan, extent to which the parent or legal guardian cooperated and used the services provided, status of the child, including the child's mental, physical, and emotional health, and the plan for permanency for the child. A permanency hearing may be held concurrently with a dispositional or review hearing.~~

(c) **Notification of hearing and opportunity to be heard.**

Prior written notice of the hearing is provided by the Department OKDHS to the present foster parent(s) of the child, any pre-adoptive parent, or relative caring for the child, and the child's guardian ad litem. An opportunity to be heard is provided by the court. Such notice and opportunity to be heard shall is not be construed as requiring any foster parent,

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pre-adoptive parent, or relative to be made a party to such action. ~~The court considers, at a minimum, the health and safety or welfare of the child and whether it is in the best interests:~~

- ~~(1) for the child to continue in out-of-home placement for a specified period;~~
 - ~~(2) for the child to be returned home. If returning home remains the plan for the child, the court must find that the conditions required by 10 O.S. § 7003-5.6d(D)(2) exist and that continued placement of the child outside the home will not exceed three months; [OAC 340:75-1-20]~~
 - ~~(3) to file a petition to terminate the parental rights of the parent and place the child for adoption;~~
 - ~~(4) if the child has been placed in out-of-home placement, for the child to remain in that placement if it continues to be safe and appropriate;~~
 - ~~(5) for the child to be placed in a planned permanent living arrangement if the Department has documented a compelling reason that it is not in the best interests of the child to return home, be placed for adoption, be placed with a fit and willing relative, or a legal guardian; or~~
 - ~~(6) if a child is to be placed for adoption, for the foster parents to be considered eligible to adopt the child. [OAC 340:75-15-83]~~
- (b) ~~**Required findings.** Upon completion of the permanency hearing, the court enters written findings and makes a determination best serving the long term interests of the child's health, safety, or welfare. At the permanency hearing, the court enters an order to:~~
- ~~(1) return the child to the child's home and set a specific date for the return of the child;~~
 - ~~(2) continue placement of the child for an additional period; and~~
 - ~~(A) enumerate the specific factors, conditions, or expected behavioral changes which must occur within the additional three month period before the child may be returned home;~~
 - ~~(B) the reasons for such extension; and~~
 - ~~(C) set a hearing date not to exceed three months to consider modification of the permanency order.~~
 - ~~(3) approve the plan for guardianship or kinship guardianship for the child;~~
 - ~~(4) order the placement of the child in a planned living arrangement; or~~
 - ~~(5) order the Department to complete all steps necessary to finalize the permanent placement of the child.~~

340:75-1-22. Administrative review and procedures

(a) **Administrative review.** Title IV of the Social Security Act requires that a case review, either judicial or administrative, occur at least each six months following the date of placement for each child in out-of-home care. An ~~Administrative Review cannot~~ administrative review may not substitute for the statutorily required hearings. An ~~Administrative Review~~ administrative review is held when a case involving a child placed in out-of-home care, or a youth age 18 - to 21 receiving voluntary foster care from the Oklahoma Department of Human Services (OKDHS) has not been reviewed after a six month interval by the ~~Court court of Jurisdiction jurisdiction~~ or

~~the Post Adjudication Review Board~~ post adjudication review board (PARB). Child Welfare is responsible for the provision of the administrative review in this situation.

(b) Section 475(6) of the Social Security Act defines the administrative review as ... *a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.* The case review system assures:

- (1) each deprived child in ~~DHS~~ OKDHS custody living in ~~out-of-own-home~~ out-of-home placement has a case plan designed to achieve placement in a safe setting that is least restrictive, in close proximity to the parent(s)' home, and is consistent with the best interest and special needs of the child;
- (2) the child's status is reviewed at least each six months by either a court or administrative review to determine: the safety of the child, continuing need for and appropriateness of the placement, extent of progress made on the case plan toward alleviating the conditions that caused the placement of the child in out-of-home care, and a likely date by which the child can be returned home or placed in another form of permanency; and
- (3) procedural safeguards are made available to the child and family such as a permanency hearing ~~no later than 12 months after the child's placement in out of home care~~ as required by Sections 7003-5.6d and 7003-5.6g of Title 10 of the Oklahoma Statutes, in accordance with OAC 340:75-1-18.1.

SUBCHAPTER 6. PERMANENCY PLANNING

PART 5. PERMANENCY PLANNING SERVICES

340:75-6-30. Child's visitation with parents and siblings

(a) **Parent-child visitation.** The frequency and quality of a child's visits with his or her ~~parents~~ parent(s) relate to the length of time the child stays in out-of-home placement. Parent-child visitation is a high priority of worker responsibilities and serves the functions of:

- (1) reassuring the child that the ~~parent~~ parent(s) has not abandoned him or her and that the ~~parent~~ parent(s) still cares for him or her;
- (2) reassuring the ~~parents~~ parent(s) that Child Welfare (CW) is serious about maintaining family relationships and about helping them;
- (3) strengthening familial relationships;
- (4) demonstrating new parenting skills by the ~~parents~~ parent(s);
- (5) evaluating parenting skills;
- (6) evaluating parent-child interaction;
- (7) assessing ~~parents'~~ parent(s)' level of interest and ability to parent;
- (8) helping prepare families for reunification; and

(9) helping identify continued risks to the child's safety that make reunification unfeasible.

(b) **Visitation is a right.** The child and ~~parents~~ parent(s) have a right to regular visitation. The ~~parents~~ parent(s) is notified of this right on the ~~treatment plan Form CWS-KIDS-10, Treatment Plan~~. Denial of family visitation, sibling contact, or the exchange of letters and telephone calls is not used to reward or punish the child or family. Visitation is available to the children and families involved with CW as long as the child is not endangered, or as long as there is not sufficient documentation that visitation is damaging to the child, or there has not been a court finding that efforts to reunite are not required or have been made and failed and visitation should cease. ~~In cases where~~ When the court has made a finding that reasonable efforts are not required, visitation may continue in some situations until the permanency hearing. Only election of the parents to decline to participate, a permanency plan goal other than reunification, or the special circumstances described in ~~(h)~~ (c) of this Section rule out regular visitation. Prior to discontinuing visitation with ~~parents~~ the parent(s), the CW worker discusses this with the district attorney, the child's attorney, and the child's therapist if appropriate, and advises the court. Parents are sent written notice of this decision with a detailed explanation and a copy provided to the court and the child's attorney.

(c) **Frequency of parent-child visitation.** Family visitation begins no later than two weeks after removal and is arranged a minimum of every four weeks thereafter until the child is returned or the permanency plan is no longer reunification. Exceptions ~~include the items outlined in (1) - (4) of this subsection.~~ are made when:

- (1) ~~The parents fail the parent(s) fails~~ to cooperate with visitation arrangements;
- (2) ~~The~~ the court orders that visitation does not occur;
- (3) ~~The~~ the whereabouts of the ~~parents~~ parent(s) are unknown; or
- (4) ~~Visitation~~ visitation, even supervised, would endanger or submit the child to highly damaging psychological stress.

(d) **Visitation schedule.** A schedule of visitation is designed jointly with the family, the placement provider, and the CW worker. Visitation increases in length and frequency and decreases in the level of supervision as the parents correct the conditions of intervention. A visitation schedule provides security for parent-child interaction and allows parents a reliable routine for practicing new parenting and relationship techniques. It promotes time management skills for the parents and allows the CW worker an opportunity to observe the parent-child interaction. The CW worker determines the frequency, location, and arrangements for visitations. When safety is assured, the placement ~~provider~~ provider(s) may participate in visitation and, thereby, serve as a model for parenting, an ally for the ~~parents~~ parent(s), and protector and guide for the child. The visitation schedule is written and signed by the family, the placement ~~provider~~ provider(s), and the CW worker, with copies for all parties, including the child as appropriate, and attached to ~~the treatment plan Form CWS-KIDS-10.~~

(1) **Frequency.** Contact with the child occurs according to the safety situation for the child. Often the frequency may increase first by adding a schedule for letters and telephone calls followed by an increase in visits. Telephone calls and visits are arranged with the ~~parents~~ parent(s), placement ~~provider~~ provider(s), and child, age permitting, in arranging a convenient method and time for all concerned.

(2) **Length.** Initial visits of short duration, one to two hours, allow parents to experience small successes. Length of visits gradually ~~increase~~ increases as the parents become more proficient in parenting skills. Successful unsupervised day-long, overnight, and weekend visits are completed prior to planning for the return home.

(3) **Location.** In the beginning stages of a case, visits may require supervision by the CW worker, and when necessary, held in a sterile environment such as the ~~DHS~~ Oklahoma Department of Human Services (OKDHS) office. As soon as safety permits, visits are held in locations conducive to parent-child interaction, such as parks, restaurants, and shopping malls. As the parents progress on eliminating the risk factors, the frequency and length of visits increase and the location moves to the placement provider's or parents' home, as appropriate. The length of visits, frequency, and location are based on the needs of the child and the abilities of the ~~parents~~ parent(s).

(4) **Activities.** Visits are planned and structured to include age appropriate activities with the child. This allows parents the opportunity to learn about the child's development, strengthen the parent-child relationship, and helps the ~~parents~~ parent(s) enjoy ~~their~~ his or her child. As parental involvement progresses, school conferences and doctor appointments may be combined with the family visits.

(5) **Mail and telephone contact.** Contact with the child's ~~parents~~ parent(s), extended family, and friends through phone calls and letters is encouraged. Mail and telephone calls are not monitored or restricted unless it is essential for the child's protection. The court is advised if restrictions appear warranted and of ~~DHS~~ OKDHS efforts to improve the quality of family contacts. Restrictions may be indicated if any of the items listed in (A) - through (D) of this paragraph are observed.

- (A) There are threats to the child.
- (B) The contact causes harm to the child's emotional well-being.
- (C) There is an attempt to influence a child's testimony.
- (D) An attempt is made to undermine a present or future placement.

(e) **Contact with siblings.** All efforts are made to place sibling groups together in both temporary and permanent placements. When this is not possible, siblings have frequent contact. A child who is in out-of-home care, ~~usually~~ is normally in compelling need of closeness with siblings. Sibling contacts approved by the CW worker ~~can~~ may be arranged by placement providers. [OAC 340:75-6-85.3]

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(f) **Child's visits or contacts with relatives.** In emergency and temporary custody situations, the CW worker evaluates requests for visitation or contact from relatives or extended family members based on information from the child's parents parent(s) and the significance of the relationship to the well-being of the child. The decision is discussed with the child's attorney when there is disagreement with the child's parents parent(s) regarding the contact or visitation with relatives.

(g) **Child's visits or contacts from outside entities.** The CW worker determines who is appropriate to have visitation or contact with a child in care. In emergency or temporary custody situations, the parents have input into this decision. For children in permanent custody, the CW worker may approve such contact, based upon the child's wishes and the case plan goal.

340:75-6-31. Permanency planning for custody children

(a) **Permanency planning.** Permanency planning begins immediately after a child is placed in the Oklahoma Department of Human Services (DHSOKDHS) custody and continues until the child is living in a permanent home and the Child Welfare (CW) case is closed. Once a child is removed from the custody of the child's parent(s), the court or DHS OKDHS immediately begins concurrent permanency planning so that permanency occurs at the earliest opportunity. Consideration of the initial placement is given so that if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child. The first permanency hearing is ~~conducted within 12 months of the child's placement in out of home care and every 12 months thereafter or within 30 days of the court's determination that reasonable efforts to reunite are not required~~ held as required by Sections 7003-5.6d and 7003-5.6g of Title 10 of the Oklahoma Statutes, and in accordance with OAC 340:75-1-18.1.

(1) The permanency plan ~~can be~~ goal is to:

- (A) reunite the child with his or her family;;
- (B) terminate parental rights and place the child for adoption;;
- (C) establish guardianship;;
- (D) provide long-term out-of-home care;;
- (E) ~~other~~ provide another permanent arrangement.

(2) The purpose of permanency planning is to ensure that every child who enters the CW system has a plan that addresses the child's immediate and long-term needs for safety, well-being, and permanence.

(3) CW staff are required to be diligent in the development and implementation of ~~this effort~~ a permanency plan.

(b) **Sources for determining the child's permanent plan.** Sources which assist the CW worker and supervisor in determining the best ~~permanent~~ permanency plan for the child are:

(1) ~~the treatment plan~~ Form CWS-KIDS-10, Treatment Plan, containing current documentation of the ~~parents'~~ parent(s)' progress, correspondence, consultations, or conferences with service and placement providers and professionals who have had interactions with the child and the parents;

(2) the case contacts and family visitation screens in KIDS_ containing pertinent information gained from visits and worker contacts with the child, parents, placement providers, and service providers;

(3) statements by the parents parent(s) which give indications of ~~their~~ the parent(s)' perceptions of the child, parenting the child, and the abuse and neglect issues that required corrections;

(4) statements by the child regarding parents the parent(s) and the child's desire to reunite, which are obtained from ~~worker-child~~ the CW worker's monthly private visitation with the child, the placement, and other service providers;

(5) staffing with the CW supervisor;

(6) recommendations by the ~~Post-Adjudication Review Board~~ post adjudication review board (PARB);

(7) conclusions or recommendations by a multidisciplinary staffing;

(8) consultation with the Adoption Section, Children and Family Services Division (CFSD), State Office;

(9) the Permanency Planning Review process, in accordance with OAC 340:75-6-31.1; and

(10) coordination with tribal officials, for a child who falls under the Indian Child Welfare Act, to explore the tribe's interest and ability in providing for the child's permanent placement.

(c) **Reunification as the first permanent plan goal.** In most situations, the initial ~~permanent~~ permanency plan case goal is to reunite the child with the family. These services are implemented until:

(1) the child is returned home, the family home has stabilized, and the court case is dismissed; or

(2) it is determined that the conditions ~~which that~~ necessitated intervention have not been corrected although sufficient time and services have been provided.

(d) **Exceptions to reunification as the initial case plan goal.** Situations that require an alternative permanent plan to reunification as the initial case plan goal include:

(1) voluntary relinquishment by all parents, natural, legal, putative, and alleged;

(2) a Petition for Termination has been filed on the parent(s), legal guardian(s) or custodian(s); or

(3) the court has found that reasonable efforts to reunite are not required. [OAC 340:75-1-18(5) 340:75-1-18.4]

(e) **Reunification services.** Prior to reunification with parents who have contributed to the abuse or neglect of the child, a court order granting approval is required. In preparation for reunification and to provide to the court for consideration, the CW worker ensures the activities in (1) - through (7) of ~~this subsection~~ have occurred.

(1) Visitation has increased in frequency and duration with reduced supervision as described in OAC 340:75-6-30.

(2) The child is aware that the parents have progressed in their treatment to the point that reunification may be possible and the court will make the decision.

(3) Any issues involving the child's apprehensions, indecisiveness, or reluctance to return home have been

managed through family consultation or counseling, or both.

(4) Support services have been utilized, including, but not limited to temporary ~~day~~ child care, assistance in contacting community service providers, in-home services, or continued Temporary Assistance for Needy Families (TANF) eligibility, if applicable. [OAC 340:75-6-31.2]

(5) The placement provider is informed of the possibility of reunification and is included in and provided with information regarding the child for the ~~treatment~~ permanency planning.

(6) Service providers have provided supporting information as to the degree of safety in the family.

(7) The case has been staffed with the CW supervisor and the requirements for the permanency planning review process have been met. [OAC 340:75-6-31.1]

(f) **Criteria for reunification.** Indications for reunification are listed in this subsection.

(1) The risk that necessitated the intervention is no longer present and there is no other risk that jeopardizes the safety of the child.

(2) The ~~parents have~~ parent(s) has complied with the treatment plan in such a manner that those adjudication conditions the court determines essential and fundamental to the child's health, safety and welfare have been met.

(3) Visitation is successful and has increased in length and frequency.

(4) The child has dealt with the feelings about the separation through counseling or some other effective means.

(5) The child has been prepared for the reunion and received support in handling his or her feelings about returning home and separating from the current placement.

(6) The court has given prior approval of the return of the child to the parents' home, ~~in accordance with~~ OAC 340:75-6-31.3 340:75-6-31(e).

(g) **Reunification with the custodial parent.** In cases where the child's parents do not live together, the priority for reunification relates primarily to the custodial parent; however, the noncustodial parent is assessed for the possibility of placement or custody, if appropriate. [OAC 340:75-1-13] Prior to closure of the court case, modification of the divorce decree or any other custody order may be needed if the parent having custody prior to CW involvement is no longer the custodial parent.

(h) **Indicators to proceed with concurrent permanency plan.** The conditions in (1) - through (8) of this subsection may be indicators of the need to expedite the concurrent ~~permanent~~ permanency plan for the child.

(1) Completion of the treatment plan is irregular or sporadic, and has not eliminated the risk in the home, which may indicate a lack of interest in or commitment to reunification.

(2) Family visitation indicates the ~~parents lack~~ parent(s): lacks a close and positive relationship with the child; ~~parents visit, visits~~ irregularly, frequently misses scheduled visits, or ~~arrive arrives~~ late and leave leaves early.

(3) Indications of maltreatment have been reported during unsupervised visitations. Examples of maltreatment include, but are not limited to, referrals regarding the recurrence of abuse or failure of the parent(s) to comply with any recommended treatment for the child.

(4) The child has been returned to the home and removed again for safety reasons.

(5) ~~Parents receive~~ The parent(s) receives negative reports from service providers or other entities, such as Permanency Planning Review members, PARB members, and Court-Appointed Special Advocate (CASA), ~~and the like~~.

(6) The length of time reunification has been the case plan goal. [OAC 340:75-6-47(c)(18)]

(7) The finding of the permanency hearing.

(8) A judicial finding of "Reasonable efforts to reunite not required."

(i) **Adoption.** When a child cannot return safely to his or her own home, adoption is the preferred permanency plan in essentially every case. Adoption is usually possible regardless of the child's age or special needs. Adoption provides a child with a lifelong, committed family, a permanent home, connection, belonging, and identity, and the same legal status he or she would have with a biological family. Consultation about adoptive placement for the child is initiated with the county's adoption specialist to discuss permanency planning options when reunification appears no longer feasible. This consultation is held whether or not termination has been recommended to the court.

(j) **Legal guardianship or permanent custodian.** In some situations, a guardianship or permanent care and custody transferred to another person or kinship guardian may be the ~~permanent permanency~~ plan for a child. [OAC 340:75-1-18.2 through 340:75-1-18.3; 10 O.S. § 7003-5.5(A)(~~8~~)(a) through 7003-5.5(A)(~~9~~)(i)] This often occurs when a child is placed with another person who is reluctant to adopt due to extenuating circumstances. Guardianship or permanent custodian is not preferred over adoption because this option does not provide the same level of family permanency. Financial assistance ~~may be~~ is available to the guardian(s) or legal custodian(s) provided ~~that~~ the guardian(s) or legal custodian(s) and the case meet the eligibility requirements. [OAC 340:75-6-31.4]

(k) **Long-term out-of-home care.** In a few cases, a permanent plan for long-term out-of-home placement may be appropriate for a child if ~~the Department OKDHS~~ has documented a compelling reason for the court to determine that to return home, be placed for adoption, or placed with a fit and willing relative relative(s) or legal guardian guardian(s) is not in the best interests of the child. Long-term out-of-home care does not always provide a child with the emotional and physical support or life-long family attachments and is used only when:

(1) all other ~~permanent permanency~~ plans have been explored and are not feasible or in the child's best interests; or

(2) the child chooses not to be adopted after adoption has been thoroughly explored, explained, and the opportunities demonstrated.

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(1) **Emancipation.** The federal definition of emancipation is the age at which the child reaches the age of majority. In Oklahoma this age is 18.

PART 7. CASE PLANS

340:75-6-40.5. ~~Court Report, Form CWS-KIDS-11~~

~~The Form CWS-KIDS-11, Court Report, is submitted for the initial disposition hearing, a minimum of for review hearings held no later than six months after the date of the child's out-of-home placement and at least every six months thereafter, for subsequent disposition review hearings and every 12 months for permanency hearings held as required by Sections 7003-5.6d and 7003-5.6g of Title 10 of the Oklahoma Statutes. [OAC 340:75-1-18.1] The Court Report Form CWS-KIDS-11 is prepared and submitted three days prior to each hearing. A copy of the Court Report Form CWS-KIDS-11 is provided to the parents and discussed with them the parent(s). Reports, correspondence, and information provided by other professionals working with the family, including the foster parent parent(s), are attached or incorporated into the Court Report Form CWS-KIDS-11.~~

[OAR Docket #03-969; filed 5-20-03]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 75. CHILD WELFARE

[OAR Docket #03-971]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 4. Family-Centered and Community Services

Part 1. ~~Voluntary~~ Family-Centered Services [AMENDED]

340:75-4-9 [AMENDED]

340:75-4-10 [REVOKED]

340:75-4-11 [AMENDED]

340:75-4-12 [REVOKED]

340:75-4-12.1 through 340:75-4-12.2 [NEW]

340:75-4-13 through 340:75-4-14 [AMENDED]

Subchapter 15. Adoptions

Part 2. Legal Base and Scope of the Adoption Program

340:75-15-5 through 340:75-15-9 [AMENDED]

Part 6. Adoption ~~Matching~~ Process [AMENDED]

340:75-15-41 through 340:75-15-43 [AMENDED]

340:75-15-45 [AMENDED]

340:75-15-47 [AMENDED]

Part 8. Adoptive Placement Process

340:75-15-59 [AMENDED]

340:75-15-61 [AMENDED]

Part 10. Adoptive Family Assessment and Preparation Process

340:75-15-82 through 340:75-15-85 [AMENDED]

340:75-15-87 through 340:75-15-88 [AMENDED]

340:75-15-91 [AMENDED]

340:75-15-93 [AMENDED]

Part 12. Post Placement Services

340:75-15-103 [AMENDED]

340:75-15-104 [REVOKED]

340:75-15-106 [AMENDED]

340:75-15-108 [AMENDED]

Part 14. Post Adoption Services

340:75-15-124 [AMENDED]

(Reference APA WF # 03-04 and 03-05)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Sections 7001-1.2, 7003-2.4, 7003-5.6, and 7501-1.1 through 7501-3.3 of Title 10 of the Oklahoma Statutes.

DATES:

Comment period:

February 19 through March 20, 2003

Public hearing:

None held or requested

Adoption:

March 25, 2003

Submitted to Governor:

March 25, 2003

Submitted to House:

March 25, 2003

Submitted to Senate:

March 25, 2003

Gubernatorial approval:

May 9, 2003

Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on May 19, 2003.

Final adoption:

May 19, 2003

Effective:

June 26, 2003

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATION BY REFERENCE:

N/A

ANALYSIS:

The revisions to Subchapters 4 and 15 of Chapter 75 reflect changes in the process of voluntary Family Centered Services (FCS) resulting from the new Oklahoma Children's Services (OCS) contract requirements; provide guidelines for determining appropriate Child Welfare (CW) referrals to Comprehensive Home-Based Services (CHBS) and decision-making processes following an investigation or assessment; and provide clarification in the areas of adoption procedures and Child Welfare (CW) worker responsibilities for children with the goal of adoption. The rules are revised to improve readability, eliminate unnecessary language, conform to current formatting guidelines, and correct and update cites.

340:75-4-9 and 75-4-11 are revised to improve readability, eliminate unnecessary language, conform to current formatting guidelines, and correct and update cites.

340:75-4-10 is revoked.

340:75-4-12 is revoked. Portions of this Section were moved to 340:75-4-12.1 to improve readability and clarify procedures by placing in chronological order.

340:75-4-12.1 is issued to detail the procedures utilized in making a decision about safety and service needs to families when an investigation or assessment has taken place.

340:75-4-12.2 is issued to provide the guidelines utilized for determining appropriate CW referrals to CHBS.

340:75-4-13 reflects the changes in ongoing voluntary FCS cases. At the discretion of the county director, the CW worker may have the option of opening an ongoing voluntary FCS case.

340:75-4-14 is revised to improve readability, eliminate unnecessary language, conform to current formatting guidelines, and correct and update cites.

340:75-15-41 is revised to include a time frame for the first adoptive placement criteria staffing.

340:75-15-82 is revised to delete a reference referring children to the Adoption Exchange Website and to reflect the referral to www.okdhs.org/adopt and www.adoptuskids.org.

340:75-15-87 is revised to add six hours of Behavior Crisis Management Training (BCMT) to the mandatory training requirements for adoptive resource parents.

340:75-15-88(d)(10) is revised to specify that the failure to complete BCMT within one year of application will result in a denial and to require the approval of State Office Adoption Section for any exceptions.

340:75-15-104 is revoked.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003.

SUBCHAPTER 4. FAMILY-CENTERED AND COMMUNITY SERVICES

PART 1. VOLUNTARY FAMILY-CENTERED SERVICES

340:75-4-9. Purpose, philosophy, legal base, and authority

(a) Purpose. Voluntary Family-Centered Services (FCS) are include decision making processes following a child abuse or neglect investigation or assessment, and services provided to families where Child Welfare (CW) has identified harm or threatened harm to a child. The purposes of voluntary FCS are to assess a family's needs for services and make referrals for services protection and ongoing assessment of the safety of children where when child abuse, child neglect, or both have been are identified and provision of services for families to enable them to correct these conditions. Intervention is Service needs assessment and referral focused focus on increasing safety for children and families the child(ren) and family, while preserving and strengthening families the family in order to prevent unnecessary out-of-home placements.

(b) Philosophy. While family reunification or rehabilitation is a priority, the right to family integrity is limited by the right of children to be protected from abuse and neglect. [10 O.S. § 7001-1.2] FCS emphasizes a commitment to:

- (1) maintain children safely in their own homes whenever possible;
(2) focus on entire families rather than individuals; and
(3) provide comprehensive services that meet the range of families' therapeutic, supportive, and concrete needs.

(c) Legal base and authority. Preventive and pre-placement services to children and families are mandated by the Adoption and Safe Families Act [42 USC 1305] and by Oklahoma Statutes, Section 1305 of Title 42 of the United States Code.

340:75-4-10. Definitions [REVOKED]

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

"Alternative voluntary out-of-home placement" means voluntary placement of a child(ren) by the Person Responsible for the Child (PRFC) in out of home placement.

"Child and Family Team" means a group of persons identified by and with the family who are committed to the family and child and invested in helping them change.

"Child well-being" means a child receives the care or services to meet minimal educational, physical, and mental health needs.

"CPS" means Child Protective Services, the CW program responsible for the investigation or assessment of allegations of abuse or neglect.

"Family-Centered Services (FCS)" means a range of services for families with problems that threaten their stability, but court intervention is not required to maintain the children's safety. Services include case management, counseling, education, skill building, advocacy, and linking families to concrete services such as food, housing, or health care.

"Family meeting" means structured guided discussions with the family about its strengths, needs and problems and the impact they have on the safety, well being, and permanency of the child. The meetings include decisions regarding what action must be taken and what services are needed.

"Safety" means freedom from serious danger due to abuse or neglect in the near or foreseeable future.

"Safety planning" means evaluating the alternatives to protective custody to determine whether the child's safety can be ensured. [OAC 340:75-3-10.1(e)]

"Threatened harm" means a substantial risk of harm to the child. It includes intentions to act, actions, omissions, or conditions which place the child at substantial risk of serious physical abuse, sexual abuse, or serious neglect.

340:75-4-11. Scope of voluntary Family-Centered Services (FCS)

(a) Voluntary FCS are initiated with a family when the Child Protective Services (CPS) Child Welfare (CW) worker has assessed the child to be at determined that there is risk of maltreatment or where that maltreatment has occurred and the family is presently unable to provide for the safety of the child without Child Welfare (CW) intervention referral for service. CW, in voluntary partnership with the family, provides for the safety of the child through accessing internal and external resources and reviews the range of services available to address the safety factors that the family is not yet able to control. The categories of services are:

- (1) referral to community services, utilization of contingency funds in accordance with OAC 340:75-1-28, or both;
(2) referral to Oklahoma Children's Services (OCS) Comprehensive Home-Based Services (CHBS). Appropriate referrals are described in OAC 340:75-4-12.2; and
(3) at the discretion of the county director, opening an ongoing FCS case in accordance with OAC 340:75-4-13.

(b) The FCS CW worker continually assesses the family's willingness, capacity, confidence, and commitment to cooperate with voluntary services, while ensuring the child's needs are met. Appropriate referrals to FCS are made according to OAC 340:75-1-180 and selection criteria for levels of service in OAC 340:75-3-13.2. Guidelines for referring cases of serious abuse or neglect to FCS are made according to OAC

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~~340:75-3-10.1. An exception to these guidelines and criteria include those instances in which When the district attorney declines to file a deprived petition on eases a case with findings a finding of Confirmed - Court Intervention Recommended confirmed report - court intervention. In these instances Level 4 - Regular Services OCS CHBS will be is offered to the family. [OAC 340:75-4-12.1]~~

340:75-4-12. Initiation of Family-Centered Services (FCS) [REVOKED]

~~(a) **Safety planning.** Children are, first and foremost, protected from abuse and neglect. Safety of the child(ren) must be ensured before any other intervention is pursued. Safety determination and responses are completed in accordance with OAC 340:75-3-10.1. While attention to safety issues is a continuous process, the initial stage of FCS requires a heightened awareness to the safety needs of the child(ren).~~

~~(b) **Acceptance of case for FCS.** A smooth case transfer is a shared responsibility between Child Protective Services (CPS) and FCS. The transition requires continuity, communication, and a full exchange of information between CPS and the newly assigned FCS worker. With few exceptions, the formal transition occurs in the presence of the family. In doing so, there will be a clear and more complete discussion of the circumstances placing the child at risk, and less chance of denial, misunderstanding, or misstatement. To be effective in an intervention, the FCS worker must begin engaging the family in a prompt and positive way from the initial contact. Expeditious contact with the family is necessary in order to maintain the family's focus on critical issues already established by CPS and to ensure a continuum of services.~~

~~(c) **Referrals to Comprehensive Home-Based Services (CHBS).** When the family is referred for Level 4 - Regular Services, a referral to CHBS is made with some limited exceptions. [OAC 340:75-3-13.2] The complex service needs of the family who meets the criteria for this level of service require the intensive level of services provided by CHBS. Referrals to CHBS are made in accordance with OAC 340:75-1-180. Once an FCS case has been accepted for services by the contractor, the referring Child Welfare (CW) specialist is not required to have ongoing direct contact with the family except in conjunction with the contracted case manager (CCM). Attendance at monthly case staffings of CHBS cases with the CCM is mandatory. In accordance with OAC 340:75-1-183 CW maintains responsibility to protect children in open CW cases. CW workers are required to stay informed about the ongoing risk to children who remain at home or are being reintegrated into the family, and take protective action when risk rises to an unacceptable level.~~

~~(d) **Family strengths and needs assessment.** Completing the Family/Child Strengths and Needs Assessment, Form CWS KIDS 9, is an ongoing process throughout the duration of services to a family and child(ren). Both the FCS worker and family need to remember the primary focus is on those needs that are directly related to the child's safety and well being. The FCS worker assists the family in providing for child safety, but it remains the responsibility of the family to take the needed steps to maintain child safety and prevent~~

~~future maltreatment. The assessment must address initially, and throughout the duration of service, what strengths, needs, and underlying behaviors and conditions in the family impact a child's safety, well being, and permanency. If the family has prior CW history, the FCS worker determines what interventions and services have or have not been effective in assisting the family. Form CWS KIDS 9 is exempt for cases referred to CHBS if the case is referred to CHBS within 30 days of the family's request for services.~~

~~(e) **Child's needs assessment.** The child's needs assessment is included in Form CWS KIDS 9. The assessment contains all of the child's risk related, safety, and other needs. The child's safety needs are incorporated into the treatment plan along with desired results which show the parent(s) can meet the child's needs. Input from the family or interviews with collaterals, such as child care providers or school teachers, is utilized to fully address the child's needs. Services are also provided to enhance and develop the child's strengths and ensure the child's well being. Form CWS KIDS 9 is exempt for cases referred to CHBS if the case is referred to CHBS within 30 days following the request for services.~~

~~(f) **Child well-being measures.** Child well-being includes ensuring the child's educational, physical, and mental health needs are addressed and documented in the case record. The federal requirements for child well-being measures are the same for FCS and Permanency Planning cases.~~

~~(g) **Referral for determination of medical eligibility.** The FCS worker discusses the child(ren)'s medical needs and determines if the family has medical coverage for the child(ren) in the home for whom DHS does not have custody. If the family does not have medical coverage for the child(ren), the PRFC(s) is referred to the SoonerCare program according to OAC 317:35-6.~~

~~(h) **Treatment planning process.** The objective of the treatment planning process is determining services needed to help the family provide for the child(ren)'s safety on their own, without CW intervention. The treatment plan must be developed with the family, not for the family. Developing the treatment plan with the family reinforces that the child(ren) is the responsibility of the PRFC(s) and responsibility for solving the problems rests with the PRFC(s). The family meeting ensures the treatment plan is developed with the family. The Treatment Plan, Form CWS KIDS 10, is exempt for cases referred to CHBS, if the case is referred to CHBS within 30 days following the request for services.~~

340:75-4-12.1. Voluntary FCS procedures

Upon completion of an investigation or assessment, utilizing all available information, the Child Welfare (CW) worker determines the safety and service needs of the child and family. [OAC 340:75-3-13.1] Appropriate service referrals for the family are made according to the selection criteria for Levels of Service.

(1) **Investigation or assessment documentation.** At the conclusion of an investigation or assessment the CW worker completes either Form CWS-KIDS-9-A, CPS Family Assessment, or Form CWS-KIDS-3, Report to

District Attorney, as well as Form DCFS-76, Safety Assessment, and Form DCFS-75, Voluntary Family Service Agreement.

(2) **Safety planning.** The safety of the child is addressed before any other intervention is pursued. Safety determination and responses are completed in accordance with OAC 340:75-3-10.1 and documented on Form DCFS-76.

(3) **Determining service needs and collaborating with the family in safety and service planning.** Whenever possible, the safety evaluation and service planning include the involvement and input of the family. The risk to the child and the level of need within the family determine the intensity and duration of services required to address any concerns within the family. The CW worker may access contingency funds to assist with service needs in accordance with OAC 340:75-1-28.

(4) **Voluntary Family Service Agreement.** The CW worker discusses service options with the family and explains that services are voluntary unless there is court action involving the child and family.

(A) When services are recommended, Form DCFS-75 is explained to the family and the family is offered the opportunity to enter into a voluntary agreement to accept services.

(B) Form DCFS-75 documents the services needed and agreed to by the family to help provide for the child's safety without CW intervention.

(5) **Informal supports to the Voluntary Family Service Agreement.** With the family's permission, supportive persons such as neighbors, friends, volunteers, and extended family members may be involved in safety plans and service agreements. Supportive persons who agree to be resources for the family commit to involvement in the safety planning and voluntary services by signing Form DCFS-75.

(6) **Formal supports to the Voluntary Family Service Agreement.** Formal supports include programs and professional services, such as community-based service programs, that assist the family in providing a safe environment for the child. Comprehensive Home-Based Services (CHBS) are available through Oklahoma Children's Services (OCS) as described in OAC 340:75-4-12.2.

(7) **Assessing the need for voluntary foster family resource care.** Voluntary foster family resource care is available as a preventive and protective service to enhance family functioning without court intervention.

(A) A child may be placed in foster family resource care at the request of the parent(s) or guardian(s) when an emergency temporarily disrupts normal functioning.

(B) Relatives or other resources available to the family are fully explored and ruled out as a possible option before considering voluntary foster family resource care.

(C) An open CW case is required for voluntary foster family resource care.

(D) Specific procedures are followed to place a child in voluntary foster family resource care.

(i) Foster family resource care by voluntary request is a written, signed agreement between the parent(s) or guardian(s) and the Oklahoma Department of Human Services (OKDHS) wherein the authority is given to place the child in foster family resource care and provide for the child's needs. Pursuant to the terms of the agreement the child is returned to the parent(s) or guardian(s) at his or her request.

(ii) If the parent(s) or guardian(s) fails to meet the terms of the agreement or cannot be located, court involvement is required.

(iii) At the time of placement, the parent(s) or guardian(s) is advised that any information obtained during the time the child is placed in voluntary foster family resource care may be used, at a later time, as the basis for a petition alleging that the child is deprived.

(iv) Foster family resource care by voluntary request is approved for an initial period of 30 days and may be extended up to a maximum of 90 days when the extension could result in family reunification without necessitating court intervention.

(v) Court intervention is necessary when foster family resource care extends beyond 90 days.

(8) **Protective and preventive child care.** Child care services may be provided to a family whose child is at risk for removal due to abuse and neglect and to a family who is in the process of reunification. OAC 340:75-6-91

(9) **Transporting families who receive voluntary Family-Centered Services (FCS).** Initially, the CW worker may assist with the transportation needs of the family. The CW worker explores with the family other means of transportation that allow for independence once services are completed. The person responsible for the child (PRFC) must be in the vehicle when CW transports a child who is not in OKDHS custody.

(10) **Case management responsibilities for exceptional voluntary FCS cases.** Ongoing voluntary family services are not provided by CW unless authorized by the county director. Certain circumstances require that CW retain case management of voluntary cases with full responsibilities for service provision as outlined in OAC 340:75-4-13, regardless whether the family has been referred for CHBS.

(11) **Transfer of case responsibility to CHBS.** When CHBS has been determined as the most appropriate service intervention based on the Levels of Service guidelines, the CW worker prepares for the transfer of responsibility as described in OAC 340:75-1-152.4. Before referring a family for CHBS, the CW worker must address the safety of the child during an abuse or neglect investigation or assessment. [OAC 340:75-3-10.1]

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340:75-4-12.2. Determining appropriate CW referrals to CHBS

(a) **CHBS services.** Comprehensive Home-Based Services (CHBS) is a voluntary service that offers resources, options, and guidance to families to better care for their children and strengthen and preserve the family unit. CHBS offers an intensive, short-term educational approach that is not appropriate or effective with all families involved with Child Welfare (CW). Families with chronic problems may be better served by other types of services.

(b) **Guidelines for referral.** Guidelines are provided to assist staff in determining what families will best be served through CHBS. A formal staffing with the CW supervisor is required for exceptions to the referral guidelines. Oklahoma Children's Services (OCS) contract liaisons may also request a justification for utilizing CHBS under such circumstances.

(1) A family who has received CHBS in the past and failed to meet goals because of a lack of cooperation may be offered a trial service period or may be denied service by the OCS contract liaison.

(2) CHBS is both comprehensive and time limited and therefore not appropriate to meet a singular need, such as transportation; or to address pervasive safety concerns, such as parents who are chronically unwilling or unable to protect their young children.

(3) There are no provisions in the contract for ongoing drug and alcohol treatment services. A brief self-assessment of drug and alcohol abuse and dependency is included. Drug screening may be provided if specified by court order.

(4) A referral for the purpose of maintaining placement or adoption is appropriate only for a child who has an established connection or attachment to the resource family. CHBS is not used to maintain therapeutic placements or to rectify deficient parenting skills of paid placement providers.

(5) At least one child in the family must be at imminent risk of removal from the home.

(6) All other less intensive services within the community must have been exhausted or it must be established that community resources are not sufficient to avert placement of the child in out-of-home care.

(7) Reunification services may be provided to a family who has an active court case regardless whether the child has been removed, has yet to be returned to the family's home, or has been returned to the home.

(8) A permanent placement, kinship adoptive, or trial adoptive home at risk of disruption due to acting out behavior of the child may be referred to CHBS. When a permanent placement is at risk of disruption due to a caregiver(s)' behavior, any referral to CHBS must be discussed with and approved by the CW worker responsible for maintaining the kinship home.

340:75-4-13. Ongoing Family-Centered Services (FCS) services

At the discretion of the county director, the Child Welfare (CW) worker has the option of opening an ongoing voluntary

Family-Centered Services (FCS) case. The guidelines and procedures in (1) through (14) are followed when an ongoing voluntary FCS case is opened.

(#1) **Ensure the ongoing Ongoing safety and health of the child.** Once After the Assessment and Treatment Planning stages have been completed CW worker completes the initial Form DCFS-76, Safety Assessment, and Form DCFS-75, Voluntary Service Agreement, and determines the need for ongoing voluntary services, the FCS CW worker's actions and plans must focus on maintaining the safety of the child while the family works on achieving the goals of the treatment plan Form CWS-KIDS-10, Treatment Plan. Form DCFS-76, Safety Assessment, is completed every six months from case opening, or whenever evidence or circumstances suggest that a child's safety may be in jeopardy.

(2) **Family strengths and needs assessment.** Completing Form CWS-KIDS-9, Family/Child Strengths and Needs Assessment, is an ongoing process throughout the duration of the case. Form CWS-KIDS-9 addresses strengths, needs, and underlying behaviors and conditions in the family that impact the child's safety, well-being, and permanence.

(3) **Child's needs assessment.** The child's needs assessment is included in Form CWS-KIDS-9. The assessment includes the child's risk related, safety, and other needs. The child's safety needs are included in Form CWS-KIDS-10 along with desired results that reflect that the parent(s) can meet the child's needs. Input from the family or collaterals, such as a child care provider or school teacher, is utilized to fully address the child's needs. Services are also provided to enhance and develop the child's strengths and ensure the child's well-being.

(4) **Treatment planning process.** The objective of the treatment planning process is to determine services needed to help the family provide for the child's safety on their own, without CW intervention. The CW worker and the family develop Form CWS-KIDS-10 to include the permanency goal, strengths, and needs of the family and child, and behaviors and conditions that must change. Form CWS-KIDS-10 is exempt for voluntary cases that are open 30 days or less.

(5) **Child well-being measures.** Child well-being includes ensuring the child's educational, physical, and mental health needs are addressed and documented in the case record. The federal requirements for child well-being measures are the same for voluntary FCS and permanency planning cases.

(6) **Referral for determination of medical eligibility.** The CW worker discusses the child's medical needs and determines whether the family has medical coverage for the child in the home for whom the Oklahoma Department of Human Services (OKDHS) does not have custody. If the family does not have medical coverage for the child, the person(s) responsible for the child (PRFC(s)) is referred to the SoonerCare program according to OAC 317:35-6.

(b7) ~~Complete~~ **Subsequent family strengths and needs assessments.** Throughout the life of the case, the ~~FCS~~ CW worker and family amend or enhance the family strengths and needs assessment to reflect the results of the continuous evaluation process. ~~Having completed the~~ The initial Form CWS-KIDS-9, Family/Child Strengths and Needs Assessment, is completed by the CW worker during the first 30 days of service; the The expanded or updated assessment is completed within 90 days and is built upon the initial assessment, incorporating any additional relevant information that ~~was is~~ gathered through professional evaluations; and worker and family contacts; ~~and any other relevant information that is obtained.~~

(e) **Assessing the need for voluntary foster care or protective and preventive child care services.** Voluntary foster family care is available as a preventive and protective service to enhance family functioning without court intervention. A child may be placed in foster family care at the request of the parents or guardians during a time of emergency temporarily disruptive to normal functioning, and there are no relatives or other resources able to provide the necessary interim care. Certain procedures are used to place children in voluntary foster care. The CW worker must assure that these steps are followed when children are placed in voluntary foster care. At the time of placement, the parents or guardians are advised any evidence gathered during the time the child is placed in voluntary foster care may be used at a later time as the basis for a petition alleging that the child is deprived or as the basis for a petition seeking termination of parental rights. Foster family care by voluntary request is a written, signed agreement between the parents or guardians and the agency wherein the authority is given to place the child in foster family care and provide for the child's needs. Such an agreement is not legally binding, and the child is returned to the parents or guardians at their request. If the parents or guardians fail to meet the terms of the agreement or cannot be located, court involvement is required. Foster family care by voluntary request is approved for an initial period of 30 days. Foster family care may be extended up to a maximum of 90 days when such an extension could result in family reunification without necessitating court intervention. Court intervention is necessary when care is beyond 90 days. Protective and preventive child care services are provided to families whose child(ren) is at risk for removal due to abuse and neglect issues and to families who are in the process of reunification. OAC 340:75-6-91

(d8) ~~Document~~ **Goals and outcomes.** During the treatment process, the ~~FCS~~ CW worker continues to engage the family by working with them on the specific goals of the ~~treatment plan~~ Form CWS-KIDS-10. The conversations with the family regarding the specific goals are documented in case contacts.

(e9) ~~Make~~ **Regular and purposeful home visits.** The CW worker continues to maintain a minimum of twice per month home visits with the family, unless worker and supervisory conferences have determined the need for more frequent visits. The CW supervisor must approve any decrease in the number of visits.

(f10) ~~Report abuse~~ **Abuse or neglect in an active voluntary FCS case.** If a child who is part of an FCS case is reported or observed by the CW worker to have an injury, including an alleged accidental injury, or has evidence of any abuse or neglect, the information is documented as a referral per OAC 340:75-3-6(d). If new allegations are reported, are more severe in nature, or both, Form CWS-KIDS-3, Report to District Attorney, is completed and submitted to the district attorney.

(g11) ~~Maintain~~ **Contact with service providers.** The CW worker maintains at least monthly contacts with service provider(s), by phone, in person, or by correspondence. It is the responsibility of the ~~FCS~~ CW worker to keep the provider(s) informed of any changes in the family's circumstances as well as providing and to provide the provider(s) with a copy of the treatment plan Form CWS-KIDS-10 which that pertains to the service provisions to be addressed. ~~When appropriate, the service provider(s) is included in the family meeting.~~

(h12) ~~Visit child in alternative~~ **Alternative voluntary out-of-home placement.** The ~~FCS~~ CW worker has face-to-face contact with the child in the voluntary out-of-home placement within the first two weeks of placement and a minimum of once every four weeks thereafter. ~~Contacts increase~~ The CW worker makes more frequent contacts in times of change and stress.

(i13) ~~Evaluate family~~ **Family progress toward meeting the child's essential needs.** As long as While the family continues to ~~receive~~ receives services, the ~~FCS~~ CW worker, in at every contact with the child, ~~continues to evaluate~~ evaluates whether the child's essential needs are being met. The CW worker assesses the ability of the person(s) responsible for the child (~~PREC~~) (PRFC(s)) to meet the child's essential needs by considering in compliance with the minimal parenting standards established by the treatment plan Form CWS-KIDS-10 and the family progress in reaching the goals of the treatment plan.

(j) ~~Conduct quarterly family meeting.~~ During this process, the Child and Family Team discuss both progress or lack of progress as it relates to individual service tasks and achievement of the overall service goal. The worker addresses behavioral changes that have occurred or still need to occur to reduce the risk of harm or threatened harm.

(k14) ~~Confer~~ **Conference with supervisor.** The ~~treatment plan and progress on Form CWS-KIDS-10~~ are reviewed in a supervisory by the CW supervisor and CW worker in a conference held at least once per month and documented in KIDS. During the conference, the CW worker and CW supervisor review the frequency of visits to the family and consider whether more frequent supervisory conferences are needed to staff the case. ~~This conference is documented by the supervisor in KIDS.~~

340:75-4-14. Termination of voluntary Family-Centered Services (FCS) services

(a) ~~Confer~~ **Conferring with the Child Welfare (CW) supervisor regarding case closure.**

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(1) ~~As~~ When the family demonstrates progress in treatment plan goals and objectives, the ~~FCS CW~~ worker determines with the family and other service providers, ~~as well as with approval from the supervisor,~~ the family's readiness ~~of for decreasing family case the frequency of~~ contacts. The CW worker obtains approval from the CW supervisor.

(2) Before initiating steps to close the case, the ~~FCS CW worker, and FCS CW supervisor, and Child Protective Services (CPS) supervisor~~ must meet to staff the case.

(b) **Terminating CW involvement and planning for after-care.** The primary criterion for closing a case is the determination that the child's safety and well-being will be maintained by the family without ~~Child Welfare (CW)~~ involvement. The family, ~~FCS CW worker,~~ and CW supervisor are involved in the determination that the child's safety and well-being is ensured. ~~In this stage of casework, the worker must continue to support and encourage the family, but there should be increasing emphasis on the family's initiation of their own efforts.~~

SUBCHAPTER 15. ADOPTIONS

PART 2. LEGAL BASE AND SCOPE OF THE ADOPTION PROGRAM

340:75-15-5. Legal base

(a) **Legal base.**

(1) "The Oklahoma Adoption Code," ~~40 O.S. Chapter 75, Section 7501-1.1 et seq.,~~ of Title 10 of the Oklahoma Statutes, set sets forth the provisions for the adoption of children and the legal actions necessary for ~~such~~ adoptions. Adoption services are provided to birth parents, children, and adoptive families to establish and maintain suitable, stable, permanent homes for children which maximally meet the child's developmental needs.

(2) Sections ~~7501-1.1~~ 7510-1.1 through 7510-3.3 and Public Law 96-272 require that the Oklahoma Department of Human Services (OKDHS) administer an adoption assistance program to assist with the adoptive placement and maintenance of ~~special needs~~ children with special needs in adoptive homes.

(3) Section 7508-1.2 requires ~~the Department OKDHS~~ to establish and administer a Mutual Consent Voluntary Registry whereby an eligible persons person who were was separated from birth family members through adoption or termination of parental rights may indicate ~~their~~ a willingness to have ~~their his or her~~ identity and whereabouts disclosed to ~~each other birth family members.~~

(4) Section 7508-1.3 requires ~~the Department OKDHS~~ to establish and administer a Confidential Intermediary Search program whereby the services of a confidential intermediary who has been certified through ~~the Department OKDHS~~ may be used by eligible persons to locate an eligible adult biological relative relative(s) with whom contact has been lost through adoption or termination of parental rights proceedings.

(5) Sections 7506-1.1 - through 7506-1.2 require ~~the Department OKDHS~~ to establish and administer a ~~centralized paternity registry~~ Centralized Paternity Registry (CPR) in order to protect the parental rights of a putative father who may wish to affirmatively assume responsibility for ~~children a child(ren)~~ he may have fathered. ~~The centralized paternity registry CPR will also expedite~~ expedites adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the registry or otherwise acknowledging their children.

(6) The Adoption and Safe Family Families Act (ASFA) [Public Law 105-89] mandates that ~~the Department OKDHS~~ place legally free children in adoptive homes when that is the case plan goal, provide for the interjurisdictional placement of children, and provide post adoption services as a component of the family preservation services.

(7) The Multiethnic Placement Act of 1994 (MEPA) as amended by the Interethnic Adoption Provisions of 1996 (IEP), is designed to eliminate discrimination on the basis of race, color, or national origin of the child or the prospective foster or adoptive ~~parents parent(s);~~ to decrease the length of time that children wait to be adopted; and to facilitate the identification, recruitment, and retention of foster and adoptive parents who can meet the distinctive needs of children awaiting placement. MEPA/IEP prohibits states or agencies that receive Federal federal funds from delaying or denying the placement of any child on the basis of the race, color, or national origin of the child or the prospective foster or adoptive parent parent(s).

(A) **Placement considerations.** Any decision to consider the use of race as a necessary element of a placement decision must be based on concerns arising out of the circumstances of the individual case and based on the best interests of the child. Only the most compelling reasons may serve to justify consideration of race and ethnicity as part of a placement decision. Such reasons are likely to emerge only in unique and individual circumstances. Accordingly, occasions where race or ethnicity lawfully may be considered in a placement decision are very rare. Children who meet the definition of an "Indian Child" as per Indian child in accordance with the Indian Child Welfare Act (ICWA) [25 U.S.C. Section 1903(4)] are placed according to the placement preferences found in ~~the Indian Child Welfare Act ICWA~~. MEPA-/IEP does not prohibit a preference for placing a child with relatives.

(B) **Recruitment efforts.** As part of MEPA-/IEP, efforts to recruit resource families must reflect the ethnic and cultural diversity of children in ~~the state Oklahoma~~ who need foster and adoptive homes. A comprehensive recruitment plan is developed and updated annually by the area adoption supervisor.

(b) **Scope.** ~~Families are essential to the growth and development of children. Families, not agencies, are primary resources for children and are best at parenting them. Children~~

~~are entitled to continuity, stability, and a sense of belonging. Attachment and a sense of belonging are critical to every child's development. Each child with a case plan goal of adoption is referred for adoption services, which includes identification of an appropriate adoptive home, preparation of the child for adoptive placement, and supportive services to the child and adoptive family. OKDHS also provides services designed to recruit and develop adoptive homes. Due to the life experiences and backgrounds of the children available for adoption through OKDHS, services in all components of adoption are child focused.~~

340:75-15-6. Program responsibilities

(a) ~~Custody children.~~ **Children in the custody of OKDHS.** Adoption services are provided for children in the custody of the Oklahoma Department of Human Services (OKDHS) who cannot be returned to a parent or guardian. Services are directed at identifying children for whom reunification efforts with the birth parents have failed or are not in the child's best interest, and permanency may be achieved through an adoptive placement. Adoption must be considered for every child who cannot return home, regardless of age or special needs, in accordance with ~~{OAC 340:75-15-8 and 340:75-6-85.3}~~.

(b) **Adoptive home development.** Services are designed to recruit and develop adoptive homes for ~~the~~ children in the custody of the Department OKDHS who need adoptive placement. The child is the client and services are focused on finding families for children, rather than finding children for families. Assessments of prospective adoptive families are completed according to the need for homes for children awaiting placement, in accordance with ~~{OAC 340:75-15-82 through 340:75-15-89}~~.

(c) **Post adoption services.**

(1) ~~The Department OKDHS provides a variety of services to the child and family after finalization of the adoption to assist in maintaining the child in the home. These services include, including adoption assistance, and Medicaid, disclosure of non-identifying background information, counseling, and family preservation services.~~

(2) The Mutual Consent Voluntary Registry and the Confidential Intermediary Search Program provide assistance to:

(A) ~~adult adoptees~~ adults, who, as children, were placed for adoption in Oklahoma;

(B) ~~and their members of the birth family members, as well as of adoptees; and~~

(C) ~~individuals~~ persons who were separated from birth family members through termination of parental rights.

(3) Counseling and assistance with reunions is ~~also~~ provided.

(d) **Additional adoption services.** ~~The~~ Department OKDHS administers the Interstate Compact on the Placement of Children, the Centralized Paternity Registry, the Interstate Compact on Adoption and Medical Assistance, and the Oklahoma Children's Adoption Resource Exchange.

340:75-15-7. Definitions

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

"**Adoptee**" means an individual who is adopted or is to be adopted.

"**Adoption**" means a way of providing security for and meeting the developmental needs of a child by legally transferring ongoing parental responsibilities for that child from the birth parents to the adoptive parents parent(s), and, in the process, creating a new kinship network that ~~forever~~ links the birth family and the adoptive family through the child ~~who is shared by both~~.

"**Adoption disruption**" means the interruption of an adoption after placement of the child and before legal finalization of the adoption.

"**Approved adoptive resource family**" means an adoptive family who has completed the required assessment process as per in accordance with OAC 340:75-15-88.

"**Attachment**" means a psychologically rooted tie between two ~~people~~ persons that permits them to have affectual significance for each other.

"**Authorized adoptive placement**" means permission from State Office Children and Family Services Division to proceed with an offer of a child to an approved adoptive resource family.

"**Blind showing**" means an ~~agency~~ Oklahoma Department of Human Services (OKDHS) sponsored arrangement for a prospective adoptive parent(s) to view a child without meeting or being introduced to the child as a prospective ~~parents~~ parent(s).

"**Concurrent planning**" means the provision of reunification services while simultaneously developing an alternative plan, in case reunification efforts fail or are no longer feasible.

"**Culture**" is not synonymous with race or ethnicity. It is the shared values, norms, traditions, customs, arts, history, folklore, and institutions of a group of people who share historical or geographical proximity.

"**Directive**" means a form signed by the Director of ~~the Department of Human Services OKDHS~~ or a designee authorizing a ~~Department an~~ OKDHS employee to sign consent to the adoption of a child who is in the ~~Department's~~ custody of OKDHS.

"**Finalized adoption**" means the legal consummation of an adoption.

"**Grief**" means the process ~~through which one passes a~~ person undergoes in order to recover from a loss.

"**Indian Child Welfare Act**" means federal and state legislation which sets minimum standards for the removal and placement of Indian children from their families and tribes. See as described in the Federal Indian Child Welfare Act, Section 1901 of Title 25, U.S.C. § 1903 of the United States Code and Oklahoma Indian Child Welfare Act, Section 40 et seq. of Title 10, O. S. § 40.2 of the Oklahoma Statutes and succeeding sections.

"**Interlocutory decree**" means a decree giving the care and custody of the child to the petitioners pending further order of the court.

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"**Licensed child-placing agency**" means a private agency which ~~that~~ is licensed by the Department of Human Services OKDHS. A licensed child-placing agency is authorized to approve families for adoptive placement, and to place children who are legally available children for adoption.

"**Life Book**" means a compilation of photographs, documents, mementos, illustrations, and narrative accounts of important events in a child's and family's life. The child's Life Book is compiled with or for a child who is in the Department's custody of OKDHS. ~~A Life Books are Book is~~ constructed so that ~~they~~ it may be used ~~with a child in preparation to prepare a child for placement.~~ The adoptive resource family's Life Book is completed by the family as a part of the assessment process.

"**Loss**" means the affectual state one experiences when something of significance is unexpectedly withdrawn. Loss is a universal human experience, and a pervasive area of concern in adoptive situations. Loss is a recurrent issue and is stimulated by subsequent losses.

"**Master adoptive parent**" means an experienced adoptive parent who serves as a support person to adoptive families.

"**Media recruitment**" means the use of newspaper, radio, television, Internet, or other communication resources to provide general information about adoption or to provide specific information about a ~~child(ren)~~ child available for adoption.

"**Notice of Plan for Adoption**" means written notification to the putative father of a child born out of wedlock that the birth mother is considering adoptive placement for the child. Notice of Plan for Adoption can be given by the Department OKDHS, a licensed child-placing agency, or an attorney representing prospective adoptive ~~parents~~ parent(s) of the child, either before or after the birth of the child.

"**Putative father**" means the father of a minor born out of wedlock or a minor whose mother was married to another person at the time of the birth of the minor, or within the ten months prior to the birth of the minor and includes, but is not limited to, a man who has acknowledged or claims paternity of a minor, a man named by the mother of the minor to be the father of the minor, or any man who is alleged to have engaged in sexual intercourse with a woman during a possible time of conception.

"**Search**" means the process of locating an adult birth relative with whom contact has been lost through adoption or termination of parental rights.

"**Special needs child**" means a child with special needs as defined by Public Law 96-272, who may be difficult to place for adoption due to a serious physical or mental disability, emotional disturbance, high risk to develop a physical or mental disability, age, sibling relationship, racial or cultural factors, or a combination of these conditions.

"**Swift adoption services**" means processes completed by contracted agencies or ~~DHS~~ OKDHS staff to gather ~~information on a child's history while regarding a child~~ information of ~~DHS~~ OKDHS, biological family background, medical, educational, and social history for purposes of full disclosure to a prospective adoptive family.

"**Termination of parental rights**" means a judicial proceeding ~~freeing that frees~~ a child from all custody and control by a ~~parent or parents~~ parent(s).

340:75-15-8. Responsibilities of the adoption specialist

The responsibilities of an adoption specialist are: included in (1) through (5) of this Section.

(1) **Adoption consultation.** The adoption specialist consults with permanency planning, foster care, and Child Protective Services staff and serves as a team member in addressing permanency planning issues for children in care. Consultation ~~can~~ may be informal between workers or occur in a multi-disciplinary team through criteria staffings and permanency planning reviews. Consultation regarding adoption issues is an ongoing process. The process begins with the referral for Swift adoption services, including the completion of Form DCFS-29, Child Profile Assessment for Adoption, and concludes when an adoptive placement is made.

~~(2) **Adoption matching process.** The matching process begins with the referral for swift adoption services including the completion of the Child Profile Assessment for Adoption Form DCFS 29, and concludes when an adoptive placement is made.~~

~~(3) **Recruitment of adoptive homes.** The adoption specialist engages in activities designed to recruit adoptive homes resource families who reflect the diversity of the children in out-of-home care and who are willing and able to parent children with special needs.~~

~~(4) **Assessment and preparation of adoptive families.** The adoption specialist will educate educates and prepare prepares families on an ongoing basis to parent children with special needs children on an ongoing basis.~~

~~(5) **Post-placement services.** Post placement services begin when a child is placed in trial adoption and end when the adoption is legalized, in accordance with {OAC 340:75-15-103 through 340:75-15-109}.~~

~~(6) **Post adoption services.** Post adoption services are provided at the family's request after the adoption is legalized, at the family's request. [in accordance with OAC 340:75-15-124 through 340:75-15-133].~~

340:75-15-9. Confidentiality

Section 7505-1.1 of Title 10 of the Oklahoma Statutes requires that all papers and records pertaining to the adoption shall be confidential except as authorized by Sections 7504-1.2, 7505-6.6, and 7508-1.2, and 7508-1.3 or upon order of a court of record for good cause shown. The adoption case record includes the child's case file and the adoptive family resource files. These files are considered an adoption record once they become part of an authorized adoptive placement. [OAC 340:75-15-103]

(1) **Adoption records are kept in locked files or desks to ensure confidentiality.** After an adoption is finalized on a child placed by the Oklahoma Department of Human Services (OKDHS), the adoption record, including the child's birth family record, adoptive placement record, and the adoptive resource file, is kept in locked storage in the State Office, Children and Family Services Division, Adoption Section.

(2) **All records regarding adoption assistance are confidential.** Certain types of non-identifying information ~~can~~ may be released when the Form DCFS-22, Oklahoma Mutual Consent Voluntary Registry, Form DCFS-22, is submitted by an adoptive family or adult adoptee. [OAC 340:75-15-132]

(3) **The adoptive family is not to be identified in any form in the child's birth family record or in reports to the court in the child's juvenile court case.** The Oklahoma Commission on Children and Youth (OCCY) ~~will~~ may have access to records regarding the transition of ~~DHS~~ custody children in the custody of OKDHS into adoptive placement from foster care status. These records; ~~however, will be~~ are redacted by ~~DHS~~ OKDHS to exclude any information identifying the adoptive parent(s). If When OCCY requests access to records pertaining to a child in adoptive placement, the State Office, Children and Family Services, Adoption Section is notified prior to the release of any information for direction in processing the request.

PART 6. ADOPTION MATCHING PROCESS

340:75-15-41. Adoptive placement criteria staffing

The adoption ~~matching~~ process is a team effort ~~including that includes~~ the adoption specialist and supervisor, ~~permanency planning~~ Child Welfare (CW) worker and supervisor, and service providers. The Within 30 calendar days of the initial adoption consultation, Form DCFS-2, Adoptive Placement Criteria Staffing, Form DCFS-2, is completed on ~~all children~~ any child with a the goal of adoption to assist in determining the type of placement which best meets the child's needs. The assessment may identify a ~~potential caregiver's~~ prospective adoptive parent(s) ability to meet the child's needs and shall address the legal status and any legal barriers to adoption. Completion of the adoptive placement criteria staffing is not approval for adoptive placement. A child for whom there is no resource identified ~~should be~~ is referred to statewide adoption staffing.

- (1) **Siblings.** Siblings are placed together when possible. ~~Separation of siblings~~ Siblings are separated in adoptive placement ~~is done~~ only in certain circumstances, in accordance with (OAC 340:75-6-85.2 and 340:75-15-43).
- (2) **Attachment.** The attachment of the child to the ~~birth family including~~ siblings, foster family, and significant others is assessed and utilized as an indicator of the child's ability to attach to an adoptive family. ~~With rare exception a child who attaches to one family, if transitioned with care, thoughtfulness, and assistance from the foster family, can attach to an adoptive family.~~
- (3) **Age.** Age is evaluated in relation to the applicant's ability to parent the child into adulthood. An applicant nearing 65 years ~~can~~ may be considered for adolescent children.
- (4) **Health.** The health records of the adoptive ~~parents~~ parent(s) must indicate ~~they have the~~ adoptive parent(s)

has the health ~~and energy~~ to participate with the child in normal developmental activities and parent the child into adulthood. ~~Due to the life experiences and backgrounds of the children available for adoption through the Department, many have special areas of concern or needs that must be given consideration when assessing each child for adoption.~~

(5) **Culture.** ~~The Department~~ OKDHS does not rely on generalizations about the identity needs of children of a particular race or ethnicity. ~~The Department~~ OKDHS does not presume from the race or ethnicity of the prospective ~~parents~~ parent(s) that ~~those parents~~ he or she would be unable to maintain the child's ties to another racial, ethnic, or cultural community.

(6) **Adoption of an Indian child.** Children who meet the definition of an ~~"Indian Child"~~ Indian child under the Indian Child Welfare Act (ICWA) must be placed according to the placement preferences established by that Act. [OAC 340:75-1-214 340:75-19-23] ~~Before the Department~~ OKDHS can ~~place~~ places an Indian child in a non-extended family or non-Indian resource, the child's CW worker must request that the court of adjudication conduct a good cause hearing. ~~The Act~~ ICWA requires that:

- (A) a good cause hearing ~~be is~~ set;
- (B) prior notice ~~be is~~ given to all parties, including the tribe(s); and
- (C) ~~that the court~~ make makes a finding that good cause exists, for whatever reason, to not follow the placement preferences of the ICWA.

(7) **Religion.** The child ~~should have~~ is provided an opportunity for spiritual and moral development. If the child has made a religious commitment or the birth ~~parent~~ parent(s) has made a specific request, ~~the Department~~ OKDHS makes a reasonable effort to find an adoptive family of like faith.

(8) **Language.** If the child's primary language is other than English, special consideration is given to identifying an adoptive family that is fluent in the same language as the child. This would include sign language for a hearing impaired child.

(9) **Education.** ~~The adoptive family is one in which the~~ The child will be is given the opportunity to develop ~~to his or her potential and one that will not have be~~ sub-jected to unrealistic academic expectations of the child's academic abilities.

(10) **Geographic location.** The child is placed in a locality where the child and adoptive family ~~can be~~ are protected from identification and from undue interference by the birth family. When foster parents or relatives are ~~being considered as an adoptive resource this~~ criteria criterion is of special significance; ~~an~~ An assessment is made ~~and their to determine~~ the adoptive parent(s) ability to parent without undue interference ~~is solicited and considered.~~

(11) **Resources.** The adoptive family must have adequate resources to meet the financial, medical, health, educational, shelter, and emotional needs of the child.

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Adoption assistance ~~may be~~ is a resource for children who meet the eligibility criteria. [OAC 340:75-15-128]

340:75-15-42. Statewide adoption staffing

A child is referred for statewide adoption staffing ~~for adoption once when~~ the goal for the child becomes adoption, unless ~~the child is in a~~ there has been a prospective relative relative(s) or foster family placement which is planning to adopt identified for the child at criteria staffing. ~~Workers should read all submitted assessments within two weeks of staffing the child.~~ From the resource family assessments submitted for consideration, the Child Welfare (CW) worker ~~will select~~ selects the three families who ~~would appear to be~~ are best able to meet the identified needs of the child and ~~rank~~ ranks the families in order of preference. If ~~an adoptive family is not there~~ are no resource families identified for consideration at the initial statewide staffing, information regarding the child's continued need for an adoptive family resource is presented at each subsequent staffing and child specific recruitment activities are initiated to recruit an adoptive family. [OAC 340:75-15-82] ~~If no recommendation is received prior to the next scheduled staffing after the child is staffed statewide, the adoption placement coordinator may convene a selection committee to make a recommendation.~~

340:75-15-43. Sibling placements

(a) ~~It is the policy of DHS to support~~ The Oklahoma Department of Human Services (OKDHS) supports the relationship of sibling groups by placing them together in out-of-home care whenever possible. Siblings who are not placed together in foster care ~~should have~~ are afforded regular visitation with each other, ~~and be~~ Siblings who are separated are moved into the same placement at the first available opportunity. ~~The policy of supporting the sibling relationship extends into adoption.~~ Siblings with the goal of adoption are staffed for adoptive placement as a sibling group.

(b) Exceptions to placing siblings together for adoptive placement include children who are placed among relatives and children who have a documented need for separation due to extreme behavior that is or would be harmful to a sibling on a long-term basis. [OAC 340:75-6-85.3]

(c) ~~If the decision is made to separate siblings for adoption~~ When separation is approved by the sibling separation committee, a plan for continued contact is provided to and agreed upon by the caregivers of the children is provided. ~~It is understood by workers and explained~~ The Child Welfare (CW) worker explains to the prospective adoptive parents that authorization to separate the children for placement is ~~not synonymous with severing~~ does not sever the sibling relationship ~~nor is it condoned by DHS.~~

340:75-15-45. Adoptive placement recommendation, and authorization, processes and offer of child

The adoption recommendation process involves professionals who have knowledge of the specific child and adoptive family, and experience in areas related to adoption and ~~special~~

~~needs~~ children with special needs. The professionals include the child's Child Welfare (CW) worker, the CW worker's supervisor, and the area adoption specialist. Others who may be included are the area adoption supervisor, the tribal worker, and the CW field liaison (CWFL). The adoption authorization process involves members of the State Office, Children and Family Services Division, Adoption Section who review each recommendation submitted.

(1) ~~If~~ When there are concerns regarding the recommendation or there is an objection to the recommendation, efforts are made to resolve the issues through communication with field staff.

(2) ~~If~~ When no resolution is reached, the State Office ~~Adoption Placement Coordinator~~ adoption placement coordinator ~~may notify~~ notifies the Child Welfare field liaison CWFL and county director ~~that to hold~~ a grand staffing ~~is needed.~~

(3) ~~If~~ When the recommendation is denied, it is referred to the program administrator for final review.

(4) Approval of the adoption placement recommendation gives the adoption specialist the authority to offer the child for placement and complete full disclosure with the authorized adoptive family, utilizing Form DCFS-89, Affidavit of Information Disclosure for Adoption, and to determine the family's interest in proceeding with pre-placement visits.

340:75-15-47. Interjurisdictional fair hearing

~~The Oklahoma Department of Human Services (OKDHS)~~ shall not deny or delay placement of a child for adoption when an approved adoptive family is available outside of ~~the State of~~ Oklahoma. A fair hearing may be requested if placement by ~~DHS OKDHS~~ with an authorized adoptive family in another ~~State~~ state has been denied or unreasonably delayed. The out-of-state adoptive family may request a fair hearing by filing an appeal on ~~OAC 340:2 Appendix G Form H-4, Resource Request for a Fair Hearing.~~ [OAC 340:75-1-12.6(a)(2)(C)]

PART 8. ADOPTIVE PLACEMENT PROCESS

340:75-15-59. Transition to adoptive placement

Coordination of placement process. The adoption specialist in conjunction with the child's Child Welfare worker determines how to best transition the child into the adoptive family. If there are differences or issues in how best to proceed, the area adoption supervisor assists with a resolution.

340:75-15-61. Interstate placements for adoption

The Interstate Compact on the Placement of Children (ICPC) is a means to ensure protection and services to children who are placed across state lines for adoption. The Oklahoma Department of Human Services contracts for the administration of adoption ICPC services. There is a \$250 fee for processing independent and private agency adoptions which is paid directly to the contractor by the independent attorney or the private agency. The contracted Deputy Compact

Administrator (DCA) is authorized to conduct the necessary investigation of the proposed placement and to determine whether or not the placement is contrary to the child's interests. After the placement is approved by the contracted DCA he or she is responsible for overseeing the placement as long as it continues or until legalization of the adoption. This oversight does not include direct supervision of the placement but does include processing supervisory reports from the receiving state, facilitating communication between the states or parties involved, and ~~notification of notifying~~ the agency or individual of an adoption disruption or legalization. ~~Refer to [OAC 340:75-1-86] through 75-1-87 for a complete description of the ICPC process.~~

PART 10. ADOPTIVE FAMILY ASSESSMENT AND PREPARATION PROCESS

340:75-15-82. Recruitment of adoptive homes

(a) **Recruitment program.** The recruitment of adoptive homes is an ongoing, proactive component of adoption services. A combination of both child-specific and more general, targeted recruitment is utilized. Public service announcements are also utilized to inform the general public of the continuous need for adoptive families for children with special needs.

(b) **Minority adoption recruitment.** General, targeted, and child-specific recruitment methods are used to recruit minority families as well as families for any growing population within the Child Welfare system. Diligent efforts are made to recruit potential adoptive families who reflect the ethnic and racial diversity of children in ~~DHS~~ the custody of the Oklahoma Department of Human Services (OKDHS) for whom adoptive homes are needed.

(c) **Media recruitment.** Options for media recruitment may include, but are not limited to television, newspapers, and public service announcements (PSA).

(d) **Adoption exchange registrations.** Sections 7510-2.1 - through 7510-2.5 of Title 10 of the Oklahoma Statutes require that children be listed on an adoption exchange if they have not been placed for adoption in 90 calendar days after termination of parental rights where the child is legally free for adoption. ~~The Department~~ OKDHS utilizes a variety of exchanges which provide the best opportunity to identify adoptive resources.

(e) **Website photo listing.** ~~The Department~~ OKDHS has an online photo listing of children who are waiting for adoptive homes. Legally free children who have been staffed at statewide adoption staffing, but for whom no adoptive home was identified, are referred ~~for listing on the Adoption Exchange Website~~ to www.okdhs.org/adopt and www.adop-tuskids.org. Children who object to being listed on the Internet or other exchanges are exempt.

340:75-15-83. Eligibility to adopt

(a) Section 7503-1.1 of Title 10 of the Oklahoma Statutes states that persons eligible to adopt a child are:

- (1) a husband and wife jointly, if both spouses are at least 21 years of age;

- (2) either the husband or wife if the other spouse is a parent or a relative of the child;
- (3) an unmarried person who is at least 21 years of age; or
- (4) a married person who is at least 21 years of age who is legally separated from the other spouse.

(b) Adoptive applicants are required to reside in Oklahoma and remain in the state long enough for an assessment and preparation of the family to be completed.

(c) The Oklahoma Department of Human Services (OKDHS) does not process applications from adoptive applicants outside the state, but accepts certified resource family studies or assessments from a licensed agency or the public agency in another state. In cooperation with a licensed adoption agency in another state, an adoptive family may be considered for an Oklahoma child. The State Office Adoption Section coordinates placement and supervision with an agency in the state where the adoptive family resides. All provisions of the Interstate Compact on the Placement of Children are followed. [OAC 340:75-15-61 and 75-15-82(f)]

(d) Families ~~who want~~ desiring to adopt specific types of children of a ~~particular category~~ for which the Department OKDHS reasonably believes it will not have a sufficient number—anticipates having few such children available for adoption are referred to licensed child-placing agencies ~~who place children in this category~~ that are more likely to place children matching the request.

340:75-15-84. Application process

(a) **Application to adopt.** The applicant is referred to the adoption specialist for the county in which the applicant lives. The adoption specialist responds promptly to prospective applicants. ~~Program issues that the~~ The adoption specialist discusses with the family ~~are that~~ information about the adoption program included in (1) through (10).

(1) ~~the~~ The program is child focused, ~~and a home~~ A family is selected ~~which who~~ who will best meet the child's ~~individual needs~~ long term best interests and individual needs.

(2) ~~the~~ The completed resource family assessment summary is the basis for selection.

(3) ~~the~~ The Oklahoma Department of Human Services (OKDHS) contracts with licensed child-placing agencies to complete resource family assessments.

(4) ~~there~~ There is no assurance that a child will be placed as a result of the application. This includes foster parent parent(s) and relative ~~applicants~~ applicant(s).

(5) ~~there~~ There is no charge fee for services provided by ~~the Department~~ OKDHS to applicants who apply to adopt a child in the ~~Department's~~ legal custody of OKDHS.

(6) ~~priority is given to completing studies for children with special needs and is based on the needs of waiting children;~~

(7) ~~families are~~ A family is referred to licensed child-placing agencies if ~~they are~~ the family is interested in adopting a specific type of child ~~from a category~~ that is not available through ~~the Department~~ OKDHS.

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(87) ~~a~~ A criminal background check is required and includes:

(A) fingerprinting and FBI check of each adoptive parent applicant and each adult residing in the household if he or she has lived in the state less than ten years;

(B) an Oklahoma State Bureau of Investigation (OSBI) check which includes Department of Public Safety check and Sex Offenders Registry check for each adult household member;

(C) a Child Abuse Registry check and ~~DHS~~ OKDHS records check for each adult household member;

(D) a Juvenile Justice Information System (JOLTS) records check for each child in the family 13 years and older; and

(E) a certificate of release of discharge from active duty, DD Form 214, Certificate of Release of Discharge From Active Duty, which is provided by applicants.

(98) ~~verification~~ Verification of marriages, divorces, legal separations or annulments, employment, and income are required;

(409) ~~applicants~~ Applicants are required to complete Oklahoma Parents as Tender Healers (OK PATH) orientation ~~unless they have already completed preservice training and six hours of Behavior Crisis management Training (BCMT); and~~. [OAC 340:75-7-103]

(110) ~~applicants~~ Applicants are responsible for providing copies of any ~~non-DHS non-OKDHS~~ assessments or evaluations to the ~~Department~~ OKDHS. This includes previous adoptive, foster home, relative, divorce custody, or other custody assessments.

(b) **Application to adopt by Department OKDHS employees.** ~~Department OKDHS~~ employees may apply to adopt from the ~~Department OKDHS~~, though no preferential treatment is given.

(c) **Reapplication to adopt.** Many previous adoptive parents will apply to adopt again. These families can be valuable resources for ~~special-needs children with special needs~~.

Denial or withdrawal of applications. When it becomes apparent that the applicant does not meet the resource family requirements as set out in Form DCFS-69, Guidelines for Resource Family Assessment, the resource family assessment process may be discontinued and the application withdrawn or denied. The reasons and requirements are explained to the applicant. [OAC 340:75-15-88(d)] The applicant may voluntarily withdraw the application. If the applicant declines to withdraw the application, local staff deny the application.

340:75-15-85. Application to adopt by a foster parent or relative

Foster parents and relatives may be considered for adoption of a child in their care when efforts to reunite the child with the birth parents have failed. If the child has resided with a foster ~~parent~~ parent(s) for at least one year, great weight is given to the foster ~~parent~~ parent(s) in the adoption consideration for the child unless there is an existing emotional bond

with a relative of the child by blood or marriage who is willing, able, and eligible to adopt the child. ~~Foster parents~~ A foster parent(s) who ~~wish~~ wishes to be considered for a child in ~~their~~ his or her care who is part of a sibling group ~~are~~ is advised that ~~DHS policy~~ Oklahoma Department of Human Services rules supporting sibling group relationships extends to adoption. [OAC 340:75-15-43]

340:75-15-87. Assessment and preparation process

(a) **Assessment.** The assessment process is ~~an avenue a tool~~ for the Oklahoma Department of Human Services (OKDHS) to assist the family in determining their ability to ~~meet the needs of parent a child with special needs children~~. The family is provided basic background information required to understand the adoption process, laws, and types of parenting issues faced by parents who adopt children with special needs. All services provided to the family in preparation for placement are designed to increase the family's ability to problem solve, access help, and cope with parenting a child with a unique history and needs.

(b) **Joint approval of ~~adoptive homes~~ resource families.** ~~The Department~~ OKDHS may jointly approve Child Welfare (CW) foster homes which are also certified as adoptive homes. Before the home may be approved as a CW foster home and certified as an adoptive home, the home must meet eligibility standards of both programs. [OAC 340:75-7-123.1] ~~The family must understand the differences in the goals of the two programs are explained to the family.~~ The family is advised that children in foster care are not moved in order to place an adoptive child in the home. All children in the home, including children in foster care placement, are considered in making placement decisions regarding an adoptive placement.

(c) ~~Priority for completion of resource family assessment.~~ ~~Priority for completion of resource family assessments is given to families who have been recruited for a specific child and to foster parents or relatives.~~

(d) **Interviews with applicants.** Individual and joint interviews are held with each family and household member with a minimum of two home visits on separate days. ~~Through the interviews information~~ Information regarding the current family structure, family history, and social support is gathered ~~through the interviews.~~

(e) **Reference information.** The signed Form DCFS-26, Resource Family Assessment Application, ~~Form DCFS 26~~, grants the ~~Department~~ OKDHS permission to contact the listed references. Forms are mailed to appropriate references.

(f) **Health and age.** Form DCFS-38, ~~Confidential~~ Medical Examination Report, ~~Form DCFS 38~~, or other medical exam report by a doctor, ~~on all~~ for each family members member in the household, must be submitted before the assessment is complete. An application to adopt a specific child ~~is~~ elicits information to assess the ~~parents'~~ parent(s)' ability to provide care for that child into adulthood, given ~~their~~ the parent(s)' health history and age.

(g) **Background checks.** A criminal background check is required for prospective adoptive parents and all other household members 18 years and older. This includes an Oklahoma Department of Public Safety check, an Oklahoma State Bureau

of Investigation (OSBI) check, a search of the Department of Corrections files maintained pursuant to the Sex Offenders Registration Act, and a Child Abuse and Neglect Information System check. A national criminal history records search based upon submission of fingerprints is required for prospective adoptive parents and other household members 18 years and older who have not lived continuously in Oklahoma for the past ten years. When a fingerprint search has been done in the past five years and is available for review by the person conducting the adoptive home study, then only an OSBI criminal background check is required. Section 7505-5.3(A)(4) of Title 10 of the Oklahoma Statutes mandates the same procedure for all public agency and private adoptive parent applicants. A study is not initiated if any adoptive parent applicant or any adult household member refuses to submit the forms granting permission for the investigation. All adult household members age 18 and older are required to complete and sign Form ADM-130, Request for Background Check, authorizing the Department OKDHS to conduct an investigation. The applicants' signatures applicant(s)' signature, as well as the submission of fingerprint cards and Form ADM-130 authorize the Department OKDHS to complete a background investigation. This information is considered in making a final recommendation. Background information which may pose that reveals a risk to the child is used in denying the application. [OAC 340:75-15-88]

(1) **Fingerprinting charges.** Once an applicant receives fingerprint cards, law enforcement or a private fingerprinting company ~~can~~ may fingerprint them. There is no charge to the ~~DHS OKDHS~~ adoptive parent applicants. ~~Non-DHS Non-OKDHS~~ adoptive parent applicants are responsible for any charges incurred for this service.

(2) **Obtaining fingerprinting services.** Law enforcement is not mandated to provide the fingerprinting service. Local law enforcement is contacted to ascertain their willingness and availability to provide this service and the cost per person.

(3) **Time frames.** If the fingerprinting is not done correctly, the cards can be rejected by either the OSBI or the Federal Bureau of Investigation (FBI). The applicant must be reprinted when this occurs. If the fingerprint cards are found unacceptable the second time, the applicant must pay the fee to be re-fingerprinted and ~~non-DHS non-OKDHS~~ applicants must pay the \$50 search fee. The estimated time frame to receive all results from the OSBI and FBI is approximately eight weeks.

(hg) **Marriage history.** Adoptive applicants provide copies of present marriage licenses and divorce decrees, legal separations, and annulments, if applicable. Documentation of the validity of the present marriage is necessary to determine eligibility to adopt and to protect the legal status of the prospective adoptive child. If there are children from a previous marriage, their role in the family is discussed and child support is documented.

(hh) **Financial statement.** Applicants complete Form DCFS-20, Resource Family Financial Assessment, and provide documentation of employment and income. Management

of resources is more important than the family's income and is addressed in the assessment summary.

(ji) **Photographs.** Recent photographs of the applicant(s) are provided as part of the final assessment summary.

(kj) **Orientation.** The adoptive applicants must attend 21 hours of Oklahoma Parents as Tender Healers (OK PATH) orientation and six hours of Behavior Crisis Management Training (BCMT) ~~unless they have completed another pre-service training~~. This training is mandatory and is designed to assist adoptive applicants in evaluating the strengths, needs, and challenges they might face in parenting a ~~special-needs~~ child with special needs. [OAC 340:75-7-14]

340:75-15-88. Completed resource family assessment and recommendation

(a) **Resource family assessment.** ~~A recommendation is made as to whether the home is approved or denied. Impressions~~ The completed assessment includes impressions of the family, their strengths and risks in adopting, and the type of child or children, special needs, age range, and sex of children the child(ren) they wish to adopt are described. A copy of the resource family assessment, except the Reference Section, is shared with the family prior to completion of the final written assessment summary. The family is given an opportunity to correct errors prior to completion of the final written assessment summary.

(b) **Approval.** The resource family assessment is approved by the area adoption supervisor if the applicant meets requirements as outlined in ~~Forms Form~~ Form DCFS-69, Guidelines for Resource Family Assessment or DCFS 70, Guidelines for Foster Parent/Adoptive Home Assessment.

(c) **Resource family relocation.** When a family moves to another county within Oklahoma the assigned adoption specialist transfers the resource family record. An evaluation is done to reflect the adoptive family's new home and situation.

(d) **Denial.** ~~Reasons~~ Some reasons for denial ~~may be~~ are:

- (1) lack of a stable, adequate income to meet the applicants' own or total family needs or poor management of available income;
- (2) inadequate physical facility to accommodate the addition of children to the home;
- (3) a history of alleged or confirmed child abuse and neglect;
- (4) a history of arrests or convictions. The felony offenses which will result in denial of the application are:
 - (A) a crime involving violence including, but not limited to, rape, sexual assault, or homicide, but excluding physical assault or battery;
 - (B) child abuse or neglect;
 - (C) a crime against a child including, but not limited to, child pornography;
 - (D) within a five year period preceding the date of the application to adopt, physical assault, domestic abuse, battery, or a drug related offense;
- (5) conviction of a sex offense and subject to the Oklahoma Sex Offenders Registration Act or an individual who is married to or living with an individual a person subject to the Oklahoma Sex Offenders Registration Act;

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- (6) the age, health, or both, of the applicant would impede his or her ability to provide care for a child on a permanent basis into adulthood;
 - (7) relationships in the household are unstable and unsatisfactory;
 - (8) the mental health of the applicant or other family member would impede his or her ability to provide care for a child;
 - (9) references are guarded or have reservations in recommending the applicants;
 - (10) applicant does not complete Oklahoma Parents as Tender Healers (OK PATH) orientation and Behavior Crisis Management Training (BCMT) within one year of application, unless ~~they have~~ the applicant has previously completed Parent(s)' Resource for Information, Development and Education (PRIDE); ~~Nova, TEAM, MAPP, or another recognized preservice training program.~~ Exceptions must be requested from the State Office, Children and Family Services Division, Adoption Section; and
 - (11) applicant has applied to adopt a child of a category type for which the Oklahoma Department of Human Services reasonably believes it does not have a sufficient number. [OAC 340:75-15-83]
- (e) ~~The An~~ applicant with a conviction as listed in OAC 340:75-15-88(ed)(4)(D) may be considered on a case by case basis in consultation with the State Office Adoption Section. If the applicant ~~can produce~~ provides verifiable information that the applicant has been evaluated by a qualified professional who ~~may have concluded~~ concluded that the applicant no longer poses a risk of harm to others, the following factors ~~should be~~ are considered in determining whether to approve the home:
- (1) the nature and seriousness of the crime in relation to the adoption;
 - (2) the time elapsed since the ~~commission of the crime was committed~~;
 - (3) the circumstances under which the crime was committed;
 - (4) the degree of rehabilitation;
 - (5) the number of crimes committed by the person involved; and
 - (6) evidence that a no child will ~~not~~ be at risk in the child's home.

340:75-15-91. Closure of resource family ~~record~~ home

- (a) **Basis for closure.** A resource family ~~record~~ home is closed if when:
- (1) a request is made by the adoptive family;
 - (2) the family has completed the adoption of a child from the Oklahoma Department of Human Services and does not wish to reapply;
 - (3) the family has moved out of state;
 - (4) the family's address is unknown;
 - (5) the family displays a lack of interest and cooperation; or
 - ~~(6) the family is not recommended for placement of a child; or~~

~~(7) the family no longer meets standards as found in OAC 340:75-15-88(ed); Denial.~~

- (b) **Procedures.** ~~The Specific~~ procedures are followed ~~in closure of to close an adoptive resource family home are outlined in the Instructions to Staff of this subsection.~~

340:75-15-93. Centralized Paternity Registry

The Oklahoma Department of Human Services (OKDHS) is required by Section 7506-1.1 of Title 10 of the Oklahoma Statutes to maintain a Centralized Paternity Registry (CPR) to protect the parental rights of a putative father who may wish to affirmatively assume responsibility for ~~children a child(ren)~~ he may have fathered. It is also maintained to expedite adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the ~~registry~~ CPR or otherwise acknowledging their children.

- (1) **Notice of Plan for Adoption per Section 7503-3.1 of Title 10 of the Oklahoma Statutes.** ~~The Form DCFS-21-A, Notice of Plan for Adoption,~~ may be used by ~~the Department OKDHS,~~ a licensed child-placing agency, or attorney to notify a putative father of a child born out of wedlock that the birth mother is considering adoptive placement for the child. The notice may be served personally or sent by certified mail, before or after the birth of the child. Whether personally served or sent by certified mail, the notice may not be delivered to, or signed for, by anyone other than the putative father.

(A) The notice must include:

- (i) the identity of the mother;
- (ii) a statement that the mother is pregnant and the estimated date of birth;
- (iii) that the notified person may be the father of the child; and
- (iv) that a plan for the adoption of the child is being considered by the mother.

(B) The notice must include Form DCFS-21-B, Form Enclosed with Notice of Plan for Adoption, to be completed and signed by the putative father indicating his acknowledgment or denial of paternity of the child.

(C) The notice must also inform the putative father that failure to file ~~the form Form DCFS-21-B~~ within 30 calendar days of service constitutes waiver of right to receive further notice of adoption proceedings or proceedings to terminate parental rights and a denial of interest in the minor child can result in termination of parental rights and adoption without his consent. ~~If the Form DCFS-21-B included in the Notice of Plan for Adoption is returned to the Department OKDHS,~~ the attorney, or child-placing agency within 30 calendar days, indicating the putative father's interest in the child, he has a right to notice of any adoption or termination of parental rights proceedings regarding the child. The return of the form within 30 calendar days is the only action by which the putative father retains the right to notice of any adoption or termination of parental rights proceedings regarding the child.

- (i) ~~The filing of the form~~ Filing Form DCFS-21-B alone, does not establish parental rights or constitute the bearing of parental responsibilities.
 - (ii) ~~The filing~~ Filing or ~~failure~~ failing to file the form does not affect the duty of ~~the putative father~~ the putative father to support the mother and child during the pregnancy or after the child's birth.
 - (iii) If a petition to adopt the child is not filed within 12 months of the placement of the child for adoption, failure to mail the ~~form~~ Form DCFS-21-B does not affect the putative father's parental rights and responsibilities.
 - (iv) Failure to give such notice is not grounds available to the putative father to establish that he was denied knowledge of the pregnancy.
 - (v) Receipt by the putative father of Form DCFS-21-A, a Notice of Plan for Adoption, or return by the putative father of the form ~~Form DCFS-21-B~~ does not obligate the mother to place the child for adoption.
- (D) If Form DCFS-21-B is not received by ~~the Paternity Registry~~ CPR within 30 calendar days from the date ~~that the Notice of Plan for Adoption Form DCFS-21-A~~ is served, it constitutes waiver of the putative father's right to receive further notice of any adoption or termination of parental rights proceedings regarding the child, and further constitutes a denial of interest in the minor which shall result in a termination of parental rights and approval for adoption without his consent.
- (2) **Notice of filing of paternity action by putative father.** Per ~~40 O.S. § Section 7503-3.2 of Title 10 of the Oklahoma Statutes,~~ if a putative father files a paternity action after receiving notice of or having knowledge of a potential adoption from the Department OKDHS, an attorney or child-placing agency, he notifies the attorney for the petitioner for adoption, the Department OKDHS, or the child-placing agency that the paternity action has been filed.
- (A) This notice includes:
 - (i) the name of the court;
 - (ii) the case number; and
 - (iii) the date of filing.
 - (B) If the name or location of the attorney for the petitioner for adoption or the child-placing agency cannot be ascertained by the putative father, the putative father notifies the petitioner for adoption. If the petitioner for adoption is also unknown to the putative father, the putative father notifies ~~the Paternity Registry~~ CPR of ~~the Department OKDHS.~~
 - (C) Upon a motion of the prospective adoptive parent, the court having jurisdiction over the paternity action, if it is filed in Oklahoma, allows the prospective adoptive parent to intervene in the paternity action and have the opportunity to be heard and seek custody or visitation. If a proceeding for adoption or

for termination of parental rights of the putative father and a paternity action by the putative father regarding the same minor are both pending in the courts of this state, upon motion of any party, the court having jurisdiction over the paternity action transfers the paternity proceeding to the court in which the adoption or termination proceeding is pending, whereupon the two proceedings may be considered.

- (3) **Putative father per Sections 7506-1. 1 - 7506-1.2 of Title 10 of the Oklahoma Statutes.** The CPR protects the parental rights of a putative father who may wish to affirmatively assume responsibility for ~~children~~ a child(ren) he may have fathered.

(A) The father or putative father of a child born out of wedlock may file Form DCFS-40, Centralized Paternity Registry, indicating:

- (i) a notice of desire to receive notification of an adoption proceeding concerning the child he has fathered;
- (ii) a notice of intent to claim paternity of the child he has fathered;
- (iii) an instrument acknowledging paternity of the child he has fathered;
- (iv) a waiver of interest concerning the child he has fathered; or
- (v) any other claim for acknowledging or denial of paternity as authorized by law.

(B) The ~~paternity registry~~ CPR is also available to any person who:

- (i) has been adjudicated by a court of another state or territory of the United States to be the father of a child by filing a certified copy of the court order with the ~~registry~~ CPR; or
- (ii) has been adjudicated by a court of ~~this state~~ Oklahoma to be the father of a child born out of wedlock.

(C) A person filing a notice of desire to receive notification of an adoption proceeding concerning the child, a notice of intent to claim paternity of a child, or an acknowledgment of paternity provides his current address and notifies the registry of any change of address. If the putative father does not have an address where he is able to receive notice of an adoption, the putative father may designate another person as an agent for the purpose of receiving notice of adoption. The putative father must provide ~~the Department OKDHS~~ the Department OKDHS with the agent's name and the address at which the agent may be served. Service of notice upon the agent constitutes service of notice upon the putative father. If the agent cannot be served at the address provided by the putative father, as provided in this subparagraph, and if the putative father cannot be served because his whereabouts are unknown, the putative father ~~can~~ may be served by publication.

(D) An unrevoked notice of intent to claim paternity of a child or an instrument acknowledging paternity may be introduced in evidence in any proceeding in which ~~that~~ it may be relevant.

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(E) A putative father may waive his right to notice of termination of parental rights proceeding on Form DCFS-21-B filed with the ~~Paternity Registry~~ CPR or by failing to register with the ~~Paternity Registry~~ CPR after receiving a Notice of Plan for Adoption.

(F) A putative father may waive his right to notice of adoption proceedings by waiving notice on a form filed with the ~~Paternity Registry~~ CPR or by failing to register with the Paternity Registry after receiving a Notice of Plan for Adoption.

(G) ~~The Department OKDHS~~, upon request, provides the names and addresses of persons listed with the ~~registry~~ CPR to any court, authorized agency, or other persons deemed necessary to receive such information by ~~the Department OKDHS~~. ~~The Department OKDHS~~ provides CPR information to attorneys or licensed child-placing agencies upon request. The information is not divulged to any other person except upon order of a court for good cause shown.

PART 12. POST PLACEMENT SERVICES

340:75-15-103. Services to the child and family in adoptive placement

Services designed to assist the family to incorporate the child or children into the adoptive family are provided during the post placement period prior to legal finalization of the adoption. The adoption specialist for the adoptive family assumes case responsibility for the child at the time of placement in the adoptive home. Every effort is made to ensure that the confidentiality of the placement is maintained.

(1) **Post placement period.** When the child has had no prior relationship with the adoptive family, the post placement period is usually six months. In relative or foster parent adoptions when the child has been in the home, the post placement period may be shorter if the child and family have successfully adjusted to the placement.

(2) **Notice to preadoptive parent of juvenile court hearing.** The pre-adoptive parent providing care for the child is provided with notice of, and an opportunity to be heard in any review or juvenile court hearing to be held with respect to the child.

(3) **Case records.** Both the adoption specialist and child's ~~original~~ Child Welfare (CW) worker are responsible for maintaining case records for the child.

(4) **Family assessment and treatment plan.** A written case plan document is required on all children and families receiving ~~child welfare~~ CW services, including adoptive families. ~~A family assessment and treatment plan~~ Form CWS-KIDS-9, Family/Child Strengths and Needs Assessment, and Form CWS-KIDS-10, Treatment Plan, are completed on with the family, to include including the child placed for adoption, within 30 calendar days of placement. This treatment plan Form CWS-KIDS-10 is not sent to the juvenile court, but it is updated. The CW worker updates Form CWS-KIDS-10 every six months.

(5) **Contacts Visits.** The adoption specialist visits the child in the adoptive placement regularly.

(A) ~~Non-related adoption~~ Adoption by non-relative(s). The adoption ~~worker~~ specialist visits the child in the adoptive placement within two weeks of the date of Form DCFS-41, Adoptive Placement Affidavit, and at least once every four weeks thereafter.

(B) ~~Relatives Adoption by relative(s) or foster parent~~ adoption parent(s). When there is no physical change in placement the ~~worker~~ adoption specialist is not required to visit within the first two weeks of trial adoption; ~~however, a~~ A visit is required prior to the end of the calendar month of placement and at least once every four weeks thereafter.

(6) **Disclosure affidavit.** The initial Form DCFS-89, Affidavit of Information Disclosure for Adoption, and all subsequent disclosures are documented in the Disclosure Affidavit screen on KIDS.

340:75-15-104. Disclosure of information during post placement [REVOKED]

~~(a) If additional information is obtained regarding the child after the adoptive placement has been made, an additional Affidavit of Information Disclosure, Form DCFS-89, is completed and copies of the additional information are provided to the adoptive parents. [OAC 340:75-15-45]~~

~~(b) A petition for adoption may not be granted until a copy of the medical and social history report is filed with the court.~~

340:75-15-106. Post placement services

~~A variety of services~~ Services are available to assist the adoptive family and child during the post placement period. Post placement services are identified for the family during the adoptive family assessment process. ~~A treatment plan~~ Form CWS-KIDS-10, Treatment Plan, is developed with the adoptive family at the time of placement of the child into the adoptive home, ~~as per in accordance with~~ OAC 340:75-15-103, and outlines the post placement services to be provided.

(1) **Post placement supervision.** The adoption specialist meets with the adoptive family as required per OAC 340:75-15-103(5).

(2) **Pre-finalization adoption assistance.** Adoption assistance may be provided to the adoptive family at the time the child enters the adoptive home in legal risk or legally free adoptive placement, in accordance with OAC 340:75-15-128. The adoption assistance may include a monthly money payment, Medicaid, or both.

(3) **Medical services.** Children in adoptive post placement are eligible to receive Medicaid services.

(4) **Counseling.** ~~It is critical that the~~ The adoptive family ~~be is~~ fully informed of the child's history of psychological counseling and referred for services at the time of placement, if needed. Under Medicaid, all out-patient psychological services except for the first hour of psychological evaluation must have prior authorization.

(5) **Comprehensive Home-Based Services.** Comprehensive Home-Based Services (CHBS), in accordance

with OAC 340:75-1-176, are available to assist trial adoptive and post adoptive families who are experiencing difficulty and are at risk of having the child disrupt from the placement. ~~OAC 340:75-1-180~~

(6) **Adoptive parent support groups.** Adoptive parent support groups ~~which provide social and emotional support to the adopted child and his or her parents~~ parent(s) can be particularly effective in providing social support, normalization of experiences, and a sense of hope. For children, knowing other adopted children helps them feel less different and isolated. Groups can encourage them to acknowledge and process their feelings about a whole range of adoption issues. The adoption specialist informs the adoptive parent(s) of the benefits of support groups.

340:75-15-108. Legal finalization of the adoption

Legal finalization. The post adoptive placement period is normally six months for a child in an unrelated adoptive placement placed with a non-relative(s), and may be a shorter period in foster parent or relative adoptions when the child is in adoptive placement with a foster parent(s) or relative(s) with whom there is an existing relationship.

(1) At the point the child is placed in the adoptive home the adoptive ~~parents are~~ parent(s) is advised to retain the services of an attorney who is knowledgeable of adoption law.

(2) A petition for adoption may not be granted until a copy of Form ODH 347, Medical and Social History Report for Adoption, is filed with the court.

PART 14. POST ADOPTION SERVICES

340:75-15-124. Post adoption services

Post adoption services are an essential component of the adoption program. ~~As the placement of special needs children into adoptive homes has increased, a need has developed for services designed to maintain these children in the adoptive home following legal finalization of the adoption. It has been found that the availability of services beyond the point of legal finalization may be critical in preventing the dissolution of the adoption. Adoption is now seen as a lifetime process which impacts all members of the adoption triad. Adult adoptees, birth parents and other family members are returning to the Department seeking information about their pasts and help in making contact with those from whom they had been separated by adoption. The Department OKDHS provides an array of post adoption services designed to both assist the adoptive family in maintaining the child in the home and to support the adult adoptee and birth family members as they need to deal with the lifelong impact of adoption. Post adoption services available through the Department OKDHS include the services listed in (1) through (7) of this Section.~~

(1) **Adoption assistance.** ~~The Department OKDHS administers the federal and state adoption assistance programs. The program is designed to assist with the~~

~~adoption of special needs children with special needs.~~ [OAC 340:75-15-128]

(2) **Comprehensive Home-Based Services.** ~~The Department OKDHS provides comprehensive services for adoptive families through Oklahoma Children's Services.~~ [OAC ~~340:75-1-180~~ 340:75-1-176]

(3) **Medicaid services.** Children who are approved for adoption assistance are eligible for services within the scope of the Medicaid program. In these cases, the adoptive family is responsible for any medical services provided to the child which are not within the scope of the Medicaid program.

(4) **Respite vouchers.** Eligible individuals may request respite vouchers to be used to prevent adoption dissolution.

(5) **Disclosure of information after finalization.** [OAC 340:75-15-104]

(A) **Adoptee and birth family.** ~~The Department will provide OKDHS provides,~~ upon request, a copy of ~~the medical and social history report Form ODH 347, Medical and Social History Report for Adoption,~~ and any additional medical and social history information in its possession to:

- (i) the adoptive ~~parent~~ parent(s) or legal guardian guardian(s) of the minor adopted child;
- (ii) an adult adoptee age 18 or older;
- (iii) an adult whose biological parents' parental rights were terminated and who was never adopted;

(B) **Direct descendant.** ~~The Department will provide OKDHS provides~~ medical information only upon request to:

- (i) an adult direct descendant of a deceased adopted person or of a deceased person whose biological mother's and biological father's parental rights were terminated and who was never adopted; and
- (ii) the parent or guardian of a minor direct descendant of a deceased adopted person or of a deceased person whose biological mother's and biological father's rights were terminated and who was never adopted.

(C) **Genetic information.** ~~The Department will provide OKDHS provides,~~ upon request, a copy of ~~genetically significant supplemental genetic~~ information about an adopted person, or about a person whose parental rights were terminated, which became available after the issuance of the final decree of adoption or the termination order to:

- (i) a biological parent or biological relative of an adopted person; and
- (ii) a biological parent or biological relative of a person whose biological mother's and biological father's rights were terminated and who was never adopted.

(D) **Post finalization.** If any additional information about an adopted child, the adopted child's

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biological parents, or the adopted child's genetic history is submitted to ~~the Department~~ OKDHS after the adoption is finalized, this information is retained in the adoption record for as long as those records are maintained. A copy of this supplemental information ~~must also be~~ is filed with the clerk of the court that issued the decree of adoption, to be made a part of the court's permanent record of that adoption.

(E) **Indian Tribal information.** ~~The Department~~ OKDHS may not provide identifying information directly to an adult adoptee to establish tribal rights or membership, but will provide identifying information to the tribe, the court, or Secretary of the Interior for purposes of establishing Native American Heritage heritage.

(F) **Inheritance.** Termination of parental rights does not terminate the child's right to inherit from the biological parent parent(s). ~~The Department~~ OKDHS assists with locating heirs and will act as an intermediary, upon request.

(6) **Mutual Consent Voluntary Registry.** This registry allows adult adoptees and individuals persons separated from birth family members through a termination of parental rights proceedings to receive assistance toward a reunion in locating birth family members. [OAC 340:75-15-132]

(7) **Confidential Intermediary Search Program.** Eligible individuals persons may request the services of a Confidential Intermediary to search for members of their birth family. [OAC 340:75-15-133]

[OAR Docket #03-971; filed 5-20-03]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 75. CHILD WELFARE

[OAR Docket #03-970]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Foster Home Care
Part 5. Eligibility and Payments
340:75-7-54 [AMENDED]
Part 6. Foster Home Care Support Services
340:75-7-65 [AMENDED]
Subchapter 15. Adoptions
Part 14. Post Adoption Services
340:75-15-128.1 [AMENDED]
340:75-15-128.4 through 340:75-15-128.5 [AMENDED]
(Reference APA WF # 02-48 and 02-49)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Sections 7201 et seq. and 7510-1.1 et seq. of Title 10 of the Oklahoma Statutes; Senate Bill 1329; 45 Code of Federal Regulations 1356.40; and by authority granted under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193.

DATES:

Comment period:

February 19 through March 20, 2003

Public hearing:

None held or requested

Adoption:

March 25, 2003

Submitted to Governor:

March 25, 2003

Submitted to House:

March 25, 2003

Submitted to Senate:

March 25, 2003

Gubernatorial approval:

May 9, 2003

Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on May 19, 2003.

Final adoption:

May 19, 2003

Effective:

June 26, 2003

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 7. Foster Home Care
Part 6. Foster Home Care Support Services
340:75-7-65 [AMENDED]
(Reference APA WF # 02-48)

Gubernatorial approval:

March 5, 2003

Register publication:

20 Ok Reg 747

Docket number:

03-381

Superseded rules:

Subchapter 7. Foster Home Care
Part 5. Eligibility and Payments
340:75-7-54 [AMENDED]
Subchapter 15. Adoptions
Part 14. Post Adoption Services
340:75-15-128.1 [AMENDED]
340:75-15-128.4 through 340:75-15-128.5 [AMENDED]
(Reference APA WF # 02-49)

Gubernatorial approval:

March 5, 2003

Register publication:

20 Ok Reg 738

Docket number:

03-380

INCORPORATION BY REFERENCE:

N/A

ANALYSIS:

The revisions to Subchapters 7 and 15 of Chapter 75 comply with amended state statutes and federal laws; and are consistent with language in OAC 340:40 regarding Child Care Services requirements and Adoption Assistance rules that describe these benefits. Revisions incorporate amendments to the Oklahoma Adoption Assistance Act, Sections 7510-1.1 through 7510-1.6 of Title 10 of the Oklahoma Statutes that became effective November 1, 2002; Senate Bill 1329; and sections of the Code of Federal Regulations (CFR) and the Administration for Children and Families (ACF) Child Welfare Manual.

340:75-7-54 is revised to add a new fixed rate, Difficulty of Care (DOC) Rate V, which provides \$400 per month or \$13.33 per day more than the standard rate. Criteria for the new rate are included.

340:75-7-65 is revised to comply with OAC 340:40 which requires that the cost of child care in a one star center be the responsibility of the foster parents unless the community does not offer one star plus, two, or three star centers or one of the special exception criteria is met. The revised rule addresses child care overpayments and child care responsibility once the foster parents adopt.

340:75-15-128.1 is revised to reflect that: adoption assistance payments are made to eligible families as long as the Oklahoma Department of Human Services (OKDHS) has sufficient funds available as allowable within the OKDHS budget, and the revised DOC Rate V will be available to children of any age who meet the criteria; monthly assistance payments range from zero to a maximum based on the age of the child; the amount of non-recurring adoption assistance is reduced to a maximum of \$1,200 actual expenses for each child, and the amount paid for reimbursement of non-recurring expenses when a child in the custody of OKDHS disrupts from a trial adoptive home is reduced from a maximum payment of \$1000 to \$500 actual expenses per child; modifications of the Adoption Assistance Agreement are prospective only and

may not be retroactive, and may be readjusted when certain circumstances change, including eligibility for a specific DOC rate; and a copy of the Final Decree of Adoption must be dated after October 1, 1997.

340:75-15-128.4 is revised to reflect changes in the age and sibling relationship criteria utilized in the determination of special needs.

340:75-15-128.5 is revised to delete references to DOC Rates V and VI recommendations made in consultation with Developmental Disabilities Services Division (DDSD); and adds a provision regarding applications made after finalization of adoption that under no circumstance may the beginning date be prior to the adoptive family's initial application for assistance that was denied, or five years, whichever is less.

CONTACT PERSON:

Dena Thayer, Programs Manager, Office of Planning, Policy and Research, Oklahoma Department of Human Services, 2400 N Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003.

SUBCHAPTER 7. FOSTER HOME CARE

PART 5. ELIGIBILITY AND PAYMENTS

340:75-7-54. Difficulty of care Care rate descriptions

There are ~~four~~ five different rates of ~~difficulty~~ Difficulty of ~~care~~ Care (DOC) payment based on the care and supervision needs of a specific child.

~~(1) Rate I. This paragraph describes the conditions or needs of a child required for approval for Rate I and the reimbursement rates.~~

(1) Rates. The standard rates for foster care reimbursements are described in (A) through (C) of this subparagraph.

(A) Ages 0 - 5: \$300 plus DOC Rate I, II, III, IV, or V, if eligible.

(B) Ages 6 - 12: \$360 plus DOC Rate I, II, III, IV, or V, if eligible.

(C) Ages 6 - 18+: \$420 plus DOC Rate I, II, III, IV, or V, if eligible.

(2) DOC rate descriptions. The descriptions in this subparagraph are guidelines from which the most appropriate DOC rate can be determined for the eligible child. Not every situation clearly fits into one DOC rate category. Consideration of the child's age is part of determining the appropriate rate category.

(A) Conditions or needs. DOC Rate I. The rate is \$50 per month or \$1.67 per day more than the standard rate. A child approved for DOC Rate I has any one or more of the following needs, or conditions, or a combination thereof: or behaviors described in (i) through (iv) of this subparagraph. The child:

- (i) requires ongoing scheduled medical or psychological appointments that routinely occur more than twice weekly;
- (ii) displays emotional difficulties that result in destruction of property;

(iii) requires ~~noncompensable~~ medical or educational supplies on a routine basis that are not compensable through Medicaid; or

(iv) requires daily physical therapy performed by the foster ~~parents~~ parent(s).

~~(B) Rate of pay. The Rate I payment is \$50 per month or \$1.67 per day more than the regular foster care reimbursement or for:~~

- ~~(i) age 0 - 5, \$350;~~
- ~~(ii) age 6 - 12, \$410; and~~
- ~~(iii) age 13 - 18+, \$470.~~

~~(2) Rate II. This paragraph describes the conditions or needs of a child required for approval for Rate II and the reimbursement rates.~~

~~(A) Conditions or needs. (B) DOC Rate II. The rate is \$100 per month or \$3.33 per day more than the standard rate. A child approved for DOC Rate II has any one or more of the needs, conditions, or behaviors listed in DOC Rate I, and, in addition to the following conditions, deficiencies, or needs:~~

- ~~(i) requires 24 hour intensive supervision due to severe medical or emotional needs;~~
- ~~(ii) requires special food preparation and feeding due to a condition that restricts normal eating;~~
- ~~(iii) requires special equipment for transportation that results in restricted mobility for child and foster ~~parents~~ parent(s);~~
- ~~(iv) displays incontinence of the bladder and bowel that is not age appropriate;~~
- ~~(v) displays multiple disabilities, birth defects, or brain damage that prevents normal functioning intellectually intellectual or physically physical functioning;~~
- ~~(vi) requires strict monitoring of medication;~~
- ~~(vii) requires assistance in movement which is very difficult due to the child's size;~~
- ~~(viii) requires post-hospitalization care such as frequent changing of bandages, tubes, and special hygiene techniques; or~~
- ~~(ix) displays emotional disturbances, developmental delay, or mental retardation that results in behavior such as constant difficulties in school, aggressive and delinquent activities, destructiveness, resistance to authority, and sexual disturbances.~~

~~(B) Rate of pay. The Rate II payment is \$100 per month or \$3.33 per day more than the regular foster care reimbursement or for:~~

- ~~(i) age 0 - 5, \$400;~~
- ~~(ii) age 6 - 12, \$460; and~~
- ~~(iii) age 13 - 18+, \$520.~~

~~(3) Rate III. This paragraph describes the conditions or needs of a child required for approval for Rate III and the reimbursement rates.~~

~~(A) Conditions or needs. (C) DOC Rate III. The rate is \$150 per month or \$5.00 per day more than the standard rate. A child approved for DOC Rate III has any one or more of the needs, conditions, or behaviors~~

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needs described in each DOC Rates I & II, and, in addition:

- (i) requires ~~noncompensable~~ medical supplies, special equipment, or educational supplies on a routine basis which are not compensable through Medicaid; or
- (ii) requires specialized substitute care.

(B) **Rate of pay.** The Rate III payment is \$150 per month or \$5.00 per day more than the regular foster care reimbursement or for:

- (i) age 0–5, \$450;
- (ii) age 6–12, \$510; and
- (iii) age 13–18+, \$570.

(4) **Rate IV.** This paragraph describes the conditions or needs of a child required for approval for Rate IV and the reimbursement rates:

(A) **Conditions and needs, DOC Rate IV.** The rate is \$225 per month or \$7.50 per day more than the standard rate. ~~The A~~ child approved for DOC Rate IV has ~~any one or more~~ of the needs, ~~or~~ conditions, ~~or~~ behaviors described in each of DOC Rates I, II, and III and ~~in addition~~ requires such specialized care that normally ~~such a~~ the child ~~could~~ would be in institutional or inpatient psychiatric care. The child ~~could~~ have needs, behaviors, or conditions such as:

- (i) requires special equipment, such as apnea monitor, suction machine, gastrostomy tube, oxygen, tracheotomy tube, and shunt;
- (ii) requires special feeding or nursing care around the clock, ~~does not include normal frequent feeding for newborn or infant~~;
- (iii) requires frequent nighttime supervision and care that is not age appropriate;
- (iv) displays such frequent seizures or other abnormal physical reactions that 24-hour monitoring is required;
- (v) displays bizarre, socially unacceptable behavior, violent tendencies, potentially harmful behavior to ~~himself~~ self or others, or sexually predatory behavior to others or animals;
- (vi) required previous inpatient mental health treatment ~~and recent discharge or has recently been discharged~~ from an inpatient facility with requirement for ongoing intense supervision;
- (vii) requires such intensive care that the foster parents are parent(s) is severely restricted in normal daily activities and ~~are~~ is frequently home-bound;
- (viii) requires frequent 24-hour awake supervision; or
- (ix) requires post-hospitalization care for severe burns.

(B) **Rate of pay.** The Rate IV payment is \$225 per month or \$7.50 per day more than the regular foster care reimbursement or for:

- (i) age 0–5, \$525;
- (ii) age 6–12, \$585; and
- (iii) age 13–18+, \$645.

(5) **Guidelines for increase recommendation.** The descriptions in this Section are to be viewed as guidelines from which staff can make the most appropriate increase recommendation. Not every situation clearly fits in one rate category. Consideration of the child's age is part of determining the appropriate rate category.

(E) **DOC Rate V.** The rate is \$400 per month or \$13.33 per day more than the standard rate. A child approved for DOC Rate V has one or more of the needs, conditions, or behaviors described in each of DOC Rates I, II, III, and IV and has a significant number of high severity needs. The child's level of need is not moderate, is likely to become more severe over time, and is likely at some time to require personal attendant care or specialized care outside of the home, when prescribed by a professional. A current medical or psychological report within the last six months is required from a qualified physician. This report must include a diagnosis, prognosis, and recommended treatment. Medical or psychological conditions considered in the determination of DOC Rate V include a child who has:

- (i) been diagnosed by a qualified physician as having severe mental illness, such as child schizophrenia, severe developmental disabilities, brain damage or autism;
- (ii) severe physical disabilities or medical conditions that are not expected to improve over time and adversely impact life expectancy when compared with others who have similar physical disabilities or medical conditions;
- (iii) severely inhibiting diagnosed mental health conditions, defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM), diagnosed within the past year, that severely limit normal social and emotional development and require ongoing outpatient behavioral health services;
- (iv) severe mental retardation as determined by the Social Security Administration and defined by the DSM;
- (v) been waiting for organ transplant or is up to one year post transplant; or
- (vi) a physical condition uncontrolled by medication or treatment such as Tourette's syndrome or epilepsy.

PART 6. FOSTER HOME CARE SUPPORT SERVICES

340:75-7-65. **Payment for foster care child care services in licensed child care center, licensed child care home, or the foster parent's own home by a licensed child care professional**

(a) **Child care services are paid by the Department of Human Services (DHS)-OKDHS.** The Oklahoma Department of

Human Services (OKDHS) pays for foster care child care services in certain situations as defined in (1) and (2).

(1) Child care services are paid by DHS OKDHS to the licensed child care center, child care home, or to a licensed child care professional in the foster parent's parent(s)' own home when:

(1A) the foster parent parent(s) is gainfully employed outside the home for 20 hours a week or more;

(2B) the child has no special needs which preclude care in a child care setting;

(3C) written verification of employment is obtained prior to utilization of the services and includes the number of hours and days the foster parent parent(s) works; and

(4D) child care services are provided in a licensed child care home, a licensed child care center, or in the foster parent's parent(s)' home by a licensed child care professional; and

(52) therapeutic Therapeutic child care is authorized services are paid when recommended by a mental health professional, prior authorized by Children and Family Services Division (CFSD), and funded.

(b) **Overpayment of child care.** OKDHS seeks repayment for any child care that has been paid in error to the licensed child care center, child care home, or to a licensed child care professional in the foster parent(s)' own home.

(bc) **Child care services that are not paid by the Department OKDHS.** The cost of the foster care child care is the responsibility of the foster parent parent(s) when:

(1) when the foster parent parent(s) attends school or participates in training, - unless the parent foster parent(s) is a non-paid relative foster parent receiving regular child care through Temporary Assistance for Needy Families (TANF);

(2) when child care has not been arranged and approved by the Child Welfare (CW) worker or supervisor prior to utilization of the service;

(3) if a the foster parent parent(s) owns, has employment with, or operates the child care center which the child attends;

(4) for informal arrangements are made for child care;

(5) for the rates charged are higher than that allowed by the state OKDHS;

(6) for children the child is placed in contracted emergency foster care;

(7) for children the child is placed in therapeutic foster care;

(8) if the foster parent parent(s) is employed in a child care home which that the child attends;

(9) if the foster parent parent(s) operates a child care home, and the child attends another child care home or child care center; and

(10) when a the foster parent's parent(s) hours of employment interfere with the provision of a suitable family life;

(11) the child is adopted by the foster parent(s); and

(12) the child care center is licensed as a one star facility unless there are no one star plus, two, or three star centers

in the community, or one of the special exception criteria in (A) through (C) is met.

(A) The child was already approved for care at this one star center prior to January 1, 2003. The child can remain at this facility unless the child stops attending there for more than 30 days. The child can also be approved at this same facility again if the only reason the child did not attend for more than 30 days was because of a school break or due to circumstances beyond the control of the foster family, such as illness of the child.

(B) Care is requested for a child living in the same home as a child already approved for care as described in (12)(A) of this subsection for the same one star child care provider.

(C) The foster parent(s) demonstrates that he or she does not have another child care option that meets the foster family's needs.

SUBCHAPTER 15. ADOPTIONS

PART 14. POST ADOPTION SERVICES

340:75-15-128.1. General adoption Adoption assistance benefits

Benefits of general adoption (a) Adoption assistance may include Medicaid coverage, a monthly assistance payment, special services, reimbursement of non-recurring adoption expenses, or any combination of such these. Children eligible for Title IV-E assistance are also eligible for available Title XX services.

(1) Medicaid. The child is eligible for the Oklahoma Medicaid program or the Medicaid program in the state of residence, if Title IV-E eligible. All necessary medical and dental care under the scope of that program is compensable compensable at usual and customary charges. [OAC 340:75-15-129]

(2) Monthly assistance payments. Payments are negotiated between the adoption specialist and the family. [OAC 340:75-15-128.2, Instructions to Staff 2] A child may be eligible for monthly assistance payments to provide financial support to families who adopt children considered difficult to place. Payments are made to eligible families as long as the Oklahoma Department of Human Services (OKDHS) has sufficient funds available and is authorized to make payments under Form DCFS-68, Adoption Assistance Agreement, as allowable within the OKDHS budget.

(A) Agreements must be signed by the adoptive parents and the Agency prior to the finalization of the adoption. [OAC 340:75-15-128.2(b)]

(B) Payments can be made prior to finalization of the adoption if the application is for pre-finalization assistance. Payment begins with the effective date shown on the agreement.

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(C) If the family does not request pre-finalization assistance, the payment starts the day following the adoption finalization.

(A) **Rates.** The standard rates for monthly adoption assistance payments are described in (i) through (iii) of this subparagraph.

(i) Ages 0 - 5: Ranges from \$0 to a maximum of \$270 plus Difficulty of Care (DOC) Rate I, II, III, IV, or V if eligible.

(ii) Ages 6 - 12: Ranges from \$0 to a maximum of \$324 plus DOC Rate I, II, III, IV, or V if eligible.

(iii) Ages 13 - 18: Ranges from \$0 to a maximum of \$378 plus DOC Rate I, II, III, IV, or V if eligible.

(B) **DOC rate descriptions.** The descriptions in this subparagraph are guidelines from which the most appropriate DOC rate can be determined for the eligible child. Not every situation will clearly fit into one DOC rate category. Consideration of the child's age is part of determining the appropriate rate category. Documentation that the child's needs, conditions, or behaviors fit the rate category is required from professional sources outside the adoptive family as well as from the adoptive family itself. Updated documentation may be required by OKDHS from time to time to establish a child's ongoing eligibility for a particular DOC rate.

(i) **DOC Rate I.** The rate is \$50 per month more than the standard rate. A child approved for DOC Rate I has one or more of the needs, conditions, or behaviors described in (I) through (IV) of this subparagraph. The child:

(I) requires ongoing scheduled medical or psychological appointments that routinely occur more than twice weekly;

(II) displays emotional difficulties that result in destruction of property;

(III) requires medical or educational supplies on a routine basis that are not compensable through Medicaid; or

(IV) requires daily physical therapy performed by the adoptive parent(s).

(ii) **DOC Rate II.** The rate is \$100 per month more than the standard rate. A child approved for DOC Rate II has one or more of the needs, conditions, or behaviors listed in DOC Rate I, and, in addition:

(I) requires 24-hour intensive supervision due to severe medical or emotional needs;

(II) requires special food preparation and feeding due to a condition that restricts normal eating;

(III) requires special equipment for transportation that results in restricted mobility for the child and the adoptive parent(s);

(IV) displays incontinence of the bladder and bowel that is not age appropriate;

(V) displays multiple disabilities, birth defects, or brain damage that prevents normal intellectual or physical functioning;

(VI) requires strict monitoring of medication;

(VII) requires assistance in movement which is very difficult due to the child's size;

(VIII) requires post-hospitalization care such as frequent changing of bandages, tubes, and special hygiene techniques; or

(IX) displays emotional disturbances, developmental delay, or mental retardation that results in behavior such as constant difficulties in school, aggressive and delinquent activities, destructiveness, resistance to authority, and sexual disturbances.

(iii) **DOC Rate III.** The rate is \$150 per month more than the standard rate. A child approved for DOC Rate III has one or more of the needs, conditions, or behaviors in each of DOC Rates I and II, and, in addition:

(I) requires medical supplies, special equipment, or educational supplies on a routine basis which are not compensable through Medicaid; or

(II) requires specialized substitute care.

(iv) **DOC Rate IV.** The rate is \$225 per month more than the standard rate. A child approved for DOC Rate IV has one or more of the needs, conditions, or behaviors described in each of DOC Rates I, II, and III and requires such specialized care that normally the child would be in institutional or inpatient psychiatric care. The child:

(I) requires special equipment, such as apnea monitor, suction machine, gastrostomy tube, oxygen, tracheotomy tube, and shunt;

(II) requires special feeding or nursing care around the clock;

(III) requires frequent nighttime supervision and care that is not age appropriate;

(IV) displays such frequent seizures or other abnormal physical reactions that 24-hour monitoring is required;

(V) displays bizarre, socially unacceptable behavior, violent tendencies, potentially harmful behavior to self or others, or sexually predatory behavior to others or animals;

(VI) required previous inpatient mental health treatment or has recently been discharged from an inpatient facility;

(VII) requires such intensive care that the adoptive parent(s) is severely restricted in normal daily activities and is frequently homebound;

(VIII) requires frequent 24-hour awake supervision; or

(IX) requires post-hospitalization care for severe burns.

(v) **DOC Rate V.** The rate is \$400 per month more than the standard rate. A child approved for DOC Rate V has one or more of the needs, conditions, or behaviors described in each of DOC Rates I, II, III, and IV and has a significant number of high severity needs. The child's level of need is not moderate, is likely to become more severe over time, and is likely at some time to require personal attendant care or specialized care outside of the home, when prescribed by a professional. A current medical or psychological report within the last six months is required from a qualified physician. This report must include a diagnosis, prognosis, and recommended treatment. Medical or psychological conditions considered in determination of DOC Rate V include a child who has:

- (I) been diagnosed by a qualified physician as having severe mental illness, such as child schizophrenia, severe developmental disabilities, brain damage, or autism;
- (II) severe physical disabilities or medical conditions that are not expected to improve over time and adversely impact life expectancy when compared with others who have similar physical disabilities or medical conditions;
- (III) severely inhibiting diagnosed mental health conditions, defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM), diagnosed within the past year, that severely limit normal social and emotional development and require ongoing outpatient behavioral health services;
- (IV) severe mental retardation as determined by the Social Security Administration and defined by the DSM;
- (V) been waiting for organ transplant or is up to one year post transplant; or
- (VI) a physical condition uncontrolled by medication or treatment such as Tourette's syndrome or epilepsy.

(3) **Special services.** Special services payments are used to meet the child's needs which cannot be met by the adoptive parents parent(s) and which are not covered under any other program.

- (A) These services include corrective appliances, which may include costs of leg braces, prostheses, walkers, and similar appliances as long as such appliances cannot be secured through any other program for which the child would qualify.
- (B) Tutoring and private school tuition are not covered as special services, as the public school systems are mandated to provide all children with special needs with an appropriate public education.
- (C) The special services are reviewed at least annually and may be approved for a limited time.
- (D) The amount paid is does not to exceed the reasonable fee for the service rendered.

(E) The special service is negotiated with the family adoptive parent(s), approved by the State Office, ~~Division of Children and Family Services Division (DCFS—CFSD)~~, Adoption Assistance Section, and included in Form DCFS-68, Adoption Assistance Agreement, or through a modification of the family's agreement.

(4) **Reimbursement of non-recurring adoption expenses.** Certain non-recurring expenses incurred by or on behalf of the adoptive parent(s) in connection with the adoption of a child with special needs may be reimbursed.

(A) Reimbursable expenses. The term "non-recurring adoption expenses" means the reasonable and necessary adoption fees, court costs, attorney fees, and other expenses that are directly related to the legal adoption of a child with special needs, are not incurred in violation of state or federal law, and have not been reimbursed from other sources or funds. Financial reimbursement is available to the adoptive parent(s) of an eligible child for:

- (i) adoption fees;
- (ii) court costs;
- (iii) attorney fees;
- (iv) adoptive home study fee;
- (v) costs incurred to obtain health and psychological reports on family members;
- (vi) supervision of the adoptive placement by another agency;
- (vii) transportation, food, and lodging for the adoptive parent(s) and child during the placement process; and
- (viii) cost of fingerprinting paid by the adoptive parent(s).

(B) Eligibility. The child must meet all of the eligibility criteria for a child with special needs as set forth in OAC 340:75-15-128.4 and have been placed for adoption in accordance with applicable state and local laws. The child does not have to be in the custody of OKDHS or a federally recognized tribe at the time of finalization of the adoption. The child does not have to meet the Title IV-E categorical eligibility requirements for adoption assistance as set forth in OAC 340:75-15-128.2.

(C) Amount of reimbursement. Reimbursement of non-recurring adoption expenses, as defined in OAC 340:75-15-128.1(a)(4)(A), may be approved on behalf of the eligible child as described in (i) and (ii) of this subparagraph.

- (i) Finalized adoption. Assistance is limited to documented actual expenses incurred up to a maximum of \$1,200 per child if the adoption is finalized. In the event an Order Terminating Parental Rights or an Order Determining the Child Eligible for Adoption Without the Consent of a Biological Parent had to be obtained in the adoption case, a request for reimbursement up to a maximum of \$2,000 per child will be considered by OKDHS on a case by case basis. In cases

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where siblings are adopted as a unit, each child is treated as an individual with separate reimbursement for non-recurring expenses.

(ii) **Non-finalized adoption.** A potential adoptive parent(s) whose trial adoption disrupts prior to finalization on or after January 1, 1999 may be eligible for up to a maximum reimbursement of \$500 per child.

(D) **Approval and payment.** The request for reimbursement of non-recurring adoption expenses must be approved and Form DCFS-68, Adoption Assistance Agreement, signed by the adoptive parent(s) and OKDHS designee prior to finalization of the adoption. Payment is made directly to the adoptive parent(s) for approved amounts shown on the itemized statement as paid in full. Payment is made directly to a vendor(s), such as attorney(s) and private adoption agency, for the fee(s) which the itemized statement indicates has not yet been paid in full by the adoptive parent(s).

(E) **Interstate placement.** The provisions of OAC 340:75-15-128.5(b) apply to reimbursement of non-recurring adoption expenses in interstate adoptions.

(4b) **Overpayments.** State Office, Children and Family Services Division, Adoption Assistance Section staff immediately notify notifies the adoptive parents parent(s) when it is discovered that an overpayment has occurred. The adoptive parent parent(s) is responsible for repayment, even if he or she is not responsible for causing the overpayment. In the event the adoptive parent parent(s) was previously the adopted child's foster parent parent(s) and foster care payments continued after adoption assistance payments began, a repayment plan is required. The adoptive parent(s) is notified in writing of the overpayment and given 30 days in which to repay. Failure to repay results in an automatic reduction of no less than 10% of each future month's payment until the overpayment is satisfied. Any other types of overpayments are handled in the same manner.

(c) **Modification.** Form DCFS-68, Adoption Assistance Agreement, may be modified and the adoption assistance payment amount may be readjusted periodically when warranted by a change in circumstances and with the concurrence of the adoptive parent(s). A change in the child's eligibility for the DOC rate paid constitutes a change in circumstance. The adoption assistance payment amount may not be automatically adjusted without agreement of the adoptive parent(s) except for an across-the-board reduction or increase in OKDHS foster care maintenance rates or DOC rates. Modification of Form DCFS-68, Adoption Assistance Agreement, is prospective only and may not be retroactive. If the parties cannot come to an agreement, OKDHS establishes the payment amount. The adoptive parent(s) has a duty to keep OKDHS informed of circumstances that would make the child ineligible for adoption assistance payments or eligible for payments of a different amount. OKDHS may require the adoptive parent(s) to provide updated documentation of a child's ongoing eligibility for the payment amount received. OKDHS may require evaluation of a child by a suitably licensed or certified

examiner selected by OKDHS if the child's eligibility is in question.

(5d) **Termination or modification.** The adoptive parents may request a modification of the agreement for adoption assistance at any time. The parents have a duty to keep the Department informed of circumstances that would make them ineligible for assistance payments or eligible for payments of a different amount. Once an agreement is signed and in effect, it is only terminated under three circumstances if one of the conditions described in (1) through (3) of this subsection is met. The three conditions for termination are:

(A1) ~~the~~ The child has attained the age of 18, or the age of 21 if it has been determined that the child has a mental or physical disability which would warrant continuation of adoption assistance. To continue adoption assistance after the age of 18, the adoptive parents parent(s) must submit documentation of a continuing mental or physical disability prior to the child's 18th birthday and yearly thereafter;

(B2) ~~a~~ A determination is made by the state agency OKDHS that the adoptive parents parent(s) is no longer legally responsible for support of the child; ~~or~~

(C3) ~~the~~ state agency OKDHS determines that the adoptive parents are parent(s) is no longer providing financial support to the child. If a child is placed in out-of-home care including psychiatric care, residential, therapeutic, or foster family foster care and the adoptive parent parent(s) continues to provide financial support to the child, adoption assistance may continue. The rate of payment may be renegotiated, as appropriate.

(6e) **Death of adoptive parents or dissolution of the adoption.** Any child who was receiving Title IV-E adoption assistance at the time of the death of all of the child's adoptive parents or at the time the adoption dissolves may be eligible for adoption assistance if he or she is adopted again after October 17, 1997. ~~State option children are~~ A child receiving state funded adoption assistance is eligible if adopted after May 29, 1998. To be eligible, the child must continue to meet the special needs criteria and all of the requirements in (A)–(D)(1) through (4) of this paragraph must be met.

(A1) The prospective adoptive family parent(s) must make application on Form DCFS-54, Adoption Assistance Application.

(B2) The prospective adoptive family parent(s) must provide from a district or tribal court a copy of a filed file-stamped Petition for Adoption from a district or tribal court if requesting pre-final prefinalization adoption assistance or a copy of a Final Decree of Adoption dated after October 17, 1997, if requesting adoption assistance is to start following begin after adoption.

(C3) ~~The~~ state OKDHS must be able to document the child was receiving Title IV-E or state option funded assistance at the time of the death of the adoptive parents parent(s) or at the time the adoption dissolved.

(D4) ~~The~~ state OKDHS must document be provided documentation that the new adoptive parents are parent(s) is not the biological parents parent(s).

(f) **Relocation by adoptive family to another state.** An Adoption Assistance Agreement signed on or after October 1,

1983 remains in effect regardless of the state in which the adoptive parent(s) is a resident at any given time.

340:75-15-128.4. Determination of special needs

A child must be determined to have special needs to be eligible for federally funded adoption assistance, [OAC 340:75-15-128.2] state funded adoption assistance, [OAC 340:75-15-128.3] or reimbursement of non-recurring adoption expenses. [OAC 340:75-15-128.1(a)(4)] A child is determined to have special needs by meeting all the criteria in paragraphs (1) - through (3) of this subsection.

(1) **Child cannot return home.** The state Oklahoma Department of Human Services (OKDHS) has determined that the child cannot or should not be returned to the home of his or her parents parent(s). The documentation required to show that a child cannot or should not be returned home is:

- (A) a Petition for Termination of Parental Rights;
- (B) an Order of Termination of Parental Rights from a court of competent jurisdiction;
- (C) for a child under the jurisdiction of the court, a signed Relinquishment of Parental Rights;
- (D) satisfied by other official documentation when it is determined a child can be adopted in accordance with state or tribal law without a Termination of Parental Rights or Relinquishment; or
- (E) verification of the death of parent(s), if the child is orphaned.

(2) **Special factors or conditions.** The child meets at least OKDHS has determined that because of one or more of the factors or conditions listed in (A) - through (G) of this paragraph, the child cannot be placed with adoptive parent(s) without providing adoption assistance.

(A) **Physical disability.** Physical disability is defined as a condition which requires regular treatment with a specific diagnosis given by the child's physician.

(B) **Mental disability.** The child meets the eligibility criteria for educable multi-handicapped (EMH) or trainable multi-handicapped (TMH) classes and has been evaluated by a licensed psychologist, psychometrist, school, or recognized diagnostic center. A child with a demonstrable need for intensive adult supervision beyond ordinary age needs also qualifies.

(C) **Age.** If no other special needs criteria are met, the child is eight years of age or older. Eligibility based on the child's age is determined according to (i) and (ii).

(i) **Kinship placement.** There is no age requirement for a child placed with a relative(s) who provides paid or non-paid kinship care and who meets the specified degree of relationship as defined in OAC 340:10-9-1.

(ii) **Non-related and other relative placements.** The child must be eight years of age or older. This includes a child adopted by a relative(s) who was not the child's caregiver at the time of adoptive placement.

(D) **Sibling relationship.** The child is one of two siblings part of a sibling group of any age placed together if at least one child meets an additional special needs condition. Three or more siblings placed together qualify without any additional condition.

(E) **Emotional disturbance.** It is recognized that all children placed for adoption experience emotional disturbance. To meet this criteria emotional disturbance must be:

- (i) established by a physician, a psychologist, behavioral therapist, or social worker;
- (ii) corroborated by a Child Welfare worker's observations of the child's behavior;
- (iii) corroborated by one or more caregivers such as foster parent, Head Start or school personnel, church nursery, or day child care provider; and
- (iv) documented with a specific diagnosis and prognosis, if applicable.

(F) **Racial or ethnic factor.** Indian, Hispanic, Oriental, and African-American children age three years or older are considered to meet special needs criteria if efforts to place without assistance are unsuccessful.

(G) **High risk of physical or mental disease.** The child who exhibits high risk of physical or mental disease for conditions which are not presently being treated may qualify. If no other special needs criteria factors or conditions are met, no monthly payment is made until there are documented symptoms of physical or mental disease. Indicators of high risk physical or mental disease are:

- (i) social and medical history such as mental illness of biological parents and family;
- (ii) events or life experiences such as severe sexual abuse; and
- (iii) prenatal exposure to drugs or alcohol.

(3) **Unsuccessful efforts to place the child without assistance.** A reasonable but unsuccessful effort has been made to place the child without assistance, except where it would be against the best interests of the child because of such factors as a strong emotional tie to a foster parents parent(s) who are is planning to adopt the child or placement with a relative.

(A) **Documentation of efforts to place a child without assistance is required and includes specific recruitment of a potential parent(s) who could meet the child's special needs.** Examples include:

- (i) area staffings;
- (ii) adoption parties;
- (iii) adoption resource exchanges; and
- (iv) media and internet efforts.

(B) **Form DCFS-54, Adoption Assistance Application, [OAC 340:75-15-128.5] must include a statement of the reasons the child could not be placed in an adoptive home without adoption assistance, including:**

- (i) the specific factors that make it difficult to place the child;

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- (ii) a description of the efforts to place the child without assistance; and
- (iii) the reasons it is not in the best interests of the child to attempt to place for adoption without assistance.

340:75-15-128.5. Adoption assistance application procedures

(a) **Application process.** ~~Application To apply for general and non-recurring~~ Application To apply for general and non-recurring adoption assistance, Form DCFS-54, Adoption Assistance Application, is completed by the prospective adoptive parent(s), custodial agency, or tribe on behalf of the child and family and is submitted to the State Office, Children and Family Services Division (CFSD), Adoption Assistance Section for approval. ~~If a monthly payment is requested, the worker makes a good faith effort to negotiate an adoption assistance payment with the adoptive family.~~

(b) **Interstate adoptive placements.** The provisions of the Adoption Assistance Program of the state in which the application is made govern the terms of an adoption assistance agreement, including, but not limited to, the rates of the adoption assistance payments.

(1) For federally funded adoption assistance in interstate adoptions, application is made to:

(A) Oklahoma, if the child is in the custody of the Oklahoma Department of Human Services (OKDHS) or a tribe and receiving Title IV-E foster care and placed for adoption in another state;

(B) the other state, when an Oklahoma child is placed by any other entity;

(C) the other state, when a child is placed in Oklahoma by the public child welfare agency of another state or a tribal child in Title IV-E foster care of another state; or

(D) Oklahoma, when a child is placed in Oklahoma from another state by any other entity and there is compliance with the provisions of the Interstate Compact on the Placement of Children.

(2) For state funded adoption assistance in interstate adoptions, application is made to Oklahoma only when the child is in the legal custody of OKDHS or an Oklahoma tribe, as defined in OAC 340:75-15-128.3(a)(2), at the time of adoption, regardless of the residence of the adoptive parent(s) by whom the child is adopted. A child placed in Oklahoma from another state is not eligible for state funded adoption assistance in Oklahoma.

(c) **Determination of adoption assistance benefits.**

(1) Each Adoption Assistance Agreement is tailored to the individual situation, not according to a set of predetermined guidelines.

(2) The adoptive parent(s) is advised by the adoption specialist of the different components of adoption assistance, including special services, coverage under Title XIX Medicaid, reimbursement of non-recurring adoption expenses, and a monthly assistance payment.

(A) If the child is eligible for Title IV-E adoption assistance, the amount of assistance payment, if any,

is determined through agreement between the adoptive parent(s) and OKDHS on an amount within the range of adoption assistance rates in OAC 340:75-15-128.1(a)(2), up to a maximum amount which must not exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home. Therapeutic foster care does not constitute a foster family home for which foster care maintenance payment is made.

(i) The adoption specialist works with the adoptive parent(s) to reach agreement on the assistance amount, taking into consideration the circumstances of the adopting parent(s) and the needs of the child.

(ii) If the parties cannot come to an agreement, the Department of Human Services (DHS) OKDHS establishes the payment amount. The payment is based on the amount that is needed to meet the child's special needs, not to exceed the amount the child would have received in traditional foster family care. Therapeutic foster care is not included in this definition per Section 7510-1.5 of Title 10 of the Oklahoma Statutes.

(B) If the child is eligible for state funded adoption assistance, OKDHS determines the adoption assistance payment amount within the range of rates in OAC 340:75-15-128.1(a)(2) based on the needs of the child and circumstances of the adoptive family. The maximum amount of adoption assistance may not exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the payment is made had been in a foster family home. Therapeutic foster care does not constitute a foster family home for which foster care maintenance payment is made.

(C) For federally funded or state funded adoption assistance, a zero payment agreement may be reached at the time Form DCFS-68, Adoption Assistance Agreement, is signed.

(i) The zero payment agreement applies in cases where a risk of physical or mental disease exists but is not manifested, no other special factor or condition exists, and the other two criteria set forth in OAC 340:75-15-128.4(1) and (3) are met.

(ii) If documented symptoms of a physical or mental disease are later manifested, Form DCFS-68 may be modified by agreement of the adoptive parent(s) and CFSD.

(D) For federally funded or state funded adoption assistance, if the child is eligible for a Difficulty of Care (DOC) payment Rate, this rate becomes is the maximum for monthly assistance payment.

(E) For federally funded or state funded adoption assistance, updated Updated supporting documentation for DOC continuing eligibility may be required of the adoptive parent(s) by OKDHS at any time.

~~(bd)~~ **Adoption Assistance Agreement.** Form DCFS-68, The Adoption Assistance Agreement, must be signed by all ~~parties~~ the adoptive parent(s) and OKDHS prior to finalization of the adoption for ~~the general~~ Title IV-E federally funded adoption assistance, state funded adoption assistance, and non-recurring assistance.

(1) Adoption assistance must be approved and the initial agreement signed prior to the child attaining 18 years of age.

~~(2) Assistance may be paid to the adoptive family at the time the child enters the adoptive placement and prior to the~~ When a child has been determined eligible by OKDHS, adoption assistance may commence at the time of adoptive placement or at the time of finalization of the adoption. ~~Requests for pre-finalization adoption assistance are included in the application packet.~~

~~(ee)~~ **Annual reviews.** ~~The adoption assistance Form DCFS-68, Adoption Assistance Agreement,~~ is reviewed annually by the State Office, CFSD, Adoption Assistance Section. Form DCFS-44, Adoption Assistance Annual Review, is mailed to the adoptive family parent(s).

~~(ef)~~ **Application made after finalization of adoption.** This Subsection applies only to Title IV-E federally funded adoption assistance. The provision for state funded application made after finalization of adoption is found at OAC 340:75-15-128.3(e). Federal regulations require that ~~the Adoption Assistance Agreement, Form DCFS-68, Adoption Assistance Agreement,~~ be signed and in effect at the time of, or prior to, the final decree of adoption. However, if the adoptive ~~parents feel they have~~ parent(s) feels he or she has wrongly been denied benefits on behalf of an adoptive child, ~~they have~~ he or she has the right to a fair hearing, even if he or she applied for adoption assistance after finalization of the adoption. If the family adoptive parent(s) prevails in a fair hearing, ~~the state~~ OKDHS may determine whether the child would have met all eligibility requirements at the time of the placement in the adoptive home and at finalization of the adoption and reverse its earlier decision to deny benefits.

(1) **Eligibility.** A child may be eligible for Title IV-E post adoption assistance only if:

(A) the adoptive ~~parent~~ parent(s) prevails in a fair hearing and it is determined that the family adoptive parent(s) proved an extenuating circumstance exists, such as:

(i) relevant facts regarding the child, the biological family, or the child's background ~~are were~~ known and were not presented to the adoptive ~~parents~~ parent(s) prior to the ~~legalization~~ finalization of the adoption;

(ii) denial of assistance was based upon a means test of the adoptive family parent(s);

(iii) erroneous determination by ~~the state~~ OKDHS that a child was ineligible for adoption assistance; or

(iv) ~~the state agency~~ OKDHS was required and failed to advise the adoptive ~~parents~~ parent(s) of

the availability of the Title IV-E adoption assistance program; and

(B) at the time of the placement in the adoptive home and at finalization of the adoption, the child met all eligibility requirements. [OAC 340:75-15-128.2 and 340:75-15-128.4]

(2) **Benefits.** The benefits are the same as for ~~general adoption assistance~~ those listed in OAC 340:75-15-128.1. ~~[OAC 340:75-15-128.3]~~

(3) **Payment.** Upon approval, the adoptive parents and the state may negotiate the beginning date of the assistance, but under no circumstance may the beginning date be prior to the adoptive family's initial application for assistance that was denied. If adoption assistance payments are approved by OKDHS, they begin effective the date of approval. OKDHS considers retroactive payments on a case by case basis, but in no event for a period that exceeds five years or the date the initial application for assistance was denied, whichever is less.

~~(A) For children adopted on or before October 1, 1986 the payment cannot precede the date of the final decree of adoption.~~

~~(B) For those children adopted after October 1, 1986 the payments may begin at the time of the initial denial of the application if the child was in adoptive placement; or back to the date of the adoptive placement, if later than the initial denial date.~~

(4) **Procedures.** The procedures for securing Title IV-E post adoption assistance are identified in (A) - and (B) of this paragraph.

(A) **Application packet.** The application includes:

(i) a court order showing the child was removed from the home by a judicial determination to the effect that remaining in the home was contrary to the welfare of the child;

(ii) Form DCFS-54, Adoption Assistance Application;

(iii) Form SC-1, SoonerCare Health Benefits Application;

(iv) description of child's special needs which meet the eligibility criteria;

(v) documentation of special needs from ~~physician~~ physician(s), therapist, social worker worker(s), adoptive ~~parent~~ parent(s), or other professionals, as required; and

(vi) criminal background check.

(B) **Application process.** Application for Title IV-E post adoption assistance is made by the adoptive parent(s) to the State Office, ~~DCFS~~ CFSD, Adoption Assistance Section and is reviewed by the Adoption Assistance Review Committee.

[OAR Docket #03-970; filed 5-20-03]

Permanent Final Adoptions

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 1. ADMINISTRATION

[OAR Docket #03-1008]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Information
450:1-1-1.1 [AMENDED]
450:1-1-2 [AMENDED]
450:1-1-5 [AMENDED]
450:1-1-10 [AMENDED]
Subchapter 3. Contracts for Mental Health, Substance Abuse, Domestic
Violence and Sexual Assault and Residential Care Services
Part 1. Eligibility to Contract
450:1-3-3 [AMENDED]
Part 3. Contracts and Contracting Processes
450:1-3-22 [NEW]
Subchapter 5. Procedure in Individual Administrative Proceedings
450:1-5-5 [AMENDED]
450:1-5-11 [AMENDED]
Subchapter 7. Charges and ~~Reimbursement~~ Rates ~~Eligibility~~ for
ODMHSAS Services
450:1-7-4 [AMENDED]
450:1-7-5 [REVOKED]
450:1-7-6 [NEW]
Subchapter 9. Certification and Designation of ~~Facilities/Services~~
Facilities and Services
450:1-9-1 [AMENDED]
450:1-9-4 [AMENDED]
450:1-9-5 [AMENDED]
450:1-9-6 [AMENDED]
450:1-9-7 [AMENDED]
450:1-9-8 [AMENDED]
450:1-9-8.1 [NEW]
450:1-9-11 [REVOKED]
450:1-9-12 [AMENDED]
450:1-9-13 [AMENDED]
450:1-9-14 [AMENDED]
Subchapter 11. Research
450:1-11-2 [AMENDED]

AUTHORITY:

Oklahoma Department of Mental Health and Substance Abuse Services
Board; 43A O.S. §§ 2-101, 3-314.1, 3-315, 3-415, 4-202, 5-206(5), and
5-207(D).

DATES:

Comment period:

February 3, 2003 through March 9, 2003

Public hearing:

March 10, 2003

Adoption:

March 14, 2003

Submitted to Governor:

March 20, 2003

Submitted to House:

March 20, 2003

Submitted to Senate:

March 20, 2003

Gubernatorial approval:

May 1, 2003

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on
May 15, 2003.

Final adoption:

May 15, 2003

Effective:

July 1, 2003

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

In accordance with the Administrative Procedures Act these rule
revisions to Chapter 1 are part of the Department's review of Title 450.
These amendments are intended to comply with statutory changes, enhance
service provision and supervision, delete redundant or superfluous language
and correct scrivener's errors.

CONTACT PERSON:

Linda Winton, Policy Analyst and Agency Liaison Officer, Department
of Mental Health and Substance Abuse Services, Post Office Box 53277,
Oklahoma City, Oklahoma 73152-3277, (405) 522-6765.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTION 308.1(A), WITH AN EFFECTIVE DATE
OF JULY 1, 2003:**

SUBCHAPTER 1. GENERAL INFORMATION

450:1-1-1.1. Definitions

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

"Administrative Hearing Officer" means an individual
who is an attorney licensed to practice law in the State of Ok-
lahoma and is appointed by the Commissioner of ODMHSAS
to preside over and issue a proposed order in individual pro-
ceedings.

"AOA" means American Osteopathic Association.

"Board" means the Oklahoma State Board of Mental
Health and Substance Abuse Services.

"CARF" means Commission on Accreditation of Reha-
bilitation Facilities (CARF).

"Certification" means a status which is granted to a per-
son or an entity by the Oklahoma State Board of Mental Health
and Substance Abuse Services or the ODMHSAS, and indi-
cates approval to provide a particular service. In accordance
with the Administrative Procedures Act, 75 O.S. § 250.3(8),
certification is defined as a "license."

"Certified facility" means any facility which has received
a certification status by the Oklahoma State Board of Mental
Health and Substance Abuse Services or the ODMHSAS.

"Certification report" means a written notice of the de-
ficiencies developed by ODMHSAS Provider Certification.

"Contractor" or **"contractors"** means any person or en-
tity under contract with ODMHSAS for the provision of goods,
products or services.

"DSM" means the Diagnostic and Statistical Manual of
Mental Disorders published by the American Psychiatric As-
sociation.

"Entities" or **"entity"** means sole proprietorships, part-
nerships and corporations (either for profit or not for profit).

"Facilities" or **"facility"** means entities as described in
43A O.S. § 1-103(7), community mental health centers, resi-
dential mental health facilities, community-based structured
crisis centers, certified services for the alcohol and drug
dependent, entities providing domestic violence shelters and

programs, and sexual assault services programs, treatment programs for batterers and programs for assertive community treatment, those conducting or providing alcohol and drug substance abuse courses (43A O.S. §§ 3-451, 452, 453) and agencies and practitioners providing/performing Drinking Driver Assessments (47 O.S. §§ 11-902(G) and 6-212.2 and 22 O.S. §§ 991a(B) and 991c(B)).

"Hearing officer" means an individual who is appointed by the Commissioner of ODMHSAS to preside over, and make written findings of fact in individual proceedings provided for in this Subchapter.

"Individual proceeding" means the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature.

"JCAHO" means Joint Commission on Accreditation of Healthcare Organizations.

"Levels of performance" or "level of performance" means units of service (by types of service).

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

"Oklahoma Administrative Code" or "OAC" means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"Reimbursement rates" means the rates at which all contractors are reimbursed (paid) for services they provide under their ODMHSAS contract, and which are reported to ODMHSAS on the Integrated Client Information System ("ICIS").

"Respondent" means the person(s) or entity(ies) named in a petition for an individual proceeding against whom relief is sought.

"Site Review Protocol" means an ODMHSAS internal document used by ODMHSAS staff as a work document in the certification site visit(s) that is based entirely primarily upon the rules (standards/criteria) being reviewed. The Site Review Protocol is used in preparing the Certification Report, which is provided to the facility, and in preparing recommendations regarding certification to the Board for its consideration and action.

"Units" or "unit" means an hour, or part of an hour, or group of hours, or a 24 hour day during which a specific client/patient service is rendered.

450:1-1-2. Applicability

This, and all subsequent chapters are applicable, unless otherwise specifically noted in a chapter, subchapter, part or section of Oklahoma Administrative Code Title 450, to the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS), the State Board of Mental Health and Substance Abuse Services (Board), and:

- (1) all employees and institutions and facilities of ODMHSAS (43A O.S. §§ 3-101, and 3-107); and

- (2) all facilities (43A O.S. §§ 1-103(7), ~~3-306~~ 3-306.1, 3-314.1, 3-315, 3-319 and 3-415) under contract with ODMHSAS; and

- (3) all facilities subject to certification by ODMHSAS (43A O.S. §§ ~~3-140~~ 3-306.1, ~~306~~ 3-314.1, 3-315, 3-317, 3-319, 3-415, 3-416); and

- (4) institutions, organizations and individuals subject to certification by ODMHSAS to provide alcohol drug substance abuse courses (43A O.S. §§ 3-451 through 3-453); and

- (5) agencies and ~~practitioners~~ individuals subject to certification by ODMHSAS to provide alcohol and drug assessment and evaluation programs related to driver's license revocation [47 O.S. §§ 11-902(G) and 6-212.2; ~~and 22 O.S. §§ 991a(B) and 991c(B)~~ 43A O.S. § 3-460]; and

- (6) individuals subject to certification to be a behavioral health case manager pursuant to 43A O.S. § 3-318.

450:1-1-5. Objectives

The objectives of the ODMHSAS are as follows:

- (1) The provision of ~~the highest quality of~~ mental health, substance abuse and domestic violence and sexual assault services, within the resources available, to those persons, and their families, receiving services from the facilities either operated by, certified by or under contract with ODMHSAS.

- (2) The services by mental health, substance abuse and domestic violence and sexual assault providers be rendered in an environment of safety, dignity and with respect to the rights of those persons and their families.

- (3) Adherence to and compliance with applicable state and federal statutes, including but not limited to Title 43A of the Oklahoma Statutes and the Public Health Services Act (42 U.S.C.) by all facilities operated by, under contract with, and certified by ODMHSAS.

450:1-1-10. Procedures to petition the ODMHSAS to request the promulgation, amendment or repeal of a rule

Any person affected either by a rule adopted and promulgated by ODMHSAS, or the lack of a rule and regulation may petition ODMHSAS to promulgate, adopt, amend or repeal the rule pursuant to 75 O.S. § 305 and in accordance with this section.

- (1) The petition must be in writing and submitted to the Rules Liaison of ODMHSAS in person at 1200 N.E. 13th Street, Oklahoma City or by mail to P.O. Box 53277, Oklahoma City, OK 73152 setting forth:

- (A) The proposed amendment, promulgation, or repeal of a specific rule.
- (B) The reason for the petition to repeal, promulgate, or amend a rule.
- (C) The effect that the repeal, amendment or promulgation of the rule would have on the petitioner.

- (2) The petitioner must print his or her name, address and telephone number on the petition, and it must be signed by the petitioner.

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- (3) The Department shall timely respond to such petition, either by initiating rulemaking proceedings or by denying the petition.
- (4) The petitioner will be notified by regular mail if rulemaking proceedings are initiated.
- (5) A petition for rulemaking will be deemed denied if the Department has not initiated rulemaking proceedings within thirty (30) calendar days after the petition is submitted.

SUBCHAPTER 3. CONTRACTS FOR MENTAL HEALTH, SUBSTANCE ABUSE, DOMESTIC VIOLENCE AND SEXUAL ASSAULT AND RESIDENTIAL CARE SERVICES

PART 1. ELIGIBILITY TO CONTRACT

450:1-3-3. Applicability

This part is applicable to all entities presently under contract with ODMHSAS to provide mental health, substance abuse, domestic violence and sexual assault, and residential care services; and to all entities which may either be, or desire to be, considered for such contracts. (~~43A O.S. §§ 3-110, 3-306, 3-313, 3-315, 3-406, 3-408~~).

PART 3. CONTRACTS AND CONTRACTING PROCESSES

450:1-3-22. Contractor reimbursement rates

Reimbursements to contractors for mental health, substance abuse, domestic violence and sexual assault, and residential care services shall be considered and set in the manner described as follows:

- (1) Contractors shall annually, or as otherwise prescribed, submit to ODMHSAS a uniform cost report in the form and format determined by ODMHSAS, and within time-frames established by ODMHSAS.
- (2) ODMHSAS staff shall review and analyze these cost reports, requesting where deemed necessary the submission of supporting clarifying information within fifteen (15) days of said request.
- (3) ODMHSAS staff may recommend to the Board fixed uniform rates for services, taking into consideration variables such as average costs, appropriate inflationary factors, capitation methods, performance outcome measures, staff credentials and available funding.
- (4) Prior to submitting to the Board the proposed rates or changes to existing rates, the following shall occur:
 - (A) The ODMHSAS shall provide written notice of an open hearing on the proposed fixed rates to each applicable contractor of record.
 - (B) The ODMHSAS shall conduct, and make a summary of, the scheduled open hearing.
- (5) Consideration of the proposed fixed rate by the Board shall not occur until the Director of Department of

Central Services has been provided with, pursuant to 74 O.S. § 85.7:

- (A) Thirty (30) days written notice of the Board Meeting to consider the uniform rates of reimbursement;
- (B) A copy of the Board Meeting agenda item(s) concerning the proposed rate(s); and
- (C) All supporting documentation and materials regarding the reimbursement rates being proposed.
- (6) The Board shall, at the meeting referenced in (5)(A) and (B) of this section, separately consider each proposed fixed and uniform rate of reimbursement. These rates, if adopted, shall then take effect on a date determined by the Board when the rates are considered for adoption; and remain in effect until subsequent Board action.
- (7) All revisions shall be examined, proposed, considered and adopted pursuant to this section.

SUBCHAPTER 5. PROCEDURE IN INDIVIDUAL ADMINISTRATIVE PROCEEDINGS

450:1-5-5. Petition and notice in individual proceedings

- (a) **Petition and Notice.** In the event the Board or ODMHSAS determines action should be taken, an individual proceeding may be initiated by ~~the Legal Division~~ filing a petition and notice with the Hearing Clerk for ODMHSAS, who shall be designated by the Commissioner, and by serving the petition on all respondents. The petition and notice shall include a statement of the legal authority and jurisdiction under which the action is taken, reference to the statutes and rules involved, a short and plain statement of the matters asserted and the relief requested. The petition may allege facts by attaching and incorporating a document by reference. The petition and notice shall provide the action shall commence and become effective fifteen (15) calendar days after receipt of said notice by the respondent, unless the respondent timely files a written request for a hearing with ODMHSAS.
- (b) **Request for hearing.** A request for hearing will be timely filed if said request is in writing and received by the Hearing Clerk of ODMHSAS within ten (10) calendar days of the date the party received the petition and notice. If a timely written request for a hearing is not filed by the respondent, the allegations in the petition shall be deemed confessed by the respondent and the action will become final as set forth herein. If the written request for hearing is timely filed, such hearing shall be scheduled before the Commissioner or ~~a~~ an Administrative Hearing Officer at least fifteen (15) days from the date said request is filed, and the parties shall be notified of the date, time and place of the hearing. If an emergency exists, a hearing may be conducted without the filing of a petition and without waiting fifteen (15) days.

450:1-5-11. Hearing officers

- (a) **Exercise of authority.** The Commissioner shall appoint at least one individual who is a licensed attorney to act as the

Administrative Hearing Officer in individual proceedings filed before the Department of Mental Health and Substance Abuse Services.

(b) The Administrative Hearing officers Officer shall conduct fair and impartial hearings and take all necessary action to avoid delay in the disposition of all proceedings. ~~They~~ He or she shall have all powers necessary to that end unless otherwise limited by law, including but not limited to, the authority to:

- (1) Administer oaths and affirmations;
- (2) Rule upon objections and offers of proof and receive relevant evidence;
- (3) Rule upon the institution of discovery procedures as appropriate;
- (4) Convene a hearing as appropriate, regulate the course of the hearing, examine any witness in order to clarify issues; maintain decorum and exclude from the hearing any disruptive persons;
- (5) Exclude from the hearing any witness whose later testimony might be colored by testimony of other witnesses or any person whose presence might have a chilling effect on testifying witness;
- (6) Rule on all motions, witness and exhibit lists and proposed findings;
- (7) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;
- (8) Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material and non-repetitious;
- (9) Make inquiries of the parties or witnesses for the purpose of clarification or fact findings to insure a fair and impartial decision;
- (10) Render decisions pursuant to the particular action taken;
- (11) May require, or allow, the filing of briefs by the parties, and may designate the order and time for filing briefs and reply briefs;
- (12) Close the record when all interested parties have had the opportunity to be heard and to present evidence; ~~and~~ and
- (13) Issue proposed final orders.

(bc) **Disqualification of hearing officer.**

- (1) ~~In the event a hearing officer considers himself/herself disqualified, he/she~~ The Administrative Hearing Officer shall withdraw from the case any individual proceeding in which he cannot accord a fair and impartial hearing or consideration, stating on the record the reasons therefore, and shall immediately notify ODMHSAS all parties of the withdrawal.
- (2) Any party may file a motion requesting the Administrative Hearing Officer withdraw on the basis of personal bias or other disqualification and specifically setting forth the reasons for the request. This motion shall be filed as soon as the party has reason to believe there is a basis for the disqualification. The Administrative Hearing Officer shall rule on said motion.

SUBCHAPTER 7. CHARGES AND REIMBURSEMENT RATES-ELIGIBILITY FOR ODMHSAS SERVICES

450:1-7-4. Charges, ODMHSAS operated facilities

(a) At least annually ODMHSAS shall review all charges for services provided at its facilities, and, if warranted, shall propose a change in the rate of charges for any service(s), based upon the cost of providing said services, or changes in the method/form of reimbursement under the U.S. Social Security Act Titles for Medicare and/or Medicaid.

(b) ~~The Commissioner of ODMHSAS shall report to the Oklahoma State Board of Mental Health and Substance Abuse Services (Board) any recommended revisions to charges for services for adoption by the Board. Should there be revision to charges adopted by the Board:~~

- ~~(1) Said revisions shall be sent to twenty five (25) newspapers throughout the state in a press release within two (2) business days of said adoption; and~~
- ~~(2) Notice of new charges shall be posted in patient/client, visiting and other public areas of each ODMHSAS operated facility~~ Charges for inpatient and outpatient mental health and substance abuse services offered by ODMHSAS facilities are as follows:
- (1) Intermediate inpatient treatment - \$400.00 per day;
- (2) Acute inpatient - \$400.00 per day;
- (3) Medically supervised detoxification services - \$173.00 per day;
- (4) Non-medical detoxification services - \$153.00 per day;
- (5) Residential substance abuse treatment - \$85.00 per day;
- (6) Intensive residential substance abuse treatment - \$187.00 per day;
- (7) Residential treatment for dually diagnosed - \$85.00 per day;
- (8) Halfway house - \$46.00 per day;
- (9) Enhanced residential mental health treatment - \$225.00 per day;
- (10) Residential treatment of mentally retarded/mentally ill - \$350.00 per day;
- (11) Residential treatment for children and adolescents - \$285.00 per day;
- (12) Acute treatment of children and adolescents - \$500.00 per day;
- (13) Competency evaluation - \$81.74 per hour;
- (14) Evaluation and assessment - \$81.74 per hour;
- (15) Clinical testing - \$83.01 per hour;
- (16) Mobile crisis service - \$122.60 per hour;
- (17) Crisis intervention - \$122.60 per hour;
- (18) Individual counseling - \$81.74 per hour;
- (19) Group counseling - \$56.28 per hour;
- (20) Family & marital counseling - \$53.22 per hour;
- (21) Home based services to children & family - \$36.46 per hour;
- (22) Individual rehabilitative treatment - \$63.77 per hour;
- (23) Group rehabilitative treatment - \$16.88 per hour;

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- (24) Case management services - \$83.53 per hour;
- (25) Intensive case management services - \$83.53 per hour;
- (26) Treatment plan review - \$100.09 per visit;
- (27) Pharmacological management - \$33.57 per visit;
- (28) Medical review - \$23.64 per visit;
- (29) Treatment planning - \$135.08 per visit;
- (30) Day treatment - mental health - \$18.28 per hour;
- (31) Psychosocial rehabilitation services - \$18.28 per hour;
- (32) Community-based structured emergency care - \$19.70 per hour.

450:1-7-5. Reimbursement rates, contractors [REVOKED]

~~Reimbursements to contractors for mental health, substance abuse, domestic violence and sexual assault, and residential care services shall be considered and set in the manner described as follows:~~

- ~~(1) Contractors shall annually submit to ODMHSAS a uniform cost report in the form and format determined by ODMHSAS, and within time frames established by ODMHSAS.~~
- ~~(2) ODMHSAS staff shall review and analyze these cost reports, requesting where deemed necessary the submission of supporting clarifying information within fifteen (15) days of said request.~~
- ~~(3) ODMHSAS staff may recommend to the Board fixed uniform rates for services, taking into consideration variables such as average costs, appropriate inflationary factors, capitation methods, performance outcome measures and available funding.~~
- ~~(4) Prior to submitting to the Board the proposed rates and/or changes to existing rates, the following shall occur:
 - ~~(A) The ODMHSAS shall provide written notice of an open hearing on the proposed fixed rates to each applicable contractor of record. Said notice to be sent certified via the U.S. Mails at least twenty (20) calendar days in advance of the hearing.~~
 - ~~(B) The ODMHSAS shall conduct, and make a summary of, the scheduled open hearing.~~~~
- ~~(5) Consideration of the proposed fixed rate by the Board shall not occur until the Director of Department of Central Services has been provided with, pursuant to 74 O.S. § 85.7:
 - ~~(A) Thirty (30) days written notice of the Board Meeting to consider the uniform rates of reimbursement;~~
 - ~~(B) A copy of the Board Meeting agenda item(s) concerning the proposed rate(s); and~~
 - ~~(C) All supporting documentation and materials regarding the reimbursement rates being proposed.~~~~
- ~~(6) The Board shall, at the meeting referenced in (5) (A) and (B) of this section, separately consider each proposed fixed and uniform rates of reimbursement. These rates, if adopted, shall then take effect on a date determined by the Board when the rates are considered for~~

~~adoption; and remain in effect until subsequent Board action.~~

~~(7) Any revision shall be examined, proposed, notices made and given, considered and adopted pursuant to this section.~~

~~(8) Exceptions to the provisions of this section may be made in the event a contract has been competitively bid (74 O.S. § 85.7); or awarded on a sole source basis (74 O.S. § 89); or is otherwise exempt pursuant to 74 O.S. § 85.7(17).~~

450:1-7-6. Liability of Consumer for care and treatment -- Eligibility for Waiver of Liability

(a) A consumer at a facility within the Department is responsible for payment and liable for his care and treatment unless he or she has received a waiver of the indebtedness from the Department.

(b) A consumer at a facility within the Department shall be granted a waiver from payment for services if the following criteria are met:

(1) The individual must be in need of behavioral health services. An individual shall be considered to be in need of behavioral health services if treatment is needed to stabilize, reduce or eliminate the symptoms of, or prevent worsening of any of the following conditions for which a facility within the Department offers treatment needed based on the diagnosis and level of care:

(A) A diagnosable behavioral health condition as defined by the current DSM, excluding a sole diagnosis of developmental disorders or dementia disorders;

(B) A presenting problem(s) that indicates a behavioral health illness or condition;

(C) A level of functioning that indicates the need for behavioral health treatment based on a standard assessment instrument; or

(D) A behavioral health crisis.

(2) The individual must be uninsured. An individual shall be considered uninsured if one of the following apply:

(A) The individual is not covered by private or public insurance and receives no insurance benefits for behavioral health services;

(B) The individual has used all available benefits or coverage allowed for behavioral health services;

(C) The individual has limited benefits for behavioral health services, but the service(s) needed by the individual are not covered by the individual's insurance or plan; or

(D) Except for housing and vocational services, persons receiving behavioral health services through a health maintenance organization are considered to be fully covered for behavioral health services and are not eligible for a waiver of liability.

(3) The individual is indigent. An individual shall be considered indigent if he or she is at or below 200% of the Federal Poverty Guidelines based solely on the individual's applicable income. The indigence requirement does

not apply to persons receiving emergency services or to persons 17 years of age or younger.

(A) "Income" is total annual cash receipts before taxes from all sources, and includes money wages and salaries before any deductions, net receipts from self-employment, regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance (including Temporary Assistance for Needy Families and Supplemental Security Income), training stipends; alimony, child support, military family allotments or other regular support from an absent family member or someone not living in the household, private pensions, government employee pensions, regular insurance or annuity payments, college or university scholarships, grants, fellowships and assistantships, dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.

(B) "Income" does not include non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied non-farm or farm housing, and federal non-cash benefit programs such as Medicare, Medicaid, food stamps, school lunches, loans and housing assistance.

(c) Before any waiver of liability is granted, a report or questionnaire must be prepared which indicates the demographic information including the consumer's name, address if any, telephone number if any, and social security number, the consumer's income, number of dependents and third-party insurance or payer information. Income must be verified by the facility obtaining one of the following:

- (1) The consumer's Internal Revenue Service Form W-2 from the previous year;
 - (2) The consumer's federal or state income tax return from the previous year;
 - (3) Two recent, consecutive paycheck stub(s) showing the pay date, hours worked, types of pay and gross rate of pay;
 - (4) A Medicaid card; or
 - (5) Any government document that verifies income.
- If the facility is unable to verify the consumer's income by an independent source, the consumer or a family member of the consumer must sign an income verification statement before a waiver of liability may be granted.

(d) The executive director of the facility within the Department or his or her designee shall make a determination of whether the consumer meets the criteria for waiver of liability and sign a statement, which must be placed in the consumer's record at the facility, of the reasons for the waiver.

SUBCHAPTER 9. CERTIFICATION AND DESIGNATION OF FACILITIES/SERVICES FACILITIES AND SERVICES

450:1-9-1. Applicability of certification

This subchapter applies to all entities which are subject to certification by the Board, as set forth in 43A O.S., § 3-306 3-306.1 (Community Mental Health Centers); § 3-314.1 (Domestic Violence Shelters and Programs, and Sexual Assault Programs and Batterers Treatment Programs); § 3-315 (Community Residential Care Mental Health Facilities); § 3-317 (Community-based Structured Crisis Centers); and § 3-415 (Substance Abuse Services Alcohol and Drug Treatment Programs); and sets forth the certification processes. [NOTE: The certification process for and Alcohol and Drug Substance Abuse Course (ADSAC) is set forth in OAC 450:21; and for certification of alcohol and drug assessment and evaluation programs related to driver's license revocation is set forth in OAC 450:22] and § 3-319 (Programs of Assertive Community Treatment).

450:1-9-4. Reviewing authority

(a) The Board is responsible for certifying Community Mental Health Centers, Community Residential Care Facilities, Domestic Violence and Sexual Assault Services, Community-based Structured Crisis Centers and Substance Abuse Services shall certify community mental health centers, community residential mental health facilities, domestic violence shelters and programs, sexual assault programs, batterers treatment programs, community-based structured crisis centers, alcohol and drug treatment programs and programs of assertive community treatment as cited in Section 450:1-9-1, and directs that such shall be carried out as stated in this subchapter.

(b) The ODMHSAS is responsible for certifying 10 Hour and 24 Hour ADSAC Instructors and for institutions and organizations providing ADSAC courses in specific locations (as cited in 450:1-9-1 and OAC 450, Chapter 21), and the Board directs such shall be carried out as stated in this subchapter.

(c) The ODMHSAS is responsible for certifying Alcohol and Drug Assessment and Evaluation Programs related to driver's license revocation (as cited in 450:1-9-1 and OAC 450, Chapter 22), and the Board directs such shall be carried out as stated in this subchapter.

450:1-9-5. Qualifications for certifications of facilities and programs and individuals

(a) Qualifications for certification of facilities, programs, organizations/institutions, agencies or individuals (as ADSAC 10 Hour or 24 Hour Instructors or Practitioners of Alcohol and Drug Assessment and Evaluation Programs related to driver's license revocation) are as follows:

- (1) Compliance with applicable Standards and Criteria as set forth in the Chapter of OAC Title 450 regulating the area for which certification is being sought; is required by

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all facilities to qualify for certification. Specific Standards and Criteria are:

- (A) ~~Chapter 18, Standards and Criteria for Substance Abuse Services;~~
 - (B) ~~Chapter 16, Standards and Criteria for Community Residential Care Mental Health Facilities;~~
 - (C) ~~Chapter 17, Standards and Criteria for Community Mental Health Centers;~~
 - (D) ~~Chapter 18, Standards and Criteria for Alcohol and Drug Treatment Programs;~~
 - (E) ~~Chapter 19, Standards and Criteria for Domestic Violence and Sexual Assault Services;~~
 - (F) ~~Chapter 21, Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and Instructors; and~~
 - (G) ~~Chapter 22, Certification of Certified Drinking Driver Alcohol and Drug Assessment Agencies and Practitioners and Evaluation Programs Related to Driver's License Revocation; and~~
 - (H) ~~Chapter 23, Standards and Criteria for Community-based Structured Crisis Centers;~~
 - (I) ~~Chapter 50, Certification of Behavioral Health Case Managers; and~~
 - (J) ~~Chapter 55, Standards and Criteria for Programs of Assertive Community Treatment.~~
- (2) ~~The An applicant for certification must also comply with any applicable statutory licensing provisions. Substance abuse treatment facility applicants, if required, must have review and comment from Oklahoma State Department of Health before submitting the Application for Certification to the ODMHSAS.~~
- (b) ~~A certified Community Mental Health Center which that provides alcohol and drug treatment services in the course of its outpatient or inpatient services, but has no designated or specialized alcohol and drug abuse treatment program component, shall also be considered as a certified provider of alcohol and drug abuse treatment services and will not be subject to additional certification under the alcohol and drug abuse treatment program certification process Certified Services for Alcohol- and Drug-Dependent Standards and Criteria in OAC 450, Chapter 18.~~
- (c) ~~A certified Community Mental Health Center providing alcohol and drug abuse treatment services as a designated or specialized program component shall remain be subject to certification under the substance abuse services certification Certified Services for Alcohol- and Drug-Dependent Standards and Criteria in OAC 450, Chapter 18.~~
- (d) ~~A certified Substance Abuse Certified Services provider for the Alcohol- and Drug-dependent providing community mental health services shall be subject to certification as a community mental health center in OAC 450, Chapter 17.~~
- (e) ~~Certified Substance Abuse Services acting as community mental health centers are responsible for providing all services required as set forth in OAC 450, Chapter 17.~~

450:1-9-6. Procedures for application for certification

- (a) ~~Applicants seeking Applications for certification shall file applications for certification with the ODMHSAS as a community mental health center, community residential mental health facility, domestic violence shelter or program, sexual assault program or batterers' treatment program, community-based structured crisis center, alcohol and drug treatment programs, and programs of assertive community treatment must be made to ODMHSAS in writing on a form and in a manner prescribed by the Commissioner of ODMHSAS and include the following:~~
- (b) ~~An application for certification shall consist of the following:~~
- (1) ~~A fully completed ODMHSAS Application for Certification Form application for certification form signed by authorized program officials;~~
 - (2) ~~The necessary written documentation and/or supporting evidence required on the Application for Certification Form application for certification form; and~~
 - (3) ~~Any The required non-refundable certification fee in the form of a check or money order, payable to the Oklahoma Department of Mental Health and Substance Abuse Services.~~
- (b) ~~The following fees are required:~~
- (1) ~~Applicants for certification as a community mental health center must submit \$150.00 with an initial application and \$150.00 with each renewal application;~~
 - (2) ~~Applicants for certification as an alcohol and drug treatment program shall submit \$100.00 with an initial application and \$100.00 with each renewal application; and~~
 - (3) ~~Applicants for domestic violence shelters or programs, sexual assault programs and batterers' treatment programs shall submit \$100.00 with an initial application and \$100.00 with each renewal application.~~
- ~~Fees paid by applicants are not refundable.~~
- (c) ~~Applicants for certification as 10 Hour and 24 Hour ADSAC Instructors, and institutions and organizations to provide ADSAC Courses shall comply with application procedures in OAC 450, Chapter 21. Applicants for Certification of Alcohol and Drug Assessment and Evaluation Programs related to driver's license revocation shall comply with application procedures in OAC 450, Chapter 22.~~
- (d) ~~The Application for Certification Form application for certification form, required written documentation and fee should must be timely submitted to Oklahoma Department of Mental Health and Substance Abuse Services, Provider Certification Division, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.~~
- (e) ~~The Application for Certification Form application may require a listing of all health care services provided by the applicant's corporate body applicant, as well as specifics about the applicant's program, applicant including (but not limited to) governing authority, administrative, fiscal, all locations or sites where applicant will provide services and types of services to be provided, and physical plant information.~~
- (e) ~~A separate application for each program site operated by the same entity will be required, except in the following~~

circumstance: The entity provides separate outpatient service sites in the same service area, and those service sites are governed by the same authority, and adhere to the same policies and procedures. This standard excludes a private non-profit or state operated community mental health center from making separate application for each program site within their designated service area, regardless of the services offered, with the exception of designated or specialized alcohol and drug abuse treatment programs. If, after being certified, a facility desires to add a service location or offer a new type of service, the facility must submit an application for certification form, the required documentation and fee to Oklahoma Department of Mental Health and Substance Abuse Services, Provider Certification Division, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.

450:1-9-7. Procedures for completion of certification process

(a) **Certification process.** Completion of the certification process will be done in cooperation between the ~~applicant facility's staff~~ applicant and ODMHSAS staff, and consists of:

- (1) a review by ODMHSAS of all application materials;
- (2) an on-site review of the facility ~~program~~ and completion of the applicable site visit protocol by ODMHSAS;
- (3) a review of all records deemed applicable by the ODMHSAS ;
- (4) development and dissemination of report materials by ODMHSAS;
- (5) development and review of any needed plans of correction;
- (6) applicable follow-up on-site reviews; and
- (7) presentation by ODMHSAS staff of the ~~completed application~~ review results and associated recommendations to the Board.

(b) **Initial applications.** All initial applications for certification ~~by facilities not currently certified~~ shall be reviewed for completeness by ODMHSAS staff. If the application is deemed complete, a site review of the facility or program will be scheduled. If the applicant is cited for deficiencies on fifty percent (50%) or more of the applicable standards and rules, based on the initial on-site review findings, a plan of correction will not be requested and a notice of denial of the certification application shall be sent to the applicant by the Commissioner.

(c) **Length of certification process.** ~~If, after being given temporary or certification status, the an applicant for initial certification~~ fails to achieve full certification within six (6) months of the filing of the application, the applicant shall not receive full certification and a recommendation of denial non-renewal or revocation of the existing certification will be made to the Board. In such case, the applicant may reapply by filing a new application for certification form, and submitting the required documentation and fee to ODMHSAS.

(d) Renewal applications.

- (1) ~~The ODMHSAS will, prior to the renewal date, notify facilities or programs the application for renewal of certification is due.~~

(2) The facility shall submit its application for renewal before the expiration of its certification.

(3) Renewal applications for certification shall be reviewed for completeness by ODMHSAS staff. If the facility is cited for deficiencies on 50% or more of the applicable standards and rules based on the site review findings, a plan of correction will not be requested and non-renewal will be recommended to the Board.

(4) If, after being granted conditional certification, an applicant for renewal fails to achieve full certification within four (4) months, the applicant shall not receive full certification and a recommendation of non-renewal of the conditional certification will be made to the Board.

(de) Site reviews.

(1) Initial, renewal, or follow-up site reviews, based on the current certification status of the applicant, will be scheduled and conducted by designated representatives of the ODMHSAS at each location or site of the applicant.

(2) ~~One Only one~~ follow-up site review will be conducted ~~within sixty (60) days of Board action on facilities receiving Conditional or Temporary Certification to determine for the purpose of determining~~ compliance with standards and the plan of correction. For ~~those programs a facility granted Temporary Certification, a the~~ site review will be conducted on standards not applicable during the initial certification visit, and a minimum of five (5) records shall be made available for review.

(3) ~~Additional site reviews may be conducted at the discretion of the ODMHSAS. These site reviews may be with or without notice at the discretion of ODMHSAS. Reasons for additional on-site review include, but are not limited to:~~

- ~~(A) determination of correction of cited deficiencies;~~
- ~~(B) receipt of a complaint;~~
- ~~(C) change in ownership, management, or location;~~
- ~~(D) substantial change in either the service provided or new service(s) initiated;~~
- ~~(E) substantial turnover in staff at the executive and/or professional level;~~
- ~~(F) change in statutorily required licensure status; and~~
- ~~(G) change in external accreditation status.~~

(4) A Site Review Protocol shall be completed during each site visit. Protocols shall contain the current ODMHSAS Standards and Criteria applicable to the facility ~~promulgated under OAC Title 450, including Chapter 15, Patient Rights.~~

- (A) A facility must be prepared to provide evidence of compliance with each applicable standard.
- (B) In the event ~~a the~~ reviewer(s) identifies some aspect of facility operation that adversely affects client safety or health, the reviewer(s) shall notify the facility director and appropriate ODMHSAS staff. An immediate suspension ~~and/or denial~~ of certification may be made by the Commissioner of ODMHSAS.

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(ef) **Accreditation status.** The ODMHSAS may accept accreditation granted by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Commission on Accreditation of Rehabilitation Facilities (CARF) or the American Osteopathic Association (AOA) as compliance with certain specific ODMHSAS standards as identified in the site review protocol. For such to be considered, the facility shall make application and submit evidence to the ODMHSAS of current accreditation status. This evidence shall include documentation of the program or programs included in the most recent accreditation survey, including reports of unannounced visits by the accrediting organization or subsequent actions initiated by the accrediting organization that may affect the accreditation status of the facility, the report of the survey and any corresponding plans of correction, and the dates for which the accreditation has been granted.

(fg) **Deficiencies.** For each standard and rule not met by the facility a deficiency shall be cited.

(gh) **Report to applicant and plan of correction.**

(1) During the course of the certification process, and prior to determination of certification status, ODMHSAS staff shall report the results of the on-site review to the facility. The facility shall receive written notice of the deficiencies in a Certification Report.

(2) The facility must submit a written plan of correction for each deficiency for approval ~~within a schedule~~ within two (2) weeks of the receipt of the Certification Report. ~~Submission of an approved~~ Approval of the plan of correction shall be required prior to presenting before the completed application for certification will be presented to the Board, or its designee. However, if the facility is cited for deficiencies on fifty percent (50%) or more of the applicable standards and rules based on the initial site review findings, a plan of correction will not be requested.

(hi) **Notification of Departmental recommendation for certification.**

(1) After completion of the on-site review and report on the Application for Certification, ODMHSAS staff shall prepare a recommendation on the certification status or application for the Board, ~~its designee, or the ODMHSAS.~~

(2) Prior to the ODMHSAS staff's presentation of its recommendation of an applicant's certification to the Board, the ODMHSAS staff shall notify the applicant of:

- (A) the recommendation, and
- (B) the date and time of the Board meeting at which the facility's application, and the recommended certification will be presented; and
- (C) the requirement of a facility receiving a recommendation of denial, non-renewal, conditional or temporary to have a representative present.

(ij) **Actions on certification applications.** ODMHSAS staff shall make one of the following recommendations to the Board:

- (1) Certification with commendation;
- (2) Certification;
- (3) Conditional certification;
- (4) Temporary certification;
- (5) Denial of initial certification; or

(6) ~~Deny of Non-renewal~~ of certification.

(k) If the Board approves a recommendation to deny an initial certification application, ~~the applicant~~ ODMHSAS shall send the applicant a notice of denial. If the Board approves a recommendation to not renew certification, an individual proceeding shall be initiated pursuant to Subchapter 5 to deny the renewal.

450:1-9-8. Duration of certification status

(a) Certification status of either "Certification with Commendation" or "Certification" shall be for the period of:

(1) Three (3) years for Certified Community Mental Health Centers, Substance Abuse Services Certified Alcohol and Drug Treatment Programs, Community-based Structured Crisis Centers, and Certified Domestic Violence Shelters or Programs, and Certified Sexual Assault Services Programs, Certified Treatment Programs for Batterers, and Certified Programs for Assertive Community Treatment.

(2) One (1) year for Community Residential Care Mental Health Facilities.

(b) Conditional certification granted to applicants for renewal shall be for a period not to exceed four (4) months. During that period, a follow-up site review will be conducted within no less than thirty (30) days and no more than sixty (60) days following the granting of conditional certification to ensure cited deficiencies have been corrected as provided in the plan of correction or to demonstrate continued correction and compliance with the previously cited deficiencies.

(c) Certification or conditional certification granted to an applicant shall not become effective until the first day of the month following the date of the action by the Board, provided however, that the Board or the ODMHSAS may waive this requirement and make the certification or conditional certification effective immediately.

(e) ~~Temporary certification may be granted to applicants for an initial ninety (90) day time period for facilities not currently certified~~ certification of a facility, location or level of service shall be for a period of six (6) months and shall become effective immediately following Board action. One extension of up to sixty (60) days may be granted upon request by the program or ODMHSAS, if, at the discretion of the Board, or its designee, such action is warranted by the circumstances. During that period,

(4) ~~A a follow-up site review will be conducted within no less than sixty (60) days and no more than ninety (90) days of granting temporary certification to ensure the deficiencies cited during the initial site visit have been sufficiently corrected and to assess the program's facility's compliance achieved with remaining applicable standards necessary to meet the requirements for certification.~~

(e) ~~Conditional Certification may be granted for a period not to exceed ninety (90) days, during which the program will be given the opportunity to correct cited deficiencies noted and/or demonstrate continued correction and compliance with the previously cited deficiencies. A follow up site review shall be conducted within sixty (60) days of conditional certification to review the program's progress in correcting cited deficiencies.~~

One extension of up to ninety (90) days may be granted upon request by the program or ODMHSAS, if such action is warranted by the circumstances.

(f) Certification is not transferable. A change of the ownership of a facility automatically terminates any certification status, requiring ~~reapplication~~ application for certification by the new ownership. If the certified facility is owned by a corporation the following applies:

(1) If the corporation is not-for-profit, a change in membership of the Board of Directors of more than fifty percent (50%) of the Directors in three (3) or less calendar months, unless such change was caused by the normal expiration of terms in accordance with the By-Laws of the Board of Directors, shall require the facility to be recertified.

(2) If the corporation is other than not-for-profit, a change in the ownership of more than forty per cent (40%) of the stock in the corporation from the owners at the beginning of the period of certification shall require the facility to be recertified.

(3) It is the responsibility of the facility to notify the ODMHSAS of the occurrence of either of the conditions requiring recertification as set forth in (1) and (2) of this subsection; and to request the application materials for recertification.

(g) Certification may be suspended, revoked, ~~or not renewed~~ with the bases for such action being delineated in Section 450:1-9-9 of this Subchapter.

450:1-9-8.1. Site reviews

ODMHSAS may conduct a site review or visit or an investigation, which may or may not be unannounced. Reasons for such review include but are not limited to:

- (1) determination of correction of cited deficiencies;
- (2) receipt of a complaint;
- (3) change in ownership, management or location;
- (4) substantial change in either the service provided or new service(s) initiated;
- (5) substantial turnover in staff at the executive or professional level;
- (6) change in statutorily required licensure status; and
- (7) change in external accreditation status.

450:1-9-11. Hearings and appeals [REVOKED]

~~Determinations of the ODMHSAS or its Board regarding certification (non-renewal, suspension, revocation) may be appealed by the aggrieved party, and all such appeals and hearings thereto are held, pursuant to the provisions of Subchapters 1 and 5 of this Chapter.~~

450:1-9-12. Reapplication following denial, suspension or revocation of certification

Reapplication for consideration of certification for any program for which certification has been ~~denied~~ suspended, revoked, ~~or not renewed~~ will not be accepted or considered unless at least six (6) months has passed since the ~~decision to~~

~~deny, suspend or revoke was rendered~~ suspension, revocation or non-renewal.

450:1-9-13. Designated Emergency Examination Facilities

(a) ODMHSAS shall maintain a list of facilities designated by the Commissioner as appropriate to conduct emergency examinations to determine if emergency detention is warranted.

(b) The following types of facilities may be placed on the list of designated emergency examination facilities:

- (1) Hospitals licensed by the Oklahoma State Department of Health;
- (2) Community Mental Health Centers certified by the Board pursuant to Chapter 17 of Title 450 of the Oklahoma Administrative Code;
- (3) Community-based Structured Crisis Centers certified by the Board pursuant to Chapter 23 of Title 450 of the Oklahoma Administrative Code; ~~and~~
- (4) Facilities operated by ODMHSAS; ~~or~~
- (5) Hospitals accredited by JCAHO, CARF or AOA.

(c) A facility may request the Commissioner to designate the facility as an emergency examination facility to be placed on the list. The facility shall make a request in writing to the Provider Certification Division of ODMHSAS and verify it has the ability to conduct emergency examinations as defined in 43A O.S. § 5-206(4) and has one or more licensed mental health professionals as defined in 43A O.S. § 1-103(11) capable of performing the functions set forth in 43A O.S. §§ 5-207 and 5-208.

(d) The facility shall receive a letter from the Commissioner notifying the facility ~~it has been~~ whether its request to be placed on the list of designated emergency examination facilities has been granted.

450:1-9-14. Designated Emergency Detention Facilities

(a) ODMHSAS shall maintain a list of facilities designated by the Commissioner as appropriate for emergency detention.

(b) The following types of facilities may be placed on the list of designated emergency detention facilities:

- (1) Hospitals licensed by the Oklahoma State Department of Health;
- (2) Community Mental Health Centers certified by the Board pursuant to Chapter 17 of Title 450 of the Oklahoma Administrative Code;
- (3) Community-based Structured Crisis Centers certified by the Board pursuant to Chapter 23 of Title 450 of the Oklahoma Administrative Code; and
- (4) Facilities operated by ODMHSAS; ~~or~~
- (5) Hospitals accredited by JCAHO, CARF or AOA.

(c) A facility may request the Commissioner to designate the facility as an emergency detention facility to be placed on the list. The facility shall make a request in writing to the Provider Certification Division of ODMHSAS and verify it has the ability to detain a person in emergency detention as defined in 43A O.S. § 5-206(5) and comply with 43A O.S. §§ 5-208 and 5-209.

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(d) The facility shall receive a letter from the Commissioner notifying the facility it has been whether its request to be placed on the list of designated emergency detention facilities has been granted.

SUBCHAPTER 11. RESEARCH

450:1-11-2. Applicability

The ODMHSAS, all subrecipients and all ODMHSAS contractors and their subcontractors involved with (U.S.) Public Health Services research grants, fellowships, or cooperative agreements as ~~described in 450:11-1-1~~ are bound by this subchapter.

[OAR Docket #03-1008; filed 5-21-03]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

CHAPTER 15. CONSUMER RIGHTS

[OAR Docket #03-1009]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

450:15-1-1 [AMENDED]

450:15-1-2 [AMENDED]

Subchapter 3. Consumer Rights

Part 1. Inpatient Mental Health Bill of Rights [AMENDED]

450:15-3-1 [AMENDED]

450:15-3-2 [AMENDED]

450:15-3-3 [AMENDED]

450:15-3-4 [AMENDED]

450:15-3-5 [AMENDED]

450:15-3-6 [AMENDED]

450:15-3-8 [AMENDED]

450:15-3-9 [AMENDED]

450:15-3-10 [AMENDED]

450:15-3-11 [AMENDED]

450:15-3-13 [AMENDED]

450:15-3-14 [AMENDED]

450:15-3-16 [AMENDED]

450:15-3-17 [AMENDED]

450:15-3-18 [AMENDED]

450:15-3-20 [REVOKED]

450:15-3-20.1 [NEW]

450:15-3-21 [AMENDED]

450:15-3-23 [REVOKED]

450:15-3-24 [REVOKED]

450:15-3-25 [AMENDED]

450:15-3-26 [REVOKED]

Part 3. Inpatient Mental Health Grievance Procedure [AMENDED]

450:15-3-35 [AMENDED]

450:15-3-36 [REVOKED]

450:15-3-43 [REVOKED]

450:15-3-44 [REVOKED]

450:15-3-45 [AMENDED]

Part 7. Consumer Access to Health Information [NEW]

450:15-3-60 [NEW]

450:15-3-61 [NEW]

450:15-3-62 [NEW]

450:15-3-63 [NEW]

450:15-3-64 [NEW]

450:15-3-65 [NEW]

450:15-3-66 [NEW]

Subchapter 7. Office of Consumer Advocacy ~~Division~~ [AMENDED]

Part 1. Duties

450:15-7-2 [AMENDED]

450:15-7-3 [AMENDED]

450:15-7-4 [AMENDED]

Part 2. Investigations

450:15-7-5 [REVOKED]

450:15-7-6 [AMENDED]

450:15-7-7 [AMENDED]

450:15-7-8 [AMENDED]

450:15-7-9 [AMENDED]

450:15-7-10 [AMENDED]

450:15-7-11 [AMENDED]

450:15-7-12 [AMENDED]

450:15-7-14 [AMENDED]

450:15-7-15 [AMENDED]

Subchapter 9. Consumer Rights, Non-Inpatient Services

450:15-9-1 [AMENDED]

450:15-9-6 [REVOKED]

450:15-9-7 [AMENDED]

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Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 2-102, 2-108, 2-109, 2-219, 2-220, 2-306, 5-201 and 5-204.

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Subchapter 3. Consumer Rights

Part 1. Inpatient Bill of Rights

450:15-3-20. [REVOKED]

450:15-3-20.1 [NEW]

Part 7. Consumer Access to Health Information [NEW]

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N/A

ANALYSIS:

In accordance with the Administrative Procedures Act, these rule revisions to Chapter 15 are part of the Department's review of Title 450.

These amendments are intended to comply with statutory changes, enhance advocacy services for individuals receiving services from organizations operated or certified by or under contract with ODMHSAS, delete redundant or superfluous language, correct scrivener's errors, and pursuant to 75 O.S. §253 (H)(1) initiate permanent rulemaking for the emergency rules adopted in compliance with the federally mandated Health Insurance Portability and Accountability Act (HIPAA).

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

450:15-1-1. Purpose

This Chapter implements 43A O.S. §§ 2-108, 2-109 and addresses the rights of individuals receiving services, either voluntarily or involuntarily from facilities operated by, certified by or under contract with, the Department of Mental Health and Substance Abuse Services (ODMHSAS) and outlines the rules governing the operation of the ODMHSAS Office of Consumer Advocacy Division, including investigations of alleged consumer rights violations conducted by that Office. It is the intent of ODMHSAS that each individual receiving services has access to, and enjoys, all rights, benefits and privileges guaranteed by the Constitution of the United States and the State of Oklahoma, and federal and state statutes; except those specifically lost through due process of law.

450:15-1-2. Definition

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

"**Abuse**" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer by ~~a caretaker~~ staff responsible for the consumer's health, safety, or welfare, including but not limited to:

- (A) non-accidental physical injury or mental anguish;
- (B) sexual abuse;
- (C) sexual exploitation;
- (D) use of mechanical restraints without proper authority;
- (E) the intentional use of excessive or unauthorized force aimed at hurting or injuring the consumer; or
- (F) deprivation of food, clothing, shelter, or health-care by ~~a caretaker~~ staff responsible for providing these services to a consumer.

~~"**Advocacy Division**" means the division of the Oklahoma Department of Mental Health and Substance Abuse Services responsible for providing assistance to consumers in exercising their rights and investigating allegations of rights violations.~~

"**Advocate**" means an employee of the Office of Consumer Advocacy, who provides assistance to consumers in exercising their rights, listens to their concerns, encourages them to speak for themselves, seeks to resolve problems, helps protect their rights, conducts investigations and seeks to improve the quality of ~~their~~ the consumer's life and care.

"**Advocate General**" means the chief administrative officer of the ODMHSAS Office of Consumer Advocacy Division.

"**Board**" means Board of ~~Directors of Oklahoma Department~~ of Mental Health and Substance Abuse Services.

~~"**Caretaker**" means an agent or employee of a public or private institution or facility responsible for the care of a consumer.~~

"**Consumer**" means an individual, adult or child, who has applied for, is receiving or has received evaluation or treatment services (evaluation or treatment) from a facility operated or certified by ODMHSAS or with which ODMHSAS contacts [43A O.S. § 1-103(g)] and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19 and 23 as client(s) or patient(s) or resident(s) or a combination thereof.

"**Correctional institution**" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house or residential community program operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense, or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial.

"**Department**" or "**ODMHSAS**" means the Oklahoma Department of Mental Health and Substance Abuse services.

"**Designated record set**" means health information, in any medium including paper, oral, video, electronic, film, audio and digital, maintained by or for facilities operated by ODMHSAS for the purpose, in whole or in part, for making decisions about a consumer, that is:

- (A) The medical records about a consumer including but not limited to the intake, screenings, assessments, history and physical examination, psychosocial evaluation, consultation report(s), treatment and continuing care plan, medication record(s), progress notes, psychometric/psychological testing results, discharge assessment, discharge plan, discharge summary, physician orders, immunization record(s), laboratory reports, ancillary therapy notes and reports, and case management records; or
- (B) The eligibility, billing and payment information and minimum data sets maintained by or for the facility.

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(C) Records that are sometimes filed with the medical records but are not part of the designated record set include:

- (i) Administrative records including court commitment paperwork, critical incident reports, peer review or utilization review documents; and
- (ii) Information compiled in anticipation of litigation.

"Exploitation" or **"exploit"** means an unjust or improper use of the resources of a consumer for the profit or advantage, pecuniary or otherwise, of a person other than the consumer through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense.

"Facility" means a public or private agency, corporation, partnership, or other entity operated or certified by ODMHSAS or with which ODMHSAS contacts for to provide the physical custody, detention or treatment of consumers.

"Guardian" means a person appointed by a court to ensure the essential requirements for the health and safety of an incapacitated or partially incapacitated person, the unit, are met, to manage the estate or financial resources of the unit, or both. As used in this subchapter, guardian includes a general or limited guardian of the person, a general or limited guardian of the estate, a special guardian, and a temporary guardian.

"Incapacitated person" means:

- (A) ~~any person who is impaired by reason of mental or physical illness or disability, dementia or related disease, mental retardation, developmental disability, or other cause, and whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person lacks the capacity to manage financial resources or to meet essential requirements for mental or physical health or safety without assistance from others; or~~
- (B) ~~a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act.~~

"Licensed mental health professional" or **"LMHP"** means:

- (A) a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology;
- (B) a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;
- (C) a licensed clinical psychologist;
- (D) a licensed professional counselor as defined in Section 1906 of Title 59 of the Oklahoma Statutes;
- (E) a person licensed as a clinical social worker pursuant to the provisions of Section 1250 et seq. of Title 59 of the Oklahoma Statutes;
- (F) a licensed marital and family therapist as defined in Section 1925.2 of Title 59 of the Oklahoma Statutes;
- (G) a licensed behavioral practitioner as defined in Section 1931 of Title 59 of the Oklahoma Statutes; or

(H) an advanced practice nurse as defined in Section 567.3a of Title 59 of the Oklahoma Statutes specializing in mental health.

"Maltreatment" is used collectively in this Subchapter to refer to abuse, neglect, exploitation, mistreatment, sexual abuse or exploitation, and rights violation.

"Minor" means any person under the age of 18 years except any person convicted of a crime specified in Section 7306-1.1 of Title 10 of the Oklahoma Statutes or any person who has been certified as an adult pursuant to Section 7303-4.3 of Title 10 and convicted of a felony.

"Mistreatment" means an act or omission that:

- (A) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;
- (B) ~~does not rise to the level of abuse or neglect;~~
- (C) ~~results in or creates~~ creates the risk of injury to a consumer; or
- (D) ~~unintentional~~ unintentional excessive or unauthorized use of force.

"Neglect" means:

- (A) the failure of a ~~caretaker staff~~ staff to provide adequate food, clothing, shelter, medical care, ~~and or~~ and supervision which includes, but is not limited to, lack of appropriate supervision ~~which that~~ which results in ~~sexual activity between consumers~~ harm to a consumer;
- (B) the failure of a ~~caretaker staff~~ staff to provide special care made necessary by the physical or mental condition of the consumer;
- (C) the knowing failure of a ~~caretaker staff~~ staff to provide protection for a consumer who is unable to protect his or her own interest; or
- (D) ~~caretaker staff~~ staff knowingly causing or permitting harm or threatened harm through action or inaction ~~which that~~ which has resulted or may result in physical or mental injury.

"OJA" means the Office of Juvenile Affairs of the State of Oklahoma.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"Privacy Officer" means the employee of ODMHSAS designated to provide guidance on state and federal privacy laws.

"Restraint" refers to manual, mechanical and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

"Seclusion" means the placement of an individual or individuals alone in a room or other area from which egress is prevented by a physical barrier.

"Sexual Abuse abuse" means any sexual contact prohibited by state law, including includes:

- (A) rape, incest, or lewd and indecent acts or proposals, as defined by state law, by a ~~caretaker staff~~

responsible for the health, safety, or welfare of the consumer;

(B) oral, anal, or vaginal penetration of a consumer by or union with the sexual organ of a caretaker or other person ~~staff providing services to the consumer~~;

(C) the anal or vaginal penetration of a consumer by a caretaker or other person ~~staff providing services to the consumer~~ with any other object; or

(D) for the purpose of sexual gratification, the touch, feeling or observation of the body or private parts of a consumer by a caretaker or other person ~~staff providing services to the consumer~~; or

(E) indecent exposure by a caretaker or other person ~~staff providing services to the consumer~~.

"Sexual exploitation" by staff with regard to a consumer includes, ~~but is not limited to:~~

(A) staff allowing, permitting, or encouraging a consumer to engage in sexual acts with others or prostitution, as defined by state law, ~~by a caretaker responsible for the consumer's health, safety, or welfare which results in harm to a consumer~~; or

(B) staff allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a consumer in those acts as defined by state law, ~~by a caretaker responsible for the consumer's health, safety, or welfare~~.

"Staff" means an agent or employee of a public or private institution or facility responsible for the care of a client or consumer and providing services to the client or consumer.

"Verbal Abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors by a caretaker or other person ~~staff providing services to a consumer~~ that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.

SUBCHAPTER 3. CONSUMER RIGHTS

PART 1. INPATIENT MENTAL HEALTH BILL OF RIGHTS

450:15-3-1. Applicability

This Part is applicable to all facilities ~~[43A O.S. § 1-103(7)]~~ providing inpatient mental health and substance abuse treatment services; ~~with said facilities~~ either operated by, certified by, or under contract with, ODMHSAS.

450:15-3-2. General rights statement

(a) ~~All persons receiving treatment services from facilities delineated in OAC 450:15-3-1,~~ Consumers shall retain all rights, benefits and privileges guaranteed by the laws and Constitution of the State of Oklahoma and the United States of America, except those specifically lost through due process of law.

(b) In addition to the rights described in (a) of this Section, all persons receiving inpatient mental health services shall have the rights guaranteed by this Part, referred to as the Inpatient Bill of Rights, unless an exception is specifically authorized by this Part or an order of a court of competent jurisdiction.

~~(e) Each consumer has the right to be treated with respect and dignity. Each person has a right to a safe, sanitary, and humane living environment (43A O.S. § 4-101). In addition, every consumer shall have a right to a humane psychological environment that protects him or her from harm or abuse, provides reasonable privacy, promotes personal dignity, and provides opportunity for improved functioning. Each consumer has a right to receive services that are suited to his or her condition, regardless of race, religion, sex, ethnic origin, age, degree of disability, handicapping condition, or ability to pay.~~

450:15-3-3. Notification of the Inpatient Bill of Rights

(a) Each ~~person~~ consumer, upon admission to a facility, shall be notified of rights guaranteed by this Part.

(1) If the consumer is a minor, his parent or legal guardian shall also be informed.

(2) If the consumer has a court ordered guardian, the guardian shall be informed.

(b) Notification shall be accomplished by:

(1) Providing the consumer with ~~the~~ a synopsis, as set forth in OAC 450:15-3-27, ~~and, if requested, the full Inpatient Bill of Rights, (OAC 450:15-3-4 through 450:15-3-26 450:15-3-25).~~ If the consumer cannot understand the language in the summary synopsis, an oral explanation of the synopsis shall be given in a language the person can understand; and the provision of the Inpatient Bill of Rights shall be documented in the consumer's record and signed by the person giving the synopsis or explanation; and

(2) Posting the synopsis of, or the full Inpatient Bill of Rights, in a conspicuous place on each consumer living area, and in area(s) of the facility ~~provided for~~ receiving consumers, visitors and the public.

(c) Facilities shall not have internal operating procedures more restrictive than the Inpatient Bill of Rights. Every consumer shall be notified of facility and unit procedures with which he or she is expected to comply, and the sanctions ~~which that~~ could be imposed for violation.

(d) Employees and volunteers shall be oriented regarding consumers' rights and the constraints of this Part.

450:15-3-4. Right to contact relative or friend or attorney upon admission

Every ~~person~~ consumer shall be allowed to contact a relative or friend and his or her attorney immediately upon admission, either by telephone or mail (43A O.S. § 5-201). No person shall interfere with this right.

450:15-3-5. Right to access to attorneys, personal physician, clergy

~~(a)~~ No limitation may be imposed on a ~~person's~~ consumer's right to communicate by phone, mail or visitation with his or

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her attorney(s), clergy and personal physician, except to the extent that reasonable times and places for the distribution of mail, use of telephones and reception of visitors may be established, and except to the extent set forth in this Part. Telephone usages funds or nonpay telephones, and postage shall be provided in reasonable amounts to consumers otherwise unable to procure same.

(b) ~~Any~~ No consumer who communicates with his or her attorney, clergy or personal physician shall not be coerced directly or indirectly into divulging the nature of ~~that~~ the confidential communication by facility staff. However, the consumer may voluntarily communicate such information.

450:15-3-6. Right to mail, telephone and visitation communication.

(a) Every consumer is entitled to communicate at all times by uncensored, sealed letter mail, either sent out or received, with the director of the facility, relatives, friends, the court which ordered commitment, his or her personal attorney, any physician and other state, federal or local agencies and courts. Sealed mail either to, or from, consumers shall not be delayed in transmittal except as determined by the treating physician and documented in the consumer's clinical record. However, the executive director of the facility or designee may establish procedures regarding the delivery and opening of consumer mail if determined necessary for security or safety precautions.

(b) Every consumer is entitled to unimpeded, private and uncensored communication by telephone, and by personal visit, with persons of his or her choice, except as ~~required~~ determined by the treating physician and documented in the consumer's medical record ~~for clinical or security reasons.~~

(c) No correspondence received by the consumer shall be placed in the consumer's medical record, or any other of the facility's records unless such correspondence provides important information regarding the consumer's medical or mental condition. This prohibition does not apply to correspondence sent directly to facility staff from others.

(d) Each facility shall make telephones ~~reasonably accessible~~ available throughout the facility to ensure calls can be conveniently made and received; ~~correspondence can be mailed; and space is made available for visits. Writing materials, telephone usage funds or nonpay telephones, and postage shall be provided in reasonable amounts to consumers otherwise unable to procure same.~~

(e) Each facility shall make space available for visitation.

(f) Each facility shall provide writing materials and reasonable amounts of postage to ensure correspondence can be written and mailed for those who cannot procure the same.

(g) Reasonable times and places for the use of telephones and for visitation shall be established in writing and communicated to consumers and family, including posting of times and places in conspicuous places, such as the unit or facility bulletin boards in the consumer areas of units and in areas of the facility normally used by the public. Visitation times shall include a liberal mix of weekdays and weekend days, business hours and after-hours in order to maximize the opportunity for visitations. ~~However, the times established shall not have~~

~~the effect of making communications with any of the parties stated in 450:15-3-6(a) impractical.~~

450:15-3-8. Right to freedom from abuse neglect mistreatment, abuse and neglect

(a) ~~No consumer shall be~~ Staff shall not mistreat, physically, sexually, verbally or otherwise ~~abused by staff of a facility~~ abuse any consumer. Neither shall any consumer ~~Visitors or other consumers shall not be permitted to suffer physical, sexual or verbal~~ physically, sexually, verbally or otherwise abuse by ~~other consumers or visitors~~ any consumer. No consumer shall be neglected by a facility or staff of a facility Staff shall not neglect any consumer.

(b) All occurrences or reports of abuse or neglect, whether by staff, consumers or others, shall be promptly reported to the person in charge of the facility, ~~or designee, and as a Critical Incident which shall be promptly investigated (43A O.S. §§ 2-219 and 4-101).~~ The facility director shall insure a critical incident report is completed for each alleged occurrence of abuse or neglect and an investigation conducted.

(c) In cases of sexual or physical abuse, the person in charge of the facility shall promptly inform the County Sheriff or the District Attorney so that a criminal investigation can be ~~begun~~ initiated; if, ~~in the opinion of the Sheriff or District Attorney~~ such an investigation is warranted (43A O.S. § 2-220).

450:15-3-9. Right to freedom of movement

(a) The freedom of movement of a consumer shall not be restricted more than is necessary to provide treatment services; to prevent injury to the consumer or others; or to prevent substantial property damage ~~(except that security precautions appropriate to the condition and circumstances of a consumer admitted by order of a criminal court or transferred from a penal institution may be taken)~~ or as is determined necessary by the executive director of the facility or designee to ensure security and safety.

(b) Freedom of movement privileges, including, but not limited to grounds privileges, or placement on an open unit or less secure area, and the right to freedom of movement shall not be withdrawn from a consumer to punish, or discipline, or as a convenience for staff or the facility. A forensic consumer's freedom of movement may be restricted more if determined by the treating physician in conjunction with the his or her legal status.

(b) ~~Withdrawal of privileges must be decided by the treating physician and the reasons for restriction(s) documented this or any other privileges shall be used only as a therapeutic measure; or to prevent the consumer from causing physical harm to himself or others; or substantial property damage; or to prevent involuntarily committed consumers from leaving the facility prior to discharge.~~

450:15-3-10. Right to use of money

(a) For purposes of this Section, "money" includes any legal tender, note, draft, certificate of deposit, stock, bond, check or credit card.

(b) A consumer has the right of easy access to money in his or her personal account at the facility and to spend or otherwise use the money as he or she chooses, except as limited in this Section. ~~However, funds provided to the facility for a consumer's account in the form of a personal or business check, will not be credited to the consumer until the check has cleared the banking system. This delay will be of the length of time approved by the Federal Reserve System, and imposed by banks. This delay of the availability of funds does not apply to monies provided via money orders, certified or cashier's checks, or checks drawn on state or federal governments.~~

(c) The facility may require either all, or part, of the money which is on the person of a consumer, or which comes to a consumer, or which the facility receives on behalf of the consumer under a benefit arrangement, or otherwise, be deposited with the ~~Finance Office~~ facility for safekeeping in a personal account in the consumer's name. The money, and transactions affecting it, shall be accounted for in the name of the consumer and recorded in the consumer's account records. The consumer, his or her attorney, or his or her legal guardian shall be provided a copy of the account and transactions at the consumer's or legal guardian's request.

(d) A consumer's easy access to his or her money and ability to spend money in his or her account may be denied or limited by the facility only after a determination is made by the treatment team, supported by facts, that the limitation is necessary and essential to prevent the consumer from unreasonably and significantly dissipating his or her assets. Any such denial shall be fully documented in the consumer's medical record. Even where denial is made, the consumer shall continue to be allowed to spend or use the money in ways which would not constitute unreasonable and significant dissipation of his or her assets or engaging in illegal activities including but not limited to exploitation of other consumers.

(e) The facility is prohibited from withdrawing funds from a consumer's personal account to pay for services rendered by the facility, except with the written consent of the consumer, if he or she is legally competent, or his or her legal guardian.

(f) Money in a consumer's personal account at the facility may be deposited with an outside financial institution at the request of the consumer if he or she is legally competent, or so deposited on the request of a legal guardian. ~~Any earnings from the money so deposited shall be credited to the consumer's account.~~

(g) All money, including earnings, in a consumer's personal account shall be delivered to the individual upon his or her release from the facility, or to his or her legal guardian if the individual is under a legal guardianship and the guardian requests the money be delivered to the guardian rather than directly to the individual.

450:15-3-11. Right to personal property

(a) Every consumer is entitled to receive, possess and use all his or her own personal property, including clothing, except in the circumstances and under the conditions below:

(1) ~~Facility directors or chief executive officers policy may prohibit particular kinds of personal property from the facility. Any exclusions shall be in writing and the~~

~~information disseminated to consumers and family on admission.~~

(2) ~~Persons authorized by written facility procedures may limit access to a consumer of specific personal property if such limitation is essential to:~~

(A) Prevent theft, loss or destruction of property;
(B) Prevent the consumer from physically harming him or herself or others;

(C) Achieve a compelling treatment objective if the personal property would interfere with the consumer's treatment plan; or

(D) To eliminate the introduction of functionally unsafe equipment into the premises not already specifically controlled by OAC 450:15-3-11 (a)(1); or

(5) As otherwise listed in facility policy.

(b) Any personal property removed from a consumer's control as determined by the treatment team, and the reasons therefore, shall be noted in the consumer's record ~~under signature of the staff authorized to carry out the written procedure.~~ Any personal property so removed shall be safely and prudently stored until it can be returned to the consumer. ~~If it cannot be returned to the consumer, then it shall be either safely and prudently stored until the consumer is discharged, or turned over to a person designated by the consumer with a receipt for the property being obtained. If the facility has concerns of the safety of property being returned, every effort shall be made to turn the property over to a person of the consumer's choice.~~

450:15-3-13. Right to vote

Each consumer who is eligible to vote according to law has the right to vote in all primary and general elections. Each facility shall make reasonable efforts to enable eligible persons to register to vote, to obtain applications for absentee ballots and comply with other requirements which are prerequisite to voting, and to vote.

450:15-3-14. Right to individualized, competent prompt treatment

(a) Every consumer shall be provided with prompt, competent, and appropriate individualized treatment that offers the consumer a realistic prospect of improvement. Consumers shall be afforded treatment by sufficient numbers of duly qualified facility personnel that meet applicable licensing or certification or accreditation standards; ~~who~~ and conform to applicable rules of ODMHSAS.

(b) ~~Consumers shall receive treatment which is individualized to their illness/condition and needs.~~

(c) ~~Adult (age 18 or over) consumers who consent to the involvement of family member, or significant others, shall have those persons actively involved in their treatment.~~

(d) Every consumer or his or her legal guardian shall be afforded the opportunity, ~~and encouraged,~~ to be actively involved in their the consumer's treatment. Family members or significant others shall be afforded the opportunity to be involved in the consumer's treatment with the consent of the consumer.

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(e) ~~The custodial parent or legal guardian of minors, and the legal guardian of adults for whom a guardian has been appointed by a court, shall be afforded the opportunity, and encouraged to be actively involved in the consumer's treatment.~~

450:15-3-16. Rights regarding medication and treatment during pre-screening detention

(a) All consumers shall be free from unnecessary, inappropriate or excessive medication. Medications shall not be used for convenience of staff, to punish, or as a substitute for a treatment program.

(b) ~~All medication usage, prescribing, ordering, dispensing, administration and monitoring of, shall be in compliance with 43A O.S. § 4-101.~~

(c) ~~Consumers who are, or who become, voluntary admissions (43A O.S. § 5-301.1) shall be medicated only upon the informed consent of the consumer. During the detention periods authorized by 43A O.S. § 5-200 or during the time set forth for emergency examination, appropriate treatment and medication including psychotropic medications, may be administered to a consenting individual.~~

(c) ~~If the a consumer refuses medication and constitutes a danger to themselves risk of harming self or others, then it is the physician's responsibility to initiate an emergency detention or involuntary commitment under pursuant to 43A O.S. §§ 5-206, et seq.~~

(d) ~~Consumers who are involuntarily committed (43A O.S. § 5-206, et seq.), appropriate treatment Treatment and medication, including psychotropic medication, may be administered to a non-consenting individual under the following conditions pursuant to (43A O.S. § 5-204):~~

(1) ~~Consenting individual after meeting informed consent criteria;~~

(2) ~~Nonconsenting individual only upon a written order of a physician who has personally examined the consumer; and~~

(2) ~~who finds an emergency exists wherein such medication or treatment is necessary to protect the consumer, the facility, or others from serious bodily harm; and~~

(3) ~~who so notes the emergency in the individual's medication record, with an explanation of the facts leading up to the decision to administer treatment and medication, including psychotropic medication. Use of involuntary medication shall not continue beyond the emergency unless either the consumer consents or the consumer is declared legally incompetent and the guardian consents.~~

(3) ~~Consumer is under the control and authority of the Oklahoma Department of Corrections.~~

(4) ~~Without consent of the consumer, psychotropic medication shall not be given on the day preceding, or the day, of any court hearing.~~

(e) Seclusion and restraint may be administered to a non-consenting individual upon the written order of a physician who has personally examined the patient and who finds that seclusion or restraint is necessary to protect the patient, the facility, or other persons. The physician shall note in the patient's chart an explanation of the decision to administer seclusion and

restraint. This shall not prohibit emergency seclusion and restraint pending notification of a physician.

(f) If the person is under the influence of psychotropic medication during any court hearing held pursuant to 43A O.S. § 5-400, the court and the jury, if any, shall be advised by the District Attorney at the beginning of such hearing that such consumer is under the influence of psychotropic medication, the purpose and effect of the medication.

450:15-3-17. Right to informed consent regarding treatment

(a) Consumers shall be informed of their proposed and ongoing treatment, including participation in their treatment plan (450:15-3-14) and of the reasonable expectations and consequences of his or her following or not following the plan.

(b) Consumers shall be informed of said rights including the right of ~~voluntary consumers who are voluntarily admitted~~ to refuse treatment and the qualified right of involuntary consumers to refuse treatment, which shall be noted in the consumer's record.

(c) Consumers shall be informed of the benefits, risks (including side effects, both long and short term) of medications prescribed.

(d) ~~However, in an emergency situation In the presence of a significant change in the consumer's condition which creates an emergency condition and danger to the consumer or to others,~~ the attending physician may order necessary treatment for the consumer without obtaining informed consent. The circumstances constituting the emergency condition shall be documented in the consumer's medical record. ~~An emergency situation is defined as a significant change in the consumer's condition which creates danger to the consumer himself or to others.~~

450:15-3-18. Right to consultant opinions

(a) Every consumer has the right to request the opinion of an outside medical or psychiatric consultant at his or her own expense and the facility shall not impede access between the consultant and the consumer.

(b) Every consumer shall have a right to an internal consultation upon request, at no expense. The second opinion shall become part of the clinical record.

(c) The clinical director shall review the second opinion as well as the treatment team's opinion and shall document decision.

450:15-3-20. Rights regarding release of consumer related information either contained in the medical record or otherwise held by the facility [REVOKED]

(a) ~~Consumer related information held by facilities which are either contained in the treatment record, or which would identify a specific consumer by name, including but not limited to census forms, consumer financial account records, receipts, insurance forms, Medicaid/Medicare forms, are confidential and privileged (43A O.S. §§ 1-109, 3-422, 3-423; 76 O.S. § 19; 63 O.S. § 1-502.2) and additional confidentiality protections~~

are present for consumers being treated for substance abuse (Federal Regulations, 42 C.F.R., Part 2). Therefore, information regarding consumers cannot be released without the written permission of the consumer or legal guardian, except as provided under state and federal law.

(b) ~~The specific conditions for a consumer to grant the release of confidential information about him or herself requires:~~

- (1) ~~Use of a specific form; and~~
- (2) ~~The release shall be to a specific person or entity; and~~
- (3) ~~The specific reason for the release; and~~
- (4) ~~The information which shall be released; and~~
- (5) ~~The time limit of the validity of the consent to release; and~~
- (6) ~~That consumer information is confidential and enjoins certain standards and federal procedures;~~
- (7) ~~Prohibition against redisclosure;~~
- (8) ~~Consumer's signature authorizing the release of the information; and~~
- (9) ~~The consumer being informed that services are not contingent upon, or influenced by his or her decision to permit the information release.~~

(e) ~~There are, however, conditions and circumstances under which consumer information may be viewed or released without the consumer's consent or knowledge. These conditions include:~~

- (1) ~~Accrediting or certifying or licensing groups/agencies such as the ODMHSAS, Health Care Finance Agency (U.S. Department of Health and Human Services), Oklahoma Department of Human Services, as the state Medicaid agency, Joint Commission on Accreditation of Health Care Organizations, Council on Accreditation of Rehabilitation Facilities, American Osteopathic Association, Oklahoma Department of Health, which review some individual consumer records as a part of the accrediting or certification or payment or licensing process.~~
- (2) ~~The order for release of consumer information by a court of competent jurisdiction.~~
- (3) ~~Between and among facilities operated by ODMHSAS or facilities under contract with ODMHSAS which have executed a Qualified Service Agreement (43A O.S. §1 109 and 63 O.S. §1 1502.2); however, such release is limited to the minimum information needed to initiate and/or continue treatment.~~
- (4) ~~The consumer is not competent and a guardian has been appointed by a court of competent jurisdiction.~~
- (5) ~~A statutory requirement such as reporting: child abuse (21 O.S. §§ 843 through 848 and Oklahoma Administrative Code Title 310), elderly or incapacitated adult abuse (43A O.S. §10 101 et seq.), reporting of communicable diseases to an outside entity (63 O.S. § 1 503).~~

450:15-3-20.1. Consumer rights regarding confidentiality of mental health and drug or alcohol abuse treatment information

(a) All mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are

both privileged and confidential. In addition, the identity of all consumers who have received or are receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the consumer unless an exception under state or federal law applies. The information available to persons or agencies actively engaged in the treatment of the consumer shall be limited to the minimum amount of information necessary for the person or agency to carry out its function or the purpose for the release. Nothing in this section shall prohibit disclosure of information as required in 22 O.S. § 1175.

(b) A consumer or his or her legally authorized representative shall have the right to request access to the consumer's own mental health and drug or alcohol abuse treatment information as provided for in 450:15-3-60.

(c) Unless an exception applies, all facilities operated by ODMHSAS will provide consumers with a copy of the ODMHSAS Notice of Privacy Practices.

450:15-3-21. Rights regarding labor by consumers

(a) ~~Consumers shall not be forced to. A consumer may perform labor which contributes to the operations and maintenance of the facility for which the facility would otherwise employ an individual under the following conditions: However, consumers may voluntarily perform labor that would be consistent with his or her treatment plan and which does not require an excessive amount of time. Performance of such labor shall in no way be made a condition for discharge or privileges.~~

- (1) The consumer voluntarily agrees to perform the labor;
- (2) Engaging in the labor would not be inconsistent with the consumer's treatment plan;
- (3) The amount of time or effort necessary to perform the labor would not be excessive as determined by and outlined in the treatment plan;
- (4) The consumer is compensated appropriately and in accordance with the applicable federal and state minimum wage laws; and
- (5) Discharge and privileges are not conditioned upon the performance of such labor.

(b) ~~A consumer who chooses to perform labor which contributes to the operation and maintenance of the facility, and who takes the place of an employee, shall be compensated in accordance with applicable federal and state minimum wage laws for his labor.~~

(c) ~~A consumer who performs labor for a person or agency other than that described in subsection (b) shall be compensated at an appropriate amount if an economic benefit to the person or agency results from his labor. The consumer shall be compensated in an appropriate amount by such person or agency.~~

(d) ~~Labor constituting The provisions of this section shall not apply to bonafide "work therapy" which is part of the consumer's treatment plan shall be an integral part of the consumer's individualized care and treatment plan. The amount~~

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of compensation may be set by the facility. Work therapy shall be:

- (1) in the best interest of the consumer;
 - (2) therapeutic in nature and purpose;
 - (3) part of the consumer's documented treatment plan;
 - (4) documented in the consumer's medical record with a rationale for the work therapy;
 - (5) voluntarily entered into by the consumer;
 - (6) compensated by the facility at a rate derived from the value of the work performed; and
 - (7) compensated in accordance with federal and state minimum wage laws if the primary benefit is to the facility.
- (c) Subsections (a) and (b) of this section shall not apply to matters of personal housekeeping, personal maintenance, communal living or tasks oriented to improving life skills. These activities shall not primarily benefit the facility.
- (d) Payment pursuant to this section shall not be applied by the facility to offset the costs of maintenance of persons receiving treatment in the facility, unless the consumer authorized such payment or offset in writing.
- (e) Labor of a personal housekeeping nature, labor performed as a condition of residence in a small group living arrangement or tasks oriented to improving community living skills, shall not be included under the term "labor" as discussed in this Section and shall be exempted from the requirements of this Section.
- (f) Payment to consumers performing labor, as permitted in this Section, or participating in "work therapy", as defined in this Section, shall not be applied by the facility to offset the cost of maintenance of consumers in the facility, unless the consumer authorizes such payment or offset in writing (43A O.S. § 4-108).

450:15-3-23. Right to assert grievances [REVOKED]

- (a) A consumer shall have a right to assert grievances with respect to an alleged infringement of his or her rights and shall have the right to have such grievances considered through a fair, timely and impartial grievance procedure.
- (b) Each non-ODMHSAS operated facility under contract with or certified by ODMHSAS shall adopt policies and procedures appropriate to the facility's structure or organization to implement a grievance procedure for consumers.
- (c) Any grievances may also be asserted through the consumers' government or ODMHSAS Advocate General, either directly to the Advocate General, 900 E. Main Street, P.O. Box 151, Norman, OK 73070, (405) 573-6605 or 1-888-866-699-6605. No consumer shall be retaliated against, coerced, or treatment altered either solely or partially because of his or her having asserted, a grievance regarding his or her rights stated in this or any other Part of OAC Title 450; any state/federal statute, the Constitutions of the State of Oklahoma and the United States.

450:15-3-24. Right to competence examination and statement [REVOKED]

- (a) Every consumer committed prior to June, 1977, whose legal competency has not since been restored shall, prior to

discharge, be examined by a physician to determine if he or she is presently mentally competent. If the consumer is competent, the examining physician(s) shall execute a certificate of restoration of competency in triplicate and place one copy in the consumer's facility record, give one copy to the consumer and submit the final copy to the district court committing the consumer (43A O.S. § 7-110).

(b) Every consumer who has applied for social security benefits, whose award is contingent upon a physician's statement regarding the ability of the consumer to manage his or her affairs, is entitled to have such physician's statement returned to the Social Security Administration promptly to avoid unnecessary delay in the processing of the social security application and loss of benefits.

450:15-3-25. Right to information and services to be provided consumers being discharged

- (a) All consumers shall be actively encouraged to be involved in their discharge planning and plan, and afforded such involvement except when the consumer is returning to a correctional facility. In addition, with the exception noted above and with the permission of the consumer, the consumer's family or designated friend(s) shall be encouraged to be involved in the discharge planning and afforded such involvement.
- (b) No consumer, except when the consumer is discharged to a correctional facility, shall be discharged without:
- (1) Sufficient medications for two (2) weeks to enable the consumer to continue the course of medication prescribed until an initial outpatient appointment pursuant to 43A O.S. § 7-102 (B);
 - (2) A referral and appointment, in writing, with a community-based facility for aftercare and followup, if consumer accepts such referral;
 - (3) Clothing suitable to the season and weather;
 - (4) Presence, or provision of for, transportation to the place to which consumer has been discharged; and
 - (5) All the consumer's funds being returned to the consumer.
 - (6) Any consumer who does not have sufficient funds to reach relatives, friends or other living accommodations shall be provided with money to help defray transportation and other initial expenses following release.
- (c) Consumers may refuse any or all of (b) of this Section. For consumers released by the court, at a hearing for commitment or continuation of commitment (43A O.S. § 5-401 et seq.) releases, it may not be possible to provide all of the above the requirements specified in this section. Situations Such situations regarding consumer or family or designated friend(s) refusal, or release by the court, as previously described, must be documented in the consumer's clinical record.
- (d) As a part of the regular discharge planning procedure, consumers likely to be in need of public assistance after their discharge from the facility, shall be assisted in meeting with the local County Department of Human Services worker and in making application for any benefits for which they may be eligible.

450:15-3-26. Right to freedom from retaliation [REVOKED]

No consumer shall be retaliated against, coerced, or treatment altered either solely or partially because of his or her having asserted, a grievance regarding his or her rights stated in this or any other Part of OAC Title 450; any state/federal statute, the Constitutions of the State of Oklahoma and the United States.

PART 3. INPATIENT MENTAL HEALTH GRIEVANCE PROCEDURE

450:15-3-35. Applicability

This Part is applicable to those facilities operated by, certified by, or under contract with, or subcontracting through a facility which is under contract with ODMHSAS, the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) (pursuant to 43A O.S. § 2-102, et seq) and which provide inpatient or residential services.

450:15-3-36. Policy, procedures and provisions for grievances, ODMHSAS operated facilities [REVOKED]

(a) Each of the facilities operated by ODMHSAS shall provide consumers reasonable opportunity, or access, to seek relief and protection from accidental or intentional abridgement of personal rights.

(b) A consumer advocate is available in each facility to serve consumers for any alleged consumer rights violation. The following grievance procedure shall be utilized by consumers to grieve a decision made by hospital staff to which the consumer objects, and which especially affects the consumers' rights as defined in OAC 450:15, Subchapter 3, Part 1. Where the affected consumer has a legal guardian, the guardian may, acting on behalf of the consumer, likewise initiate a grievance hearing.

(c) Whenever the consumer's grievance appears not to have merit, the consumer advocate shall continue to investigate and inform the consumer that due to lack of merit or supporting data, the findings may not be complete. However, the consumer advocate shall continue to monitor the situation surrounding the complaint, and the consumer shall be advised of the services of the external Protection and Advocacy Agency. Whenever the consumer's grievance with merit is not resolved to the consumer's satisfaction, the consumer advocate shall proceed as provided in this Chapter.

(d) Informal efforts to resolve complaints shall be employed prior to the convening of a grievance hearing (hearing), by the treatment team. If resolution is not obtained within five (5) calendar days, a hearing shall be required.

(e) When a hearing is required, it shall be conducted by a Grievance Hearing Committee (committee) composed of a senior staff M.D. or D.O., if available, and if not, a mental health professional, and any two of the following three disciplines: psychologist, a registered nurse or a social worker. Committee members (including a chairperson) are to be appointed by the director with the consent of the consumer advocate. No

committee member may be appointed to review a grievance in which he or she is directly involved.

(f) If the grievance involves the conduct or actions of the superintendent or director, the Committee, (and chairperson), shall be appointed by the Commissioner of the ODMHSAS, of persons not employed by the facility of the superintendent or director against whom the grievance is made. Further, the Committee shall make its report/finding directly to the Commissioner of ODMHSAS and the Consumer Advocate General.

(g) The committee shall, based upon the facts presented at the hearing, render written findings. Said findings shall be submitted to the director of the facility (unless the committee was appointed under (f) of this Section) and the Commissioner of ODMHSAS.

(h) An emergency shall, for the purposes of this Part, be a medical or clinical determination that immediate measures must be taken to prevent consumer or staff injury or person endangering property damage. Documentation requirements shall include:

- (1) the supporting facts leading to, or creating, the need for immediate action;
- (2) alternative approaches attempted or reasons not attempted; and
- (3) physician's order for the therapeutic response.

(i) For good cause shown, persons appointing the committee may extend the time allowable at any phase of the investigative process.

(j) In response to a documented emergency, action to impose restrictions or administer medication(s) shall not be impeded. The consumer may, however, seek relief, following the action, through the grievance procedure; with a review being held within one day (excluding weekends and legal holidays) from the receipt of the consumer's completed Grievance Form. In the event a resolution satisfactory to the complainant is not found, a grievance hearing will be required.

(k) In response to a treatment decision by clinical staff, action to impose restrictions shall not be carried out until the grievance procedure is complete.

(l) If a consumer or legal guardian objects to any decision which affects any right(s) under Subchapter 3 of this Chapter, the physician or treatment team members shall advise the consumer or legal guardian of the reasons for the decision and the consumer's rights under this Subchapter.

- (1) If, following notice and explanation, the consumer or guardian voices no desire to appeal the decision by use of this procedure, the decision shall be implemented as deemed appropriate by the treatment team. If the consumer or guardian objects to the decision and wishes to file a grievance, the treatment team shall insure the complainant receives the Consumer Grievance Form immediately or as soon as possible. The complainant (consumer or legal guardian) shall complete the grievance form stating the circumstances of the grievance. All forms must be signed and dated by the grieving party. Consumers who are unable to write, or who have difficulty expressing their complaint in writing without assistance, may obtain aid from the Consumer Advocate in completing the

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Grievance Form. After completing the Grievance Form, the complainant submits the form to a member of the treatment team.

(2) The physician or treatment team shall document in the medical record the fact the consumer received notice of the treatment team's decision, was advised of his or her rights, and whether the consumer agreed or objected to the decision.

(3) The complainant may select a representative to aid in the presentation of his or her case or may elect to represent self.

450:15-3-43. Grievance Hearing ODMHSAS operated facilities [REVOKED]

Upon notification that a Grievance Committee Hearing is required, the facility director, or designee, shall:

(1) select the committee members;

(2) complete the appropriate section of the Grievance Form; and,

(3) within one day, deliver the Grievance Form to the chairperson of the committee. The committee shall, within two days, set a date and time to hear the grievance.

(A) Where an emergency existed and the subject of the grievance relates to an action which has already been taken by the consumer's treatment team, the hearing must be set within three days, excluding weekends and legal holidays, from the date the Grievance Form was received by the person appointing the committee. In other cases the Hearing may be held any time agreeable to the parties, providing, however, that no action to implement the decision objected to by complainant may be taken until the committee findings have been submitted and an opinion or action is initiated by the person receiving the finding.

(B) The committee may postpone the hearing date/time providing that all parties, including complainant, agree. If the hearing date/time is to be changed, a memo stating reason and demonstrating agreement of parties by signature shall be attached to the grievance form.

(C) The committee shall insure that the hearing is conducted without spectators and in an orderly fashion. The committee may question anyone who has information relevant to the issue; shall interview or hear witnesses one at a time and provide reasonable opportunity for cross-examination/rebuttal by the consumer or representative.

(D) The Committee shall permit information from consumer's hospital or facility record to be used by staff only as an aid to recall relevant events and not as a substitute for testimony. The committee may grant a continuance of the hearing if a person (whose statement is believed essential to determination of the issue) is not available or for any other reasonable cause.

(E) The Hearing shall be tape recorded and subject to review as needed, with the approval of the person appointing the committee.

(F) Following the Hearing, the Committee shall arrive to an agreement as to facts relating to the issue and formulate findings of facts related to the issue.

(G) The person appointing the committee shall, within one day (excluding weekends and holidays) review the committee's findings and:

(i) Take any action appropriate based upon the findings.

(ii) Provide the complainant with a written summary of the action taken based upon the committee findings.

(iii) Direct, and insure that a complete record of all materials and documents involved in the grievance are transmitted to the Advocate General who shall be responsible for retention of said materials and documents in conformity with Records Disposition Schedule 88-17A as approved by the Oklahoma Archives and Records Commission.

450:15-3-44. Appeals [REVOKED]

The complainant may, within two business days of receipt of the action taken based upon the findings of the committee, appeal said actions in writing, to the Commissioner.

(1) Such appeal shall state, specifically all areas and reasons of disagreement.

(2) Such appeal shall not affect the action taken.

(3) The Commissioner shall consider the appeal and take whatever action he or she deems appropriate, so informing the appellant in writing.

450:15-3-45. Grievance procedures and policy, facilities under contract with ODMHSAS

Facilities either under contract with ODMHSAS, or subcontracting through a facility which is under contract with ODMHSAS, for the provision of inpatient services shall insure that said services incorporate a consumer's grievance procedure which provides have a written grievance policy that includes:

(1) Public A written notice of the grievance procedure is provided to consumers, and their guardians or families, of the procedure each consumer or guardian and, if involved with the consumer, to family member(s) or significant other(s).

(2) Time frames of disposition at least equal to OAC 450:15-3-36 through 450:15-3-44 for the grievance procedures which allow for a resolution within fourteen (14) days.

(3) Provision for appeal to the facility's governing board-Procedure for providing written notification to the consumer advising that he or she has the right to make a complaint to the ODMHSAS Consumer Advocacy Division.

(4) All persons involved in disposition of the grievance are not directly involved in the grievance Name(s) of the individual(s) who are responsible for coordinating the grievance procedure and the individual responsible for or authorized to make decisions for resolution of the

grievance. In the instance where the decision making is the subject of a grievance, decision making authority shall be delegated.

(5) A written record of the grievance, and all hearings, disposition, appeal, disposition of appeals, is maintained for not less than five (5) years mechanism to monitor the grievance process and improve performance based on outcomes.

(6) Consumer or guardian attendance at all grievance hearings. An annual review of the grievance policy and procedure.

(7) Consumer right to examine or cross examine all witnesses and rebut document submissions.

(8) The ODMHSAS Advocate General shall have immediate and unfettered access to all facility materials relating to grievance procedures and grievances.

PART 7. CONSUMER ACCESS TO HEALTH INFORMATION

450:15-3-60. Right to Access Designated Record Set from Facilities Operated by ODMHSAS

(a) A consumer has a right to access his or her health information in the designated record set from facilities operated by ODMHSAS.

(b) The process for requesting access to read or request copies of the designated record set from ODMHSAS facilities is as follows:

(1) The consumer shall obtain a Consent for Release of Confidential Information form from the facility's health information department, complete it and submit it to the facility's health information department director or designee. If the consumer requests a copy from the designated record set, the facility may charge the consumer a fee of twenty-five cents (\$0.25) per page for copying the information and the actual mailing expenses when applicable.

(2) If the facility does not possess the information the consumer requests but knows where it is maintained, the health information department shall inform the consumer where to direct the request.

(3) The health information department shall coordinate the request for access to the designated record set with the person in charge of the care and treatment of the consumer.

450:15-3-61. Denial of Access to the Designated Record Set from Facilities Operated by ODMHSAS

(a) ODMHSAS may deny, in whole or in part, the designated record set under certain conditions. Some denials provide the consumer with a right to a review of the denial while others do not.

(b) The consumer does not have a right of review for a denial of access if the denial is made on the following bases:

(1) If the facility is a correctional institution or acting under the direction of a correctional institution, and access to a copy of the information in the designated record

set would jeopardize the health, safety, security, custody or rehabilitation of the consumer or other inmates, or the safety of any officer, employee or other person at the correctional institution or responsible for the transporting of the consumer.

(2) The information in the designated record set was obtained by the facility in the course of research that includes treatment of the research participants, while such research is in progress, provided the consumer has agreed to the denial of access in conjunction with the consumer's consent to participate in the research and the facility has informed the consumer the right of access will be reinstated upon completion of the research.

(3) The information in the designated record set was obtained under a promise of confidentiality from someone other than a health care provider and such access would be reasonably likely to reveal the source of the information.

(c) The consumer has a right of review for a denial of access if the denial is made on the following bases:

(1) A licensed mental health professional has determined, in the exercise of professional judgment, that access to the designated record set by the consumer is reasonably likely to endanger the life or physical safety of the consumer or another person;

(2) The requested designated record set makes reference to another person unless such other person is a health care provider and a licensed mental health professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or

(3) The request for access is made by the consumer's personal representative and a licensed mental health professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the consumer or another person.

(d) In lieu of providing access to the designated record set, the facility may provide the consumer with a summary of the requested information, if the consumer agrees in advance to such a summary.

450:15-3-62. ODMHSAS action on consumer's request for access to the designated record set from facilities operated by ODMHSAS

(a) ODMHSAS shall act on the request for access to the designated record set within the following time periods:

(1) If the requested information from the designated record set is readily available, the health information department shall within thirty (30) days of the receipt of the request inform the consumer of the approval or denial of the request and if approved provide the access to the designated record set; or

(2) If the requested information is not stored on the facility premises, the health information department shall within sixty (60) days from receipt of request inform the consumer of the approval or denial of the request and if approved provide the access to the designated record set.

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(b) If the health information department is unable to provide response within these timeframes, it shall send a letter to the consumer, which shall inform the consumer of the delay and state the date by which a response to the request will be provided. The deadline can be extended for no more than 30 additional days and the facility may extend the deadline once per request for access.

(c) If a decision is made to deny the request for access, the health information department of the facility shall send the consumer a letter stating the basis of the denial and, if applicable, providing a statement of the consumer's right for review of the denial and how to exercise such review rights. The letter must also include a description of how the consumer may complain to the ODMHSAS Office of Consumer Advocacy or to the U.S. Secretary of the Department of Health and Human Services. The description must also include the name, or title, and telephone number of the Office of Consumer Advocacy.

450:15-3-63. Consumer's request for review of denial of access to the designated record set from facilities operated by ODMHSAS

(a) If a facility denies a request for access to the designated record set on the basis of one of the grounds for denial for which review is available, the consumer may initiate the review process by making a request for review of the denial in writing and submitting it to the ODMHSAS Privacy Officer at 1200 N.E. 13th Street, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.

(b) The ODMHSAS Privacy Officer or designee shall select a licensed mental health professional, who did not participate in the original decision to deny access, to review the denial. This reviewer will complete the review within a reasonable period of time and forward his or her findings to the ODMHSAS Privacy Officer or designee. The reviewer's decision is final.

(c) The Privacy Officer shall promptly inform the consumer by letter of the outcome of the review.

(1) If a decision is made to grant access, the letter will explain the process to fulfill the request for access.

(2) If a decision is made to uphold the denial of access, the letter shall state the reasons for denial.

450:15-3-64. Right to Request Amendment of Designated Record Set from Facilities Operated by ODMHSAS

Except as provided herein, a consumer has a right to request an amendment of his or her health information in the designated record set from facilities operated by ODMHSAS for as long as the facility maintains the information.

(1) A consumer shall request the amendment in writing to the health information department of the facility and provide a reason to support the requested amendment.

(2) The facility shall have sixty (60) days to act on the request to amend the information, unless the facility sends the consumer a letter within the initial sixty (60) day period stating the time period will be extended up to an additional thirty (30) days, explaining the need and reasons

for delay and providing a date by which the consumer can expect a decision.

(3) If the facility agrees to the requested amendment, in whole or in part, it must:

(A) Make the amendment by, at minimum, identifying the affected records and appending or otherwise providing a link to the location of the amendment;

(B) Timely inform the consumer the amendment is accepted;

(C) Obtain the consumer's agreement to have the facility with which the amendment needs to be shared. Relevant persons include:

(i) Persons identified by the consumer as needing the amendment;

(ii) Persons the facility identifies as having relied or could foresee ably rely on the unamended information previously provided to them.

(D) Make reasonable efforts to inform and timely provide the amendment to those persons.

(4) The facility may deny a request for amendment if it determines that one of the following reasons exists:

(A) The information that is the subject of the request was not created by the facility, unless the consumer can provide a reasonable basis to believe that the originator of the information is no longer available to act on the requested amendment.

(B) The information that is the subject of the request is not part of the designated record set;

(C) The information that is the subject of the request is accurate and complete.

(5) If the facility denies the amendment, in whole or part, it must:

(A) Provide the consumer with a timely denial, written in plain language and including:

(i) The basis for denial;

(ii) Notice of the consumer's right to submit a written statement of disagreement; and instructions on how to file the statement;

(iii) A statement that if the consumer does not submit a statement of disagreement, the consumer may request the facility provide the consumer's request for amendment and the denial with any future disclosures of the designated record set; and

(iv) Notice that the consumer may complain about the decision to the ODMHSAS Office of Consumer Advocacy or to the U.S. Secretary of the Department of Health and Human Services;

(B) Permit the consumer to submit a one (1) page statement of disagreement;

(C) Provide a copy of any rebuttal prepared to the consumer;

(D) As appropriate, identify the part of the record subject to the disputed amendment and append or otherwise link the request, the denial, and any statement of disagreement or rebuttal to the record;

(E) For future disclosures of the designated record set, include any statement of disagreement or, in response to the consumer's request, the amendment request and the denial (or an accurate summary of either of the foregoing).

(6) If the facility is informed by a healthcare provider or health plan, such as an insurance company, about an amendment to a consumer's information in the designated record set, the facility must amend the information in its record by, at a minimum, identifying the affected records and appending or otherwise providing a link to the location of the amendment.

(7) The facility must document the titles of the persons or offices responsible for receiving and processing requests for amendments and maintain the list for a period of six (6) years.

450:15-3-65. Right to Request Confidential Communications from Facilities Operated by ODMHSAS

(a) Facilities operated by ODMHSAS shall accommodate reasonable requests by a consumer to receive confidential communications from the facility by alternative means or at alternative locations.

(b) Alternative means may include contacting the consumer by telephone.

(c) Alternative locations may include an alternative address other than the consumer's home address.

(d) To request alternative communications, the consumer must provide the facility with the request in writing and specify the alternative means or location.

450:15-3-66. Right to an Accounting of Disclosures from Facilities Operated by ODMHSAS

Facilities operated by ODMHSAS must provide to consumers upon request an accounting of disclosures of health information in the designated record set as provided below:

(1) The consumer must make a written request to the facility's health information department director or ODMHSAS Privacy Officer.

(2) The facility must provide an accounting of disclosures made of the consumer's designated record set during a time period specified up to six (6) years prior to the date of the request for an accounting except for disclosures:

(A) To carry out treatment, payment or health care operations as permitted under law;

(B) To the consumer about his or her own information;

(C) Authorized by the consumer;

(D) To persons involved in the consumer's care or other notification purposes permitted under law;

(E) For national security or intelligence purposes;

(F) To corrections officials or law enforcement officials as permitted under law; or

(G) That are a part of a limited data set;

(H) That are merely incidental to another permissible use or disclosure;

(I) Which were made before April 14, 2003;

(J) In certain circumstances involving health oversight, a facility may temporarily suspend the consumer's right to receive an accounting of disclosures.

(3) The accounting for disclosure must contain the following information for each disclosure:

(A) Date of disclosure;

(B) Name of entity or person who received the information, and, if known, the address of such entity or person;

(C) A brief description of the information from the designated record set disclosed; and

(D) The purpose for which the disclosure was made;

(4) If during the time period for the accounting, multiple disclosures have been made to the same person or entity for a single purpose, or pursuant to a single authorization, the accounting may provide information as set forth above for the first disclosure, and then summarize the frequency, periodicity, or number of disclosures made during the accounting period and the date of the last such disclosure during the accounting period.

(5) The facility shall have sixty (60) days to act on the request for accounting of disclosures, unless the facility sends the consumer a letter within the initial sixty (60) day period extending the period for no more than an additional thirty (30) days. The letter shall explain the reasons for delay and the date on which the accounting will be provided.

(6) The first accounting in any twelve (12) month period must be provided to the consumer without charge. A reasonable, cost-based fee may be charged for additional accountings within the twelve (12) month period, provided the consumer is informed in advance of the fee, and is permitted an opportunity to withdraw or amend the request.

(7) The facility must document the following:

(A) All information required to be included in an accounting of disclosures of information from the designated record set;

(B) All written accountings provided to consumers, and;

(C) Titles of persons or offices responsible for receiving and processing requests for an accounting from consumers.

SUBCHAPTER 7. OFFICE OF CONSUMER ADVOCACY DIVISION

PART 1. DUTIES

450:15-7-2. Office of Consumer Advocacy Division purpose and authority

(a) The Office of Consumer Advocacy Division is designed to ensure: is authorized by 43A O.S. § 2-108 to conduct investigations on behalf of the Board to determine if a client or consumer of services from a facility operated by, certified by

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or under contract with the Department has been wrongfully deprived of liberty or cruelly, negligently or improperly treated or has had inadequate provisions made for the his or her medical care, supervision and safe keeping.

- ~~(1) protection of consumer rights through monitoring and investigations, education and training;~~
 - ~~(2) access to services;~~
 - ~~(3) broad participation of external advocacy and support groups; and~~
 - ~~(4) documentation and data collection capabilities.~~
- (b) The program Office of Consumer Advocacy is directly under the authority and control of the Board shall conduct investigations into allegations of physical abuse, neglect, exploitation, mistreatment, sexual abuse and other consumer rights violations.
- (c) The Program Office of Consumer Advocacy is responsible for the coordination of all rights and advocacy activities, and serves as the channel through which external protection advocacy agencies and programs can access ODMHSAS shall conduct investigations for the purpose of having an independent and objective administrative investigation of suspected consumer maltreatment in order to protect consumers from further maltreatment, to deter and prevent maltreatment, to rule out unfounded allegations and to allow the Board and the Department to hold violators accountable.

450:15-7-3. Advocate General

The Advocate General shall be an attorney appointed by the Board. He or she is responsible for the Office of Consumer Advocacy Division and coordinates its system-wide implementation. The Advocate General ~~performs or supervises~~ shall have the following powers and duties:

- ~~(1) Develops and monitors implementation of rules promulgated as a part of Oklahoma Administrative Code Title 450 relating to consumers' rights and advocacy. To serve as an advocate for consumers. If a consumer needs legal counsel, the Advocate General shall advise the consumer of his or her right to seek counsel and refer the individual to counsel, if necessary.~~
- ~~(2) Develops and maintains an Advocacy Manual for use in all department operated facilities. To supervisory personnel assigned to the Office of Consumer Advocacy.~~
- ~~(3) Hires, trains and supervises all Advocacy Division personnel.~~
- ~~(4) Assists in the development of advocacy issues/plans. To monitor and review grievance procedures in facilities operated by, subject to certification by or under contract with the Department.~~
- ~~(54) Meets and consults with external agencies (Protection and Advocacy, Department of Human Services, etc.) regarding advocacy related issues as needed. To investigate unresolved grievances and allegations of improper treatment of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department.~~
- ~~(65) Works with other agencies and groups to promote legislation and interagency collaborations that ensure the provision and protection of consumers' rights. To access~~

facilities operated by, subject to certification by or under contract with the Department. Reasonable access shall be granted for the purposes of conducting investigations of abuse, neglect and improper treatment and performing other activities as necessary to monitor care and treatment provided by such facilities.

~~(76) Periodically visits facilities and provides assistance as needed. To access the records of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department. Records that are confidential under state and federal law shall be maintained as confidential and not be redisclosed by the Advocate General.~~

~~(87) Reviews and coordinates the investigation and reporting, as appropriate, of complaints and alleged violations of rights of consumers in ODMHSAS operated, certified, or contract facilities. To submit a report of the results of investigations of abuse to the appropriate district attorney and, if the individual is a juvenile in the custody of a state agency, submit a report to that state agency.~~

~~(98) Makes appropriate. Make recommendations to Commissioner and others provide regular or special reports regarding violations of consumers' rights investigations and unresolved grievances to the Commissioner and Board.~~

~~(109) Prepares monthly status reports of the Advocacy Division and submits them to the Board and Commissioner. To perform other duties as assigned by the Board.~~

~~(11) Serves as the Department's representative on any external advocacy and oversight committees.~~

450:15-7-4. ODMHSAS facility advocacy

The Advocate General ~~will~~ shall assign advocacy ~~personnel an Advocate~~ to monitor and investigate allegations of abuse, neglect, mistreatment or rights violations at each facility operated by, certified by or under contract with the ODMHSAS.

(1) ~~A Consumer Advocate Attorney is assigned to Eastern State Hospital and Griffin Memorial Hospital and serves as the Advocate at the facility. Consumer Advocate Attorneys report to the Advocate General but have the ability to conduct investigations and resolve matters at their assigned facilities with consultative input from the Advocate General. The Consumer Advocate Attorneys perform the following duties:~~

(A) ~~Perform responsible administrative and professional legal work in identifying problems in investigating consumer grievances, overseeing commitment, guardianship, and rights proceedings, appraising the facility administration of problems, proposing policy and procedures, serving on facility committees and working to educate staff and public in consumers' rights matters. Advocate Attorneys represent consumer interests in court related matters with approval of the Advocate General.~~

(B) ~~Assist the Advocate General in investigating and resolving consumer complaints, grievances, including those related to abuse/neglect.~~

(C) Provide direction and consultation to assigned Consumer Advocate (non attorney) regarding legal issues.

(D) Assist the Advocate General in monitoring all assigned facilities, at least annually, to evaluate compliance with ODMHSAS rules as related to consumer advocacy.

(E) Assist in the preparation of annual reports of facility monitoring visits.

(F) Serve as an advocacy resource person to facilities, other agencies, and other advocacy groups as requested by either the Advocate General, facility advocate, or facility directors.

(G) Assist the Advocate General as needed regarding the provision and safeguarding of consumers' rights.

(2) A Consumer Advocate (non attorney) is assigned to all ODMHSAS operated, certified or contract facilities within a designated geographic area and under the direction of the Advocate General and shall, among others, perform the following duties:

(A) Ensure facility staff inform consumers of their rights and responsibilities while residing at or receiving services from the facility.

(B) Conduct periodic reviews of the facility's procedures and practices to ensure that they are in keeping with ODMHSAS rules (policies) regarding consumer rights and advocacy.

(C) Initiate or assist consumers, or others acting on their behalf, with filing complaints; conduct investigations of all complaints of alleged violations of consumers' rights in the facility; and, when possible, assist facility staff in resolving problems noted.

(D) Gather data and prepare reports of all findings and recommendations regarding consumer rights as requested by the Advocate General.

(E) Initiate or assist patient, families, guardians, or others acting on the consumer's behalf, with grievance procedure when decisions and actions at the facility are not acceptable to the patient or aggrieved individual.

(F) Conduct periodic monitoring of the facility to ensure that conditions and practices of the facility are in keeping with departmental policies regarding rights protection and advocacy and report findings directly to the Advocate General.

(G) As appropriate, serve as a member of any facility committees related to advocacy and rights protection.

PART 2. INVESTIGATIONS

450:15-7-5. Advocacy Division investigation protocols [REVOKED]

(a) Legal authority. Section 2-108 of Title 43A of the Oklahoma Statutes authorizes investigations on behalf of the Board,

of caretaker abuse, neglect, exploitation, mistreatment, sexual abuse or exploitation, and rights violations.

(b) Scope. The Advocacy Division shall conduct investigations on behalf of the Board of caretaker abuse, neglect, exploitation, mistreatment, sexual abuse or exploitation, and rights violations involving consumers of ODMHSAS operated, contract or certified facilities.

(c) Purpose. The purpose of the investigations conducted by the Advocacy Division is to have an independent and objective administrative investigation of suspected maltreatment of consumers by caretakers in order to protect consumers from further maltreatment, to deter and prevent maltreatment, to rule out unfounded allegations and to allow the Board and the court to hold violators accountable.

(d) The Advocacy Division shall monitor grievance procedures at ODMHSAS operated, contract or certified facilities.

450:15-7-6. Reporting suspected maltreatment

(a) Reporting Requirements. ODMHSAS employees who have reason to believe that maltreatment of a consumer has occurred shall report such information to the Office of Consumer Advocacy Division. This reporting requirement also extends to employees of facilities which contract with or are certified by ODMHSAS. Persons unsure of what to report are directed to call the Office of Consumer Advocacy Division at 1-888-699-6605.

(b) Failure to Report. Any person who knowingly and willfully fails to promptly report a reportable incident as provided for in this section may be subject to administrative or criminal sanctions.

(c) Method of Reporting. Any person obligated to report an allegation of suspected abuse, neglect, mistreatment, or exploitation of consumers shall contact the Office of Consumer Advocacy Division in Norman, Oklahoma by telephone (1-405-573-6605 or 1-888-699-6605) between 8:00 a.m. and 5:00 p.m. on normal business days. Reports may also be made by faxing a critical incident ~~form report~~ to 1-405-573-6647.

450:15-7-7. Administrator's responsibilities regarding allegations reportable to the Office of Consumer Advocacy Division

(a) Immediate protection for safety, health, and welfare. If the Office of Consumer Advocacy Division receives an allegation of caretaker maltreatment involving a consumer from anyone other than the administrator executive director of the facility or provider responsible for the consumer, Office of Consumer Advocacy Division will promptly notify the facility administrator executive director of the allegation.

(b) Upon becoming aware of an allegation of caretaker maltreatment involving a consumer, the facility administrator shall ensure the safety, protection, and needed medical attention of any consumer named in the allegation and other consumers receiving services from the facility or provider prior to initiating investigation.

(c) When criminal activity is alleged, other than caretaker abuse or neglect unless it involves a serious physical injury,

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the facility ~~administrator executive director~~ should ~~shall~~ immediately notify the appropriate law enforcement authority. The types of criminal activity which are reported to law enforcement involve illegal drugs, domestic abuse, illegal sexual activity, illegal use of alcohol, theft of money or property, and when someone other than a caretaker is involved in the allegation.

~~(d) The administrator should take necessary personnel actions to ensure the protection and safety of the alleged victim(s) and other consumers. The Advocacy Division does not determine or approve personnel actions taken by an administrator in response to allegations reported to the Advocacy Division.~~

450:15-7-8. Processing reports of maltreatment received by the Office of Consumer Advocacy Division

~~(a) Disposition options. The Office of Consumer Advocacy Division shall record the specifics of each report received and make an appropriate disposition regarding how the report is to be handled. Consideration is given to all known information to determine an appropriate disposition and course of action and keep all investigations conducted. The findings of each investigation shall be reported to the appropriate division within the Department for review and disposition.~~

~~(b) Notifying Law Enforcement. If a report opened as an investigation involves possible criminal activity on the part of a caretaker, the Advocacy Division determines from the reporting party or the designated contact person for the facility or provider whether law enforcement was notified. If law enforcement has already been notified, that information shall be recorded. If law enforcement has not been notified or it is unclear if the matter has been reported to law enforcement, the Advocacy Division shall request the contact person at the facility or provider to notify law enforcement immediately. If acceptable assurances are not given that law enforcement has been or will be notified by the end of the business day, the Advocacy Division shall notify the appropriate law enforcement authority and note the specifics.~~

450:15-7-9. Investigation procedures

~~(a) Initiation of Advocacy Division Investigation. The assigned Office of Consumer Advocacy Division investigator shall conduct a prompt investigation of the report allegation. The investigator contacts Advocate shall contact the applicable facility administrator executive director to arrange for document production, site visits and interviews.~~

~~(b) Access. The applicable facility administrator executive director shall arrange for the Advocacy Administration Investigator Advocate to have immediate and direct access to any the alleged victim-victim(s) in the report who is still a consumer of the facility. During an investigation, the facility shall provide the investigator Advocate access to all employees, consumers or clients, facilities, files and records of any nature that may pertain to the investigation. Denial of access may be grounds for termination of a contract between ODMHSAS and a contractor or revocation, non-renewal or suspension of certification or both.~~

~~(c) Interference prohibited. Interference includes, but is not limited to:~~

- ~~(1) Intimidating, harassing, or threatening a party to the investigation;~~
- ~~(2) Retaliation against a consumer or employee for reporting an allegations; or~~
- ~~(3) Denial of investigator Advocate access to clients, employees, facilities, witnesses, records, or evidence.~~

450:15-7-10. Rights and responsibilities of accused caretakers individuals

During the investigation process, an individual accused caretaker ~~maltreatment of a consumer or an individual identified to have information about the allegation(s)~~ has the right to:

- (1) Be advised of the nature of the allegations made against him or her in the ~~referral allegation~~;
- (2) Be advised of the investigative process involving caretaker maltreatment;
- (3) Be interviewed by the investigator Advocate and allowed to give his or her position regarding the ~~referral allegation~~;
- (4) Submit or supplement a written statement relating to the allegations;
- (5) Seek advice from other parties concerning a caretaker's ~~his or her~~ rights and responsibilities in Office of Consumer Advocacy Division investigations;
- (6) Be notified in writing by his or her employer of the outcome of the investigation.

450:15-7-11. Responsibilities

During the investigative process, an individual accused caretaker ~~of maltreatment of a consumer~~ has the responsibility to shall:

- (1) Be available for interviews and accommodate the investigator Advocate in scheduling of interviews;
- (2) Refrain from any action which interferes with the investigation, including any action which intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and
- (3) Provide pertinent information and respond fully and truthfully to questions asked.

450:15-7-12. Educational employees

This subsection applies to an employee of a school district providing contract educational services on-site at a facility, ~~as defined in OAC 340:2-3-2~~, who is either a witness or an individual accused caretaker ~~of maltreatment of a consumer~~ in an investigation opened by the Office of Consumer Advocacy Division.

- (1) The administrator executive director of the facility where the incident took place shall notify the principal of the school of the nature of the allegation and the name of the assigned Office of Consumer Advocacy Division investigator Advocate.
- (2) The principal of the school is responsible for notifying the school employee of the reason for the investigative

interview, advising the employee of his or her rights and responsibilities relating to the Office of Consumer Advocacy Division investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process and does not extend to ensuring the protection of the alleged victim(s) or other clients or consumers at the facility where the educational services are provided. The administrator of the facility where the alleged incident took place is responsible for protection of clients or consumers.

(3) ~~Advocacy Division investigates educational employees who meet the definition of a caretaker in OAC 340:2-3-2.~~

450:15-7-14. Investigative interviews

The investigator Advocate shall interview or attempt to interview persons known or identified to have information about the referral allegation. If an injury is alleged, the investigator Advocate or other appropriate person shall observe and note apparent injuries, and obtains obtain pertinent medical documentation, including photographic evidence. An attorney or other representative of the person being interviewed may attend an interview only as a silent observer with prior permission of the Advocate General.

(1) ~~Interview protocols.~~ The Office of Consumer Advocacy Division investigator conducts Advocate shall conduct a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who allegedly were directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each caretaker-individual accused of the maltreatment. When possible, all other witnesses are shall be interviewed prior to interviewing the accused caretaker(s) individual(s).

(2) ~~Tape recording of interviews.~~ The Office of Consumer Advocacy Division investigators tape record interviews. Tape recordings of interviews remain with the Office of Consumer Advocacy Division investigative file. Office of Consumer Advocacy Division files and tape recordings are not public documents due to the confidential and privileged information contained in the interviews.

(3) ~~Explanation of the process.~~ The investigator Advocate shall inform persons interviewed of the investigative process.

(4) ~~Presentation of the allegation.~~ The Advocate General investigator Advocate shall verbally inform each accused caretaker-individual of the allegation(s). The name of the person making the report of the allegation shall not be disclosed.

(5) ~~Opportunity for accused caretakers to respond.~~ During the interview with an individual accused caretaker of maltreatment of a consumer, the Advocacy Division investigator Advocate shall provide the caretaker-individual an opportunity to respond to the allegation(s). Following the initial interview of the accused caretaker, if the investigator Advocate obtains information to which the accused

caretaker-individual did not have an opportunity to respond, the investigator Advocate shall conduct another interview with the caretaker-individual. The investigator Advocate shall advise the accused caretaker-individual of the substance of the new information and provides provide an opportunity to present a response.

(6) ~~Interpreter services.~~ If the investigator Advocate needs to interview a person who is deaf, hard of hearing, or is non-English speaking, the Office of Consumer Advocacy Division will shall arrange oral or sign language interpreter services by an independent and qualified interpreter.

(7) ~~Scheduling interviews.~~ To schedule an interview with an accused caretaker-individual, the investigator Advocate shall contact by phone or regular mail the administrator executive director of the facility or provider that employs the caretaker-accused individual. If a reasonable time has passed without being able to schedule an interview, the investigator Advocate shall contact the administrator executive director of the facility or provider to request the administrator to compel the employee be required to participate. If unsuccessful, the investigator sends both a certified letter and a letter by regular mail to the caretaker's last known address notifying the caretaker of the investigation and offering an opportunity to be interviewed, setting a date and time for a response. The letter shall inform the caretaker the consequence of failure to participate in the investigation. The If the accused individual refuses to participate in the investigation, the report will shall be completed without the caretaker's accused individual's statement and a finding is shall be made based on available information. For other persons needing to be interviewed, the investigator Advocate shall follow the same sequence as for an accused caretaker, but the certified letter only requests their participation in an interview.

(8) ~~Failure to appear.~~ If a person fails to appear for a scheduled interview without good cause, the investigator Advocate shall complete the investigative report without interviewing that person. The investigative report includes shall include an explanation of why the interview was not conducted, including documentation of efforts to interview the person.

(9) ~~Exit conference.~~ The investigator Advocate shall conduct an exit conference, either in person or by telephone, with the applicable administrator executive director when the information-gathering portion of the investigative process is completed. The investigator Advocate shall complete the written investigative report within 30 days of the date of the exit conference and a summary letter is shall be sent to the Administrator executive director of a contract or certified facility.

450:15-7-15. Investigative report and findings

(a) ~~The written investigative report.~~ After completing the information-gathering portion of the investigative process, the investigator Advocate shall prepare a written investigative report minimally containing:

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- (1) ~~The allegation(s) contained in the referral investigated including the date, time, and made to the Office of Consumer Advocacy, Division of the location of the alleged incident(s), the date the allegation was reported to Advocacy Division, and the assigned Office of Consumer Advocacy Division case number;~~
 - (2) A statement of any injuries sustained by the alleged victim(s);
 - (3) The applicable definition(s) of the type of maltreatment at issue such as abuse, neglect, exploitation, or mistreatment;
 - (4) The finding(s) in accordance with subsection ~~(4)~~ (b) of this Section;
 - (5) A list of the involved parties, their titles and role in the matter, if they were interviewed and, if so, when and if interviewed face to face or by telephone;
 - (6) The name, address, and telephone numbers of any interpreter used during the investigation;
 - (7) An explanation of the basis for the finding(s);
 - ~~(8) In cases involving a confirmed finding, a summary of relevant information obtained during each interview conducted during the investigation;~~
 - ~~(9) Any areas of concern relating to the referral identified during the investigation regarding that facility, that provider, or practices or procedures which have implications for the safety, health, or welfare of clients;~~
 - ~~(10) A list of relevant documents and records reviewed during the investigation; and~~
 - ~~(11) A list of attachments to the report.~~
- (b) ~~Investigative findings.~~ The investigative finding options are:
- (1) **"Substantiated"** which means ~~that~~ the available evidence establishes that it is more likely than not that the alleged maltreatment occurred;
 - (2) **"Unsubstantiated"** which means ~~that~~ the available evidence established that it is unlikely that the alleged maltreatment occurred; or
 - (3) **"Unable to substantiate"** which means the available evidence was not sufficient to establish whether or not the alleged maltreatment occurred.
- (c) ~~Identification of the responsible caretaker. When a confirmed finding is made, the investigator shall determine the caretaker(s) responsible for the maltreatment. The administration can be named as responsible when the policies, procedures, or practices adopted by the administration of a facility, provider, or day treatment program are the primary factor resulting in the maltreatment of individual clients.~~
- ~~(d) Information. Except as otherwise specifically provided in this section and as otherwise provided by state or federal laws, the information, records, materials and reports related to investigations by the Office of Consumer Advocacy Division are confidential and contain privileged information. Accordingly, such records, materials and reports shall not be open to public inspection nor their contents disclosed, nor shall a subpoena or subpoena duces tecum purporting to compel disclosure of such information be valid pursuant to 43 A.O.S. § 1-109(C). Disclosures regarding investigation to~~
- ~~anyone outside ODMHSAS shall be limited to summaries of information provided for a specific purpose. Information, records, materials and reports regarding Advocacy Division investigations shall not be released for research purposes without prior approval of the Advocate General.~~
- ~~(d) An order of the court authorizing the inspection, release or disclosure of information, records, material and reports related to investigations by the Office of Consumer Advocacy shall be entered by a court only after a review of the records and a determination, with due regard for confidentiality of the information and records and the privilege of the persons identified in the records that a compelling reason exists, any applicable privilege has been waived and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest.~~
- ~~(e) The Office of Consumer Advocacy shall provide results of investigations shall be provided as follows:~~
- (1) A copy of the final Office of Consumer Advocacy Division investigation report shall be sent to the administrator, executive director of a state ODMHSAS operated facility.
 - (2) A summary of the allegation and finding shall be sent to the administrator, executive director of a state certified or contract facility.
 - (3) ~~If the report involved alleged abuse, neglect, or exploitation, a summary of finding shall be sent to the applicable district attorney~~
 - (4) When an administrator, executive director is named as an individual accused caretaker of maltreatment of a consumer in the allegation, the Office of Consumer Advocacy Division shall forward a summary of the investigative report to the chair of the board of directors of the facility.
 - ~~(5) A copy of all Office of Consumer Advocacy Division reports shall be sent to the Provider Certification Division of the ODMHSAS.~~
 - ~~(6) A summary of the allegations and finding shall be provided to the Board and a copy of the report shall be provided upon request of the Board.~~
 - ~~(7) The facility may notify the caretaker of the results of the investigation. The Department or the Office of Consumer Advocacy may summarize the outcome of an investigation, stating the allegation and the finding. The summary may be provided to the person suspected of the abuse, neglect or improper treatment, the person subject to alleged abuse, neglect or improper treatment, the person who reported an allegation, and the executive director of a facility certified by or under contract with the Department at which the alleged abuse, neglect, or improper treatment occurred.~~
- (f) ~~Storage and retention of Advocacy Division investigative records. The Office of Consumer Advocacy Division shall maintain the original report, supporting documents, and pertinent recorded tapes in locked file cabinets in accordance with the applicable ODMHSAS records management and disposition plan. Access to investigative files and records is limited to Advocacy Division employees on a need-to-know basis.~~

**SUBCHAPTER 9. CONSUMER RIGHTS,
NON-IMPATIENT SERVICES**

450:15-9-1. Applicability

This subchapter is applicable to all facilities operated by, certified by, or under contract with, ODMHSAS as a community mental health center, ~~or approved treatment facility for~~ substance abuse services, or domestic violence, ~~and~~ sexual assault program ~~or batterers' program or community-based structured crisis center~~, or residential care facility.

450:15-9-6. Advocate general [REVOKED]

~~The ODMHSAS Advocate General has the responsibility and authority to investigate any allegation of violations of consumer rights within the facilities and programs named in this subchapter.~~

450:15-9-7. Community-Based Structured Crisis Centers

The rights for consumers of community-based structured crisis centers are set forth in OAC 450:23-9-1 through OAC ~~450:23-9-3~~ 450:23-9-2.

[OAR Docket #03-1009; filed 5-21-03]

**TITLE 450. DEPARTMENT OF MENTAL
HEALTH AND SUBSTANCE ABUSE
SERVICES
CHAPTER 19. STANDARDS AND CRITERIA
FOR DOMESTIC VIOLENCE AND SEXUAL
ASSAULT PROGRAMS**

[OAR Docket #03-1010]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
 - 450:19-1-1 [AMENDED]
 - 450:19-1-2 [AMENDED]
 - 450:19-1-5 [REVOKED]
 - 450:19-1-6 [AMENDED]
- Subchapter 3. Services
 - Part. 1 Required ~~DV/SA Shelter Program~~ ~~Service~~ Components [AMENDED]
 - 450:19-3-1 [AMENDED]
 - 450:19-3-2 [AMENDED]
 - 450:19-3-3 [AMENDED]
 - 450:19-3-4 [AMENDED]
 - 450:19-3-5 [REVOKED]
 - Part 2. ~~Optional~~ ~~Other~~ Service Components [AMENDED]
 - 450:19-3-7 [AMENDED]
 - 450:19-3-8 [AMENDED]
 - 450:19-3-9 [AMENDED]
 - 450:19-3-10 [NEW]
- Subchapter 5. Client Records and Confidentiality
 - 450:19-5-1 [AMENDED]
 - 450:19-5-2 [AMENDED]
 - 450:19-5-3 [AMENDED]
 - 450:19-5-3.1 [AMENDED]
 - 450:19-5-4 [AMENDED]
 - 450:19-5-7 [REVOKED]

- 450:19-5-8 [REVOKED]
- 450:19-5-9 [REVOKED]
- 450:19-5-10 [NEW]
- Subchapter 7. ~~DV/SA Shelter~~ Program Physical Environments [AMENDED]
- 450:19-7-6 [AMENDED]
- Subchapter 9. Program Management and Performance Improvement
 - 450:19-9-10 [AMENDED]
- Subchapter 11. Client Rights
 - 450:19-11-1 [AMENDED]
 - 450:19-11-2 [AMENDED]
 - 450:19-11-3 [AMENDED]
- Subchapter 13. Personnel and Volunteers
 - Part 1. General
 - 450:19-13-9 [AMENDED]
 - Part 3. Training
 - 450:19-13-20.1 [AMENDED]
 - 450:19-13-20.2 [AMENDED]
 - 450:19-13-25 [AMENDED]
 - 450:19-13-29 [AMENDED]
 - 450:19-13-30 [AMENDED]

AUTHORITY:

Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 2-202, 3-306 and 3-314.1

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- Subchapter 5. Client Records and Confidentiality
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 - 450:19-5-4 [AMENDED]
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N/A

ANALYSIS:

In accordance with the Administrative Procedures Act, these rule revisions to Chapter 19 are part of the Department's review of Title 450. These amendments are intended to comply with statutory changes, enhance programs for individuals receiving domestic violence or sexual assault services by organizations certified by or under contract with ODMHSAS, delete redundant or superfluous language, correct scrivener's errors, and pursuant to 75 O.S. §253 (H)(1) initiate permanent rulemaking for the emergency rules adopted in compliance with the federally mandated Health Insurance Portability and Accountability Act (HIPAA).

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

450:19-1-1. Purpose

This chapter sets forth the rules, including standards and criteria, used in certifying all domestic violence, batterer's intervention and sexual assault programs and shelters (43A O.S., § 3-314.1). The rules regarding factors relating to the certification processes including, but not necessarily limited to, applications, fees, requirements for, and administrative sanctions, are found in OAC Title 450, Chapter 1.

450:19-1-2. Definitions

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

"Abuser" means ~~Batterer as described in this Section.~~

"Admission" means to accept a client for services or treatment.

"Advocacy" means ~~the act of pleading for or empowering a client assistance provided which supports, supplements, intervenes and/or links the client with the appropriate service components. This can include medical, dental, financial, employment, legal and housing assistance.~~

"Batterer" means a person, male or female, who perpetrates domestic violence, stalking or other harassment against present or past intimate partners, another adult, emancipated minor or minor child, who are family or household members or who are or were in a dating relationship.

"Batterer's treatment intervention" means ~~treatment of services provided to batterers, or perpetrators or abusers which holds batterers a batterer accountable for their his or her abusive behavior, provides consequences for engaging in violent or abusive behavior, provides monitoring of batterer's behavior, and requires abusers/perpetrators him or her to change their his or her behavior and attitudes. This treatment and is also protective of the victim(s). Teaching anger control or management does is not meet synonymous with batterer's treatment intervention.~~

"Case consultation" means review of a client's case by the primary service provider and other agency program staff providers, consultants or both.

"Catchment area" means ~~"Service area" as defined in this section).~~

"Child" or **"Children"** means any individual from birth to eighteen years of age.

"Children's services" means curricula, children's groups and activities and referral for needed services in an effort to reduce stress, increase self-esteem and educate about domestic violence, sexual assault or both.

"Client" means ~~a person~~ an individual, adult or child, who requests and receives has applied for, is receiving or has received assistance or services of a ~~domestic violence/sexual assault DV/SA or batterer's program.~~

"Client record" means written information including assessment information, description of services provided services plan, and other information on an individual client.

"Community" means the people, groups, agencies, or other facilities within the locality served by the program.

"Consultant" means ~~one who provides professional advice or services upon request.~~

"Consultation" means a formal and structured process of interaction between staff member(s) or unrelated individuals, groups or agencies for the purpose of problem solving or enhancing their capacity to serve clients, manage programs or both.

"Contract" means a formal document adopted by the governing authority of the agency program and any other organization, agency, or individual, ~~which that~~ specifies services, personnel, or space to be provided to the program and the monies to be expended in exchange.

"~~Cooperative service agreement~~" means ~~a written agreement between two or more service agencies or service agencies and individual service providers defining the roles and responsibilities of each party. The purpose of cooperative agreements is to promote coordination and integration of service programs for the purpose of curbing fragmentation and unnecessary service duplication.~~

"Counseling" means ~~the advice or guidance given to an individual or group a method of using various commonly acceptable treatment approaches provided face-to-face by qualified professional staff with clients in individual, group or family settings to promote positive emotional or behavioral change. Counseling is goal directed and utilizes techniques such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy psycho-educational interventions or another widely accepted theoretical framework for treatment.~~

"Court advocate" means a volunteer or staff member whose duties are to provide advocacy in the court system for victims of domestic violence or sexual assault.

"~~Court-related evaluation~~" means ~~"Evaluation Court related" as defined in this section.~~

"Crisis intervention" means an immediately available service to meet the psychological, physiological or safety aspects of mental health, alcohol and drug, or domestic violence or sexual assault related crises. ~~These unscheduled interventions and are in response to emergencies, and provide crisis resolution and stabilize conditions. May and may include triage, assessment/screening assessment, screening, planning, intervention, referral and documentation.~~

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse

drug events; self-destructive behavior; deaths and injuries to clients, staff and visitors; medication errors; neglect or abuse of a client; fire; unauthorized disclosure of information; damage to or theft of property belonging to a client or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Direct services" means services delivered by a staff member or volunteer, in direct contact with a client or client's child, including child care and telephone contact.

"Director" means the person hired by the governing authority to direct all the activities of the organization.

"DVSAAC" means the Domestic Violence and Sexual Assault Advisory Committee [a statutory entity 43A O.S., § 3-312].

"DV/SA" means domestic violence and sexual assault.

"Documentation" means the provision of written, dated, and authenticated evidence to substantiate compliance with standards; e.g., minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, and announcements

"Domestic violence" means assaultive or coercive behaviors, including physical, sexual and psychological attacks and economic coercion, against another adult, emancipated minor or minor child, who are family or household members or who are or were in a dating relationship.

"Drug abuse" means the use of a drug in a manner inconsistent with or unrelated to acceptable medical practice.

"Education" means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning mental health, substance abuse, or domestic violence/sexual violence, sexual assault or batterer's intervention and other related problems and services. A and may include a systematic presentation of selected information to impart knowledge or instructions, to increase understanding of specific issues or programs, to examine attitude or behaviors and stimulate social action or community support of the program and its consumers.

"Emergency/crisis Emergency services" or "crisis services" means a twenty-four (24) hour capability for assessment, intervention and resolution of a client crisis or emergency that are is provided in response to unanticipated, unscheduled emergencies requiring prompt intervention to resolve immediate, overwhelming problems that severely impair the individual's ability to survive or maintain in the community.

"Evaluation, court-related" means the process of conducting, upon request from the court system, a written evaluation establishing problem identification; clinical diagnosis or diagnostic impression; an assessment, testing or scaling of the severity of each problem identified; and determination of appropriate sources of assistance.

"Evaluation program" means written assessment activities, performed internally or externally, of a program or a service and its staff, activities, and planning process to determine whether program goals are met, staff and activities are effective, and whether or not a program or service has any effect on

the problem which it was created to address or on the population which it was created to serve.

"Executive director" means the person hired by the governing authority to direct all the activities of the organization in charge of a facility as defined in this section.

"Facility" means the physical location(s) of a certified program governed by this chapter of Title 450.

"Family" means the children, spouse, parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of clients.

"Fee schedule" means the price list for services.

"Governing authority" means a group of persons having the legal authority, and final responsibility for the operations and functions of the entire DV/SA agency program in and of all geographical locations and administrative divisions.

"Group counseling" means a method of resolving emotional, social or relationship issues by using the interaction between a professional or paraprofessional and two or more clients to offer emotional support or promote change using various commonly acceptable treatment approaches provided face-to-face by qualified staff with not more than ten (10) clients to promote positive emotional or behavioral change. Counseling is goal directed and utilizes techniques such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy psycho-educational interventions or another widely accepted theoretical framework for treatment.

"Guardian" means an individual who has been given the legal authority for managing the affairs of another individual.

"Host family" or "Sponsor family" means an individual or family providing safe home services through a formal agreement with a Certified DV/SA Agency Program.

"ICIS" See "Integrated Client Information System."

"Individual counseling" means using one-to-one interaction between a service provider and a client to promote positive emotional or psychological change.

"Initial contact" means a person's first contact with the agency program or facility; usually requests for information or service by telephone or in person.

"Intake" means the written information about a client as a basis for assessment or services, obtained by the program at time of admission.

"Integrated Client Information System" or "ICIS" is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide DMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by DMHSAS.

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"Job development/placement" means a program or service organized to assist individuals to gain or maintain employment.

"Licensure" means the official or legal permission to persons or health facilities meeting qualifications to engage in a given occupation or use a particular title.

"Life skills" means abilities and skills necessary to function independently in society.

"Medical care" means those diagnostic and treatment services which, under the laws of the jurisdiction in which the program is located, can only be provided or supervised by a licensed physician.

"Medication" means any prescription or over-the-counter drug, that is taken as prescribed or directed.

"Mental health services" means a range of diagnostic, therapeutic, and rehabilitative services used in treating mental illness or emotional disorders, including substance abuse.

"Neglect" means failing to provide adequate personal care or maintenance, or access to medical care which results or may result in physical or mental injury or harm to a client.

"Objectives" means a specific statement of planned accomplishments or results which are quantitative, qualitative, time-limited, and realistic.

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

"Oklahoma Administrative Code" or "OAC" means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"Operation" means that clients are receiving services provided by the program.

"Outreach" means the process of reaching into a community systematically for the purposes of identifying persons in need of services, alerting persons and their families to the availability of services, locating needed services, and enabling persons to enter and accept the service delivery system.

"Paraprofessional" means a person who does not have an academic degree, a professional license or certification in the discipline, but performs prescribed functions under the general supervision of that discipline.

"Peer review" means a method for evaluating the quality of services, in which a group of professionals or staff review client's records or the clients, to determine whether a specific staff's services and changes are appropriate. It is based on the assumption that only fellow professionals (peers) have the competence to judge one another's professional activities.

"Perpetrator (of abuse)" means "Batterer" as defined in this Section.

"Personnel record" means a chart or file containing the employment history and actions relevant to individual employee and volunteer activities within an organization such as application, evaluation, salary data, job description, citations, credentials, etc.

"Persons with special needs" means "Special needs" as defined in this section persons with a condition which is considered a disability or impairment under the "American

with Disabilities Act of 1990" including, but not limited to the deaf/hearing impaired, visually impaired, physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

"Policies" means statements of program intent, strategy, principle, or rules for providing effective and ethical services.

"Procedures" means the standard methods by which policies are implemented.

"Professional staff" means ~~those individuals specifically qualified by education, experience, licensure or certification, or special training to perform the duties of her or his respective position an individual who:~~

(A) Meets the requirements under Oklahoma statutes to be licensed as:

(i) a licensed physician;

(ii) a licensed registered nurse;

(iii) a licensed professional counselor

(iv) a licensed clinical social worker

(v) a licensed marriage and family therapist

(vi) a licensed behavioral practitioner; or

(vii) a licensed psychologist; or

(B) Meets the academic requirements for one of the above, has an approved application for licensure in Oklahoma and is actively engaged in the applicable licensure process including active and documented supervision by an approved supervisor or is a practicum student or intern in an accredited program.

"Program" means a structured set of activities designed and structured to achieve specific objectives relative to the needs of the clients ~~served by the agency.~~

"Program evaluation" means the documented assessment activities, performed internally or externally, of a program or a service and its staff, activities and planning process to determine whether program goals are met, staff and activities are effective, and what effect, if any a program or service has on the problem which it was created to address or on the population which it was created to serve.

"Program goals" means broad general statements of purpose or intent

"Program component" or "service component" means the category into which interrelated services can be classified as individual components.

"Qualified personnel" means ~~employees who have documented evidence of education, training, licensure or experience, etc., required by their job descriptions to do the work assigned.~~

"Qualified Service Agreement" means a written, signed agreement between the ODMHSAS and facilities which contract with the ODMHSAS that permits the transmittal of records and information regarding clients as appropriate for service provision and the exchange of information necessary between those signatory facilities directly involved in providing services to a client without the individual's consent.

"Rape crisis response services" means "sexual assault services" as defined in this section.

"Rehabilitative services" includes a broad range of physical, mental, and social activities designed to restore an individual to highest possible functional capacity after an episode of illness or injury. Examples include physical therapy, speech therapy, family consultation, and alcohol/drug counseling.

"Research" means organized program(s) directed toward the investigation and evaluation, whether basic or applied, of subjects related to the prevention, diagnosis, and treatment of psychiatric illness, substance abuse or ~~domestic violence/sexual assault~~ DV/SA.

"Screening" means the process of determining, preliminarily the nature and extent of a person's problem in order to link the person with appropriate and available services to be provided.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Service agreement" means a written agreement between two or more service agencies or service agencies and individual service providers defining the roles and responsibilities of each party. The purpose of cooperative agreements is to promote coordination and integration of service programs for the purpose of curbing fragmentation and unnecessary service duplication.

~~"Service area" means a defined geographic area and specified population base which identifies regions for services. Service areas are designated in the Oklahoma State Plan for Mental Health Services. Also referred to as "catchment area".~~

"Service note" means the documentation of the time, date, location, and description of services provided, and signature of staff providing the services.

"Service plan" means a plan of action developed and agreed upon by the client and service provider that contains service appropriate goals and objectives for the client.

"Sexual assault services" means personal advocacy and support services provided to victims of rape and sexual assault in settings such as law enforcement, medical settings, or program offices.

"Shelter services" means a cooperative living arrangement in a secure residential setting with staff providing counseling provided by qualified staff, or support and client advocacy for a victims of domestic violence and their dependents.

~~"Special Needs (Persons with)" means persons with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the deaf/hearing impaired, visually impaired, physically disabled, developmentally disabled, persons with~~

~~disabling illness, persons with mental illness. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.~~

~~"Sponsor family" means host family as defined in this section.~~

~~"Staff" mean employees, paraprofessionals and volunteers that function as program staff with a defined role within the agency program.~~

"Support" or "Supportive Services" means services provided to victims of domestic violence/sexual assault and/or their families which augment or complement a defined service plan. "Transitional living services" means housing maintained and operated by a certified domestic violence and sexual assault agency program.

"Universal precautions for transmission of infectious diseases" means those guidelines promulgated by the U.S. Occupational Health and Safety Administration which are designed to prevent the transmission of Human Immunodeficiency Virus, hepatitis, and other infectious diseases.

"Update" means a dated and signed review of a report, plan or program with or without revision.

"Victim recovery services" means a face-to-face service, provided one on one by qualified staff to groups or individuals to maintain or develop skills necessary to perform activities of daily living and successful integration into community life. This service includes educational and supportive services regarding independent living, self care, social skills regarding development, lifestyle changes and recovery principles and practices.

"Volunteer" means any person who is not on the agency program's payroll, but provides direct services and fulfills a defined role within the agency program and includes interns and practicum students.

450:19-1-5. New standards and criteria [REVOKED]

(a) ~~As new and amended standards and criteria set forth in the rules in this chapter become effective under the provisions of regular rulemaking (Title 75 O.S., §§ 250 through 308, and OAC Title 655, Chapter 10), all affected programs shall come into compliance within one hundred twenty (120) calendar days of the effective date.~~

(b) ~~For new and amended standards and criteria approved under the provisions of emergency rulemaking (Title 75 O.S., §§ 250 through 308, and OAC Title 655, Chapter 10), all affected programs shall come into compliance within sixty (60) calendar days notice by the ODMHSAS of approval by the Governor of the emergency rule(s).~~

450:19-1-6. Services

(a) All certified DV/SA shelter programs shall provide the following services for victims of domestic violence and their dependent children:

- (1) Shelter services, which are confidential, long-term (30 days or more) or short-term emergency shelter services with transportation to longer-term shelter as needed. Safe

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home services [450:19-3-8] may be used to supplement either long or short term shelter services.

(2) Twenty-four (24) hour crisis intervention services, to include a crisis line with 24-hour immediate, direct access to crisis advocates. Pagers, answering machines or answering services shall not be sufficient to meet this requirement. Follow-up services shall be offered to all victims if victim safety is not compromised. If follow-up services are not provided the reason(s) shall be documented;

(3) Counseling, or support and advocacy services to victims and their dependent children, who are or are not, utilizing the program's shelter or other residential services;

(4) "Counseling", as used in this chapter, shall be provided only by persons meeting the requirements defined in 450:19-1-2 for "professional staff."

(5) Sexual assault services (if another local agency provides these services, evaluation and referral shall be provided); and

(56) Public education services including professional consultation and training of volunteers when such is needed; and

(b) Certified programs may also provide one (1) or more of the following services. The following domestic violence services may be provided as components of certified DV/SA shelter programs or independently:

(1) Transitional living services;

(2) Safe home services; and

(3) Batterer's treatment intervention; and

(4) Sexual assault services.

(c) Compliance with 450:19-1-6 shall be determined by a review of the program's policy and procedures, and any other relevant documentation provided by the program.

SUBCHAPTER 3. SERVICES

PART 1. REQUIRED DV/SA SHELTER PROGRAM SERVICE COMPONENTS

450:19-3-1. Shelter services

(a) Each shelter program shall provide long-term (thirty [30] days or more) shelter services; and have written policy and procedures governing the maintenance of the facilities, staffing to provide services twenty-four (24) hours per day, seven (7) days per week, staff training, record-keeping and operational methods to provide the following services:

(1) The shelter is a A confidential, group living program providing room, board, bathing and laundry facilities, necessary clothing and toiletries for victims and their children, advocacy, ~~supportive support or counseling~~, transportation, and a play area for children.

(2) Shelter programs shall provide 24-hour crisis intervention services to the community or region served. Emergency transportation for victims which shall be available within 30 minutes of a client's request for transport in urban areas and no longer than two (2) hours in rural areas.

(3) Shelters shall be staffed at all times when clients are in residence.

(4) Shelter or program staff shall provide ~~applicable services to the children~~ children's services to children accompanying the primary victims.

(5) The shelter's ~~policy and procedures~~ policy shall have written procedures regarding the supervision of children.

(6) ~~Specialized services may be offered when resources are available, including transitional living, batterer's treatment.~~

(7) Shelter programs shall provide screening, ~~and~~ referral and linkage to clients and callers to appropriate community resources, to include assistance in making appointments.

(87) Agency Program staff shall provide advocacy, ~~supportive individual support or counseling~~, support groups, ~~rehabilitative victim recovery services~~ and 24-hour crisis intervention services for shelter residents.

(98) The shelter program shall provide transportation or access to transportation for necessary or emergency services.

(109) The shelter program shall maintain cooperation/liason with the local school system.

(110) The shelter program shall maintain affiliated service agreements with a continuum of available community services and regional services which may be needed by the residents of the shelter.

(121) The shelter has a written plan to address "reasonable accommodation" for people with special needs.

(1312) The shelter maintains written admission, exclusion, and involuntary discharge criteria.

(14) ~~Before using domestic violence/sexual assault shelter housing options for either non-traditional or extended purposes, written permission shall be obtained from the Domestic Violence and Sexual Assault Division of ODMHSAS.~~

(b) Compliance with 450:19-3-1 shall be determined by a review of policy and procedures; personnel training records; client records; service referral agreements; and other documentation.

450:19-3-2. Crisis intervention services

(a) Each ~~domestic violence/sexual assault agency~~ certified DV/SA shelter or crisis program shall maintain facilities, staffing, documentation, and operational methods to provide the following crisis intervention services, including, but not limited to:

(1) Twenty-four (24) hour crisis telephone services staffed by trained staff or volunteers, 24-hour immediate, direct access to crisis advocates. Pagers, answering machines or answering services shall not be sufficient to meet this requirement. Follow-up services shall be offered to all victims if victim safety is not compromised. If follow-up services are not provided the reason(s) shall be documented.

(2) Emergency transportation available for victims as needed follows:

(A) within 30 minutes of client request in urban areas; and

(B) within 2 hours of client request in rural areas.

(3) Cooperation with law enforcement to provide assistance to the victim and accompanying child(ren).

(4) Safe shelter available, as needed, for temporary housing of victims.

(5) Services shall minimally include crisis intervention to ensure the safety of the victims, provision of transportation to a safe place, provision of a trained staff person or volunteer to talk to the victim, provision of advocacy and referral to assist the victims in obtaining needed services or resources, arrangement for safe shelter, food, clothing, and incidentals needed by victim/dependents.

(b) Compliance with 450:19-3-2 shall be determined by a review of program policy and procedures; client service records; contact logs; personnel training records; contract or agreement for lodging; or other supporting documentation of the program.

450:19-3-3. Counseling, support, and advocacy services

(a) ~~Face-to-face~~ A certified DV/SA shelter program shall provide face-to-face rehabilitation, counseling, support, or advocacy services shall be made available at least six (6) hours per day a minimum of five (5) days per week for clients who do not require shelter services and for clients who do require shelter services. Group or individual counseling or rehabilitation and support services shall be made available before or after normal working hours (8am to 5pm), if needed by clients.

(b) These services shall minimally provide the following:

(1) A publicly accessible facility with offices, individual and group counseling space to provide services.

(2) Advocacy services, both in person and by telephone, either in the locations of other community services and systems, or in the program's offices. Other locations include but are not limited to those necessary to provide court advocacy services to clients.

(3) Current service agreements to be renewed every three (3) years with available community services to provide access for the client to a continuum of needed services. If this is not done with all available appropriate resources in the community, efforts to do so or reasons/opinions why this is not or cannot be done are shall be documented.

(4) ~~The program maintains a~~ A resource document of local, area, or state resources to facilitate referrals for clients.

(5) Service approaches that focus on the empowerment of victims to access needed resources and make healthier and safer decisions for themselves and dependents.

(c) Compliance with 450:19-3-3 shall be determined by on-site observation; review of program policy and procedures; service referral agreements; referral manuals; personnel training documentation; client records; or other supporting documentation of the program.

450:19-3-4. Children's services

(a) ~~Crisis intervention services shall be provided for children who accompany parent to seek services. Needs~~ Each certified DV/SA shelter program shall assess the needs of the children accompanying primary victims are assessed and provide services provided to address the effects of violence in their lives including, but not limited to,:

(1) ~~These services are~~ offered either in the shelter setting or in another setting as needed,;

(2) ~~A shelter shall provide~~ a specific safe, protected play area for children,;

(3) ~~The program has~~ admission criteria for children under the age of eighteen (18),;

(4) ~~The program provides~~ advocacy with community systems,;

(5) ~~The program provides~~ referral to community resources,;

(6) ~~The program provides~~ parenting education for clients, if applicable,; and

(7) ~~Services approaches include~~ age appropriate curricula, children's groups, and referrals for needed services.

(b) Compliance with 450:19-3-4 shall be determined by a review of program policy and procedures; staff and volunteer training manuals; staff training documentation; client records documentation; or other supporting documentation of the program.

450:19-3-5. Sexual assault services [REVOKED]

(a) ~~Sexual assault services include personal advocacy, counseling and support for victims in law enforcement and hospital settings, providing needed clothing, follow up counseling, and support and advocacy in the legal system. The program shall minimally provide the following:~~

(1) ~~Sexual assault services, also known as rape crisis response services, shall be provided in the social service, legal, law enforcement, medical setting in program offices or at any safe and appropriate site, as needed by the client.~~

(2) ~~Twenty four (24) hour, seven (7) days per week access to these services through the program's crisis hotline.~~

(3) ~~A twenty four (24) hour hotline, crisis intervention, in-person advocacy as needed, active listening, or counseling by trained staff, paraprofessionals or volunteers with a knowledge of the issues and processes of rape trauma recovery, assessment, referral when indicated, and family involvement where chosen by the victim.~~

(b) ~~Compliance with 450:19-3-5 shall be determined by a review of program policy and procedures; staff and volunteer training manuals; staff training documentation; client records documentation; or other supporting documentation of the program.~~

PART 2. OPTIONAL OTHER SERVICE COMPONENTS

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450:19-3-7. Transitional living services

(a) ~~These optional services~~ Transitional living services are independent living facilities providing transitional or assisted housing for survivors of domestic violence or sexual assault.

(b) The program maintains the facilities, defines and maintains needed staffing, and ~~has shall maintain~~ policy, procedures, documentation, and operational methods to provide these transitional living services, and shall meet the following criteria:

(1) ~~The transitional living program shall be under the supervision and management of a certified domestic violence/sexual assault program.~~

(2) The program ~~maintains~~ shall maintain homes, apartments, or other residential living environments suitable for survivors of domestic and sexual violence, and dependents, if applicable, and which provide the reasonable safety and privacy needed by this population. The program ~~provides~~ shall provide access to necessary furniture and equipment.

(3) The program ~~includes~~ shall include heating and refrigerated cooling systems to maintain a reasonable comfort level.

(4) Each transitional living site shall have an annual fire and safety inspection by the local or state fire department.

(5) Supportive services for residents are available through the twenty-four (24) hour program hotline by trained staff or volunteers.

(6) The program maintains referral service agreements, to be renewed at least every three years with available community services for the provision of a continuum of services for clients/residents.

(7) The program ~~maintains~~ shall maintain a resource manual of local, area, and state resources available for clients.

(8) ~~Staff is assigned~~ The program shall assign staff as the advocate or liaison for the clients residing in the transitional living program(s). This person, or a crisis line staff person, shall be available for emergencies at all times.

(9) The program shall maintain written criteria for the following services:

- (A) Admission to the transitional living program;
- (B) Continuation of transitional living residence; and
- (C) Discharge from the transitional living program.

(10) Transitional living residents shall be required to attend at least one (1) weekly support group.

(11) In addition to support group, there shall be at least one (1) weekly contact with ~~agency program~~ staff.

(12) Advocacy is provided for the residents as needed.

(c) Compliance with 450:19-3-7 shall be determined by a review of program policy and procedures; documentation of staff training and experience; program staffing patterns; client records; or other program documentation.

450:19-3-8. Safe home services

(a) Safe homes are optional services which include private dwellings available for the temporary housing of victims of domestic violence or rape. Programs which use safe homes

shall maintain the operational methods, policy and procedures, staffing, and documentation to meet the following:

(1) Safe homes are private dwellings arranged for and regularly monitored by the sponsoring or host ~~dv/sa agency~~ DV/SA program via on-site observation at least monthly when clients are in residence.

(2) The sponsoring ~~domestic violence/sexual assault DV/SA~~ program shall maintain service referral agreements, to be renewed at least every three years, with local or area services to provide a continuum of services to the client, as needed.

(3) The sponsoring ~~domestic violence/sexual assault DV/SA~~ program shall maintain a resource manual for the purpose of providing clients with needed referrals.

(4) The sponsoring ~~domestic violence/sexual assault DV/SA~~ program shall have written admission and involuntary discharge criteria for clients using safe homes.

(5) DV/SA program staff ~~will~~ shall provide, support and direct services to the client; and

(6) The sponsoring program provides general non-residential client services to the client, as needed.

(b) Compliance with 450:19-3-8 shall be determined by a review of program policy and procedures; documentation of staff training and experience; program staffing patterns; client records; or other program documentation, as applicable.

450:19-3-9. Batterer's/perpetrator's treatment Batterer's intervention services

(a) ~~Batterer's/perpetrator's treatment~~ Batterer's intervention is an optional service that shall provide group and individual counseling services for self or court-referred batterers. Referral to domestic violence services is provided for the batterer's partner or victim. Group ~~treatment services~~ shall be the primary treatment modality.

(b) The focus shall be to eliminate violence within the home and assist the ~~client batterer~~ in developing personal responsibility for her or his behaviors, understanding the fundamentals of anger and emotions, learning effective coping strategies, and recognizing cyclic behavior. The ~~treatment service~~ shall be based on non-victim-blaming strategies.

(c) Whereas confidentiality is a fundamental underpinning of services for victims of domestic violence, limited confidentiality is critical in batterer ~~treatment~~ intervention services. Victim safety shall supersede all consideration of batterer confidentiality.

(d) Appropriate releases shall be obtained to facilitate communication with the partner or victim; other needed community agencies; the law enforcement or judicial systems, to assure that sufficient information is obtained to increase partner or victim safety and to properly apprise all parties of services, including the victim, court personnel, law enforcement personnel, staff of other ~~treatment~~ programs serving perpetrators batterers and the staff of programs providing victims' services. The batterer's ~~treatment~~ intervention program shall maintain contact with the victim at the victim's discretion, through a victim advocate/liaison from ~~the dv/sa a DV/SA~~ DV/SA services program serving the victim.

(e) A program providing batterer's treatment intervention services shall have the policy, procedures, staffing, training, operational methods,—and facilities to meet the following requirements:

- (1) Services shall be provided in a facility with offices available for private individual and group sessions.
- (2) Services shall be provided during hours which make them available for clients whose work hours are between 8:00 A.M. and 6:00 P.M. Monday through Friday.
- (3) The program shall maintain annually renewed service referral agreements with appropriate referral sources: substance abuse, legal and mental health services.
- (4) The program shall liaison with the judicial system or judge, in the case of court-referred clients.
- (5) Collaboration shall be established with other ODMHSAS certified domestic violence/sexual assault programs, networks and coalitions which recognize and agree to the use of the expertise of these DV/SA program services for the partner or victim of batterer program participants. These collaborative agreements shall be renewed annually.
- (6) The program shall maintain admission criteria for batterer's treatment intervention services.
- (7) Exclusion criteria shall include, but not be limited to active mental health or substance abuse treatment needs , current threat of danger by batterer to self or others, and behaviors which include, but are not be limited to the sexual molestation of children.
- (8) The program shall provide individual assessment sessions, crisis intervention, and group counseling—by professional staff sessions.
- (9) Treatment Service policy shall not permit the substitution of individual counseling appointments for group participation.
- (10) Group sizes shall be limited to not less than three (3) and not more than ~~eight (8)~~ to ten (10) clients.
- (11) Discharge criteria shall be contingent on the satisfactory meeting of specific criteria by the participant, and NOT only upon the end of a specified period of time or a specified number of sessions.
- (12) The assessment of risk of battering must be on-going and documented in the client record.
- (13) Mandatory or joint participation shall not be required of the victim.
- (14) Male and female perpetrators of domestic violence batterers shall not be treated, served, or counseled, in the same group or session, i.e., together.
- (15) There shall be a written, cooperative, accountable working relationship between the batterer's treatment intervention program, and the DV/SA program so potential victims and others are warned of imminent danger.
- (16) At a minimum, partner or victim notification is required when:

- (A) The batterer/perpetrator-batterer begins attending the treatment intervention program;
- (B) At the time the batterer/perpetrator—batterer terminates the treatment intervention program for noncompliance;

(C) The batterer/perpetrator-batterer has completed the treatment intervention program; and

(D) There is an imminent threat/danger to the victim's safety.

(17) The efforts to find and notify the batterer's partner or victim shall be documented.

(18) Education shall be provided to the batterer and shall minimally address:

- (A) power and control issues;
- (B) the sociocultural basis for violence; and
- (C) issues of sexism and gender role stereotyping

(f) Batterer intervention programs shall not be less than 24 weeks in duration.

(g) Compliance with 450:19-3-9 shall be determined by a review of program policy and procedures; documentation of staff training and experience; client records; service referral agreements, cooperative and resource; and other program documentation.

450:19-3-10. Sexual assault services

(a) Sexual assault services are a required component of certified domestic violence programs and may also be offered as a free-standing service and include personal advocacy and support for victims in law enforcement and hospital settings providing needed clothing, follow-up and support and advocacy in the legal system. The program shall minimally provide the following:

- (1) Sexual assault services shall be provided in the social service, legal, law enforcement or medical setting, in program offices or at any safe and appropriate site, as needed by the client.
- (2) Twenty four (24) hours, seven (7) days per week access to these services through the program's crisis hotline.
- (3) A twenty-four (24) hour hotline, crisis intervention, in-person advocacy as needed, active listening, or support by trained staff or volunteers with a knowledge of the issues and processes of rape trauma recovery, assessment, referral when indicated and family involvement where chosen by the victim.

(b) Compliance with 450:19-3-10 shall be determined by a review of program policy and procedures; staff and volunteer training manuals; staff training documentation; client records documentation; or other supporting documentation of the program.

SUBCHAPTER 5. CLIENT RECORDS AND CONFIDENTIALITY

450:19-5-1. Purpose

The purpose of this subchapter is to set forth the standards and criteria governing client records and confidentiality of client information, including client records, for domestic violence, batterer's intervention and sexual assault programs.

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450:19-5-2. Client records

(a) ~~For the purposes of this subchapter, the subsequently stated sections regulating client record documents, and the documentation required therein, does not apply to individuals for whom there were either no formal services provided, or the contact was of such short duration the complete information needed for a client record could not be obtained. In these instances, the program shall have its own written policy and procedures for recording and documenting these short term contacts.~~

(b) ~~The~~ A certified program shall have and maintain a master client index system containing the client's name, and the program's discreet numerical or letter identifier. If the program is under contract with ODMHSAS, the discreet identifier shall be the ODMHSAS ICIS client identification.

(e**b**) ~~There~~ A certified program shall be have written policy and procedures for correcting errors on record material by lining through, initialing both error and correction, and inserting the correct material either above the error or at the end of the entry. Further, the policy and procedures shall forbid the use of "white-out" or any action which obliterates the error.

(d**c**) Compliance with 450:19-5-2 shall be determined by on-site observation, ~~a review of program policy and procedures,~~ client records, and any other supporting program documentation.

450:19-5-3. Record content - general

(a) Client records shall contain, at a minimum, the following information:

(1) Intake assessment and screening information:

- (A) Client's name;
- (B) Date of initial contact/admission;
- (C) Pertinent medical information;
- (D) Emergency contact information;
- (E) History/nature of abuse;
- (F) ~~Perpetrator/abuser~~ Batterer information; and
- (G) Drug and alcohol screening, which shall include, but not limited to a substance abuse history.

(2) Service notes, which shall minimally include:

- (A) The time, date, location and description of services provided;
- (B) The signature of staff providing the services; and
- (C) A daily service note for shelter clients,—and a service note for each contact for other services.

(3) Service plan; focusing on victim safety and recovery, which shall minimally include:

- (A) Goals and objectives of the client, which shall be developed and agreed upon between the client and staff; and
- (B) Service plans and their updates shall be signed and dated by the client and staff.

(4) Discharge information, which shall minimally include:

- (A) Documentation that the client participated in planning for ~~their~~ his or her discharge;
- (B) The reasons for the client's discharge or departure; and

(C) Client and staff dated signatures or an explanation if staff were unable to obtain the client's signature.

(b) Each client record entry shall be legible, dated, and signed by the staff member making the entry.

(c) Compliance with 450:19-5-3 shall be determined by a review of program policy and procedures; observation of the office space or file locations; review of the client records for content; and other supporting program documentation.

450:19-5-3.1. Record content - service specific

(a) Client records for specific services shall conform ~~with~~ to the following:

(1) Shelter Services:

(A) On a client's entry to the shelter staff shall record the client's name, contact person(s) and ~~the assessed need for medical care~~ any referral for medical services. This information may be a part of the full intake interview,—if such is done on entering the shelter.

(B) Shelter client residents shall have the full intake interview and screening completed within twenty-four (24) hours of admission.

(C) Service plans shall be completed within five (5) working days of the client resident's entry to the shelter.

(D) The service plan shall be reviewed and updated at least every two (2) weeks.

(E) The client's service plan shall include components which address the needs of children accompanying the client.

(2) Crisis Intervention Services:

(A) All contacts with admitted clients are documented and contacts with persons not receiving additional services shall be documented as prescribed in program policy.

(B) Contact information is kept by the crisis intervention program.

(C) Clients to be transported to shelter facilities shall be screened before the shelter referral is made. If the client is in immediate danger, or no safe housing is available, this screening may be initially waived. If the screening is waived, documentation shall reflect the reason(s) and the notification of such to the shelter.

(3) Counseling, Support and Advocacy Services:

(A) An assessment of the client's needs shall be completed by the third (3rd) counseling or advocacy session.

(B) A service plan shall be completed by the fifth (5th) advocacy, rehabilitation or counseling session.

(C) A service plan review and update shall be completed at least every six (6) months.

(4) Children's Services:

(A) Children under the age of six (6) years shall receive an intake screening with the resident custodial parent within five (5) working days of the parent's admission. However, the screening may be conducted

without the presence of the parent, but shall be so documented.

(B) Intake screening for children six (6) years and older shall be completed within five (5) days of the admission of the parent. The screening may be conducted without the presence of the parent, but shall be so documented.

(C) Documentation of the services provided to a child shall be maintained in the resident custodial parent's record, or in a separate child's record, according to the program's policy and procedures.

(5) Sexual Assault Services:

(A) For victims who continue in ~~supportive support~~ or counseling sessions, a service plan shall be developed by the fifth (5th) visit.

(B) Service plans shall be reviewed and updated at least every ninety (90) days.

(6) Public Education Services:

(A) A standardized program form shall be used to minimally document date, location, organization, attendance, subject, length of presentation and name of presenter.

(B) Public education services records are maintained in a clearly identifiable file.

(7) Transitional Living Services:

(A) A service plan shall be developed within five (5) days of the client moving in.

(B) The service plan shall be reviewed and updated at least every ninety (90) days.

(8) Safe home Services

(A) A service plan that includes goals agreed upon by the client and sponsoring family shall be developed within five (5) days of the client moving in.

(B) The service plan shall be reviewed and updated at least monthly.

(C) Goals that were set in the service planning process shall be provided to the sponsoring family.

(D) All records regarding the client shall be retained in the client's record at the sponsoring program.

(9) ~~Batterer's/perpetrator's Treatment~~ Batterer's Intervention Services:

(A) An assessment of the client's needs shall be completed prior to initiating the ~~treatment~~ intervention processes and shall include, but not be limited to:

- (i) Current and past history of violence;
- (ii) Current lethality risk; and
- (iii) Drug and alcohol use/abuse screening which shall include, but not be limited to a substance abuse history.

(B) An individualized written client-contract shall be completed by the second (2nd) session; signed by the ~~batterer/perpetrator~~ batterer; and shall include, but not be limited to:

- (i) Attendance policy, including the length of ~~treatment~~ intervention, minimum number of sessions required and the maximum length of time for completion of the required sessions.

(ii) The criteria for suspension and termination.

(iii) The program's rules.

(iv) A written notice in bold type which specifies "Please be advised any reasonable knowledge or suspicion of illegal activities or bodily harm, or a threat of such, to the victim, her or his property, or to third persons, or any attempt, threat or gesture to commit suicide, or any belief that child abuse or neglect is present or has occurred, will be reported to the appropriate person(s) or authorities."

(v) A list of provider program expectations, such as participation, homework and that the batterer will be held accountable for all abusive and violent behavior.

(vi) The ~~batterer's/perpetrator's~~ batterer's responsibilities for safety planning, including, but not limited to, an awareness of abusive and violent behavior and patterns, e.g., time out procedures, procedures which inform the partner or victim appropriately and are not used to control her or him, logging or writing a journal of efforts to control behavior and non-violence maintenance such as buddy telephone calls, additional support groups, relaxation and exercise, etc.

(vii) Providing releases of information for collateral treatment, i.e., substance abuse or mental health treatment.

(C) A service plan shall be completed by the client and counselor by the third (3rd) session.

(D) A service plan review and update shall be completed every sixty (60) days.

(E) Service notes shall document the ongoing provision of educational components addressing the risk of battering and other violence.

~~(E)~~ Discharge reports shall be completed for all types of discharges. Types and reasons for discharge include:

(i) Rejection. Reasons for rejection shall be documented and include, but are not limited to: psychiatric history, including active or recent mental health related problems; criminal record of violent crimes; chemical dependency requiring completion of an inpatient or residential treatment program; or inability to function in a group due to limited mental cognitive abilities;

(ii) Involuntary termination. Reasons for involuntary termination shall be documented and include, but are not limited to: recurrence of violence; arrest; absences from program sessions and activities; failure to actively participate in sessions attended; attending a session when under the influence of alcohol or drugs; violation of any rules of the treating program or violation of the client-contract; and

(iii) Completion.

~~(E)~~ Without jeopardizing the safety of the victim and with the written consent of the batterer, unless

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otherwise ordered by the court, a written report to the referring agent, the victim and the victim's advocate shall be submitted within seven (7) working days of the batterer's discharge and shall include, but not be limited to:

- (i) Summarize the services provided and the batterer's participation;
- (ii) The reason(s) for discharge or rejection;
- (iii) Recommendations;
- (iv) Involuntary termination reports shall include recommendations, which may include, but are not limited to, weekend incarceration, community service hours, probation violation determination, or return to the ~~treatment-intervention~~ program; and
- (v) Efforts to notify the referring agent, the victim or the victim's advocate

(G) Efforts to notify the referring agent, the victim or the victim's advocate shall be documented in the batterer's record; and

(H) Copies of all ~~treatment~~ service documentation and reports shall be kept in the batterer's file.

(b) Where required information is not obtained, efforts to comply with the requirements of this subsection shall be documented in the client record.

(c) Compliance with this 450:19-5-3.1 shall be determined by a review of client records.

450:19-5-4. Client confidentiality

(a) ~~Case record or client records, files or notes; client records or similar records of any person who is utilizing or has utilized the services of a DV/SA program are~~ shall be confidential, and shall only be released under certain prescribed conditions (43A O.S. § 3-313 and 22 O.S. § 1601).

(b) The program shall have written policy and procedures to insure confidentiality of client information and govern the disclosure of information contained in client records which also complies with 450:19-5-10.

(c) Compliance with 450:19-5-4 shall be determined by a review of the program's policy and procedures manual; on-site review of locking mechanisms to assure security; and on-site observation of the handling of client records.

450:19-5-7. Disclosure of client information [REVOKED]

(a) ~~The policy and procedures shall describe the conditions under which information on applicants, clients, or persons with only a brief contact may be disclosed, and the procedures for releasing such information. These conditions and procedures must be in compliance with 43 O.S. § 3-313 and 22 O.S. § 1601.~~

(b) Compliance with 450:19-5-7 shall be determined by a review of the program's policy and procedures.

450:19-5-8. Consent for disclosure of client information [REVOKED]

(a) ~~A consent to release confidential information form shall be completed prior to releasing client records or any client identifying information and shall contain the following:~~

- (1) ~~The name and business address of the program making the disclosure;~~
- (2) ~~The name (and title, if any) of the person, program, or agency to whom the disclosure is to be made;~~
- (3) ~~The name of the client;~~
- (4) ~~The purpose or need for the disclosure;~~
- (5) ~~The extent or nature of information to be disclosed;~~
- (6) ~~A printed statement that the consent is subject to revocation at any time except to the extent that action has been taken in reliance thereon; and a specification of the date, event, or condition upon which the statement expires without an express revocation;~~
- (7) ~~The date on which the consent is signed;~~
- (8) ~~The signature of the client, or, when required, the signature of the person legally authorized to sign in lieu of the client; and~~
- (9) ~~A bold-faced printed statement addressing prohibition of redisclosure.~~

(b) ~~Compliance with 450:19-5-8 shall be determined by a review of the program's policy and procedures; client records; and a copy of the program's consent to release confidential information form.~~

450:19-5-9. Conditions for disclosure of client information [REVOKED]

(a) ~~The program shall have policy and procedures for obtaining consent to release confidential client information.~~

(b) ~~A client's written consent for the release of information shall be considered valid only if the following conditions have been met.~~

- (1) ~~The client is informed, in a manner that assures her or his understanding, of the specific type of information that has been requested, and the period of time for which the information has been requested.~~
- (2) ~~The client is informed of the purpose or need for the information.~~
- (3) ~~Services are not contingent upon the client's decision concerning authorization for the release of information.~~
- (4) ~~The client gives her or his consent freely and voluntarily.~~
- (5) ~~Fulfillment of the conditions for consent in (1) through (4) above shall be documented in the client record.~~

(c) ~~Compliance with 450:19-5-9 shall be determined by a review of the program's policy and procedures manual.~~

450:19-5-10. Confidentiality of mental health and drug or alcohol abuse treatment information

(a) All mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are

both privileged and confidential. In addition, the identity of all consumers who have received or are receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the consumer unless a state or federal law exception applies.

(b) All facilities shall have policy and procedures protecting the confidential and privileged nature of mental health and drug or alcohol abuse treatment information in compliance with state and federal law and which contain at a minimum:

(1) an acknowledgment that all mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be released without the written consent of the consumer or the consumer's legally authorized representative;

(2) an acknowledgment that the identity of a consumer who has received or is receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative;

(3) a procedure to limit access to mental health and drug or alcohol abuse treatment information to only those persons or agencies actively engaged in the treatment of the patient and to the minimum amount of information necessary to carry out the purpose for the release;

(4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's mental health and drug or alcohol abuse treatment information;

(5) an acknowledgement that certain state and federal law exceptions to disclosure of mental health and drug or alcohol abuse treatment information without the written consent of the consumer or the consumer's legally authorized representative exist and the facility will release information as required by those laws and

(6) a procedure by which to notify a consumer of his or her right to confidentiality.

(c) A facility disclosing information pursuant to a written consent to release information shall ensure the written consent form complies with all applicable state and federal law and contains at a minimum the following:

(1) the name of the person or program permitted to make the disclosure;

(2) the name or title of the person or the name of the organization to which disclosure is to be made;

(3) the name of the consumer whose records are to be released;

(4) a description of the information to be disclosed;

(5) the specific reason for the disclosure;

(6) the signature of the consumer or the consumer's legally authorized representative;

(7) the date the consent to release was signed by the consumer or the consumer's legally authorized representative;

(8) an expiration date, event or condition which shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given;

(9) a statement of the right of the consumer, or the consumer's legally authorized representative, to revoke the consent to release in writing and a description of how the patient may do so;

(10) a confidentiality notice which complies with state and federal law; and

(11) a statement in bold face writing that "The information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS)."

(d) Compliance with 450:19-5-10 shall be determined by a review of facility policy and procedures; facility forms; consumer record reviews; interviews with staff and consumers; and any other supporting facility documentation.

SUBCHAPTER 7. DV/SA SHELTER PROGRAM PHYSICAL ENVIRONMENTS

450:19-7-6. Program environment, general

(a) The certified DV/SA shelter program environment shall meet the following conditions:

(1) The facility shall be accessible by an all-weather road.

(2) The facility shall have adequate space in which to carry out the program's goals and objectives, including outdoor areas and equipment when appropriate.

(3) The facility shall have heating and air conditioning equipment adequate to maintain the temperature in areas utilized by residents at between 65°F and 85°F.

(4) The facility shall have adequate ventilation and air circulation provided in the facility to assure an environment that will be comfortable for the residents.

(5) The facility shall have water from an approved tested potable source.

(6) The facility shall have a commode, lavatory, and bathing facility at a ratio of one (1) to twelve (12) residents, including infants and children. The privacy of individuals or families shall be assured while using these facilities.

(7) Closet, bedroom, and bathroom doors shall be easily opened from both sides.

~~(8) The facility shall have designated smoking areas~~ Smoking shall not be allowed in food preparation or sleeping areas and shall not be allowed in any other indoor portion of any facility.

(9) Residents' rooms shall be so arranged that the client has direct access to a hallway or common area without having to pass through other resident's rooms or areas.

(10) Telephones shall be provided for the convenience of the staff, and the necessary accommodation of the clients. Pay telephones only are not acceptable.

- (11) Baby beds and high chairs shall be available for infants and small children.
- (12) The facility shall have access to outdoor recreational space and playground equipment located, installed, and maintained as to ensure the safety of the clients and their children. The grounds and access thereto shall be maintained in a manner that shall ensure the area is free of any hazard to health or safety.
- (13) The facility shall be secured by double locks or locking devices such as (~~chains, bolts, etc.~~) on ground floor doors. However, documentation that the locking system meets state and local fire code inspection shall be accepted. When key-locked deadbolts are used, the location of the keys must be identified and readily accessible.
- (14) There shall be written policy and procedures addressing the use of any outdoor recreational space, including required supervision and the safety of pre-schoolers.
- (15) All outdoor openings such as (~~doors, and windows~~) shall be screened and covered for privacy.
- (16) Toxic materials and dangerous substances, such as toxic cleaners, insecticides, and matches shall be stored in a non-resident area, locked space where they are not accessible to children.
- (17) Combustible materials shall be stored in locked non-flammable containers.
- (18) The Poison Control Center's toll-free telephone number shall be posted and visible to staff and resident clients at all times.
- (19) Facility sanitation shall be maintained to prevent offensive odors and insect infestation.
- (20) Provision shall be made for cleaning the facility minimally once per week. A written work schedule or other form of notification shall be posted, which clearly delineates each individual's responsibility for various tasks.
- (21) Kitchens used for meal preparation in the residential facility shall be provided with the necessary equipment for the preparation, storage, serving, and clean-up of all meals. All equipment shall be maintained in working order.
- (22) Provisions shall be made to assist or make food available for meal preparation that accommodates special diets.
- (23) There shall be written policy and procedures for laundry and linens, addressing frequency of changing linens, and laundry arrangements within the facility.
- (24) Laundry equipment shall be provided within the residential facility, and shall be kept clean, well-maintained, and properly ventilated.
- (25) Space shall be provided for storage of clients' personal belongings.
- (26) Written policy and procedures shall address secure storage of client valuables.
- (b) Compliance with 450:19-7-6 shall be determined by a review of program policy and procedures; shelter rules; review of fire and safety inspection report; staff and resident client interviews, and shelter policy and procedures.

SUBCHAPTER 9. PROGRAM MANAGEMENT AND PERFORMANCE IMPROVEMENT

450:19-9-10. Performance improvement plan

- (a) The program shall have a written performance improvement plan. This plan shall include, not be limited to, the following:
- (1) The purposes of the performance improvement plan, which shall include, but not be limited to, the improvement of services to clients.
 - (2) The job titles of persons responsible for the implementation and operations of the plan.
 - (3) The operational procedures of the plan.
 - (4) Protection of client confidentiality with no client name(s) or initial(s) being stated in any report or recommendation.
 - (5) Monitoring of services to clients to insure:
 - (A) Services offered are based on client need(s).
 - (B) Service delivery is based on client need(s).
 - (C) There is routine and regular use of case conferences, case consultation and staff supervision of client cases.
 - (D) Cultural competence and cultural sensitivity.
 - (6) Provisions for an annual report of the plan's operation, recommendations and disposition of those recommendations to be reported, annually, to the governing body.
 - (7) Annual review, recommendations, and approval of the plan by the governing body.
 - (8) A mechanism by which clients may voluntarily provide input regarding services.
- (b) Compliance with 450:19-9-10 shall be determined by a review of the performance improvement plan, documentation of the plan's operations, recommendations, disposition of those recommendations, governing board and staff meeting minutes, and any other supporting documentation provided by the program.

SUBCHAPTER 11. CLIENT RIGHTS

450:19-11-1. Client rights, shelter and residential services

- (a) All clients of shelters and residential services shall have and enjoy all constitutional and statutory rights of all citizens of the State of Oklahoma and the United States, unless abridged through due process of law by a court of competent jurisdiction. Specific client rights shall be visibly posted, and are listed below:
- (1) All clients have the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect for individual dignity.
 - (2) All clients have the right to a safe, sanitary, and humane living environment.
 - (3) All clients have the right to a humane psychological environment protecting them from harm, abuse, and neglect.

- (4) Each client has the right to an environment which provides reasonable privacy, promotes personal dignity, and provides opportunity for the client to improve her or his functioning.
- (5) Each client has the right to receive services suited to her or his needs without regard to her or his race, religion, sex, ethnic origin, age, degree of disability, handicapping condition, legal status, or ability to pay for the services.
- (6) Each client, on admission, has the absolute right to communicate with a relative, friend, clergy, or attorney, by telephone or mail, at the expense of the program if the client is indigent.
- (7) Each client shall have and retain the right to confidential communication with an attorney, personal physician, or clergy.
- (8) Each client has the right to uncensored, private communications including, but not limited to, letters and telephone calls. Copies of any personal letter, sent or received, by a client shall not be kept in her or his client record without the written consent of the client.
- (9) No client shall be neglected or sexually, physically, verbally, or otherwise abused.
- (10) Each client shall have the right to practice her or his own religious beliefs, and afforded the opportunity for religious worship that does not infringe on the health or safety of others. No client shall be coerced into engaging in, or refraining from, any personal religious activity, practice, or belief.
- (11) Each client has the right to be provided with prompt, competent, appropriate services and an individualized service plan.
 - (A) The client shall be afforded the opportunity to participate in her or his service plan.
 - (B) The client may consent, or refuse to consent, to the proposed services.
- (12) The records of each client shall be treated as confidential.
- (13) Each client has the right to refuse to participate in any research project or medical experiment without informed consent of the client, as defined by law. A refusal to participate shall not affect the services available to the client.
- (14) Each client has the right to assert grievances with respect to any alleged infringement of these stated rights of clients, or any other subsequently statutorily granted rights.
- (15) No client shall ever be retaliated against, or subject to, any adverse conditions or services solely or partially because of having asserted her or his rights as stated in this section.
- (16) Clients may review their records, or authorize their attorney or others to do so. However, where the program is providing the treatment of a mental health or substance abuse illness, the provisions of 43A O.S. § 1-109 and 42 CFR then apply. Clients also have the right that all information and records regarding them shall be treated as confidential.

- (b) Programs shall have written policy and procedures, and shall provide documented staff training to insure the implementation of each and every client right stated in this section.
- (c) Programs shall have written policy and procedures to insure each client enjoys, and has explained to her/him, these rights; and these rights are visibly posted in both client and public areas of the facility.
- (d) The ODMHSAS ~~Advocate~~ General Office of Consumer Advocacy, in any investigation or program monitoring regarding client rights, shall have unimpeded access to clients, program records and program staff as set forth in OAC Title 450, Chapter 15, Consumer Rights.
- (e) Compliance with 450:19-11-1 shall be determined by a review of program policy and procedures; posted notices of client rights; interviews with staff and clients; review of grievances by clients or others; and any other supporting program documentation.

450:19-11-2. Client rights, non-shelter/residential services

- (a) All clients receiving outpatient services shall have and enjoy all constitutional and statutory rights of all citizens of the State of Oklahoma and the United States, unless abridged through due process of law by a court of competent jurisdiction. Specific client rights shall be visibly posted, and are listed below:
 - (1) All clients have the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect for individual dignity.
 - (2) Each client has the right to receive services in a safe, sanitary, and humane living environment.
 - (3) Each client has the right to receive services in a humane psychological environment protecting them from harm, abuse, and neglect.
 - (4) Each client has the right to receive services in an environment which provides privacy, promotes personal dignity, and provides opportunity for the client to improve her or his functioning.
 - (5) Each client has the right to receive services without regard to her or his race, religion, sex, ethnic origin, age, degree of disability, handicapping condition, legal status, or ability to pay for the services.
 - (6) No client shall ever be neglected or sexually, physically, verbally, or otherwise abused.
 - (7) Each client has the right to be provided with prompt, competent, appropriate services and an individualized service plan.
 - (A) The client shall be afforded the opportunity to participate in her or his services and service planning; and may consent, or refuse to consent, to the proposed services.
 - (B) When the client permits, the client's family or significant others shall be involved in the treatment and treatment planning.
 - (8) The records of each client shall be treated as confidential.

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(9) Each client has the right to refuse to participate in any research project or medical experiment without informed consent of the client, as defined by law. A refusal to participate shall not affect the services available to the client.

(10) Each client has the right to assert grievances with respect to any alleged infringement of these stated rights of clients, or any other subsequently statutorily granted rights.

(11) No client shall ever be retaliated against, or subject to, any adverse conditions or services solely or partially because of having asserted her or his rights as stated in this section.

(12) Clients may review their records, or authorize their attorney or others to do so. However, where the program is providing the treatment of a mental health or substance abuse illness, the provisions of 43A O.S. § 1-109 and 42 CFR apply. Clients also have the right that all information and records regarding them shall be treated as confidential.

(b) Programs shall have written policy and procedures, and shall provide documented staff training to insure the implementation of each and every client right stated in this section.

(c) Programs shall have written policy and procedures to insure each client enjoys, and has explained to her or him, these rights; and these rights are visibly posted in both client and public areas of the facility.

(d) ~~The ODMHSAS Advocate General~~ Office of Consumer Advocacy, in any investigation or program monitoring regarding client rights, shall have unimpeded access to clients, program records and program staff as set forth in OAC Title 450, Chapter 15, Consumer Rights.

(e) Compliance with 450:19-11-2 shall be determined by a review of program policy and procedures; posted notices of client rights (outpatient services); interviews with staff and clients; review of grievances by clients or others; and any other supporting program documentation.

450:19-11-3. Client's grievance policy

(a) Each program shall have a written Client's Grievance Policy providing for, but not limited to, the following:

(1) Written notice of the grievance and appeal procedure provided to the resident or guardian; and, if involved with the client, to family members or significant others.

(2) Time frames for the grievance policy's procedures which allow for ~~expedient resolution~~ an initial response to the client within five (5) days of receipt and resolution within 30 days.

(3) Name(s) of the individual(s) who are responsible for coordinating the grievance policy and the individual responsible for or authority to make decision(s) for resolution of the grievance and the individual responsible for or authorized to make decisions for resolution of grievance. In the instance where the decision maker is the subject of a grievance, decision making authority shall be delegated.

(4) ~~Procedure by which an individual may file a grievance and appeal the outcome~~ Provide for notice to the resident that he or she has a right to make a complaint to the ODMHSAS Consumer Advocacy Division.

(5) Mechanism to monitor the grievance process and improve performance based on outcomes.

(6) Annual review of the grievance policy and procedures, with revisions as needed.

(b) Compliance with 450:19-11-3 shall be determined by:

(1) a review of the program's grievance policy procedures;

(2) posted notices of client rights;

(3) interviews with staff and clients;

(4) review of the program's records of filed grievances; and

(5) any other supporting program documentation.

SUBCHAPTER 13. PERSONNEL AND VOLUNTEERS

PART 1. GENERAL

450:19-13-9. Supervision of employees and volunteers

(a) ~~The agency~~ A certified program shall establish in writing lines of supervision for all employees and volunteers and have a defined schedule of supervisory meetings.

(b) A certified program shall ensure each volunteer has the knowledge appropriate to his or her job duties and are supervised by staff.

(c) Compliance with 450:19-13-9 shall be determined through a review of the program's policy and procedures, and any other supporting documentation provided, including but not limited to, employee/volunteer manuals, organizational charts, job descriptions.

PART 3. TRAINING

450:19-13-20.1. Orientation - general, employees, ~~paraprofessionals~~ and volunteers

~~The agency~~ A certified program shall have a formal orientation program to familiarize new employees and volunteers which includes, but is not limited to:

(1) ~~Agency Program~~ Agency Program goals and services of each ~~program~~ service component;

(2) ~~Agency Program~~ policy and procedures;

(3) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;

(4) Facility safety and disaster plans;

(5) First aid kits, their location, contents and use;

(6) Universal precautions;

(7) Client rights;

(8) Domestic violence and its effects on victims and children;

(9) The cycle of domestic violence;

(10) Power and control tactics of abuse;

(11) Crisis intervention techniques;

(12) Sexual assault;

(13) ~~Supportive counseling~~;

(14) Victim advocacy;

- (~~45~~14) Parenting techniques;
- (~~46~~15) Active listening techniques;
- (~~47~~16) Accessing resources needed by victims and their families;
- (~~48~~17) The orientation training component shall be a minimum of ten (10) hours; and
- (~~49~~18) Orientation must be ~~obtained/provided~~ take place within the first week of employment or prior to direct client contact and services.

(b) Compliance with 450:19-13-20.1 shall be determined by a review of the written policies and procedures, and employee and volunteer training manuals and records.

450:19-13-20.2. Inservice and ongoing training for employees, ~~paraprofessionals~~ and volunteers

(a) ~~The agency~~ A certified program shall have policy and procedures mandating the annual training of all staff ~~and volunteers~~, which shall include, but not be limited to:

- (1) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;
- (2) Facility safety and disaster plans;
- (3) First aid kits, their location, contents and use;
- (4) Universal precautions
- (5) Client rights;
- (6) Program evaluation and goals;
- (7) Domestic violence and its effects on victims and children;
- (8) The cycle of domestic violence;
- (9) Power and control tactics of abuse;
- (10) Crisis intervention techniques;
- (11) Sexual assault;
- (12) ~~Supportive counseling;~~
- (~~13~~) Victim advocacy;
- (~~44~~13) Parenting techniques;
- (~~45~~14) Active listening techniques;
- (~~46~~15) Accessing resources needed by victims and their families;
- (~~47~~16) The annual training component for staff shall be a minimum of sixteen (16) hours.

(b) A certified program shall have policy and procedures mandating the annual training of all volunteers, which shall include, but not be limited to:

- (1) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;
- (2) Facility safety and disaster plans;
- (3) First aid kits, their location, contents and use;
- (4) Universal precautions
- (5) Client rights;
- (6) Program evaluation and goals;
- (7) Volunteers who provide less than eight (8) hours of direct service per month shall receive a minimum of four (4) hours annual training;
- (8) Individuals that volunteer services and do not meet the requirements for a volunteer as defined in OAC 450:19-1-2 shall annually review the certified program's policies and procedures addressing items (1) through (5)

of this section, but do not have a minimum number of training hours required.

(c) Compliance with 450:19-13-20.2 shall be determined by a review of policy and procedures; volunteer or staff training materials; staff development and in-service training documentation; employee and volunteer development plan.

450:19-13-25. Staff training, sexual assault services

(a) Prior to providing any direct services, all sexual assault services staff shall receive ~~the prescribed orientation training and SANE sexual assault training or other curriculum consistent with SANE classroom training~~ in addition to basic orientation which shall include but not be limited to information regarding sexual assault and rape, date rape, spousal rape, incest, stalking and sexual harassment, as well as training in safety planning and local procedures for providing sexual assault services for victims of rape.

- (b) Compliance shall be determined by:
- (1) Review of program's policy and procedures.
 - (2) Review of program's training records and other provided documentation of staff training.
 - (3) Review of personnel or volunteer records.

450:19-13-29. Staff training, advocates Court Advocates

(a) Prior to providing services, Court Advocates shall receive the prescribed orientation program and have at least three (3) hours of accompanied court time with a trained court advocate.

- (b) Compliance with 450:19-13-29 shall be determined by:
- (1) Review of program's policy and procedures.
 - (2) Review of program's training records and other provided documentation of staff training.
 - (3) Review of personnel records.

450:19-13-30. Staff training, batterer's and perpetrator's treatment intervention services

(a) Staff providing batterer's ~~and perpetrator's treatment intervention~~ services shall minimally have:

- (1) A Bachelor's degree in a behavioral health or criminal justice related field and two years related work experience; or
- (2) Four (4) years supervised experience providing counseling and treatment or related services.
- (3) At least one staff member in each certified program meeting the requirements defined in 450:19-1-2 for "professional staff" or the program shall contract with an individual that meets the requirements for "professional staff" for consultation.

(b) Prior to providing any direct services, staff providing batterer's ~~and perpetrator's treatment intervention~~ services shall receive the prescribed orientation and at least three (3) hours training in:

- (1) the dynamics and scope of domestic violence and sexual assault; and
- (2) the dynamics of batterers.

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- (c) Compliance with 450:19-13-30 shall be determined by:
- (1) Review of program's policy and procedures.
 - (2) Review of program's training records and other provided documentation of staff training.
 - (3) Review of personnel records.

[OAR Docket #03-1010; filed 5-21-03]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 30. CLINICAL CARE

[OAR Docket #03-1011]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Role of State-Operated ~~Inpatient~~ Psychiatric ~~Hospitals~~ Units
[AMENDED]

- 450:30-9-1 [AMENDED]
- 450:30-9-2 [AMENDED]
- 450:30-9-3 [AMENDED]
- 450:30-9-3.1 [NEW]
- 450:30-9-4 [AMENDED]
- 450:30-9-5 [AMENDED]
- 450:30-9-6 [AMENDED]
- 450:30-9-7 [AMENDED]
- 450:30-9-8 [AMENDED]

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ANALYSIS:

In accordance with the Administrative Procedures Act, these rule revisions to Chapter 30 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory changes, enhance service provision and supervision, delete redundant or superfluous language and correct scrivener's errors.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003:

SUBCHAPTER 9. ROLE OF STATE-OPERATED INPATIENT PSYCHIATRIC HOSPITALS UNITS

450:30-9-1. Purpose

The purpose of this subchapter is to define the role of ~~the three state-operated facilities with inpatient psychiatric hospitals units~~ serving adults under civil admissions (~~O.S. Title 43A, §§ 3-101(A) (1) (2) (3)~~) in providing mental health treatment services to individuals within the State of Oklahoma.

450:30-9-2. Applicability

(a) **Applicability.** This subchapter is applicable to ~~those state-operated facilities with inpatient psychiatric hospitals units delineated in 450:30-9-1 above; to those state-operated facilities (delineated in O.S. 43A §§ 3-101(A) (4) and (B) and 3-107) as well as all contract programs, agencies or facilities funded in whole or in part by the Department.~~

(b) **Exceptions.** ~~The forensic unit at Eastern State Hospital and the medical/surgical unit at Griffin Memorial Hospital are exceptions to this Subchapter.~~

450:30-9-3. Admission criteria for state-operated inpatient psychiatric units hospitals

Individuals appropriate for ~~hospital involuntary~~ admission to a state-operated inpatient psychiatric unit are persons age eighteen or older who have received maximum benefit of the community based treatment available ("Maximum benefit" is defined as the extent available resources can no longer accommodate ~~and/or~~ assist in the reduction of psychiatric symptoms in a level of care less restrictive than ~~state hospitals inpatient services.~~); and who ~~have evidence of a psychiatric disorder as manifested by one or more of the following:~~

(1) ~~Thought disorders, to include~~ Are determined to have any of the following psychiatric diagnoses based on nomenclature established in the most current edition of the Diagnostic and Statistical Manual, published by the American Psychiatric Association:

- (A) Paranoid ideation Schizophrenia;
- (B) Ideas of reference Schizoaffective Disorder;
- (C) Loss of reality testing Other Psychotic Disorders;
- (D) Loss of time concept Bipolar Disorder;
- (E) Confusion, autism or incoherence Depressive Disorders;
- (F) Delusions Other Mood Disorders;
- (G) Anxiety Disorders;
- (H) Dissociative Disorders;
- (I) Adjustment Disorders; or,
- (J) Substance Related Psychiatric Disorders; and

(2) ~~Pereceptual disorders, to include: Demonstrate they are a risk of harm to self or others as defined in 43A O.S. § 1-103.~~

- (A) ~~Auditory hallucinations~~
- (B) ~~Visual hallucinations~~
- (C) ~~Inability to recognize familiar people~~

(3) ~~Suicidal ideation or intent.~~

(4) ~~Mood disorders.~~

(5) ~~Withdrawal from substance abuse requiring medical care when such services are not available locally, to include:~~

- (A) ~~Seizure symptomology.~~
- (B) ~~Alcohol or drug induced psychosis.~~

(6) ~~Withdrawal from substances requiring either medically supervised or non-medical care only when such services are not available locally.~~

450:30-9.3.1. Voluntary formal and informal admissions to a state-operated inpatient psychiatric unit

The executive director of the state-operated inpatient unit may receive and retain as a consumer, when there are available accommodations, any person eighteen (18) years of age or over, who meets the admission criteria defined in 450:30-9-3, and who voluntarily makes a written application for inpatient treatment.

(1) Any person presenting to a state-operated inpatient psychiatric unit for voluntary admission shall be evaluated by a licensed mental health professional, as defined by 43A O.S. §1-103 (11), who is employed by the state-operated inpatient psychiatric unit to determine that the requested admission is appropriate in accordance with the facility's admission criteria . If the licensed mental health professional determines that admission is necessary and an appropriate referral by a community mental health center has not been made, the licensed mental health professional will seek consent from the person making application for admission to contact the local community mental health center to discuss the admission of the consumer and review options for consideration in lieu of admission to the facility.

(2) A person being admitted to the state-operated inpatient psychiatric unit on a voluntary status must be able to grant consent for the admission. The licensed mental health professional shall ensure that the person signing the request for voluntary admission is competent to grant consent. If the person is unable or not competent to give consent, then the individual may be admitted through the civil involuntary commitment process.

(3) The written application for voluntary admission shall include: the name of facility to which the request is made, the current date and time, the name and address of the person making the request, the signatures of the person making the request and the licensed mental health professional conducting the evaluation, and the signature of a witness or notary.

(4) An individual presenting for voluntary admission with pending criminal charges against him or her shall not

be admitted if he or she is confined in a jail or adult lock-up facility.

(5) An individual voluntarily admitted to the state-operated inpatient psychiatric unit shall not be detained for a period exceeding seventy-two (72) hours, excluding weekends and holidays, from notice of the consumer's desire to leave such inpatient treatment facility.

(6) The state-operated inpatient psychiatric unit shall refer, with appropriate signed consent by the individual, persons who do not meet the criteria for admission and are refused admission to an appropriate agency or service. Appropriate documentation of the referral and reason for the non-admission shall be made.

450:30-9-4. Conditions for Community Mental Health Center CMHC referrals

The state-operated inpatient psychiatric unit shall develop procedures by which referrals for admission to the unit are accepted from community mental health centers, provided a signed consent for release of information is secured from the consumer. Conditions under which a state-operated inpatient psychiatric unit may accept a referral from a community mental health center (CMHC) may refer hospitals are as follows:

(1) ~~CMHCs without local inpatient capacity (having either its own or a contracted for, inpatient service) should refer to the state hospital when: The consumer shall meet admission criteria as defined in 450:30-9-3 and 450:30-9-3.1; and~~

~~(A) Individuals meet the admission criteria and outpatient community based treatment has been unsuccessful, or~~

~~(B) Individuals meet the admission criteria as defined in 450:30-9-3; have multiple and/or complex problems that require a diagnostic evaluation and cannot be resolved in a community based setting.~~

~~(C) Individuals meet the admission criteria and exhibit violent and/or aggressive acting out behavior.~~

(2) ~~CMHCs with local inpatient capacity should refer to the state hospital when: The CMHC shall have no local inpatient psychiatric unit capacity either of its own or a contracted for inpatient service; or~~

~~(A) Individuals meet the admission criteria and 1) have medical problems for which there is no treatment locally; or 2) are totally resistant to psychiatric treatment. (These individuals may only be referred if there is documentation regarding numerous attempts locally to stabilize their psychiatric condition with medications. (Prior to acceptance, a treatment team review with state hospital staff shall occur.)~~

~~(B) Individuals meet the admission criteria and need specialized services that are unavailable locally, such as the Forensic Unit at Eastern State Hospital.~~

~~(C) When the environment at the local inpatient psychiatric unit is deemed unsafe (i.e., structural problems, overcrowding), the CMHC may petition the state hospital for referral. (Overcrowding in and of itself may not be deemed an unsafe environment.)~~

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450:30-9-5. Detoxification referrals

~~For~~ The state-operated inpatient psychiatric unit may develop procedures by which referrals for admission to the unit for detoxification; are accepted from an alcohol and drug program (ADP) shall refer to the state hospital only when detoxification services, are not provided locally; an adequate signed consent for release of information is secured from the consumer. Conditions under which a state-operated inpatient psychiatric unit may accept a referral from an alcohol and drug program are as follows:

- (1) The individual shall meet admission criteria as defined in 450:30-9-3 and 450:30-9-3.1;
- (2) Detoxification services are not provided locally; and
- (3) The specific alcohol and drug program referring the individual to the state-operated inpatient psychiatric unit for detoxification services agrees to participate in discharge planning, with properly signed consent by the consumer, to assure continuity from state-operated inpatient psychiatric unit services to community based services.

450:30-9-6. Criteria for exclusion from state-operated inpatient psychiatric units hospital admission

~~Individuals inappropriate for state hospital admission to state-operated psychiatric inpatient units are considered to be the following:~~

- (1) ~~Individuals who have a problem with substance abuse except those in acute withdrawal, and for whom no local inpatient services for such treatment are immediately available.~~
- (2) ~~Individuals who with a are post-traumatic head injury or other organically based disorders with behavioral manifestations not attributable to a specific mental illness as listed in 450:30-9-3(1), and do not meet the admission criteria stated in 450:30-9-3(2).~~
- (3) ~~Individuals who are mentally retarded, or developmentally disabled, with behavioral manifestations not attributable to a specific mental illness as listed in 450:30-9-3 (1), and do not meet the admission criteria stated in 450:30-9-3(2).~~
- (4) ~~Individuals who are homicidal/aggressive homicidal or aggressive, and do not meet the admission criteria stated in 450:30-9-3.~~
- (5) ~~Individuals who are medically unstable, ("Medically unstable" is defined as an-immediate life threatening medical disorder or illness that requires emergency, care, and/or severe medical illnesses or disorders for which the state-operated psychiatric inpatient unit hospital does not have the ability to treat/accommodate.)~~
- (6) ~~Individuals with personality disorders [as defined in the current DSM-III-R (Diagnostic and Statistical Manual, Third Edition, Revised, published by the American Psychiatric Association)] and who do not meet the admission criteria stated in 450:30-9-3.~~
- (7) ~~Individuals who are elderly (age 65 and over), and do not meet the admission criteria stated in 450:30-9-3.~~

450:30-9-7. Referral assistance to be provided by to the state-operated psychiatric inpatient unit hospital

~~Referral to the hospitals~~ The state-operated psychiatric inpatient unit shall assure that procedures are published and followed related to activities which may be initiated at the local level to assist with admissions to the state-operated psychiatric inpatient unit on a consumer's behalf with signed consumer consent. These shall involve the following:

- (1) Pre-screening Evaluation and assessment for consideration of admission to the state-operated psychiatric inpatient unit if shall be performed by a the community mental health center (CMHC) or alcohol or drug program ADP of all referrals to the state hospital; and,
- (2) CMHC or ADP staff are actively involved in the crisis intervention and referral process to the hospital. Communication with local law enforcement and courts regarding the appropriate referral process and appropriate court orders.
- (3) Referral to the hospitals by the CMHC or ADP only occurs after all other community resources are explored with the client and family (if family is available).
- (4) Prior notification to the hospital of all referrals from CMHCs or ADPs is required.
- (5) CMHCs and ADPs shall work actively with local sheriffs/courts regarding the appropriate referral process and appropriate court orders.

450:30-9-8. State-operated psychiatric inpatient unit hospital treatment functions

~~(a) State hospital triage/admission function.~~ The state-operated psychiatric inpatient unit hospital triage/admission function is as follows:

- (1) Comprehensive evaluation prior to admission; and
- (2) On voluntary admissions all options (other than hospitalization) are to be explored with the client, family and referring CMHC or ADP.
- (3) Begin active crisis Crisis intervention/crisis intervention and stabilization immediately, regardless of legal status. in consideration of relevant There may be legal restrictions on providing treatment including but not limited to medications to individuals admitted on emergency detention/detention order status; however, this does not preclude beginning other needed treatment.

~~(b) Acute short term hospital care.~~ The state-operated psychiatric inpatient unit acute care treatment function is as follows:

- (1) Acute short term hospital treatment within the state hospitals shall be available only to individuals who reside in a CMHC service area that does not have access to local inpatient treatment, with the exception of those terms specified in 450:30-9-4(2) (A) through (C). Treatment to provide quick reduction and stabilization of psychiatric or acute withdrawal symptoms with ongoing treatment provided in the community; and
- (2) The anticipated length of stay is not expected to exceed 30 days. (For individuals who have not been stabilized and are still in need of hospitalization after the initial

~~30 days treatment may be extended based on a treatment team review. Discharge planning which shall begin at time of admission.~~

~~(3) Treatment focus is upon quick reduction and/or stabilization of psychiatric/acute withdrawal symptoms with ongoing treatment provided in the community.~~

~~(4) Discharge planning begins at time of admission.~~

~~(c) **Specialized treatment tracks.** For those individual meeting the admission criteria, specialized treatment tracks maybe developed based upon the treatment needs of those individuals within the hospital.~~

~~(d) **Continued treatment planning/community linkage functions.** The state-operated psychiatric inpatient unit continued treatment function is as follows:~~

~~(1) Continued treatment planning/community linkage begins which shall begin with between the consumer patient, and, pursuant to releases signed by the consumer, the family and the local community mental health center CMHC or alcohol or drug program ADP as soon as the consumer patient is admitted to the state-operated psychiatric inpatient unit hospital.~~

~~(2) Planning includes the active involvement of the patient, the family and the local CMHC or ADP.~~

~~(3) Discharge planning. Planning, pursuant to appropriately signed releases by the consumer, which shall include a and the state hospital and written discharge plan to shall address all the basic needs of the patient consumer including but not limited to (such as housing, income maintenance, and social support, etc.), not only as well as specific provisions for ongoing community based mental health and or substance abuse treatment needs [O.S. 43 A §§ 7 101 and 7 102]. When treatment for co-occurring substance abuse and mental health disorders is indicated, discharge planning shall include arrangements to continue treatment for the co-occurring disorders.~~

~~(4) Regular communication including meetings linkage with all CMHCs community mental health centers and ADPs alcohol or drug programs within the state-operated psychiatric inpatient unit hospital service area shall occur, with each (hospital, CMHC, ADP) being responsible for pursuant to appropriately signed releases by the consumer to support the existence and continuation of linkage functions care on behalf of the consumer in post-inpatient settings.~~

~~(d) Any person involuntarily committed for inpatient treatment shall receive a review of his or her involuntary status at least once every three (3) months. The executive director of the state-operated facility with the psychiatric inpatient unit shall take appropriate action based upon this review.~~

~~(1) If continued care in the involuntary commitment status is indicated, the treatment team shall determine reasons the individual does not meet criteria for discharge and summarize these in a written evaluation. The team's report shall indicate the exploration of alternatives for continuing care in a less restrictive setting and reasons these alternatives are not clinically indicated.~~

~~(2) A second, independent evaluation shall be made by the state-operated psychiatric unit clinical director. In~~

~~cases where the clinical director is also the treating physician, a non-treating physician shall conduct and document an the independent evaluation.~~

~~(3) All evaluations for purposes of such reviews shall be documented in the medical record.~~

~~(4) Summaries and recommendations of the team and the independent evaluation shall be forwarded to the executive director who shall document, in the medical record, actions authorized by him or her based on the review. Such actions may include but not be limited to discharge from the state-operated psychiatric inpatient unit, motion to modify commitment orders, or development of revised treatment plans for services offered for the consumer in the state-operated psychiatric inpatient unit~~

~~(5) Copies of all evaluations including recommendations, pursuant to this subsection shall be provided to the ODMHSAS Office of Consumer Advocacy.~~

[OAR Docket #03-1011; filed 5-21-03]

**TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #03-1012]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 11. Purchasing [NEW]
- 610:1-11-1 Purpose [NEW]
- 610:1-11-2 Purchasing authority for OneNet statewide contracts [NEW]
- 610:1-11-3 Definitions [NEW]
- 610:1-11-4 General contracting and purchasing provisions [NEW]
- 610:1-11-5 Vendor registration [NEW]
- 610:1-11-6 Vendor retention and removal from bidders list [NEW]
- 610:1-11-7 Competitive bidding [NEW]
- 610:1-11-8 Request for Proposals process [NEW]
- 610:1-11-9 Group purchasing acquisitions [NEW]
- 610:1-11-10 Sole source contracts [NEW]
- 610:1-11-11 Emergency acquisition process [NEW]
- 610:1-11-12 Purchases \$2,500 or less [NEW]
- 610:1-11-13 Purchases between \$2,501 and \$25,000 [NEW]
- 610:1-11-14 Purchases in excess of \$25,000 [NEW]
- 610:1-11-15 Purchases in excess of \$100,000 [NEW]
- 610:1-11-16 Professional services contracts [NEW]
- 610:1-11-17 Training [NEW]

AUTHORITY:

State Regents for Higher Education, OKLA. CONST. Art XIII-A; 70 O.S., §3206, 74 O.S. §§85.3A, 85.9E.

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Permanent Final Adoptions

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N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The rules set forth the necessary instructions and guidelines for vendors or other interested parties regarding the purchasing processes for the OSRHE.

The Purchasing Department of the Oklahoma State Regents for Higher Education is responsible for the acquisition of all goods, equipment and services for the operation of the Oklahoma State Regents for Higher Education, authorized by 70 O.S. §3206. The State Regents is exempted from the provisions of the Oklahoma Central Purchasing Act by 74 O.S. 85.3A. All acquisitions of the State Regents made pursuant to the State Regents' approved Purchasing Policy.

The Department of Central Services shall recognize as a statewide contract an unencumbered contract consummated in behalf of the telecommunications network known as OneNet by the Oklahoma State Regents for Higher Education or any other state entity assigned responsibility for OneNet; provided, said recognition shall require recommendation by the Information Services Division of the Office of State Finance. The Department of Central Services shall not subject purchases pursuant to said contracts to any quantity limit. [74 O.S., §85.9E. A.]

The Oklahoma State Regents for Higher Education and any other state entity assigned responsibility for OneNet are authorized to negotiate for education or government discounts from published price listings and to make contracts at such prices subject to adjustment for price increases nationally published. [74 O.S., §85.9E. C.]

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003:

SUBCHAPTER 11. PURCHASING

610:1-11-1. Purpose

The Purchasing Department of the Oklahoma State Regents for Higher Education is responsible for the acquisition of all goods, equipment and services for the operation of the Oklahoma State Regents for Higher Education, authorized by 70 O.S. §3206. The State Regents is exempted from the provisions of the Oklahoma Central Purchasing Act by 74 O.S. 85.3A. All acquisitions of the State Regents made pursuant to the State Regents' approved Purchasing Policy. The purposes of the policy are:

- (1) To establish consistent purchasing practices and procedures for operations of the Oklahoma State Regents for Higher Education;
- (2) To achieve economies and efficiencies and make the most effective use of public funds;
- (3) To encourage competition and ensure fair and equitable treatment among vendors; and

- (4) To insure the quality and integrity of the purchasing process.

610:1-11-2. Purchasing authority for OneNet statewide contracts

- (a) The Department of Central Services shall recognize as a statewide contract an unencumbered contract consummated in behalf of the telecommunications network known as OneNet by the Oklahoma State Regents for Higher Education or any other state entity assigned responsibility for OneNet; provided, said recognition shall require recommendation by the Information Services Division of the Office of State Finance. The Department of Central Services shall not subject purchases pursuant to said contracts to any quantity limit. [74 O.S., §85.9E. A.]
- (b) The Oklahoma State Regents for Higher Education and any other state entity assigned responsibility for OneNet are authorized to negotiate for education or government discounts from published price listings and to make contracts at such prices subject to adjustment for price increases nationally published. [74 O.S., §85.9E. C.]

610:1-11-3. Definitions

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

"Acquisition" means all type of purchases and rental necessary to perform the duties assigned to the Oklahoma State Regents for Higher Education, whether bought or leased by contract or otherwise, and includes every means by which the Oklahoma State Regents for Higher Education obtains any materials, supplies, service or equipment.

"Award" means when the Authority, Chief Executive Officer, department, Purchasing Director, or other person authorized to make the acquisition, agree on a suitable vendor for a competitive bid and the Purchasing Director, or designee, notifies the successful vendor.

"Bidders list" means a list of individuals or business entities that desire notification of solicitations for specified commodity codes.

"Chancellor" means the Chief Executive Officer at the Oklahoma State Regents for Higher Education.

"Commodity Code" means a group of like products or services.

"Competitive Bidding" means a process of acquisition wherein bidders submit bids to the Purchasing Director pursuant to terms, conditions and other requirements of a solicitation.

"Days" means calendar days unless otherwise specified.

"Department" means a department within the Oklahoma State Regents for Higher Education

"EEOC" means Equal Employment Opportunity Commission.

"Emergency acquisition" means an acquisition made by the Purchasing Director without seeking competitive bids to relieve an unforeseen condition believed to endanger human life or safety or pose imminent danger to significant property, or a condition certified by the as a serious environmental situation.

"Equipment" means all personal property acquired for the Oklahoma State Regents for Higher Education's use which is in the nature of a tool, device, or machine and shall be deemed to include all personal property used or consumed by The Oklahoma State Regents for Higher Education and is not included within the category of materials and supplies.

"Fiscal Year" means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.

"Goods" means products, material, supplies and includes all property except real property acquired by the Oklahoma State Regents for Higher Education for its use or consumption, except equipment.

"Invitation to Bid" or "ITB" means a document issued which describes the goods or services for which offers are being solicited.

"Professional Services" means services which are predominantly advisory or intellectual in character, or involve support rather than supplying equipment, supplies or other merchandise. Professional services include those services requiring special, usually advanced education or skill.

"Purchasing" means the Purchasing Department of the Oklahoma State Regents for Higher Education.

"Purchasing Director" means the Purchasing Director of the Oklahoma State Regents for Higher Education.

"Request for proposal" means a type of solicitation the Purchasing Director sends to suppliers requesting submission of proposal for acquisitions.

"Request for quotation" means a simplified written or oral solicitation the Purchasing Director sends to suppliers requesting submission of a quote.

"Services" means labor rendered by a person to another as distinguished from providing tangible goods. It shall include any type of personal or professional service, employment or undertaking except the employment of regular officers and employees by a state agency or such extra seasonal help as is authorized by law and is regularly use.

"Solicitation" means a request or invitation by the Purchasing Director for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal or request for quotation.

"State Regents" means the Oklahoma State Regents for Higher Education.

"Vendor registration" means a process a supplier uses to register with the Purchasing Division to receive solicitations for specified commodities for a specified period of time.

610:1-11-4. General contracting and purchasing provisions

- (a) Acquisitions for the State Regents will be as follows:
 - (1) Direct purchase order for goods and services to the vendor within the authorized dollar amounts and other limitations contained in this Chapter.
 - (2) Formal bid process
 - (3) Purchases may be made from purchase orders or purchase contracts or at a price equivalent to purchase order or purchase contracts that have been awarded to a vendor(s) on the basis of competitive bids by any of the following entities:

- (A) Oklahoma Department of Central Services
- (B) Colleges and universities within the state system
- (C) General Services Administration
- (D) Educational purchasing consortia

(b) Purchases exempt from competitive bidding requirements:

- (1) Emergency purchases
- (2) Memberships and Subscriptions
- (3) Services of Licensed Professionals
- (4) Sole Source Purchases
- (5) Training

610:1-11-5. Vendor registration

(a) Any vendor wishing to do business with the State Regents should be on the vendor bidder list maintained by the Purchasing Department of the Oklahoma State Regents for Higher Education. Any vendor who wants to be on the bidder list must register with the Purchasing Division at the State Regents to receive copies of bids for the commodities or services which the vendor wishes to sell. All vendors are eligible for consideration.

(b) Vendors wishing to be added to the bidders list should write, fax, or visit the Purchasing Department and provide information about the company and the products or services that the vendor is interested in providing to the Regents.

(c) Upon receipt of this information, Purchasing will ascertain what classification(s) the vendor has identified an interest in supplying and will then enter the information into the Purchasing Data System. As a service to the vendor, the vendor will be mailed copies of the ITB or RFP for those products and services for which the vendor is registered.

(d) It is the responsibility of the vendor to update its file on an ongoing basis. Purchasing will retain all vendor information on file for three years.

610:1-11-6. Vendor retention and removal from bidders list

(a) To ensure a mutually beneficial relationship between vendors and the State Regents, it may become necessary to remove a vendor from the active vendor list.

(b) Removal from the bidders list may be considered for the following:

- (1) Failure to respond to an Invitation to Bid or Request for Proposal. (A "NO Bid" response is considered a response.)
- (2) Repeated or unexplained failure on the part of the vendor to meet promised and/or required delivery dates and prices.
- (3) Delivery by the vendor of substitutes in lieu of the items(s) specified on the approved bid and/or purchase order.
- (4) Failure to meet EEOC and other requirements mandated by public legislation or the State Regents.
- (5) Problems created by the vendor regarding incorrect or inappropriate billing adjustment for goods and/or services furnished.

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(6) Failure to support purchase products by not supplying necessary information, required maintenance and/or parts.

(7) A conviction or plea of guilt to a felony involving fraud, bribery, corruption or sales to the state or to any of its political subdivisions.

(c) Vendor may petition the Director for reinstatement. Such a vendor has the burden of demonstrating that it has the capability to responsibly do business with the state, and the conditions leading to its removal have been remedied.

610:1-11-7. Competitive bidding

The competitive or formal bidding process requires that vendors submit sealed bids in accordance with detailed specification of the goods or services to be purchased. Bids are to be awarded to the vendor that submits a bid meeting specifications and which offers the best value to the state.

(1) Submission of bids.

(A) If a vendor wishes to bid on the item(s) listed in an ITB, the vendor shall complete the bid according to the instructions provided with the ITB. It is the vendor's responsibility to read and understand the instructions and terms and conditions provided with the invitation to bid. Failure to comply with the instructions and terms and conditions in the ITB may disqualify the bid. Any questions should be directed to the Director of Purchasing listed on the bid.

(B) If the vendor does not wish to bid on the items, the vendor should fill in the vendor name, address, and write "No Bid" in the unit price column and return the bid to Purchasing.

(C) It is the responsibility of the vendor to ensure delivery of a bid to Purchasing at or prior to the designated time on the ITB. The Oklahoma State Regents for Higher Education will not be responsible for, or accept late bids.

(2) Bid openings.

(A) All sealed bids will be stamped with the time and date upon receipt at Purchasing. The bids will be placed in a secured bid file until time for the scheduled bid opening. Access to the file is limited to the Purchasing Director or designee until the bid opening.

(B) Bids will be opened at the designated date and time of closing by State Regent's purchasing personnel. A bid opening record will be completed and maintained in the bid file.

(C) A vendor and/or interested parties prior to the bid opening may request public openings.

(D) No award will be made at routine or public openings. Award recommendations are made in writing upon conclusion of the bid evaluation.

(E) All bids responses are open to the public during normal working hours, after the bid opening, and in accordance with 51 O.S. 1991, Sections 24A.1 et seq., as amended. Copies may be requested in writing from the Purchasing Director.

(3) Award of bid.

(A) Purchasing has the right to waive minor deficiencies or informalities in a bid provided that, in the Purchasing Director's judgment, the best interest of the State would be served without prejudice to the rights of the other bidder(s).

(B) Tie bids may develop between bidders. If these bidders are equal in price and all specifications, the award will be determined by a coin toss or by a series of coin tosses.

(C) If the ITB specifies that the bid evaluation criteria is lowest and best, the bid will be evaluated by applying the following criteria:

(i) **Lowest total purchase price.** The bid price shall be a firm fixed price for each acquisition the ITB specifies for the duration of the contract period.

(ii) **Quality and reliability of the acquisition.** Additional factors regarding the responsiveness of the bid and the responsibility of the bidder shall be considered.

(iii) **Consistency of the proposed solution with state agency objectives.** The State Regents shall determine if the bid meets the specifications of the ITB and determine the consistency with state agency planning documents and announced strategic direction.

(D) The State Regents reserve the right to implement criteria of "Best Value" in the bid award process as outlined in 74 O.S., 1998, Section 85.7.

(E) The State Regents reserve the right to accept by item, group of items, or by the total bid, as specified in the ITB.

(F) The State Regents reserve the right to reject in part or whole any bid.

(G) No award will be made if the State Regents determines the lowest bid total more than the money available for purchase or if the lowest bid exceeds the reasonable market price.

(H) The State Regents will send a purchase order or a notice of award as acceptable notification of a valid and binding contract with a vendor.

(I) All awards will be made under the terms and conditions specified in the ITB.

(J) The ITB together with the successful vendor's responsive bid shall constitute a binding contract and will be interpreted under Oklahoma law.

(K) All ethics rules and laws related to conflicts of interest and doing business with public officials apply to any acquisition by the State Regents.

(4) Award protests.

(A) Any bidder may protest the award of a bid. A protest may be based, but is not limited to, the following:

(i) Error in the calculation of price

(ii) The bid of the successful vendor did not meet the bid specifications

(iii) The bidding procedure was done in violation of the State Regent's rules; or

(iv) State Regents personnel handling the bidding procedure acted in a willful or capricious manner.

(B) After the award is made, the protesting bidder shall submit written notice to the State Regents' Purchasing Director, within seven (7) days of reasonable notice of contract award. The protest notice shall state supplier facts and reasons for protest.

(C) The Purchasing Director shall review the protest and contract award documentation, and respond to the vendor.

(5) **Administrative review.**

(A) If the protesting bidder does not agree with the Purchasing Director's decision on the challenge of award, the protesting bidder may request an administrative review. Any protesting bidder may appeal a decision by the Purchasing Director to the Chancellor. In order for the claim to be eligible for administrative review, the appeal must have been through the protest award process as per 610:1-11-7(4).

(B) The protesting bidder must file a notice of appeal within seven (7) working days of the date of the letter notifying the bidder of the decision by the Purchasing Director to the challenge of award by the protesting bidder, or the postmark of such letter, whichever is later. The letter shall contain the following:

(i) The letter must state all the facts and arguments giving rise to the claim of controversy and the appeal.

(ii) The letter must also state clearly and separately the alleged error by the Purchasing Director or other State Regents' personnel and the relief sought with the appeal to the Chancellor.

(iii) The letter must clearly and separately state that the vendor is requesting an opportunity to be heard in pursuit of the appeal.

(C) Upon receipt of a properly perfected notice of appeal, the Chancellor shall review the appeal himself or appoint a designee to conduct the administrative review. The Chancellor may appoint any officer of State Regents or may appoint an attorney licensed to practice law to conduct the review. The person conducting the review shall promptly set a time period in which a review will be conducted that will be not more than forty-five (45) days in length beginning from the date the notice is filed. The person conducting the administrative review will set a date in which the vendor must produce or identify all the documents or other supporting data (verbal or written) which supports his appeal, which date must be within the forty-five (45) day time period above. The person conducting the administrative review may schedule a meeting with the vendor to discuss the appeal and issues raised, and will examine all such documents and supporting data.

(D) Within twenty (20) working days after the administrative review period, the person conducting the

administrative review shall make a written recommendation for decision to the Chancellor for contracts/purchases within the Chancellor's purchasing authority or to the State Regents for contracts/purchase exceeding that limit. For decisions that will be made by the Board, such matters shall appear on the agenda of the next regularly scheduled meeting. Either the Chancellor or the Board, given those parameters, shall render the final agency decision and staff shall notify the protesting bidder and the apparent successful bidder of the decision by certified mail. The decision shall include findings of the fact and conclusions of law supporting the decision to uphold the award or set the award aside.

610:1-11-8. Request for Proposals process

A Request for Proposal (RFP) process may be used when it is determined by the Chancellor or the Chancellor's designee that it is more practical and advantageous to receive proposals for services or goods rather than to invite competitive bids based on detailed specifications. The RFP process will ordinarily be limited to purchases, such as professional services, where the purchase award is based on qualitative factors most advantageous to the state.

610:1-11-9. Group purchasing acquisitions; Alternatives to the formal bid process

Purchases may be made from purchase orders or purchase contracts or at a price equivalent to purchase order or purchase contracts that have been awarded to a vendor(s) on the basis of competitive bids by any of the following entities:

- (1) Oklahoma Department of Central Services
- (2) Colleges and universities within the state system
- (3) General Services Administration
- (4) Educational purchasing consortia

610:1-11-10. Sole source contracts

When a contract for a particular acquisition for services or goods, which, by the contract specifications needed by the agency, restricts the contract to one vendor or to one brand name, the purchase can be made without informal quotations or formal bids. All sole source purchases are subject to the approval of the Chancellor or the Chancellor's designee, and must be supported by a written statement of justification from the requesting unit.

610:1-11-11. Emergency acquisition process

The Chancellor or the Chancellor's designee may waive bidding requirements when an emergency exists that is a threat to public health, welfare, or safety of State Regents: operations and staff. In such event, documentation that is reasonable and sufficient under the circumstances should be maintained substantiating the basis for the emergency and justifying the selection of the vendor.

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610:1-11-12. Purchases \$2,500 or less

Purchases \$2,500 or less are not subject to competitive bidding and may be made from vendors capable of providing the required good(s) or services(s) in a quality and timely manner.

610:1-11-13. Purchases between \$2,501 and \$25,000

Purchases between \$2,501 and \$25,000 may be made on the basis of an informal bid process. Purchases made on this basis require price quotations from a minimum of three (3) vendors. All price quotations must be supported by documentation of telephone solicitations or facsimile transmission from the vendors.

610:1-11-14. Purchases in excess of \$25,000

Purchases in excess of \$25,000 must be reported to the Budget & Audit Committee which may choose to forward them to the full board for approval. These purchases shall be made on the basis of one of the following processes:

- (1) Formal bid process.
- (2) Alternatives to the formal bid process. Purchases may be made from purchase orders or purchase contracts or at a price equivalent to purchase order or purchase contracts that have been awarded to a vendor(s) on the basis of competitive bids by any of the following entities:
 - (A) Oklahoma Department of Central Services
 - (B) Colleges and universities within the state system
 - (C) General Services Administration
 - (D) Educational purchasing consortia
- (3) Request for Proposal process.

610:1-11-15. Purchases in excess of \$100,000

Purchases in excess of \$100,000 require prior approval of the State Regents.

610:1-11-16. Professional services contracts

A contract for the personal services of a physician, architect, attorney, certified public accountant, professional engineer, land surveyor, or other licensed professional as defined in 18 O.S., § 803(6) may be awarded without competitive bidding, except as may be otherwise provided by law applicable to the State Regents. All requests for the services of a specific licensed professional must be supported by a written statement from the requesting unit justifying the selection. The requesting unit must consider the specific needs of the agency, the ability of the individual to meet those needs in a timely manner, and the cost of the services. All contracts for professional services must be approved by the Chancellor or the Chancellor's designee.

610:1-11-17. Training

Employee training services may be acquired without competitive bidding if necessary to accommodate the needs of the

agency and to ensure continued performance of hardware, software, or telecommunications equipment. The requesting unit must provide written justification for an exemption from the competitive bidding requirements. The requesting unit should consider (1) employee work schedules, (2) potential for interruptions in service, (3) cost of interruptions in service, and (4) the number of employees already trained for the particular purpose. All acquisitions under this section must be approved by the Chancellor or the Chancellor's designee. The Chancellor will require a periodic review of all costs associated with employee training services, including any associated travel expenses, to ensure that the costs are reasonable.

[OAR Docket #03-1012; filed 5-21-03]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 10. AD VALOREM

[OAR Docket #03-1015]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 6. Storm Shelter Exemption [NEW]
- 710:10-6-1. through 710:10-6-10. [NEW]
- Subchapter 9. Manufactured Homes
- 710:10-9-1. Listing and assessment of manufactured homes for ad valorem taxes [AMENDED]
- 710:10-9-3. Transfer of manufactured home with real property [AMENDED]
- 710:10-9-7. ~~Dealers' tags and repo tags; requirements on permits to move~~ Moving manufactured homes [AMENDED]
- 710:10-9-19. Obtaining a release of taxes paid for ad valorem tax liability before the subsequent move of a manufactured home from initial situs within the tax year [AMENDED]

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ANALYSIS:

New Subchapter 6. Storm Shelter Exemption, has been added to implement State Question 696, which was adopted by popular vote on

November 5, 2002 and provided an Ad Valorem tax exemption for qualifying storm shelters. Proposed amendments to Subchapter 9, Manufactured Homes, set out the circumstances and procedures for surrendering the documents of title where a manufactured home has become permanently affixed to real property and having the home assessed as other real property thereafter.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003:

SUBCHAPTER 6. STORM SHELTER EXEMPTION

710:10-6-1. Purpose

The provisions of this Subchapter have been adopted for the purpose of compliance with the Administrative Procedures Act, 75 O.S.1991, § 250 et seq., and to facilitate the administration of the exemption from the ad valorem taxation for storm shelters approved by popular vote on November 5, 2002 (Laws 2002, H.J.Res.No. 1001; State Question 696).

710:10-6-2. Definitions

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

"Storm shelter", for purposes of exemption, means a structure designed for protection and safety from tornadoes or tornadic winds and installed or added to an improvement to real property after January 1, 2002, which does not exceed One Hundred (100) square feet in size. "Storm shelter" shall include, but not be limited to, a safe room built as part of and within an improvement to real property.

710:10-6-3. Status as of January 1 controls

In order to obtain the exemption for a storm shelter, the applicant must be the actual owner of the property on January 1 of the year for which the exemption is sought. If evidence of title is not executed on or before January 1 and filed of record in the office of the County Clerk on or before February 1, no exemption can be allowed.

710:10-6-4. Ownership

In any case where title is proffered by warranty deed, quit claim deed, tax deed, sheriff's deed, or by similar evidence of title, the assessor and county board of equalization shall assume that the person or entity for whom application is made is the actual owner of the property. A person who purchases property by a contract for sale, or contract for deed, on or before January 1, and who is designated as the purchaser in proper documents

filed of record in the County Clerk's office on or before February 1, is entitled to the exemption. Refer to OAC 710:10-5-6 for additional ownership clarification.

710:10-6-5. Period of exemption

Beginning January 1, 2002, any storm shelter which meets the definition set out in 710:10-6-2 shall be exempt from Ad Valorem tax. Thereafter, if title to the property is transferred, changed, or conveyed to another person or entity, the exemption will be terminated and the property assessed as set forth in Article 10, Section 8 of the Oklahoma Constitution.

710:10-6-6. Exemption not restricted to homestead property

As stipulated in Article 10, Section 6, of the Oklahoma Constitution, any residential or commercial property where a storm shelter is located may qualify for the exemption.

710:10-6-7. Undivided interests

A person or entity who owns an undivided interest in the property and occupies the property shall be entitled to the entire storm shelter exemption allowed by Article 10, Section 6, of the Oklahoma Constitution. In no circumstances shall a person or entity be allowed more than One Hundred (100) square feet of total exempt area, regardless of the number of undivided interests in the property.

710:10-6-8. Filing an application

(a) **Application by taxpayer.** Unless the exempt storm shelter property has been identified and designated by the county assessor, an application to obtain a storm shelter exemption must be filed with the county assessor on forms prescribed by the Oklahoma Tax Commission. Such an application may be filed at any time. However, the county assessor shall, if the applicant qualifies, grant an exemption for a storm shelter for the current tax year only if the application is filed on or before March 15 of the current tax year. An application filed after March 15 of the current tax year will only entitle the applicant, if otherwise qualified, to an exemption for storm shelter property beginning the following tax year. There will be no requirement for annual reapplication once the exemption is granted.

(b) **Assessor may identify exempt storm shelter property.** If the county assessor identifies a storm shelter that, in the assessor's opinion, qualifies for the exemption, the assessor may designate the shelter on the permanent property record in the assessor's office. In this case, there will be no requirement for the property owner to make application for the exemption. The exemption will be subject to all other requirements set out in this Subchapter.

710:10-6-9. County assessor to make determination of status

(a) The county assessor shall examine each application and shall determine if the storm shelter meets the requirements set

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out by law. In determining if the application is to be approved, the assessor may, if necessary, make inspections, make a written request for additional information, or examine any person under oath, as provided by law.

(b) The assessor shall complete the assessor's portion of the application and shall deliver all applications, whether approved or rejected, to the County Board of Equalization on or before the fourth Monday in April, for the Board's review.

(c) If the county assessor finds an application for exemption should not be allowed by reason of non-conformity with the law, the applicant shall be notified of the disapproval and advised of the appeal process. [See: 68 O.S.Supp.2001, §§ 2893-2895]

710:10-6-10. County recording procedure for real property assessment and tax rolls

The county recording procedure shall separately show each approved storm shelter exemption in the same manner as other exemptions from Ad Valorem Tax.

SUBCHAPTER 9. MANUFACTURED HOMES

710:10-9-1. Listing and assessment of manufactured homes for ad valorem taxes

(a) **Manufactured homes subject to ad valorem taxation.** On the first day of January of each year, the county assessor of the county in which a manufactured home is located shall list, assess and tax such manufactured homes as required by the Ad Valorem Tax Code as it pertains to real and personal property. [See: 68 O.S. §§2811-2813] If a manufactured home is permanently affixed to the real estate, the original document of title may be surrendered to the Oklahoma Tax Commission for cancellation, in accordance with 47 O.S.Supp.2002, § 1110, provided there is no outstanding lien recorded on the title. Thereafter, these homes will be assessed as other real property improvements.

(b) **New manufactured homes sold and properly registered between December 1st and January 31st.** New manufactured homes which are sold and properly registered between December 1st and January 31st pursuant to this subsection shall be exempt from ad valorem taxes for the assessment period beginning January 1st. [See: 710:10-9-4 for proper listing and assessment of used manufactured homes held for resale.]

(c) **New manufactured homes.** The purchaser of a new manufactured home will not be subject to ad valorem taxes until January 1st of the following year, if the new manufactured home is properly registered, titled, and tagged, as required by law.

(d) **Information required.** Data elements required for listing a manufactured home with a **completed certified** OTC Form 936 (Manufactured Home Certificate 936) consist of:

- (1) Receipt or Release for taxes paid;
- (2) Type of manufactured home transaction;
- (3) Date to be moved;
- (4) Name of current manufactured home owner(s);

- (5) Seller's current mailing address;
- (6) Seller's new mailing address;
- (7) Name of manufactured home buyer;
- (8) Buyer's current mailing address;
- (9) Buyer's new mailing address;
- (10) Information describing where manufactured home is being **moved from**, such as:
 - (A) Landowner's or park's name,
 - (B) City,
 - (C) County, and
 - (D) Legal description, or
 - (E) Situs description;
- (11) Current physical address;
- (12) Real property account number or personal property account number;
- (13) Information describing where manufactured home is being **moved to**, such as:
 - (A) Landowner's or park's name,
 - (B) City,
 - (C) County, and
 - (D) Legal description, or
 - (E) Situs description;
- (14) New physical address;
- (15) School district;
- (16) Certificate of Title information, consisting of:
 - (A) Vehicle identification number (VIN);
 - (B) Year of manufacture;
 - (C) Size;
 - (D) Make;
 - (E) Title number;
 - (F) Body type;
 - (G) Model;
 - (H) Agent number;
 - (I) Factory delivered price;
 - (J) Total delivered price.
- (17) Fair cash value;
- (18) Total current estimated taxes due;
- (19) Taxes due from prior years, if unpaid;
- (20) Total of prior years' taxes due, if unpaid;
- (21) Signature of applicant and date;
- (22) Certification by assessor's office, evidenced by signature and date;
- (23) Certification by treasurer's office that all current and prior years' taxes have been paid, evidenced by signature, date, and a statement substantially as follows: **"THIS DOCUMENT SHALL NOT BE CERTIFIED BY THE TREASURER'S SIGNATURE UNLESS ALL SPACES HAVE BEEN COMPLETED WITH THE INFORMATION REQUESTED"**
- (24) Column for remarks;
- (25) Instructions as to who receives colored copies of the Manufactured Home Certificate 936:
 - (A) The white copy is retained by the assessor issuing the certificate;
 - (B) The yellow copy is forwarded to the county assessor of the county receiving the Manufactured Home Certificate 936;

- (C) The pink copy is retained by the homeowner or applicant;
- (D) The blue copy is retained by the county treasurer signing the certificate;
- (26) Legal certification of the Manufactured Home Certificate 936 requires the **signatures of the assessor and treasurer;**
- (27) Other information necessary for CAMA valuation;
- (28) Such other information as may be required by the Oklahoma Tax Commission.

710:10-9-3. Transfer of manufactured home with real property

When ownership of the manufactured home is transferred with the land upon which it is located with real property, the registration and certificate of title will be transferred in the new ownership as follows:

- (1) The new owner will obtain a "Manufactured Home Certificate 936" (OTC Form 936) from the county assessor's office; and
- (2) The new owner will present the "Manufactured Home Certificate 936" (OTC Form 936) to the Oklahoma Tax Commission or a motor license agent (tag agent) who will prepare the registration and certificate of title pursuant to the rules and regulations of the Motor Vehicle Division of the Oklahoma Tax Commission. A registration would not be issued unless that initial registration fee was never collected.
- (3) All taxes due, as required by this Subchapter and the statutes of Oklahoma, including the current year's ad valorem taxes, will be collected before issuance of the "Manufactured Home Certificate 936" (OTC Form 936). However, there will be no excise tax due on the change in registration and certificate of title.
- (4) If the manufactured home owner has surrendered the title in accordance with 47 O.S.Supp.2002, § 1110, no title work or OTC Form 936 will be required, provided the home is not being moved.

710:10-9-7. Dealers' tags and repo tags; requirements on permits to move Moving manufactured homes

- (a) ~~Permit to transport or move; exception to payment of ad valorem tax paid in advance.~~ The Department of Public Safety shall not issue a permit to any person to transport or move a manufactured home without evidence of payment of the required registration fees, ad valorem taxes or excise taxes on the manufactured home except:
 - (1) The Department of Public Safety shall issue a permit to the holder of a dealer's license plate ("D" tag) issued by the Oklahoma Tax Commission;
 - (2) The Department of Public Safety shall issue a permit to the holder of a transporter's in transit license plate ("K" tag) issued by the Oklahoma Tax Commission;
- (b) ~~Ad valorem taxes.~~ The use of a "K" tag by a repossession company's manufactured home transporter (who is authorized by the Oklahoma Corporation Commission and the

~~Oklahoma Tax Commission) does not relieve the holder of a perfected security interest of the ultimate responsibility of the payment of ad valorem taxes in the county of origin. The repossession lender must obtain a Repossession Affidavit (OTC Form 737) before hiring a manufactured home transporter. The repossession has thirty (30) days from the date shown on the repossession affidavit to obtain an OTC Form 936 and pay any fees or taxes which may be due.~~

~~(e) Dealer's license plates.~~ The "D" tag is issued to dealers. A "D" tag can only be used for purchasing and delivery for the dealer's place of business. The "D" tag cannot be used for repossessing manufactured homes. There is no statutory authorization for the use of a "D" tag to transport repossessed manufactured homes. Therefore, a manufactured home must be repossessed with an in transit license plate ("K" Tag).

~~(d) Required documentation.~~ In all instances other than those described in (1) and (2) of subsection (a), the Department of Public Safety will require that the following documentation be presented:

- ~~(1) A current registration and current year decal.~~
- ~~(2) A current OTC Form 936 may also be used, providing the current year decal is affixed. [See: 68 O.S.1997, § 2813]~~

~~(e) Application for moving permit.~~ Application for a moving permit on a manufactured home which is in the state of Oklahoma for less than sixty (60) days must be accompanied by the tax receipts of the state in which residency is claimed or by following the rules and regulations prescribed for residents of the state of Oklahoma.

~~(a) License plates.~~ Except as described in subsection (b), a current manufactured home license plate, in the form of a permanent metal or temporary dealer plate, is to be displayed at all times when upon a public roadway. [See: 47 O.S.Supp.2002, § 1113(E)] An "M" tag is issued to manufactured home dealers and can only be used for the purchase and delivery of manufactured homes for the dealer's place of business. A "K" tag is an "in-transit" license plate issued to transporters and can be used only for transporting a new manufactured home or in the case of manufactured homes coming into Oklahoma from another state. Neither an "M" tag, nor a "K" tag may be used to transport a repossessed manufactured home, which requires use of a repossession affidavit.

~~(b) Permit to transport or move; exceptions to payment of ad valorem tax paid in advance.~~ The Department of Public Safety shall **not** issue a permit to any person to transport or move a manufactured home without evidence of a current calendar year registration and decal on that manufactured home, except:

- (1) To the holder of a dealer's license plate ("M" tag) issued by the Oklahoma Tax Commission;
- (2) To the holder of a transporter's in-transit license plate ("K" tag) issued by the Oklahoma Tax Commission;
- (3) In the case of a manufactured home which is in the state of Oklahoma for less than sixty (60) days and the tax receipts of the state in which residency is claimed are provided; or,
- (4) When a properly-completed repossession affidavit, issued pursuant to the terms of Sections 1110 and 1126

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of Title 47, has been obtained for use in moving a repossessed manufactured home to a secure location. [See: 47 O.S.Supp.2002, § 1113(E)]

(c) **Ad valorem taxes.** Issuance of a permit to transport a manufactured home does not relieve the holder of a perfected security interest of the ultimate responsibility for the payment of ad valorem taxes in the county of origin. The repossession lender must obtain a Repossession Affidavit (OTC Form 737) before hiring a manufactured home transporter and has thirty (30) days from the date shown on the repossession affidavit to obtain an OTC Form 936 and pay any fees or taxes which may be due.

(d) **Required documentation.** In all instances other than those described in (1) through (4) of subsection (b), the Department of Public Safety will require that the following documentation be presented:

- (1) A current registration and current year decal; or
- (2) A current OTC Form 936 may also be used, providing the current year decal is affixed. [See: 68 O.S.1997, § 2813]

710:10-9-19. Obtaining a release of taxes paid for ad valorem tax liability before the subsequent move of a manufactured home from initial situs within the tax year

If a manufactured home is moved more than one time within any given tax calendar year, a new OTC Form 936 current year registration and decal is required for a release of Ad Valorem taxes paid will be required by the Department of Public Safety before issuing a permit.

- (1) **Release of taxes paid.** Requirements for obtaining a release of taxes paid are as follows:
 - (A) Current registration and current decal or payment of ad valorem taxes due for the current year and prior years.
 - (B) Possession of a Manufactured Home Certificate 936 (OTC Form 936) showing receipt of taxes paid, signed by a county assessor and county treasurer may also be used.
- (2) **Issuance of release.** Procedure for issuing a release of taxes paid are as follows:
 - (A) Upon meeting the requirements for obtaining a release of taxes paid, the county assessor shall complete Manufactured Home Certificate 936 (OTC Form 936) and forward it to the county treasurer.
 - (B) The county treasurer shall check for any tax warrants from another county, and any special assessment or taxes delinquent on the manufactured home.
 - (C) The county treasurer shall collect any outstanding taxes or assessment due on the manufactured home.
 - (D) If no taxes are due, the county treasurer will place "NTD" in the space designated total estimated taxes due.
 - (E) The treasurer will sign and return the OTC Form 936 to the county assessor.
 - (F) The county assessor will sign the OTC Form 936 and forward the yellow copy of the release of

taxes paid to the county assessor of the county in which the new taxable situs of the manufactured home is to be located.

[OAR Docket #03-1015; filed 5-21-03]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 40. FRANCHISE TAX

[OAR Docket #03-1016]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- 710:40-1-2. Definitions [AMENDED]
- 710:40-1-2.1. Examples of current liabilities for Franchise Tax purposes [NEW]
- 710:40-1-6. Accounting and reporting; suspension and reinstatement [AMENDED]
- 710:40-1-10. Inter-company balances [AMENDED]

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ANALYSIS:

Section 710:40-1-2 has been amended to clarify the definition of "Current Liability" consistent with controlling case law. *Mazzio's Corporation v. Oklahoma Tax Commission*, 789 P.2d 632 (Okla. 1990)

New Section 710:40-1-2.1. has been added to provide examples to illustrate the definition of "Current Liability" for franchise tax purposes.

710:40-1-6 has been amended to prescribe procedures for corporations that previously elected an Income Tax filing year for Franchise Tax purposes, who later wish to revert back to the statutory filing date.

710:40-1-10 has been amended to conform the rule to statute and controlling case law. 68 O.S. § 1209(b) contemplates advances made by a parent to a subsidiary, or a subsidiary to a parent corporation, but does not speak to advances between subsidiaries. Thus, the existing rule was broader than the scope of the statute and has been amended accordingly. The rule has also been amended to include loans represented by notes within the scope of "capital" pursuant to *Personal Loan & Finance Co. of Capitol Hill V. OTC*, 437 P.2d 1015 (Okla. 1968).

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003:

710:40-1-2. Definitions

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

"Affiliated corporations" means those entities authorized or required to file a consolidated Federal Income Tax Return by the applicable provisions of the Internal Revenue Code, as amended, and regulations promulgated pursuant to such code.

"Business situs" means the location at which a reporting entity exercises control over an intangible asset. For purposes of this Chapter, a branch location shall not be considered to be the business situs for an intangible asset unless the asset is managed, directed and controlled from that location.

"Current liability" means any bond, note, debenture, or other evidences of indebtedness, or any portion thereof, maturing and payable within three (3) years or less after issuance. Current liability shall not include ~~any that~~ portion of a debt ~~that~~ which matures more than three (3) years after issuance.

710:40-1-2.1. Examples of current liabilities for Franchise Tax purposes

Examples of amounts which may be treated as current liabilities in the case of a non-renewable, ten-year note, payable in annual installments, are as follows:

- (1) In the year of issuance, an amount equal to the sum of three years of payments from the date of issuance may be considered a current liability.
- (2) In the second year after issuance, the sum of two years of payments from the date of issuance may be considered a current liability.
- (3) In the third year after issuance, one years payment may be considered a current liability.
- (4) In the fourth year and thereafter, no amount of the obligation is considered to be a current liability for Franchise Tax purposes.

710:40-1-6. Accounting and reporting; suspension and reinstatement

(a) **Due date.** Effective September 1, 1998, and for all subsequent franchise tax years, taxpayers have an option to select their next Income Tax year end as the due date for payment and filing of their Franchise Tax Return. If this optional due date is not selected in writing, at the time the 1998-99 Franchise Tax Return is filed, it will be assumed that the option is not being exercised, and the due date for filing the annual Franchise Tax Return will remain July 1, of 1999. An optional due date may be selected for subsequent years if done so in writing at the time of filing of the taxpayer's Franchise Tax Return, due on July 1.

(b) **No short period return generally required.** A corporation which has exercised its option to select its Income Tax year end date as the due date for payment and filing of its Franchise Tax Return shall not be required to file a Franchise Tax Return for the first year after the option is exercised on a date earlier than the Franchise Tax Return would have been due, had the option not been exercised.

(c) **Examples.**

(1) A calendar-year taxpayer, Corporation A, uses its Income Tax year-end date of December 31, for franchise tax purposes. Corporation A files and pays its franchise tax on July 1, 1998. Taxpayer's next Franchise Tax Return would be due on December 31, 1999.

(2) Corporation B uses its Income Tax year-end date of May 31, for franchise tax purposes. Corporation B files and pays franchise tax on July 1, 1998. Corporation B's next Franchise Tax Return would be due on May 31, 2000.

(d) When short period return is required. When a corporation has exercised the option to select its income tax year ending date as the due date for the payment and filing of its Franchise Tax Return, and subsequently requests to revert back to the July 1 due date, a Short Period Return will be required. The Short Period Return will be for the period from the ending date of its income tax year through the following June 30.

(e) **Examples of use of Short Period Returns.**

(1) Corporation A used its income tax year ending date of December 31, 2001, for Franchise Tax purposes and filed and paid its Franchise Tax on March 15, 2002. Corporation A later requested reversion to the July 1 due date. Corporation A's Short Period Return, for the period January 1, 2003 through June 30, 2003, will be due on March 15, 2003. Beginning July 1, 2003, Corporation A will file its Franchise Tax Returns on July 1.

(2) Corporation B used its income tax year ending date of March 31, 2002, for Franchise Tax purposes and filed and paid its Franchise Tax on June 15, 2002. Corporation B later requested reversion to the July 1 due date. Corporation B's Short Period Return, for the period April 1, 2003 through June 30, 2003, will be due on June 15, 2003. Beginning July 1, 2003, Corporation B will file its Franchise Tax Returns on July 1.

(~~f~~) **Good standing certificates.** A corporation shall be issued a good standing certificate (required for filings with the Secretary of State) during the period following the date on which the corporation's Franchise Tax Return is due until the date the corporation's Franchise Tax Return is delinquent.

(~~g~~) **Delinquency date.** The date on which the annual Franchise Tax Return and payment is considered to be delinquent is:

- (1) For franchise tax years beginning before July 1, 1999, the Franchise Tax Return and payment is delinquent if not filed and paid on or before the next August 31.
- (2) For franchise tax years beginning on or after July 1, 1999, for those taxpayers who have not elected to file franchise tax returns and pay franchise tax on their corporate income tax due date, the franchise tax return and payment is delinquent if not filed and paid on or before the next August 31.

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(3) For franchise tax years beginning on or after July 1, 1999, for taxpayers who have elected to file and pay franchise tax on their next corporate income tax year due date, the franchise tax will be delinquent if not paid by the fifteenth (15th) day of the third month following the close of the corporate income tax year. However, if the corporate income tax return due date has been extended, the Franchise Tax Due Date shall also be extended. This extension of the due date for filing the return will not serve to extend the date on which the payment of the tax is due.

(fh) **Suspension and reinstatement.** [See: 68 O.S. § 1212] The Order issued by the Tax Commission reinstating or reviving the charter or other instrument of organization of a previously suspended organization shall state the effective date of the reinstatement or revival. The effective date shall be the date on or by which, as determined by the Commission, the corporation, association, or organization met all requirements for reinstatement, including:

- (1) Payment of tax;
- (2) Filing of returns;
- (3) Filing of officer lists, and
- (4) Meeting other requirements as determined by the Commission under applicable law.

(gi) **Parent-subsidiary corporate relationships.** In the case of parent-subsidiary corporate relationships, both the parent corporation and any subsidiary corporations shall use the same accounting method as was employed for the last Oklahoma Income Tax Return.

(hj) **Consolidated Oklahoma Income Tax Returns.** When a Consolidated Oklahoma Income Tax Return has been filed for the parent/subsidiary corporate group, all subsidiary corporations shall file Oklahoma Franchise Tax Returns based upon the method of accounting used by each subsidiary, provided that any undistributed income which is reported on the subsidiary corporation's Oklahoma Franchise Tax Return may be eliminated from the computation on the parent's Oklahoma Franchise Tax Returns.

710:40-1-10. Inter-company balances

Inter-company balances shall be eliminated from the computation of capital employed on the Franchise Tax Return. A reporting entity with an inter-company receivable account or note shall eliminate such amount from the value of its assets. A reporting entity with an inter-company payable account or note shall eliminate such amount from its current liabilities. The requirements of this Section ~~respecting shall apply solely to inter-company eliminations shall apply to a between a parent and its subsidiary corporation, subsidiary corporations with a common parent or any group of affiliated corporations.~~ [See: 68 O.S. §1209(b)]

[OAR Docket #03-1016; filed 5-21-03]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 45. GROSS PRODUCTION, PETROLEUM EXCISE, AND CONSERVATION EXCISE

[OAR Docket #03-1017]

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PERMANENT final adoption.

RULES:

Subchapter 3. Payment; Remittance; Refund

710:45-3-2. Allocated percentages [REVOKED]

710:45-3-11. Minimum requirements for ~~filing claim for refunds making claims for rebates, refunds, or credits~~ [AMENDED]

Subchapter 9. Exemptions and Exclusions

Part 1. General Provisions

710:45-9-1. Exemptions; decimal equivalents [AMENDED]

Part 5. Horizontally Drilled Production Wells

710:45-9-20. Scope of Part 5 [AMENDED]

710:45-9-24. ~~Limitation/expiration of Time periods for exemption from gross production tax levied on horizontally drilled producing wells~~ [AMENDED]

Part 7. Incremental Production from Enhanced Recovery Projects or Properties

710:45-9-30. Scope of Part 7 [AMENDED]

710:45-9-32.1. Recovery of costs allowed as payback factors [AMENDED]

Part 9. Production Enhancement Projects

710:45-9-40. Scope of Part 9 [AMENDED]

Part 11. Reestablishment of Production from an Inactive Well

710:45-9-50. Scope of Part 11 [AMENDED]

Part 13. Deep Wells

710:45-9-60. Scope of Part 13 [AMENDED]

710:45-9-62.1. Refund procedure [AMENDED]

Part 15. New Discovery Wells

710:45-9-70. Scope of Part 15 [AMENDED]

Part 17. Economically At-Risk Oil Leases

710:45-9-80. ~~Qualification and application for exemption from the levy of gross production tax on economically at risk oil leases~~ Scope of Part 17 [AMENDED]

Part 19. Production Using Three Dimensional Seismic Shoots

710:45-9-90. Scope of Part 19 [AMENDED]

710:45-9-94. Applicable time periods [AMENDED]

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710:45-3-11. Minimum requirements for ~~filing claim for refunds making claims for rebates, refunds, or credits~~ [AMENDED]

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02-1255

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The proposed rule amendments conform the existing agency rules to L. 2002, c. 416, § 1, which amended 68 O.S. § 1001, extending deadlines for certain gross production incentives ("horizontal wells") and adding a new category for the "deep well" exemptions. The amendments also make permanent the streamlined reporting procedures promulgated in an emergency rule, effective June 21, 2002 (19 Ok Reg 2838). The remaining amendments cross-reference each Subchapter of the rules to the applicable Section of the Oklahoma Statutes and have been added at the request of industry.

CONTACT PERSON:

Carolyn Swifthurst, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003:

SUBCHAPTER 3. PAYMENT; REMITTANCE; REFUNDS

710:45-3-2. Allocated percentages [REVOKED]

~~Oil and gas tax remitters must remit payment of taxes based on their allocated or dedicated percentages as set forth in the purchase agreements.~~

710:45-3-11. Minimum requirements for filing claim for refunds making claims for rebates, refunds, or credits

~~Claims for refunds of Gross Production Tax must include the information and conform to the procedures described in this Section. All claims for refund remain subject to audit.~~

~~(1) **Claims filed within twelve months of production.** Claims for refund of gross production tax which are filed within the twelve month period immediately following the month of production to which the claim pertains, must include:~~

~~(A) Amended reports (Type 3) for each month, county, and product code; noting the "As Paid" volumes, values, and taxes; followed by entries reflecting "Should Have Paid" volumes, values, and taxes. The page totals must accurately support the amount of the refund request.~~

~~(B) Exceptions to the filing requirements set out in Subsection (a)(1) include claims pertaining to the exemptions provided for by 68 O.S. §§ 1001(e) through (i); §1001.3; and the Frac Oil exclusion provided for by 710:45-9-10. All claims made pertaining to the exemptions and exclusion described~~

~~in Subsection (a)(2) must include documentation required by statute or Commission rule.~~

~~(2) **Claims not filed within twelve months of production.** Claims for refund of gross production tax not post-marked within the twelve month period immediately following the month of production to which the claim pertains, must include:~~

~~(A) A letter stating the reason for the request, amount requested, by Gross Production Tax and Petroleum Excise Tax, the period of time covered, and the Oklahoma Tax Commission's assigned production unit numbers.~~

~~(B) Original source documents, provided to the operator, which will include but not be limited to: run, settlement, purchase, sales, or metered volume statements, frac affidavits, frac invoices, check stubs, worksheets, pricing bulletins, and any information necessary to verify an exemption such as BLM lease numbers. Original and all correcting statements pursuant to the claim for refund must be submitted.~~

~~(C) Amended reports (type 3) for each month, county, and product code reversing the "as paid" volumes, values, and taxes, then entering the "should have paid" volumes, values, and taxes. Page totals should reflect the amount of the refund request.~~

(a) **General provisions.** Adjustments to Gross Production Taxes previously paid may be made by filing a claim for refund or by claiming credit on a subsequent return. In either case, the claim must include the information and conform to the procedures described in this Section. All claims for refund or credits taken remain subject to audit.

(b) **Rebates.** Claims for rebates, authorized by 68 O.S. Sections 1001(E) through (J), and from Section 1001.3, must be filed following the specific procedures applicable to each statutory incentive and be supported by the documentation required by statute and the applicable Tax Commission rules set out in Subchapter 9, Parts 5 through 19 of this Chapter.

(1) For claims related to horizontally drilled wells, see Part 5 of Subchapter 9.

(2) For claims related to incremental production from production enhancement projects, see Part 9 of Subchapter 9.

(3) For claims related to reestablished production from an inactive well, see Part 11 of Subchapter 9.

(4) For claims related to deep wells, see Part 13 of Subchapter 9.

(5) For claims related to new discovery wells, see Part 15 of Subchapter 9.

(6) For claims related to economically at-risk oil leases, see Part 17 of Subchapter 9.

(7) For claims related to three-dimensional seismic shoots, see Part 19 of Subchapter 9.

(c) **Frac oil exclusion.** Procedures to be followed in computing, documenting, and claiming the exclusion for frac oil used in qualified well completions may be found in Part 3 of Subchapter 9 of this Chapter.

Permanent Final Adoptions

(d) **Claims for refund.** Claims for refunds of Gross Production Tax must include the information and conform to the procedures described in this subsection.

(1) **Claims filed within twelve months of production.** Claims for refund of gross production tax which are filed within the twelve-month period immediately following the month of production to which the claim pertains, must include:

(A) A letter stating the reason for the request, amount requested, by Gross Production Tax and Petroleum Excise Tax, the period of time covered, and the Oklahoma Tax Commission's assigned production unit numbers; and,

(B) Amended reports (Type 3) for each month, county, and product code. The amended report must note the "As Paid" volumes, values, and taxes; followed by entries reflecting "Should Have Paid" volumes, values, and taxes; and page totals must accurately support the amount of the refund request.

(2) **Claims not filed within twelve months of production.** Claims for refund of gross production tax not post-marked within the twelve-month period immediately following the month of production to which the claim pertains, must include:

(A) A letter stating the reason for the request, amount requested, by Gross Production Tax and Petroleum Excise Tax, the period of time covered, and the Oklahoma Tax Commission's assigned production unit numbers;

(B) Original source documents, provided to the operator, which may include, but not be limited to: run, settlement, purchase, sales, or metered volume statements, frac affidavits, frac invoices, check stubs, worksheets, pricing bulletins, and any information necessary to verify an exemption, such as BLM lease numbers. Original and all correcting statements pursuant to the claim for refund must be submitted;

(C) Amended reports (Type 3) for each month, county, and product code, reversing the "As Paid" volumes, values, and taxes, then entering the "Should Have Paid" volumes, values, and taxes. Page totals must reflect the amount of the refund request; and,

(D) All supporting documentation required by statute or Commission rules.

(e) **Claims for credit.** For claims pertaining to production months July 2002 and later, credits may be applied to the current month's tax liability, provided that:

(1) Amended reports (Type 3) for each month, county and product code are filed. The amended reports must note the "As Paid" volumes, values, and taxes; followed by entries reflecting "Should Have Paid" volumes, values and taxes; and page totals must accurately support the amount of the credit requested. The amended reports must be submitted along with the current production month's Gross Production Tax Report.

(2) The prior month's adjustments do not exceed the current production month's liability;

(3) Magnetic media submissions conform to established magnetic media guidelines; and,

(4) Supporting documents are retained and available for submission upon request of the Oklahoma Tax Commission.

(f) **Exceptions and limitations.** Neither the refund procedures described subsection (d), nor the expedited filing procedures for claiming a credit described in subsection (e) may be used for claiming an abatement or frac oil exclusion, nor for any claims for refund submitted by a non-remitting party.

SUBCHAPTER 9. EXEMPTIONS AND EXCLUSIONS

PART 1. GENERAL PROVISIONS

710:45-9-1. Exemptions; decimal equivalents

The Commission will verify decimal equivalents of exempt interests with the appropriate agency. The decimal equivalent supplied by the agency will generally stand as the correct deduction for tax purposes. ~~No~~—However, inflation of the decimal equivalent ~~will~~—may be allowed for purposes of accurately computing the allowable exemption for Gross Production Tax purposes. The producer or take-in-kind owner shall provide a written explanation to the Tax Commission supporting the necessity for making the adjustment. [See: 68 O.S. § 1008]

PART 5. HORIZONTALLY DRILLED PRODUCTION WELLS

710:45-9-20. Scope of Part 5

Exemption from the levy of Gross Production Tax on horizontally drilled production wells set out in 68 O.S. § 1001(E) shall be determined according to the provisions of Part 5 of this Subchapter, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to law. [See: 68 O.S. § 1001(M)(1)]

710:45-9-24. ~~Limitation/expiration of Time periods~~ **for exemption from gross production tax levied on horizontally drilled producing wells**

~~The exemption shall end whenever exempt production equals the cost of drilling and completing the well or after the expiration of twenty-four (24) months beginning with the month of initial production, whichever is sooner.~~

(a) **General provisions.** The exemption for horizontally drilled wells qualified pursuant to this Part shall be determined from the project beginning date until project payback is achieved, and are limited in duration to the time periods set out in this Section.

(b) **Twenty-four (24) month exemptions.** For production described in this subsection, duration of the exemption may

not exceed a period of twenty-four (24) months commencing with the date of initial production from the horizontally drilled well.

(1) **Production prior to July 1, 1994.** Any incremental production which results from a horizontally drilled well producing prior to July 1, 1994.

(2) **Production prior to July 1, 2002, which commenced after July 1, 1995.** Any horizontally drilled well producing prior to July 1, 2002, which production commenced after July 1, 1995.

(c) **Forty-eight (48) month exemption.** For a horizontally drilled well producing prior to July 1, 2003, which production commenced after July 1, 2002, the duration of the exemption may not exceed a period of forty-eight (48) months commencing with the date of initial production from the horizontally drilled well. [See: 68 O.S.Supp.2002, § 1001(E)(1)]

PART 7. INCREMENTAL PRODUCTION FROM ENHANCED RECOVERY PROJECTS OR PROPERTIES

710:45-9-30. Scope of Part 7

Exemption from the levy of Gross Production Tax on incremental production attributable to the working interest owners of oil or other liquid hydrocarbons from enhanced recovery projects and properties set out in 68 O.S. § 1001(D) shall be determined according to the provisions of Part 7 of this Subchapter. [See: 68 O.S.-§ 1001+ § 1001(D)(7)]

710:45-9-32.1. Recovery of costs allowed as payback factors

(a) **Enhanced recovery projects with beginning date between October 17, 1987, and June 30, 1990.** For enhanced recovery projects whose beginning dates are October 16, 17, 1987, through June 30, 1990, **allowable enhanced recovery project costs** shall include only incremental capital costs and incremental operating expenses associated with the enhanced recovery project.

(b) **Enhanced recovery project with beginning date between July 1, 1990, and June 30, 1993.** For any enhanced recovery project whose beginning date was July 1, 1990, through June 30, 1993, **allowable enhanced recovery project costs** shall be limited to the incremental capital costs of project start up, including the cost of completing any well necessary to the project and of converting any existing well to handle secondary or tertiary injection of liquids, gas or other matter. No expenditure after the completion date of such wells shall be included.

(c) **Secondary enhanced recovery project with beginning date on or after July 1, 1993, and before July 1, 2000.** For any secondary enhanced recovery project with a project beginning date on or after July 1, 1993, and before July 1, 2000, **allowable enhanced recovery project costs** shall include only incremental capital costs and fifty percent (50%) of incremental operating expenses, provided however, that the period for project payback shall not exceed a period of ten (10) years from the project beginning date.

(d) **Tertiary enhanced recovery project with beginning date on or after July 1, 1993, and before July 1, 2003.**

For any tertiary enhanced recovery project with a project beginning date on or after July 1, 1993, and before July 1, 2003, **allowable enhanced recovery project costs** shall include only incremental capital costs and incremental operating expenses, excluding administrative expenses and the capital expense of pipelines constructed to transport carbon dioxide to a tertiary recovery project, provided such payback shall not exceed a period of ten (10) years from the project beginning date.

(e) **Excluded costs.** The cost of tank batteries, meters, pipelines or other external equipment shall not be included in allowable enhanced recovery project costs. Allowable costs shall be determined using generally accepted accounting principles such as outlined in the "Council of Petroleum Accountants Society (COPAS) - Accounting Procedure Form for Joint Operations" and "COPAS Bulletin No. 16", or subsequent revisions thereto.

PART 9. PRODUCTION ENHANCEMENT PROJECTS

710:45-9-40. Scope of Part 9

Exemption from the levy of gross production tax on the incremental production which results from a production enhancement project with a project beginning date on or after July 1, 1994, and prior to July 1, 2003, set out in 68 O.S. § 1001(G) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

PART 11. REESTABLISHMENT OF PRODUCTION FROM AN INACTIVE WELL

710:45-9-50. Scope of Part 11

Exemption from the levy of gross production tax on the reestablishment of production from an inactive well set out in 68 O.S. § 1001(F) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

PART 13. DEEP WELLS

710:45-9-60. Scope of Part 13

(a) Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells spudded between July 1, 1994 and June 30, 1997, and drilled to a measured depth of fifteen thousand (15,000) feet or more shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

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(b) ~~Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells spudded between July 1, 1997, and June 30, 2003, and drilled to a depth of Twelve Thousand Five Hundred (12,500) feet or more shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission, pursuant to 68 O.S. § 1001(M)(1). The exemption shall apply to gross production tax levied by 68 O.S. § 1001(H) from the date of first sales, for a period of twenty-eight (28) months.~~

(e) ~~For purposes of qualifying for the exemption, "depth" means the length of the maximum continuous string of drill pipe utilized between the drill bit face and the drilling rig's kelly bushing.~~

(a) General provisions. Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells certified as being "Deep Wells" set out in 68 O.S. § 1001(H) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

(b) Definitions. For purposes of qualifying for the exemption, "depth" means the length of the maximum continuous string of drill pipe utilized between the drill bit face and the drilling rig's kelly bushing.

(c) Exemption for wells spudded between July 1, 1994, and June 30, 1997, to a depth of fifteen thousand (15,000) feet or greater. Deep wells spudded between July 1, 1994, and June 30, 1997, and drilled to a depth of fifteen thousand (15,000) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(d) Exemption for wells spudded between July 1, 1997, and June 30, 2002, to a depth of twelve thousand five hundred (12,500) feet. Deep wells spudded between July 1, 1997, and June 30, 2002, and drilled to a depth of twelve thousand five hundred (12,500) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(e) Exemption for wells spudded between July 1, 2002, and June 30, 2003. Deep wells spudded between July 1, 2002, and June 30, 2003, shall be eligible for an exemption from the gross production tax which shall begin from the date of first sale, and vary as to duration in relation to the depth of the well.

(1) 12,500 to 14,999 feet. The duration of the exemption for wells drilled to this depth is twenty-eight (28) months.

(2) 15,000 to 17,499 feet. The duration of the exemption for wells drilled to this depth is forty-eight (48) months.

(3) 17,500 feet or greater. The duration of the exemption for wells drilled to this depth is sixty (60) months.

710:45-9-62.1. Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners

of the well, shall make its request for refund by letter to the Audit Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A Corporation Commission order certifying the well as ~~qualifying for the deep well incentive exemption; a well spudded within the applicable time periods and drilled to the prescribed depths provided in OAC 165:10-21-45;~~

(2) A copy of OCC Form 1534 submitted to the Corporation Commission;

(3) A copy of an approved OTC Form 320A that shows date of first sale of production;

(4) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(5) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for qualifying wells.** Approval of a "Deep Well Incentive" shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.

(c) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 15. NEW DISCOVERY WELLS

710:45-9-70. Scope of Part 15

Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells spudded or reentered between July 1, 1995 and June 30, 2003, which qualify as a new discovery well pursuant to Title 68, Section ~~4001(i)-1001(I)~~ shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

PART 17. ECONOMICALLY AT-RISK OIL LEASES

710:45-9-80. ~~Qualification and application for exemption from the levy of gross production tax on economically at risk oil leases~~ Scope of Part 17

Exemption from the levy of Gross Production Tax on economically at risk oil leases set out in 68 O.S. Supp. 1999, § 1001.3 shall be determined according to the provisions of this Part. [See: 68 O.S. -~~§1001.3~~Supp. 1999, § 1001.3(F)]

PART 19. PRODUCTION USING THREE DIMENSIONAL SEISMIC SHOOTS

710:45-9-90. Scope of Part 19

Exemption from the levy of gross production tax on the production of oil, gas or oil and gas from a well, drilling of which is commenced after July 1, 2000, and prior to July 1, 2003, located within the boundaries of a three-dimensional seismic shoot and drilled based on three-dimensional seismic technology, as set out in 68 O.S. § 1001(J), shall be determined according to the provisions of this Part. [See: 68 O.S. § 1001(M)(1)]

710:45-9-94. Applicable time periods

The exemption from gross production tax levied on oil, gas or oil and gas production from a well qualified pursuant to this Part shall be applied as follows:

- (1) **Eighteen (18) month exemption.** For a well where the seismic shoot was ~~finished before shot~~ prior to July 1, 2000, the well shall be exempt from the gross production tax levied from the date of first sales for a period of eighteen (18) months.
- (2) **Twenty-eight (28) month exemption.** For a well where the seismic shoot was ~~finished after shot on or after~~ July 1, 2000, the well shall be exempt from the gross production tax levied from the date of first sales for a period of twenty-eight (28) months.

[OAR Docket #03-1017; filed 5-21-03]

**TITLE 710. OKLAHOMA TAX
COMMISSION
CHAPTER 50. INCOME**

[OAR Docket #03-1018]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 15. Oklahoma Taxable Income
 - Part 3. Exemptions
 - 710:50-15-32. Small business incubators incentive [AMENDED]
 - Part 5. Other Adjustments to Income
 - 710:50-15-49. Deduction for Oklahoma or federal government retirement income [NEW]
 - 710:50-15-63. Deduction for nonrecurring adoption expenses [AMENDED]
 - 710:50-15-66. Deduction for contributions to an Oklahoma College Savings Plan [NEW]
 - Part 7. Credits Against Tax
 - 710:50-15-76. Oklahoma coal ~~credit~~ credits [AMENDED]
 - 710:50-15-89. Oklahoma coal production credit [REVOKED]
 - 710:50-15-91. Credit for employers incurring expenses for the provision of child care services [NEW]
 - 710:50-15-92. Credit for manufacturers of advanced small wind turbines [NEW]
- Subchapter 17. Oklahoma Taxable Income for Corporations
 - Part 5. Determination of Taxable Corporate Income
 - 710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations [AMENDED]
- Subchapter 19. Oklahoma Taxable Income for Partnerships
 - 710:50-19-1. Partnership return [AMENDED]

AUTHORITY:

Oklahoma Tax Commission; 68 O.S. §§ 203, 2357.11(G), 2357.32B(H), 2358(D)(14)(c); 74 O.S. § 5075

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 15. Oklahoma Taxable Income
- Part 5. Other Adjustments to Income
- 710:50-15-49. Deduction for Oklahoma or federal government retirement income [NEW]

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20 Ok Reg 20

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Superseded rules:

- Subchapter 17. Oklahoma Taxable Income for Corporations
- Part 5. Determination of Taxable Corporate Income
- 710:50-17-51. Adjustments to arrive at Oklahoma Taxable income for corporations [AMENDED]

Gubernatorial approval:

December 10, 2002

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20 Ok Reg 320

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INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Section **710:50-15-32.**, dealing with "*Incubator Incentives*" has been amended to allow income tax free status for distributions made to partners or shareholders of SubChapter S Corporations, in keeping with the provisions of Senate Bill 1442.

New Section **710:50-15-49.** "*Deduction for Oklahoma or Federal Government Retirement Income.*" originally effective October 8, 2002, as an emergency rule, clarifies Commission policy and makes explicit the Oklahoma tax treatment of various retirement benefits with respect to the \$5,500.00 statutory deduction. The new rule expressly includes disability retirement benefits within the defined eligibility.

Existing rule **710:50-15-63.** has been amended to implement the provisions of House Bill 2613, which increased the amount which can be claimed as a deduction for qualified adoption expense from \$10,000.00 to \$20,000.00 per calendar year.

New Section **710:50-15-66.** has been promulgated to implement the provisions of the Oklahoma College Savings Plan Act, House Bill 2908, which specified the amount of the contributions which may be deducted for Oklahoma income tax purposes as \$2,500.00 per account.

Section **710:50-15-76.** "*Oklahoma coal credit*", has been amended to implement House Bill 2073 and to merge the rule for producer's credit, **710:50-15-89.**, into one unified rule. The statute authorizing the coal credits was modified to create a single amount of credit. Additionally, the credit, previously available only to corporations, will now be available to all qualifying persons except individuals.

Permanent Final Adoptions

New Section **710:50-15-91**, has been added to implement Senate Bill 1256, which amended the Employer Child Care Credit by authorizing a twenty percent (20%) income tax credit in lieu of a deduction from taxable income. The amount of expense on which the credit is based is capped at \$3,100.00 per child receiving care which is paid for by an employer in a facility that has received at least a two-star rating from the Oklahoma Department of Human Services. If an employer elects to provide on-site child care facilities, the expenses are capped at \$50,000.00. Finally, if the employer pays any fees or grants for child care resources, the amount of these expenses is capped at \$5,000.00.

New rule **710:50-15-92**, has been added to implement the provisions of Senate Bill 1451, which established an income tax credit for Oklahoma manufacturers of advanced small wind turbines. The credit is to be based on the square-footage of the rotor-swept area of advanced small wind turbines manufactured in this state. For calendar year 2003, the credit per square foot is \$25.00; for calendar year 2004, the credit per square foot is \$12.50; and for calendar year 2005, the credit per square foot is \$6.25. There is also the opportunity to transfer any unused credit for ten (10) years following the year of qualification. The first year in which credits may be transferred is 2004.

Section **710:50-17-51**, has been amended by the addition of paragraph (21). The new language was promulgated to implement 68 O.S. § 2358.6, a new law which prescribed the method by which corporations that claim federal "bonus depreciation" under the "Job Creation and Workers Assistance Act of 2002" must treat that allowance for Oklahoma Income Tax purposes. The new law required an "add-back" of eighty percent (80%) of the amount claimed for federal purposes, and then permits the remaining bonus allowance to be claimed in twenty-five percent (25%) increments over the following four years. This Section was adopted by the Commission as an emergency rule and has been in effect since December 10, 2002.

Section **710:50-19-1**, has been amended to allow for expanded filing formats.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003:

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 3. EXEMPTIONS

710:50-15-32. Small business incubators incentive

(a) **General provisions.** Certain exemptions for the levy of Oklahoma income tax may be allowed for income earned by qualifying sponsors and tenants pursuant to the provisions of the Small Business Incubators Incentive Act (74 O.S. 1991, §5071 et seq.)

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Act"** means the Small Business Incubators Incentives Act (74 O.S. 1991, §5071 et seq.).

(2) **"Arms length basis"** means that standard under which unrelated parties, each acting in his or her own best interest, would carry out a particular transaction.

(c) **Exemption for sponsors.** Procedures applicable to sponsors under the Act are as follows:

(1) An approved copy of the Small Business Incubator Incentives Program application must be submitted with the Oklahoma Income Tax Return when it is filed with the Oklahoma Tax Commission.

(2) The amount of exemption will be limited to the net income. If the sponsor is involved in other operations, allocations of overhead applicable to the income must be made on an arms length basis.

(3) An audit may be made to verify the income received and expenses relating to the business.

(4) An allowable Oklahoma NOL carryback or carry-over shall not include any income or loss attributable to this Section.

(5) Income exempt from income tax is limited to that listed in the Act.

(d) **Exemption for tenants.** Procedures applicable to tenants under the Act are as follows:

(1) The amount of exemption will be limited to the net income. If the tenant is involved in other operations, allocations of overhead applicable to the income must be made on an arms length basis.

(2) An audit may be made to verify the income received and expenses relating to the business. If the tenant is organized as either a Subchapter S Corporation or a partnership, the exemption will flow through to the shareholder or partner, as applicable.

(3) An allowable Oklahoma NOL carryback or carry-over shall not include any income or loss attributable to this Section which is the result of such operation. [See: 74 O.S. 1991, §§5075(B), 5078(B)]

(4) Effective November 1, 2001, the period of income exemption for income earned as a result of activities conducted as an occupant, for tenants of incubators is ten (10) years from the date of occupancy in the incubator. The tenant is not required to be an occupant of the incubator for the full ten (10) years to receive the exemption, however, the exemption period cannot exceed a total of ten years for any tenant. The exemption is applicable in years six (6) through ten (10) only if the tenant makes at least seventy-five percent (75%) of its gross sales to buyers located outside of Oklahoma, to buyers whose principal business activity is located outside of Oklahoma, to the federal government, or to buyers in this state if the product or service is resold to an out-of-state customer or buyer for ultimate use. In years six (6) through ten(10), failure of a tenant to achieve the qualifying percentage for the exemption in any single year will not result in disqualification for subsequent years. [See: 74 O.S. § 5078]

PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-49. Deduction for Oklahoma or federal government retirement income

(a) **General provisions.** Each individual taxpayer may deduct up to Five Thousand Five Hundred Dollars (\$5,500.00) of retirement benefits paid by the State of Oklahoma or by the federal government. This deduction cannot exceed the

amount included in the taxpayer's Federal Adjusted Gross Income. The total exclusion from all government retirement benefit plans may not exceed Five Thousand Five Hundred Dollars (\$5,500.00) per individual.

(b) Qualifying retirement income defined. For purposes of this Section, "**Oklahoma or federal government retirement income**" means retirement income received from the following sources:

- (1) The Civil Service of the United States;
- (2) Any Component of the Armed Forces of the United States;
- (3) The Oklahoma Public Employees' Retirement System;
- (4) The Oklahoma Teachers' Retirement System;
- (5) Oklahoma Law Enforcement Retirement System;
- (6) Oklahoma Firefighters' Pension and Retirement System;
- (7) Oklahoma Police Pension and Retirement System;
- (8) The Employee retirement systems created by counties pursuant to 19 O.S. §§ 951 et seq.
- (9) The Uniform Retirement System for Justices and Judges;
- (10) The Oklahoma Wildlife Conservation Department Retirement Fund;
- (11) The Oklahoma Employment Security Commission Retirement Plan; or,
- (12) The Employee retirement systems created by municipalities pursuant to 11 O.S. §§ 48-101 et seq.

(c) Disability retirement income. Disability retirement benefits received by an individual from sources listed in subsection (b) shall qualify for the retirement income deduction, without regard to the recipient's age.

710:50-15-63. Deduction for nonrecurring adoption expenses

(a) General provisions. In taxable years beginning after December 31, 1995, and ending before January 1, 2003, a deduction, ~~not to exceed ten thousand dollars (\$10,000.00) per calendar year,~~ is allowed to resident individual taxpayers for nonrecurring adoption expenses, ~~not to exceed ten thousand dollars (\$10,000.00) per calendar year,~~ paid in connection with the adoption of a minor, or proposed adoption of a minor which did not result in a decreed adoption. Effective for taxable years beginning after December 31, 2002, the deduction for nonrecurring adoption expenses shall not exceed Twenty Thousand Dollars (\$20,000.00) per calendar year.

(b) Allowable expenses. For purposes of this Section "**non-recurring adoption expenses**" means and includes:

- (1) Adoption fees;
- (2) Court costs;
- (3) Medical expenses;
- (4) Attorney fees;
- (5) Expenses directly related to the legal process of the adoption of a child and are not reimbursed by other sources, to include, but not limited to costs related to:
 - (A) The adoption study;
 - (B) Health and psychological examinations;
 - (C) Transportation and reasonable costs of food and lodging for the child or adoptive parents which

are incurred to complete the adoption process. Transportation expense by either commercial or private means may be claimed based upon actual unreimbursed costs incurred, or in the case of travel by private means, the mileage rate allowed pursuant to the Internal Revenue Code for determining business travel expense may be elected.

(6) Costs associated with physical remodeling, renovation, or alteration of the adoptive parents home or property, if incurred in conjunction with the adoption of a special needs child, as authorized by the court.

(c) "Nonrecurring adoption expenses" shall not mean or include:

- (1) Costs reimbursed by other sources.
- (2) Attorney fees incurred from and after the commencement of an action involving a contest of an adoption.
- (3) Costs associated with physical remodeling, renovation, or alteration of the adoptive parent's home or property, with the exception noted in (b)(6) of this Section.

(d) Verification. A schedule describing the expenses claimed must be enclosed and filed with the claimant's tax return. Receipts supporting the claimed expenses are not required to be submitted with the tax return and descriptive schedule, but must be retained and be available upon request by the Commission.

710:50-15-66. Deduction for contributions to an Oklahoma College Savings Plan

For tax years beginning after December 31, 2001, individuals may deduct up to Two Thousand Five Hundred Dollars (\$2,500.00) of contributions made to an Oklahoma 529 College Savings Plan Account, established pursuant to the Oklahoma College Savings Act, in arriving at Oklahoma taxable income. If contributions are made to more than one account, the deduction for each contributor is limited to Two Thousand Five Hundred Dollars (\$2,500.00) for each account. Contributions made to other states' college savings plans, the Coverdell Education Savings Account, or transfers from one Oklahoma College Savings Plan Account to another may not be deducted.

PART 7. CREDITS AGAINST TAX

710:50-15-76. Oklahoma coal credit credits

(a) General provisions. ~~There shall be allowed a credit against the tax imposed by 68 O.S. §§ 1803 and 2355 for the purchase of Oklahoma mined coal. In order to qualify for the Oklahoma Coal Credit, corporations must either furnish water, heat, light or power to the citizens or state of Oklahoma or burn coal to generate heat, light or power for use in manufacturing operations in Oklahoma. [See: 68 O.S. Supp. 1996, §2357.11; Wyoming v. Oklahoma, 112 S.Ct. 789 (1992)]~~

~~(1) For tax years beginning on or after January 1, 1993 and ending on or before December 31, 1994, the credit shall be one dollar (\$1.00) per ton of Oklahoma mined coal purchased.~~

~~(2) For tax years beginning on or after January 1, 1995 and ending on or before December 31, 2002, The~~

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credit shall be Two Dollars (\$2.00) per ton of Oklahoma mined coal purchased.

~~(3) For tax years beginning on or after January 1, 1997 and ending on or before December 31, 2002. There shall be allowed, in addition to the credit described in (2) of this subsection, a supplemental credit of Three Dollars (\$3.00) per ton of Oklahoma mined coal purchased. However, to obtain the credit described in this paragraph, purchases must total at least Seven Hundred Fifty Thousand (750,000) tons of Oklahoma-mined coal in the tax year for which credit is sought.~~

~~(A) **Transferability.** The supplemental credit allowed, but not used, shall be freely transferable by written agreement to subsequent transferees, at any time during the five (5) years following the year of qualification.~~

~~(i) For purposes of this subsection, an "eligible transferee" means any taxpayer subject to the tax imposed by Section 1803 or 2355 of Title 68 of the Oklahoma Statutes.~~

~~(ii) The corporation which was originally allowed the credit and the subsequent transferee must jointly file a copy of written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring corporation, and the tax year or years for which the credit may be claimed.~~

~~(iii) In no event will the transferred credit be applied retroactively.~~

~~(B) **Method of election.** Any credit transferred, may upon the election of the taxpayer, be claimed as a payment of tax, a prepayment of tax or a payment of estimated tax. The amount of the credit will be deemed to have been paid as tax upon the date of the transfer. In no event shall the credit reduce the tax below zero, and as such, this credit is non-refundable.~~

~~(b) **Carryover provisions.** Any coal credit, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability.~~

(a) **General provisions applicable to qualifying business entities purchasing Oklahoma-mined coal.** There shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for legal business entities purchasing Oklahoma-mined coal for qualifying purposes. In order to qualify for the Oklahoma Coal Credit, the business entity must either furnish water, heat, light, or power to the citizens or to the State of Oklahoma, or burn coal to generate heat, light, or power for use in manufacturing operations in Oklahoma. [See: 68 O.S.Supp.2002, § 2357.11; **Wyoming v. Oklahoma**, 112 S.Ct. 789 (1992)]

(1) **Basic credit.** For tax years beginning on or after January 1, 1993, and ending on or before December 31,

2007, the credit shall be Two Dollars (\$2.00) per ton of Oklahoma-mined coal purchased.

(2) **Additional credit for large quantity purchasers.** For tax years beginning on or after January 1, 1995, and ending on or before December 31, 2007, there shall be allowed, in addition to the credit described in (1) of this subsection, a supplemental credit of Three Dollars (\$3.00) per ton of Oklahoma-mined coal purchased. However, to obtain the credit described in this paragraph, purchases must total at least Seven Hundred Fifty Thousand (750,000) tons of Oklahoma-mined coal in the tax year for which credit is sought.

(b) **General provisions applicable to qualifying business entities that mine, produce, or extract coal.** There shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for every business entity in this state primarily engaged in mining, production, or extraction of coal, and holding a valid permit issued by the Oklahoma Department of Mines, so long as the average price of coal mined, produced, or extracted in any month for which credits are claimed is less than Forty-five Dollars (\$45.00) per ton.

(1) **Basic credit.** For tax years beginning on or after January 1, 2001, the credit shall be Ninety-five Cents (\$0.95) per ton of coal mined, produced, or extracted in this state, on or after January 1, 2001.

(2) **Additional credit for thin seam coal.** For tax years beginning on or after January 1, 2001, there shall be allowed, in addition to that described in (1) of this subsection, a supplemental credit in the amount of Ninety-five Cents (\$0.95) per ton of coal mined, produced, or extracted from thin seams in this state, so long as the purchaser of the thin seam coal purchases less than Seven Hundred Fifty Thousand (750,000) tons of Oklahoma coal per year.

(c) **Transferability.** The coal credits allowed, but not used, shall be freely transferable by written agreement to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an "eligible transferee" means any taxpayer subject to the tax imposed by Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36 of the Oklahoma Statutes. [See: 68 O.S.Supp.2002, § 2357.11(G)] Pursuant to the statutory definition, an "eligible transferee" taxpayer may be an individual, as well a legal business entity.

(2) **Written transfer agreement requirements.** The business entity which originally earned the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring entity, and the tax year or years for which the credit may be claimed.

(3) **Claiming transferred credit.** A copy of OTC Form 572 must be attached to any tax return on which a taxpayer claims a transferred credit.

(d) **Application of credit election.** Any coal credit may, upon the election of the taxpayer, be claimed as a payment of tax, a prepayment of tax, or a payment of estimated tax for purposes of Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36. In no event shall the credit reduce the tax below zero, and as such, this credit is non-refundable.

(e) **Carryover provisions.** Any coal credit, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability.

710:50-15-89. Oklahoma coal production credit [REVOKED]

(a) **General provisions.** There shall be a non-refundable tax credit against the tax imposed by 68 O.S. § 1803 or § 2355 for any corporation engaged in the mining, production, or extraction of coal in this state. The credit is also available against the tax imposed under 36 O.S. § 624 or 628.

(b) **Permit required.** In order to qualify for this credit, a corporation must have a valid permit issued by the Oklahoma Department of Mines.

(c) **General credit.** The credit is Ninety five Cents (\$0.95) per ton of coal mined, produced, or extracted from sources in Oklahoma, on or after January 1, 2001.

(d) **Additional credit for thin seam production.** There is an additional credit of Ninety five Cents (\$0.95) per ton of coal mined, produced, or extracted from thin seams in Oklahoma, on or after January 1, 2001. The additional credit based on thin seam coal production is not available if the coal is sold to any consumer who purchases in excess of Seven Hundred Fifty Thousand (750,000) tons of Oklahoma mined coal annually.

(e) **Limitation.** The credit outlined in this section shall not be allowed for coal mined, produced or extracted in any month when the average price of coal is over Forty five Dollars (\$45.00) per ton of coal, as determined by the Oklahoma Tax Commission. Average price does not include freight charges.

(f) **Transferability.** Any credits outlined in this Section that are not used are freely transferable after January 1, 2002, and up to five (5) years following the year of qualification. The transferor and transferee shall submit Oklahoma Tax Commission Form 572 within thirty (30) days after the transfer of the tax credits.

(g) **Claim of credit.** A copy of OTC Form 572 must be attached to any tax return on which a taxpayer claims the transferred credit.

710:50-15-91. Credit for employers incurring expenses for the provision of child care services

(a) **General Provisions.** There shall be a non-refundable tax credit against the tax imposed by 68 O.S. § 2355 for employers, as defined by 68 O.S. § 2357.26(B)(2), incurring eligible expenses in the connection with providing child care services for children of their employees. The credit is based on the amount of eligible expenses and shall be twenty percent (20%)

of the eligible expense subject to limits based on the type of expense. The credit is effective for tax years beginning after December 31, 2001.

(b) **Eligible expenses subject to the \$3,100.00 cap.** Eligible expenses subject to the \$3,100.00 cap per employee-child are those amounts paid for the purchase of childcare services for children of employees at a facility licensed by the Department of Human Services and rated at least two stars.

(c) **Eligible expenses subject to the \$50,000.00 cap.** Eligible expenses subject to the \$50,000.00 cap are those expenses associated with providing a child care center. These include expenses associated with planning, preparing, constructing, or expanding a child care center; equipment for a child care center; or maintenance and operating expenses of a child care center, including direct administrative and staff costs.

(d) **Eligible expenses subject to the \$5,000.00 cap.** Eligible expenses subject to the \$5,000.00 cap are those expenses for fees and grants to child care resource and referral organizations doing business within Oklahoma.

(e) **Credit is in lieu of expense deduction.** The credit for employers incurring expenses for the provision of child care services shall be in lieu of a deduction of eligible expenses used in computing Oklahoma taxable income. If the credit is claimed or generated, then none of the expenses on which the credit is based shall be allowed as deduction in calculating Oklahoma taxable income.

(f) **Carryforward allowed.** Credits generated but not used are allowed to be carried forward four (4) years following the year generated.

710:50-15-92. Credit for manufacturers of advanced small wind turbines

(a) **General provisions.** Oklahoma manufacturers of advanced small wind turbines may claim an Oklahoma income tax credit for manufacturing advanced small wind turbines in this state. This credit is available for advanced small wind turbines manufactured between January 1, 2003 and December 31, 2005.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Advanced small wind turbines (ASWT)"** are wind turbines that have a rated capacity of at least one kilowatt (1kw) but no more than fifty kilowatts (50kw). The wind turbine must also incorporate advanced technologies such as new airfoils, new generators, new power electronics, and variable speed. In order to qualify as an advanced small wind turbine, at least one unit of each model must be installed for testing at the United States Department of Energy National Wind Technology Center and must comply with appropriate interconnection safety standards of the Institute of Electrical and Electronics Engineers as are applicable to small wind turbines.

(2) **"Rotor Swept Area"** means an area calculated by using the formula $\pi \times D^2 \div 4$, (D being the rotor diameter in feet, $\pi = 3.1416$).

(3) **"Oklahoma manufacturer"** means, for purposes of this Section, a manufacturer who operates facilities that

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have the capability of manufacturing small wind turbine products in this state.

(4) **"Small wind turbine products"** means and includes rotor blades and alternator fabrication.

(c) **Computation of the credit.** The credit is based on the square footage of the rotor swept area of the advanced small wind turbine manufactured in Oklahoma. For ASWT manufactured between January 1, 2003, and December 31, 2003, the credit is Twenty-five Dollars (\$25.00) per square foot of the rotor swept area. For ASWT manufactured between January 1, 2004, and December 31, 2004, the credit is Twelve Dollars and Fifty Cents (\$12.50) per square foot of the rotor swept area. For ASWT manufactured between January 1, 2005, and December 31, 2005, the credit is Six Dollars and Twenty-five Cents (\$6.25) per square foot of the rotor swept area.

(d) **Transfer of the credit.** Effective for tax year 2004, the credit for manufacturers of advanced small wind turbines may be transferred.

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME

710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations

The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to Federal taxable income to arrive at Oklahoma taxable income for corporations: [See: 68 O.S. § 2358]

(1) **Taxes based on income.** [See: 68 O.S. § 2358(A)(5)]

(A) Taxes based on or measured by income shall not be allowed as a deduction.

(B) Type of taxes that are based on or measured by income are:

- (i) State and Local Income Taxes,
- (ii) Foreign Income Taxes, and
- (iii) some Franchise Taxes that are based on or measured by income.

(2) **Federal income taxes.** Federal Income Taxes are not deductible.

(3) **Federal loss carryback/carryforward.** A Federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma Net Operating Loss deduction refer to (4) of this Section.

(4) **Oklahoma net operating loss carryback/carryover.** An election may be made to forego the Net Operating Loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.

(A) **Oklahoma net operating loss.** [See: 68 O.S. § 2358(A)(3)]

(i) An Oklahoma Net Operating Loss (NOL) may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a Federal NOL carryback from the same loss year to the same carryback year.

(I) For net operating losses incurred for the years beginning after December 31, 1992, and before December 31, 1993, the loss **carryback** shall be for a period of three (3) years;

(II) For net operating losses incurred for tax years beginning after December 31, 1993, and before December 31, 1994, the loss **carryback** shall be for a period of two (2) years;

(III) For net operating losses incurred for tax years beginning after December 31, 1994, and before December 31, 1995, the loss **carryback** shall be for a period of one (1) year;

(IV) For net operating losses incurred for tax years beginning after December 31, 1995, and before January 1, 2001, no loss **carryback** shall be allowed; and

(V) For net operating losses incurred for tax years beginning on or after January 1, 2001, the loss **carryback** shall be for a period as allowed in the Internal Revenue Code.

(ii) Any Oklahoma Net Operating Loss (NOL) carryback not allowed, due to no Federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980, or carried over until utilized, without regard to a Federal loss.

(B) **Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981.** The following shall apply to Oklahoma net operating loss before January 1, 1981:

(i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)

(ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to Federal loss. (If no Federal loss, there is no NOL allowable.) This percentage is then applied to the Federal NOL (each loss year separately) when it is taken (absorbed) on the filed Federal Return. The Oklahoma NOL can be used in the same Oklahoma year it is used on the filed Federal Return year.

(5) **Oklahoma accrued income tax.** Oklahoma will allow a deduction for Oklahoma Accrued Income Tax. The Oklahoma Accrued Income Tax is computed by dividing Oklahoma Net Income by the number 21 (twenty-one) for tax years beginning after December 31, 1984, and the number 26 (twenty-six) for tax years beginning before January 1, 1985. For tax years beginning after December 31, 1989, the number 17.6667 shall be used. There is no

deduction for Oklahoma Accrued Income Tax when Oklahoma Net Income is a loss. [See: 68 O.S. § 2358(A)(5)] When credits are allowed, the accrual of Oklahoma tax will not be allowed on the amount of Oklahoma taxable income that is covered by the credit. Tax accrual is allowed on the amount of income for which tax is actually paid. The example in Appendix A of this Chapter shows how the accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.

(6) **Expenses allocated to nontaxable income.** 68 O.S. § 2358(A)(4) provides that deductions should be allocated to assets that may produce nontaxable income. When a corporation has an investment in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income, an adjustment is required. The expense adjustment is used to more clearly reflect true income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is nontaxable by the average of total assets. This result is then applied to certain expenses claimed on the return. Generally, interest expense is the only expense against which this result is applied. However, facts and circumstances may indicate that other expenses should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [See: 68 O.S. § 2358(A)(4)]

(7) **Interest income.**

(A) **U. S. obligations.** Interest income from U.S. obligations are excluded from Federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) **Other interest income.**

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to Federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) **Dividends.** Dividends are to be allocated to the domiciliary situs of the taxpayer. [See: 68 O.S. § 2358(A)(4)(b)]

(9) **Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) Commission Expense.** Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [See: 68 O.S. § 2358(A)(4)]

(10) **Net oil and gas income.** Income or loss from oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]

(11) **Oklahoma 22% depletion.** Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For tax years beginning January 1, 1997, and prior to December 31, 1999, and for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2004, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty (50%) of net income for such property (computed without allowance for depletion).

(B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not exceed fifty (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.

(C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the Federal Income Tax Return. [See: 68 O.S. § 2353(10)]

(12) **Net rental income and safe harbor leasing.** The following provisions apply to the treatment of net rental income and safe harbor leasing:

(A) Net Rental Income is separately allocated. [See: 68 O.S. § 2358(A)(4)]

(B) A schedule of Net Rental Income is required to be filed with the return showing gross income and all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).

(13) **Royalties; patents; copyrights.** [See: 68 O.S. § 2358(A)(5)]

(A) Income from patent or copyright royalties is apportionable.

(B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.

(14) **Capital gains or loss - 4797 gains or loss.**

(A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [See: 68 O.S. § 2358(A)(5)]

(B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.

(15) **Partnership income or loss from corporate partners.**

(A) Partnership income or loss shall be separately allocated. [See: 68 O.S. § 2358(A)(4)]

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(B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.

(16) **Overhead allocation.** The Commission may adjust or allocate overhead expenses to or from a parent or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [See: 68 O.S. § 2366]

(17) **Federal new jobs credit deduction.** For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma's own Investment/New Jobs Credit.

(18) **Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [See: 68 O.S. § 2358(A)(4)]

(19) **Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.

(20) **Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [See: 68 O.S. § 2358(A)(5)]

(21) **Add-back of federal bonus depreciation for Oklahoma Income Tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma Income Tax purposes.

(A) Corporations filing Oklahoma Income Tax Returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*. Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

(B) The provisions relating to the add-back of the federal bonus depreciation apply only to C-Corporations and are not applicable to corporations which have elected to be treated as Subchapter S Corporations pursuant to 26 U.S.C. § 1361 et seq. of the Internal Revenue Code, nor to Limited Liability Companies.

SUBCHAPTER 19. OKLAHOMA TAXABLE INCOME FOR PARTNERSHIPS

710:50-19-1. Partnership return

The Oklahoma distributive share of partnership income shall be the same portion of that reported for Federal Income Tax purposes. OTC Form 514 is used to report income. [See: 68 O.S. §§ 2358, 2362, 2363]

(1) When a partnership has source income or loss then that partnership must file a return showing the income or loss applicable to Oklahoma. The partnership shall also furnish a detailed schedule stating the amount of income distributable to each partner from Oklahoma sources.

(2) All resident partners must file individual income tax returns with Oklahoma if they are required to file individual Federal Income Tax Returns. All nonresident partners that have gross income of \$1,000.00 must file an Oklahoma Return even though their net may actually be a loss. The partnership income for Oklahoma may be apportioned using the three factor

formula unless its operations are from real and tangible personal property, such as rents, oil and mining production or royalties, and gains or losses from sales of such property; then the income or loss shall be allocated in accordance with the situs of such property. The partner's distributive share of Oklahoma income or loss shall be the same proportion to the partner's distributive share of income or loss shown on the Federal Partnership Return.

(3) Neither residents nor nonresidents are allowed a credit for income taxes paid to other jurisdictions on partnership income.

(4) Oklahoma will allow partnerships to file composite returns for nonresident partners when the following requirements are adhered to:

(A) Compute each partner's share of Oklahoma income.

(B) Deduct a standard deduction of fifteen percent (15%), for individuals, of the Oklahoma income, limited to \$2,000.00, with no minimum amount or proration thereof. When the filing status for federal purposes is known, the maximum allowable shall not exceed \$1,000.00 for any partner using married, filing separate, status. This deduction is only available to individuals.

(C) No allowance for personal exemption, Federal Income Tax, or deductions for dependents is permitted.

(D) Reporting and payment is to be made by the partnership on a fiduciary return (OTC Form 513).

(E) The tax is to be computed using the proper schedule for filing status, i.e. single, married, corporate, etc. If the status is not known, rates on the fiduciary return must be used.

(F) Any partners having Oklahoma income from other sources should file their individual returns. Partners may elect to file their own returns with the State of Oklahoma.

(G) A schedule must be provided, showing the name, social security number, Oklahoma income, deduction, and taxable income of each partner.

(H) It will be acceptable to file the listing of nonresident individual partners on microfiche. The listing of nonresident individual partners may be provided on magnetic media, electronic, or other format which meets Tax Commission guidelines.

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**TITLE 710. OKLAHOMA TAX
COMMISSION
CHAPTER 60. MOTOR VEHICLES**

[OAR Docket #03-1019]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 710:60-1-3. Confidentiality of motor vehicle information [AMENDED]
- Subchapter 3. Registration and Licensing
- Part 1. General Provisions
- 710:60-3-23. October 9, 2001, tornado registration fee credit [NEW]
- Part 13. Manufactured Homes
- 710:60-3-133. Cancellation of manufactured home title [NEW]
- Subchapter 5. Motor Vehicle Titles
- Part 5. Certificates of Title
- 710:60-5-53. Salvage titles [AMENDED]
- Subchapter 7. Motor Vehicle Excise Tax
- 710:60-7-8. October 9, 2001, tornado excise tax credit [NEW]

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ANALYSIS:

Section 710:60-1-3. has been amended to implement Senate Bill 1413, § 2, which clarifies that release of confidential Motor Vehicle information may be provided under proper circumstances to an operator of a private toll transportation facility. [47:1109(2)]

New Section 710:60-3-23. has been promulgated to implement the provisions of Senate Bill 1413, § 3, which allows a credit for unused registration fees to be applied to a vehicle which is a replacement for one destroyed by the tornado of October 9, 2001. [47:1132.3(B)]

New Section 710:60-3-133. has been promulgated to implement the provisions of Senate Bill 983, which allows an owner of a manufactured home that has been permanently affixed to real estate, to make application for

cancellation of the Oklahoma certificate of title to the manufactured home. [47:1110(E)]

Section 710:60-5-53. has been amended to implement Senate Bill 1413, § 1, which allows qualifying insurance companies to be issued Oklahoma salvage titles on vehicles which have been stolen, but not yet recovered. [47:1105(O)]

Section 710:60-7-8. has been amended to implement Senate Bill 897, § 1, which provided for a credit from the Motor Vehicle Excise Tax for a vehicle which is a replacement for one destroyed by the tornado of October 9, 2001. [68:2103.1(2)]

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

710:60-1-3. Confidentiality of motor vehicle information

(a) **Procedure for release of vehicle and lien information.** Vehicle ~~information~~ and lien information may be released only to qualified requestors upon ~~the~~ completion of OTC Form 769 and remittance of the statutory fee, or to qualified requestors completing the "Service Contract for Purchase of Oklahoma Motor Vehicle Registration (MVR) Database" with the Tax Commission.

(b) **Who may obtain vehicle and lien information.** Vehicle and lien information may be released to:

- (1) The current owner;
- (2) An individual, on behalf of the current owner, with written authorization;
- (3) A licensed wrecker or towing service, for notification to owners;
- (4) A legitimate business, for purposes of:
 - (A) Verifying the accuracy of personal information submitted to the business by the individual to whom the requested information pertains; or
 - (B) Obtaining correct information for purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual to whom the requested information pertains;
- (5) A requestor who is to use the information in conjunction with a civil, criminal, administrative, or arbitral proceeding in a federal, state, or local court or agency, or before any self-regulatory body. Use may include service of process, investigation in anticipation of litigation, and the execution or enforcement of a judgment or order;
- (6) A requestor, pursuant to an order of any court;
- (7) An insurer or insurance support organization;
- (8) A licensed private investigative agency or licensed security service, for purposes permitted by 47 O.S. § 1109(A);

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(9) A governmental or law enforcement agency, or a court, for use in an official function; or

(10) Any person compiling and publishing motor vehicle statistics, provided that names and addresses of individuals shall not be disclosed;

(11) Any motor vehicle manufacturer or an authorized representative thereof, in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles, motor vehicle parts and dealers, motor vehicle market research activities, including survey research, and removal of non-owner records from the original owner records of motor vehicle manufacturers; or.

(12) For use in connection with the operation of private toll transportation facilities.

(c) **Insurance information release.** Insurance information, including insurer and policy number, may be released to a law enforcement officer investigating an accident pursuant to 47 O.S. § 10-104.

(d) **Penalties for the release of prohibited information.** The release of any information not specifically authorized by statute, as described in subsections (b) and (c) of this Section, is strictly prohibited, and may be subject to penalties enumerated in 47 O.S. § 1109(H).

(e) **Penalties pursuant to the Drivers Privacy Protection Act.** In addition to penalties provided under state law, certain provisions of federal law, under the Drivers Privacy Protection Act, may apply.

(1) Any person who violates the Drivers Privacy Protection Act (DPPA) is subject to criminal prosecution as provided in 18 U.S.C.A. § 2721, et seq.

(2) Any person who violates the Drivers Privacy Protection Act (DPPA) is subject to civil penalties of actual damages not less than \$2,500.00; punitive damages, reasonable attorneys' fees, litigation costs, and such other relief the court determines to be appropriate.

(3) Any state agency violating the Drivers Privacy Protection Act (DPPA) is subject to a civil penalty of not more than \$5,000.00 for each day of substantial noncompliance.

(f) **Types of information released.** The form, formats, media, and sources of information provided under this Section may be available for a statutorily provided fee:

(1) Current ownership or lienholder information may be provided to qualified requestors by the Oklahoma Tax Commission and Motor License Agents.

(2) Computer-generated title history information may be provided by the Oklahoma Tax Commission.

(3) Microfilm title history information may be provided by the Oklahoma Tax Commission.

(4) Certified microfilm title history may be provided by the Oklahoma Tax Commission.

SUBCHAPTER 3. REGISTRATION AND LICENSING

PART 1. GENERAL PROVISIONS

710:60-3-23. October 9, 2001, tornado registration fee credit

Credit will be allowed towards the Oklahoma registration fee of a vehicle which is a replacement for a properly registered vehicle destroyed by a tornado on October 9, 2001. The credit will be prorated to an amount equal to the fee for the number of months remaining on the registration for the destroyed vehicle, as of October, 2001. No excess credit may be refunded.

PART 13. MANUFACTURED HOMES

710:60-3-133. Cancellation of manufactured home title

Owners of manufactured homes that have been permanently affixed to real estate may make application to cancel the Oklahoma certificate of title. Only the owner of record on the Oklahoma title may make application through the Tax Commission or any motor license agent.

(1) An Oklahoma certificate of title for the manufactured home in the name of the applicant must be submitted. Applicants unable to produce a certificate of title must obtain a duplicate title before applying for cancellation.

(2) An application fee of Five Dollars (\$5.00) must be remitted.

(3) The Tax Commission or motor license agent must verify that no active lien appears on the record. If an active lien is reflected, a Cancellation Denial Notice will be given to the owner and the lienholder. The owner will be given a "Notice to Owner of the Existence of an Active Lien upon Application to Cancel Oklahoma Certificate of Title" and the application fee will be returned. The lienholder will be given a "Notice to Lienholder of Application to Cancel Oklahoma Certificate of Title". The Oklahoma title will not be cancelled until all liens are released.

(4) If there is no active lien on the records, the applicant must complete an "Application for Title Cancellation of a Manufactured Home Permanently Affixed to Real Estate" Form and a "Notice to County Assessor of Cancellation of Oklahoma Certificate of Title" Form.

(5) A copy of the "Application for Cancellation Form" and the "Notice to County Assessor Form" will be forwarded to the county assessor of the county in which the property is located.

SUBCHAPTER 5. MOTOR VEHICLE TITLES

PART 5. CERTIFICATES OF TITLE

710:60-5-53. Salvage titles

(a) **Salvage vehicle defined.** A salvage vehicle is a vehicle ten (10) model years and newer which has been damaged by collision or other occurrence to the extent that the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of its fair market value at the time of loss.

(b) **Determining classification as a salvage vehicle.** To determine the 10 year model age limit for this purpose, subtract

9 from the current latest manufacturers model on sale. September 1 is the generally accepted date that new model vehicles go on sale. For example, prior to September 1, 1991, the latest manufacturers model on sale are 1991 models. Therefore, a ten year old vehicle would be a 1982 (1991-9) model. 1981 and older models would be exempt from the salvage requirements. Beginning September 1, 1991, 1992 model vehicles officially go on sale, resulting in 1982 models becoming exempt from the salvage requirements. This formula for determining the age of a model year will apply to all such determinations regarding salvage and rebuilt vehicles.

(c) **Change of classification.** Vehicles over 10 model years old may go in to, or come out of, salvage at any time. No inspection is required to bring such vehicles out of salvage.

(d) **Out-of-state salvage titles.** Vehicles over 10 model years old entering Oklahoma with an out-of-state salvage title may receive either a salvage title or standard (green) title with a salvage date listed.

(e) **Notification by insurance companies.** An insurance company paying a loss on a vehicle 7 model years old or newer where the cost of repairing the vehicle to a roadworthy condition exceeds 60% of its fair market value is required to notify the vehicle owner to surrender the title to the Oklahoma Tax Commission or a motor license agent so that it may be replaced by a salvage title. The Motor Vehicle Division will also be notified by the insurance company.

(f) **Transfer salvage title to insurance company on payment of total loss due to theft; removal of salvage notation.** Any vehicle 7 model years old or newer on which an insurance company has paid a total loss due to theft must be transferred to the insurer by a salvage title.

However, the statutes provide that the salvage notation may be removed if the vehicle is recovered and has suffered damage amounting to less than 60% of the value of the vehicle. Certification to that effect, in the form of a letter on the insurance companies letterhead, will be required.

(g) **License plate not affected by salvage classification; current registration generally required.** The license plate from a vehicle entering salvage status need not be surrendered. However, registration must be current on a vehicle entering salvage status, unless it is being titled by a salvage dealer.

(h) **Damage by flooding brand.** A salvage or rebuilt vehicle which was damaged by flooding, or a vehicle which was submerged at a level to or above the dashboard of the vehicle and on which an amount of loss was paid by the insurer, shall have the notation "Damage by Flooding" listed on the face of the Oklahoma title.

(i) **Multi-state motor vehicle salvage processing centers.** Insurance companies licensed by the Oklahoma Insurance Department and which maintain a multi-state motor vehicle salvage processing center in this state may be issued an Oklahoma original salvage title on an unrecovered stolen vehicle without a visual inspection of the vehicle identification number (VIN) or odometer. For a vehicle to qualify, the following conditions must be met:

- (1) The vehicle has been stolen and not yet recovered;
(2) An out-of-state title, assigned to the qualifying insurance company, must be submitted. An Oklahoma title

may not be issued if an existing Oklahoma title record is on file reflecting a VIN inspection "hold"; and,

(3) One of the following documents, verifying the theft of the vehicle, must be submitted:

- (A) Stolen vehicle report;
(B) Insurer's proof of loss; or,
(C) A statement from the insurer verifying that the vehicle was stolen and has not yet been recovered.

SUBCHAPTER 7. MOTOR VEHICLE EXCISE TAX

710:60-7-8. October 9, 2001, tornado excise tax credit

Credit will be allowed with respect to the excise tax due on a vehicle which is a replacement for a vehicle destroyed by a tornado on October 9, 2001. Excise tax on the destroyed vehicle must have been paid on or after October 9, 2000. Credit will be allowed in the amount of excise paid on the destroyed vehicle, excluding any penalties. The credit may only offset any excise tax due on the replacement vehicle. No excess credit may be refunded.

[OAR Docket #03-1019; filed 5-21-03]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 65. SALES AND USE TAX

[OAR Docket #03-1020]

RULEMAKING ACTION:

PERMANENT final adoption.

RULES:

- Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 3. Records and Recordkeeping
710:65-3-30. Books and records required; presumption of taxability; burden of proof [AMENDED]
710:65-3-33. Records required to support deductions from gross receipts for purposes of calculating sales tax [AMENDED]
Subchapter 5. Audit and Assessment
710:65-5-3. Out-of-state tax audits [REVOKED]
710:65-5-4. Examination of tax return; adjustments, notices, and demands [AMENDED]
Subchapter 13. Sales and Use Tax Exemptions
Part 7. Churches, and Charitable, Civic, and Social Organizations and Activities
710:65-13-47. Exemption for sales by 501(c)(3) organizations on behalf of churches [NEW]
Part 9. Computers; Data Processing; Telecommunications
710:65-13-52. Sales of computers, data processing equipment, related peripherals, and telephone, telegraph, or telecommunications service and equipment to a qualified purchaser primarily engaged in computer services and data processing or research and development [AMENDED]
Part 14. Estate Sales [NEW]
710:65-13-78. Exemption for certain estate sales [NEW]
Part 19. County, District and State Fairs
710:65-13-100. Fairs, circuses, carnivals, and other public exhibitions; sales tax exemption for county, district and state fair authorities; purchases by contractors [AMENDED]
Part 23. Gas and Electricity for Residential Use [AMENDED]

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710:65-13-122. Exemption for sales of electricity for use in a reservoir dewatering project [NEW]

Part 39. Schools and Higher Education

710:65-13-210. Exemption for public and private schools and institutions of higher education [AMENDED]

Subchapter 19. Specific Applications and Examples

Part 5. "C"

710:65-19-49. Golf and country clubs [AMENDED]

Part 7. "D"

710:65-19-71. Dentists, dental laboratories, and dental supply houses [AMENDED]

Part 25. "M"

710:65-19-214. Multi-level sales [AMENDED]

AUTHORITY:

Oklahoma Tax Commission; 68 O.S. §203

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INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Section 710:65-3-30. was amended to conform to Laws 1998, c. 301, § 1, which removed the requirement for taxpayers to bear the costs of out-of-state audits.

Section 710:65-3-33 has been amended to discuss and clarify the general recordkeeping requirements needed to support exemptions and to provide a cross reference to Subchapter 7, which addresses the duties and liabilities of vendors in more detail. The lack of clarity in the rule had been argued in a protest. [OTC Order No. 2002-02-12-003]

Section 710:65-5-3. was amended to conform to Laws 1998, c. 301, § 1, which removed the requirement for taxpayers to bear the costs of out-of-state audits.

Section 710:65-5-4. was amended to conform to Laws 1998, c. 385, § 3, which deleted the requirement that taxpayers file a notice of their "intent to appeal" with the Tax Commission.

New Section 710:65-13-47., dealing with annual sales by nonprofits on behalf of churches, has been added to implement the provisions of Laws 2002, Chapters 393, §1 (HB2088) [68:1356(7)]

Section 710:65-13-52. was amended to correct a statutory reference.

New Section 710:65-13-78., dealing with certain estate sales, implements the provisions of Laws 2002, c. 385, §1 (SB 935). [68:1357(28)]

Section 710:65-13-100. has been amended to reflect the provisions of Laws 2002, c. 458, § 7 (SB 1448), which clarified that tickets for admission and fair events sold at remote locations would also be exempt if those monies are distributed to or retained by a fair authority. [68:1356(4)]

New Section 710:65-13-122. implements the provisions of Laws 2002, Chapters 382, §1 (SB871), which authorized a new sales tax exemption for sales of electricity and associated transmission and delivery charges made to an oil and gas operator for exclusive use at an approved reservoir dewatering project or unit commenced after July 1, 2003. 68:1357(28)]

Section 710:65-13-210., which deals with the exemption for public and private schools and higher education, has been amended to reflect the

provisions of Laws 2002, c. 458, § 1 (SB 1415), which provided an exemption for sales made by or to non-profit PTA organizations or associations. [68:1356(4)]

Section 710:65-19-49. has been amended to clarify that cart storage fees charged by some golf and country clubs are considered taxable pursuant to the terms of the Sales Tax Code. (Taxpayer request) [68:1354(11)-(14)]

Sections 710:65-19-71. and 710:65-19-214. have been amended for clarity and to improve readability.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003:

SUBCHAPTER 3. REPORTS AND RETURNS; PAYMENTS AND PENALTIES; RECORDS

PART 3. RECORDS AND RECORDKEEPING

710:65-3-30. Books and records required; presumption of taxability; burden of proof

(a) Vendors shall keep records and books of all sales and all purchases of tangible personal property. Vendors must maintain complete books and records covering receipts from all sales and distinguishing taxable from nontaxable receipts.

(1) Such books and records must clearly document all the information (deductions as well as gross receipts) required for tax returns and shall, at all times during business hours of the day, be subject to inspection and audit by the Commission or its duly authorized agents and employees.

(2) Such books and records must be kept in the English language.

(3) Such books and records must be kept within Oklahoma except in instances where a business has several branches, with the head office being located outside Oklahoma, and where all books and records have been regularly kept outside the State at such head office. If books and records are kept outside Oklahoma, the vendor must, within a reasonable time after notification by the Commission, make all pertinent books, records, papers and documents available at some point within Oklahoma for the purpose of inspection and audit or ~~agree to pay audit costs~~ arrange for Commission personnel to inspect and audit the books and records of the vendor at a location outside Oklahoma.

(b) It shall be presumed that all sales of tangible personal property are subject to tax until the contrary is established, and the burden of proving that a transaction was not a taxable sale shall be upon the person who made the sale. [See: 68 O.S. §1365(C)]

710:65-3-33. Records required to support deductions from gross receipts for purposes of calculating sales tax

(a) **Supporting records required.** Where the nature of a business is such that charge and time sales are made, or where the nature of the business is such that a portion of its sales are for resale, or are within the protection of the Commerce Clause of the Constitution of the United States, or consist of ~~nontaxable services, or are made to exempt churches, to a governmental body, or are exempt from the tax on some other ground, under any provision of the Oklahoma Sales Tax Code,~~ then such records as will clearly indicate the information required in filing returns must be kept.

(b) **Complete and detailed records required.** To support deductions made on the tax return, ~~such as sales for resale, sales within the protection of the Commerce Clause of the Constitution of the United States, sales made to churches, or sales made to any governmental body,~~ the vendor's records for each transaction for which exemption is claimed shall be in detail sufficient to show:

- (1) The name and address of the customer,
- (2) The character of the transaction,
- (3) The date,
- (4) The amount of gross receipts or gross proceeds; and
- (5) Such other information as may be necessary to establish the nontaxable character of such transaction under the Sales Tax Code.

(c) **Purchaser resale number requirement.** Anyone claiming a sale for resale exemption shall also keep a record of the purchaser's resale number issued by the Commission. The failure to obtain and keep a record of the purchaser's resale number shall create a presumption that the sale was not a sale for resale. The vendor may, however, present other documentary evidence from its books and records to overcome this presumption. More detail regarding duties and liabilities may be found in Subchapter 7 of this Chapter. [See: ~~68 O.S. §1365(C)~~ 68 O.S. § 1365(E)]

SUBCHAPTER 5. AUDIT AND ASSESSMENT

710:65-5-3. Out-of-state tax audits [REVOKED]

~~When it is deemed advisable by the Commission to examine the books and records of any taxpayer for tax audit purposes at a location outside this state, the necessary and reasonable expenses including, but not limited to, travel, lodging, and meals incurred in the examination shall be charged to such taxpayer; however, the taxpayer may elect, in writing, to deliver all books and records determined to be necessary by the examiner to the office of the Commission or to an office of the taxpayer located in Oklahoma. [See: 68 O.S. §206.1]~~

710:65-5-4. Examination of tax return; adjustments, notices, and demands

If, upon examination of the books of account and records of the person filing the tax return, facts are obtained which, in the opinion of the Commission, warrant an adjustment of

the tax liability reported, the following procedure shall be followed:

(1) **Notice and demand.** A proposed assessment report will be prepared and mailed to the taxpayer. This report will contain an explanation of adjustments together with a recomputation of tax in accordance with such adjustments. The notice of adjustments and the demand for payment (if additional tax is due) or any other notice or demand upon the person filing the return required by law shall be sent to him at his last known address. In the alternative, the Commission may cause to be served upon such person a written statement of the computation of tax due.

(2) **Acquiescence or failure to protest.** In the event the person filing the return acquiesces in the changes reflected on the proposed assessment, or fails to file a protest within the period specified in the letter of proposed assessment (or any extensions allowable by Statute that have been granted) the proposed assessment becomes final.

(3) **Jeopardy assessment.** If the Commission has reason to believe that the collection of any tax due under the Sales and Use Tax Codes may be jeopardized, the Commission may immediately terminate the reporting period of the person required to pay such tax. Thereupon the Commission may assess a tax on the basis of information or knowledge available to him and demand immediate payment. If such payment is not immediately made, the Tax Commission may collect the tax by the use of any of the methods authorized law.

(4) **Protest of assessment.** Where a person does not acquiesce in the proposed assessment, he may file a protest within the period specified in the letter of proposed assessment (or within any extensions allowable by Statute that have been granted).

(5) **Review by taxing division; referral.** If, after a review of his protest the Division is unable to reach agreement with taxpayer, the taxpayer's file will be forwarded to the Office of the Administrative Law Judge where the taxpayer will have an opportunity to have a hearing before an Administrative Law Judge. The Administrative Law Judge subsequently will notify such person of the date set for the hearing.

(6) **Determination of case without hearing available.** If the taxpayer does not desire a hearing, an order will be issued by the Commission within a reasonable time.

(7) **Hearing; final determination.** If a hearing before the Administrative Law Judge is requested and granted, an order will not be issued until such time as the Administrative Law Judge has submitted Findings, Conclusions and Recommendations to the Commission and the Commission has made a final determination.

(8) **Final determination; appeal; ~~notice of appeal.~~** The issuance of an order by the Commission constitutes a final determination. The taxpayer aggrieved by the order is granted a period of thirty (30) days from the date of mailing to the taxpayer of a certified copy of the order in which to directly appeal to the Oklahoma Supreme Court. ~~However, a taxpayer desiring to appeal shall file with the~~

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~~Commission a written notice of his intention to appeal within ten (10) days from the date of mailing to the taxpayer of the order. [Sec: 68 O.S. §§221, 223, 225; 710:1-5-21 through 710:1-5-48]~~

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 7. CHURCHES, AND CHARITABLE, CIVIC, AND SOCIAL ORGANIZATIONS AND ACTIVITIES

710:65-13-47. Exemption for sales by 501(c)(3) organizations on behalf of churches

Sales made on behalf of or at the request of churches are exempt from sales tax if the following conditions are met:

- (1) The sales are made by an organization exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
- (2) The sales are made not more than once each calendar year for a period not to exceed three (3) days; and,
- (3) The proceeds of the sale are used either by the church or churches, or by the organization for charitable purposes.

PART 9. COMPUTERS; DATA PROCESSING; TELECOMMUNICATIONS

710:65-13-52. Sales of computers, data processing equipment, related peripherals, and telephone, telegraph, or telecommunications service and equipment to a qualified purchaser primarily engaged in computer services and data processing or research and development

(a) **Definitions.** In addition to the definitions found in the Oklahoma Research and Development Act, 68 O.S. Supp. 1992, §54001 et seq., the following words and terms, when used in this Section shall have the following meaning, unless the context clearly indicates otherwise:

- (1) **"Computer"** means an electronic device which performs work using programmed instruction having one or more of the capabilities of storage, logic, arithmetic or communication. The term "computer" includes input, output, processing, storage, software and communication facilities which are connected or related to a device in a system or network.
- (2) **"Data processing equipment"** means machines which perform work using programmed instruction, and which singly or collectively have capabilities of memory, logic, arithmetic and/or communication and all machines used in support of machines possessing those capabilities.

(3) **"Primarily engaged in"** means that at least seventy-five percent (75%) of the gross revenues of the new or expanding business must come from such activities.

(4) **"Qualified purchaser"** means any new or expanded business or facility which adds at least ten (10) new in-state full-time-equivalent employees, as certified by the Employment Security Commission, for a period of at least thirty-six (36) months at an average annual salary of at least Thirty-five Thousand Dollars (\$35,000.00) per year per employee. In addition, at least fifty percent (50%) of the annual gross revenues must be derived from sales of a product or service to an out-of-state buyer or consumer.

(5) **"Qualified purchases"** means computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment.

(6) **"Related peripheral"** means data transmission between a computing system and remotely located devices.

(b) **Qualification.** Effective July 1, 1992, sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications services and equipment sold to a qualified purchaser by a qualified vendor are exempt from sales and use tax.

(c) **Exempt items.** Exempt items shall include, but shall not be limited, to the following:

- (1) Bar code reader
- (2) Card reader/punch
- (3) Computer
- (4) CRT
- (5) Dedicated lines
- (6) Disk drive
- (7) Fixed disk
- (8) Key punch
- (9) Memory
- (10) Modem
- (11) Monitor
- (12) Plotter
- (13) Printer
- (14) Removable disk
- (15) Software
- (16) Tape drive
- (17) Telegraph equipment
- (18) Telegraph service
- (19) Telephone equipment
- (20) Telephone service
- (21) Terminal
- (22) Video display terminal

(d) **Non-exempt items.** The exemption shall not apply to the following:

- (1) Supplies, such as:
 - (A) Cleaning product
 - (B) Cleaning kit
 - (C) Diskettes
 - (D) Media storage
 - (E) Paper
 - (F) Pens
 - (G) Print wheels
 - (H) Print-out label
 - (I) Print-out ruler

- (J) Ribbons
- (K) Storage case
- (L) Tape
- (M) Template
- (2) Furniture, such as:
 - (A) Acoustical protector
 - (B) Acoustical shelving
 - (C) Chair
 - (D) Desk
 - (E) Rack
 - (F) Stand
 - (G) Table
- (3) Accessories, such as:
 - (A) Dust cover
 - (B) Filter
 - (C) Radiation shield
 - (D) Security system
 - (E) Static dissipater
 - (F) Surge protector

(e) **Qualified purchaser explained.** Specifically exempted from sales and use taxes are sales of qualified purchases to a qualified purchaser primarily engaged in computer services and data processing as defined under Industrial Group Number 7372 (prepackaged software), Industrial Group Number 7373 (computer integrated system design), Industrial Group Number 7374 (computer processing and data preparation and processing services) and Industrial Group Number 7375 (information retrieval services). In order to qualify for this exemption under Industrial Group 7374 a qualified purchaser must have a minimum of One Hundred Thousand Dollars (\$100,000.00) in qualified purchases yearly. In order to qualify for this exemption, a new or expanding business can not include the existing employee positions of any business enterprise that is directly or beneficially owned by a corporation, trust, joint venture, proprietorship, or partnership doing business in this state as of January 1, 1992.

(f) **Out-of-state sales.** Eligibility to receive the exemption provided for in 68 O.S. §54003(1) as a business which derives at least fifty percent (50%) of its annual gross revenues from sales of a product or service to an out-of-state buyer or consumer shall be established, subject to review by the Oklahoma Tax Commission on an annual basis, by an affidavit that the business qualifies for such exemption. The Oklahoma Tax Commission may require additional information as required to ensure that the business qualifies for such exemption. All sales to the federal government shall be considered to be sales to an out-of-state buyer or consumer.

(g) **Limitations.** No exemption shall be granted if the qualified computer services and data processing or research and development facility fails to file the documentation required by Subsection (j) of this Section with the Commission within thirty-six (36) months of the date of purchase and the required certification issued by the Employment Security Commission within thirty-six (36) months of the date of first purchase.

(h) **Administration.** Pursuant to statute, the exemption for sales to a qualified computer service and data processing or research and development facility outlined in this Section will be administered as a refund for state and local taxes paid by the

qualified computer services and data processing or research and development facility to the vendor or, in the case of use tax, self-remitted to the State of Oklahoma.

(i) **Application process.** All persons who believe that they fall within the exemption shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as an attachment, specifications of the new or expanded facility, a complete description of the computer services and data processing or research and development that will take place within the facility, and other information requested by the Commission. Upon receipt of the application, the application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the application will be forwarded to the Employment Security Commission for establishment of the entity's base line employment. The applicant will be notified of any action taken regarding the application by the Commission.

(j) **Claims process.** For each purchase made, the entity who believes that it will be certified shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(1) **Invoices** indicating the amount of state and local taxes billed to the qualified computer services and data processing or research and development facility.

(2) **An affidavit** of the vendor of the tangible personal property that state and local sales tax reflected on that invoice has not been credited, rebated, or refunded to the qualified purchasing facility, but rather, that the sales tax charged has been collected by the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached.

(3) All additional documentation required to be submitted by the Commission.

(k) **Filing claims.** At the option of the entity who believes it will be certified as a qualified computer services and data processing or research and development facility, the documentation required by Subsection (j) of this Section can be filed monthly, quarterly, semiannually, or annually. However, all documentation must be filed no later than thirty-six (36) months after the item is purchased. The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for denial. The entity submitting the documentation will similarly be notified that a claim has been approved.

(l) **Fiscal procedure.** Each month, the Commission shall transfer from sales and use tax collected, to an account designated by the Commission, the estimated amount of claims approved the previous month.

(m) **Certification process.**

(1) **Application review.** Upon completion of the new or expanded business and the addition of the employees as required by statute, the entity believing it falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification

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shall be reviewed by the Commission for the purpose of determining that the total annual purchases exceeded the sum of One Hundred Thousand Dollars (\$100,000.00) required by law. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(2) **Approval.** The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The qualified computer services and data processing or research and development facility will also receive accrued interest upon the principal amount of the refund made as provided for by statute. [~~See: 68 O.S. §1357(L)~~ 68 O.S. § 5405(C)]

(3) **Denial.** The following procedure shall apply when a request for certification is denied:

(A) Any applicant whose request for certification is denied may, within thirty (30) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the Applicant or a duly authorized agent setting out:

- (i) A statement of denial as determined by the Commission;
- (ii) A statement of the applicant's disagreement with such denial; and,
- (iii) Supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within thirty (30) days, then the denial, without further action of the Commission, shall become final and no appeal will be entertained.

(4) **Protest of denial of certification.** The following procedure shall apply to protests of any denial of certification.

(A) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing. The burden of proving that the denial of certification was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested certification.

(B) The Commission will issue an order in each case. That order is directly appealable to the Oklahoma Supreme Court. An applicant aggrieved by the order of the Commission must file, within ten (10) days of mailing of the order, a notice of intent to appeal with the Secretary of the Commission. The appeal must be perfected within thirty (30) days of the mailing of the order by filing a Petition in Error with the Clerk of the Supreme Court of the State of

Oklahoma and by filing a designation of the record with the Secretary of the Commission at the same time the Petition in Error is filed. [~~See: 710:1-5-21 through 710:1-5-48 / 68 O.S. §§225, 1357.5, 1404.4~~]

PART 14. ESTATE SALES

710:65-13-78. Exemption for certain estate sales

The gross proceeds of sales made at estate sales are exempt from sales tax providing that:

- (1) The sale is not held for more than three days;
- (2) The sale is conducted within six (6) months of the date of death of the decedent;
- (3) The property to be sold was part of the decedent's estate; and,
- (4) The sale is conducted on the premises of the former residence of the decedent by a person that is not required to be licensed pursuant to 19 O.S. Section 1601, the Transient Merchant Licensing Act, or who is not otherwise required to hold a sales tax permit.

PART 19. COUNTY, DISTRICT AND STATE FAIRS

710:65-13-100. Fairs, circuses, carnivals, and other public exhibitions; sales tax exemption for county, district and state fair authorities; purchases by contractors

(a) Persons conducting games of chance or skill at fairs, carnivals, circuses, expositions, celebrations, bazaars, picnics and similar places and delivering merchandise as prizes are deemed consumers of such articles. All sales to them of tangible personal property, including merchandise, devices, apparatus, furnishings and other equipment are taxable. Credit cards and extension of credit in any form, given as prizes, will be deemed merchandise and taxable, unless the tax is paid at the time the credit is exchanged for merchandise. Concessionaires at fairs, circuses, carnivals, etc., must collect, report and remit the sales tax on all their sales. The Commission reserves the right to require a concessionaire to file a report and pay the tax at the close of any business day or period during which he operates.

(b) However, specifically exempted from sales tax are sales made upon the premises of a county, district or state fair authority when said sales are made directly by the county, district or state fair authority and the sales are made solely for the benefit of the fair authority.

(1) For purposes of this exemption, "*fair authority*" means:

- (A) Any county, municipality, school district, public trust or any other political subdivision of this state, or
- (B) Any not-for-profit corporation acting pursuant to an agency, operating management agreement which has been approved or authorized by the governing body of any of the entities specified in (1)(A) of this subsection which conduct, operate or produce

a fair commonly understood to be a county, district or state fair.

(2) *"Sales made directly by the county, district or state fair authorities"* for purposes of this exemption requires that all persons making sales be employees of the authority or contract labor employed by the fair authority.

(3) *"For the sole benefit of the fair authority"* for purposes of this exemption requires that all proceeds of sales made go to the fair authority. Sales made under a proceeds splitting arrangement or pursuant to a contract requiring payment to persons or groups based on a percentage of sales do not qualify for this exemption. [68 O.S. §1356(C)]

(c) Provided further, sales of admissions to fairs or fair events made at any location other than the premises of the fair in this state that is authorized by the fair authority are subject to sales tax only with respect to any portion of an admission price that is not retained by or distributed to the fair authority. "Fair event" shall be limited to an event held on the premises of the fair authority in conjunction with and during the time period of a county, district, or state fair. [See: 68 O.S. § 1356(4)]

(ed) Persons operating or sponsoring a fair, circus, carnival, etc., shall be held liable, as the principal, for the tax upon the sale or use of tangible personal property sold, given as prizes or otherwise disposed of by a person engaged in business without a sales tax license at such exhibition, unless the tax is paid by the dispenser of such property.

(de) Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor who performs improvements to real property for a county, district or state fair authority may not purchase the tangible personal property or services to perform the contract exempt from sales tax.

PART 23. GAS AND ELECTRICITY FOR RESIDENTIAL USE

710:65-13-122. Exemption for sales of electricity for use in a reservoir dewatering project

(a) General provisions. Beginning January 1, 2004, sales of electricity and associated delivery and transmission services, when sold exclusively for use by an oil and gas operator for approved reservoir dewatering projects and associated operations shall be exempt from the levy of sales tax.

(b) Where to apply. To qualify for the exemption, the operator of the reservoir dewatering project must apply in writing to the Director's Office, Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Boulevard, Oklahoma City, OK 73194, requesting an exemption letter.

(c) Contents of the application letter. The letter of application must set out the name of the operator, the physical location of the project, the Federal Identification Number of the operator, the date the project commenced, and the electric service account number associated with services provided to the project. A copy of the Oklahoma Corporation Commission Order approving the designation of the area and reservoir as a

"reservoir dewatering project" or a "reservoir dewatering unit" must accompany the application letter.

(d) Review and approval procedure. Upon review and approval, a letter of exemption shall be issued to the operator, who must forward the exemption letter to the electricity utility, to document the sales tax exemption on their purchases of electricity. The letter, when provided to the utility along with a statement by the operator that the purchases of electricity are exempt, shall constitute "properly completed documentation certified by the Oklahoma Tax Commission" as that phrase is used in 710:65-7-6.

(e) Limitations. The exemption shall apply to the electricity used in reservoir dewatering projects and associated operations which commenced after June 30, 2003. The exemption shall not apply to the transportation or distribution of the oil or gas once it has been produced.

PART 39. SCHOOLS AND HIGHER EDUCATION

710:65-13-210. Exemption for public and private schools and institutions of higher education

(a) Sales to schools. Sales of tangible personal property or services to the following entities are exempt from taxation:

- (1) Private institutions of higher education.
- (2) Private elementary and secondary schools.
- (3) Members of the Oklahoma system of higher education.
- (4) Public school districts.

(b) Scope of exemption. The exemption in this subsection shall apply only if said institution or school is accredited by the State Department of Education, registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher education which are exempt from taxation pursuant to 26 U.S.C.A. § 501(c)(3) of the Internal Revenue Code. Included in sales which are exempt are materials, supplies and equipment used in construction and improvement of buildings owned by said entities and operated for educational services.

(c) Sales by a lease or lease-purchase agreement with a school district. As of July 1, 1999, sales of tangible personal property or services pursuant to a lease or lease-purchase agreement executed between a vendor and a school district are exempt from sales tax.

(d) Sales under public contract. Sales to any public school, institution of the Oklahoma system of higher education and to any person, including subcontractor, whom a public school or institution of the Oklahoma system of higher education has duly entered into a contract pursuant to law necessary for carrying out said contract are exempt from taxation.

(e) Certification required. Certification on the face of the invoice is required of persons making purchases on behalf of an entity listed in subsection (a). The invoice containing the certification must be retained by the vendor. Wrongful or erroneous certification may result in criminal punishment.

(f) Campus construction. Sales for use on campus construction projects for the benefit of institutions of the Oklahoma system of higher education or private institutions of

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higher education accredited by the Oklahoma State Regents for Higher Education are exempt when the projects are financed by or through the use of nonprofit entities exempt from taxation pursuant to the provisions of the Internal Revenue Code 26 U.S.C., § 501(c)(3).

(g) **Obtaining exemption for campus construction projects.** The general contractor shall request a letter of confirmation that the project qualifies for the exemption from the Taxpayer Assistance Division. Along with the request, the following must be supplied:

(1) A letter from the institution confirming that the not-for-profit entity is financing the project and that the requestor is the general contractor for the project.

(2) A copy of the IRS letter to the not-for-profit entity showing its exemption status.

(h) **Private schools tuition.** Tuition and educational fees paid to private institutions of higher education, private elementary and secondary institutions of education duly accredited by the State Board of Education or registered to participate in federal programs are exempt from sales tax. The institution must be exempt from income taxation pursuant to the provisions of 26 U.S.C.A. § 501(c)(3) for this exemption to apply.

(i) **Sales in school cafeterias.** Sales of food in cafeterias or lunchrooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils are exempt from taxation so long as the cafeteria or lunch room is not operated primarily for the public or for profit. Management companies operating for a profit who contract with a school, college or university to operate a lunchroom or cafeteria will be denied the exemption. Also, sales of food made on school premises but not in a cafeteria or lunchroom do not fall within the exemption provided by statute.

(j) **Sales of admission tickets.** That portion of the gross receipts received from the sale of admission tickets which is for the repayment of money borrowed by an accredited state-supported college or university for the purposes outlined in the statute is exempt from taxation if said amount is:

(1) separately stated on the admission ticket; and

(2) imposed, collected and used for the sole purpose of servicing the debt incurred by the college or university for capital improvements described in the statute.

(k) **Sales by school, student, parent organizations.** Private schools, public schools, public school boards, public school districts, and public school student organizations (to include parent organizations) can make sales of tangible personal property, including admission tickets and concessions at athletic events, for fund-raising projects to benefit the school or organization without collecting and remitting sales tax. [See: 68 O.S. §§ 1356(13),(14)]

(l) Sales to, or by, parent-teacher organizations. Parent-teacher organizations that are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code may make purchases and sales free from the levy of Oklahoma sales taxes.

SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES

PART 5. "C"

710:65-19-49. Golf and country clubs

(a) Sales and leases of tangible personal property, including but not limited to food, beverages, locker rental, club storage, cart service charges, pool rental, room rental, golf shop sales, and pro shop sales are subject to sales tax.

(b) Membership dues, tennis dues, pool dues and any other dues charged by a club, or similar business or establishment, required as a condition precedent to membership, are subject to sales tax.

(c) Swim, tennis, golf and other lessons given at a club or country club are subject to sales tax unless the club or country club is merely a conduit for the instructor and the entire fee charged for the lesson is turned over to the instructor who taught the lesson and reported for income purposes.

(d) Fees for instructional services at locations where no membership dues are charged and there is no member/non-member difference in fees, will be considered the provision of nontaxable services.

(e) Club and country club initiation fees, defined as any payment, contribution, or loan, required as a condition precedent to membership, whether or not such payment, contribution or loan is evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization to whom paid, contributed or loaned, greens fees and other fees charged to members and fees charged to members who bring guest(s) to enjoy a club's swimming, golf, tennis or other facility are subject to sales tax. "Fees" include free or complimentary dues or fees which shall have the value equivalent to the charge that would have otherwise been made.

(f) Cart fees, cart rider fees, cart service charges, driving range fees, ~~and cart rental, and cart storage fees~~ are subject to sales tax.

(g) Gross receipts from sales of stock certificates received by a country club from its members when members must purchase stock to gain access to the club's facilities constitute dues or fees for the use of facilities or services rendered at a health spa, club or any similar facility or business and are subject to sales tax. Furthermore, where members must purchase stock to gain access to the club's facilities, any stock transfer fee is similarly subject to sales tax. [See: 68 O.S. ~~§1354(K)~~ § 1354(11)-(14)]

PART 7. "D"

710:65-19-71. Dentists, dental laboratories, and dental supply houses

(a) **Dentists.** Dentists primarily render services and incidentally use tangible personal property in connection therewith. The gross receipts of dentists derived from these sources are not subject to the sales tax.

(b) **Dental supply houses.** Dental supply houses who sell tangible personal property such as platinum, gold, silver or cement for filling, artificial teeth or other such materials to a dentist for use in the performance of the dentist's services are making sales within the Sales and Use Tax Code and must

collect, report and remit tax based on the gross receipts received from such sales. This is true whether the dental supply house sells material to a dentist whose services are rendered directly to a patient, or to a dental laboratory that uses the material in producing plates, bridge-work, artificial teeth or prosthetic devices on prescription of the dentist for the dentist to use in connection with rendering dental services. Dental supply houses likewise collect, report and remit tax on gross receipts from sales of dental chairs, motors, instruments, drilling machines or other such items for use by dentists or dental laboratories.

(c) **Dental laboratories.** Dental laboratories that purchase tangible personal property to produce plates, bridge-work, artificial teeth, prosthetic devices and the like must pay tax when the material is purchased and must not charge tax to the dentist when the finished product is transferred to the dentist.

(d) **Items purchased by dentists.** Items which are purchased by dentists, but which are used incidentally in the rendition of professional or laboratory services, are subject to sales or use tax and the dentist or professional must pay sales or use tax when the item is purchased. Examples of such taxable items are:

- (1) Appointment Books
- (2) Broaches
- (3) Brushes, Tooth Cleaning
- (4) Burs
- (5) Cotton Rolls
- (6) Discs, Sandpaper
- (7) Examination Blanks
- (8) Excavators
- (9) Floss Silk
- (10) Forceps
- (11) Gauze
- (12) Handpieces and Angles
- (13) Instruments
- (14) Mandrels
- (15) Matrix Bands
- ~~(16) Matrix Bands~~
- ~~(17) Mirrors~~
- ~~(18) Napkins~~
- ~~(19) Needles, All Types~~
- ~~(20) Paper Cups~~
- ~~(21) Pumice~~
- ~~(22) Scalers~~
- ~~(23) Scissors~~
- ~~(24) Sandpaper Strips~~
- ~~(25) Soap~~
- ~~(26) Towels~~
- ~~(27) Trays, Impression~~
- ~~(28) Aluminum Trays~~
- ~~(29) Plastic Trays~~
- ~~(30) Waste Receivers~~
- ~~(31) X-Ray Supplies~~

(e) The enumeration of the taxable items in subsection (d) is made by way of illustration and not limitation.

PART 25. "M"

710:65-19-214. Multi-level sales

(a) Vendors operating a multi-level distribution system will collect tax on the gross receipts of the ~~products~~ retail value of the products sold. This tax is to be passed through the ~~non-permit holder~~ multi-level distributors, who will not be required to hold an Oklahoma sales tax permit, to the consumers/users.

(b) For example, ~~a~~ the vendor who sells to distributors, who in turn ~~sells~~ sell to consumers/users at ~~a~~ home party parties, is required to collect, report, and remit sales tax on the total amount of gross receipts received by the vendor's distributors ~~for~~ from the sales of tangible personal property or taxable services. The ~~distributor~~ distributors will collect the tax from the consumer.

(c) Shipping and handling charges ~~that result from~~ associated with the shipment of multi-level sales merchandise to the distributor or the distributor's customers are not subject to sales tax, if separately stated.

[OAR Docket #03-1020; filed 5-21-03]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 95. MISCELLANEOUS AREAS OF REGULATORY AND ADMINISTRATIVE AUTHORITY**

[OAR Docket #03-1021]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 5. Waste Tire Recycling
 - 710:95-5-8. Transactions to which the fee is inapplicable [AMENDED]
 - 710:95-5-20. Procedures to request compensation for use by entities which process and utilize waste tires in erosion control, bank stabilization or other conservation projects [AMENDED]
 - 710:95-5-21. Procedure to be used by units of local or county government to request compensation for tires that are baled and used in approved engineering projects [AMENDED]
- Subchapter 6. Oklahoma Safe Playground Surfaces Program
 - 710:95-6-4. Procedure to be used by public schools or institutions and state parks or recreation areas to request compensation [AMENDED]
 - 710:95-6-5. Review and determination of requests for reimbursement or payment [AMENDED]

AUTHORITY:

Oklahoma Tax Commission; 27A O.S. §§ 2-11-409(A) and 2-11-415(G)

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n/a

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Section 710:95-5-8, describing transactions to which the waste tire fee is not applicable, has been amended to remove references to "Waste Tire Fee Exemption Certificates", which were deleted from statutes by the provisions of Laws 2002, c. 502, § 1 (SB 1406). [27A:2-11-403]

Section 710:95-5-20, has been amended in conformity with the provisions of Laws 2002, c. 502, § 2,3 (SB 1406), which increased reimbursement rates for waste tires used in erosion control, bank stabilization, and other conservation projects. [27A:2-11-407.1 & 2-11-408]

Section 710:95-5-21, has been amended to conform to the provisions of Laws 2002, c. 328, § 2 (HB 2151), which clarified reimbursement procedures and requirements applicable to local or county governments wishing to use baled tires in approved engineering projects. [27A:2-11-407.2]

Sections 710:95-6-4 and 710:95-6-5, have been amended to conform to the provisions of Laws 2002, c. 502, § 4 (SB 1406), which authorized payment of funds at the time of the contract, in addition to the existing reimbursement procedure; limited eligible waste tires to those discarded within the State; added certain requirements to the application procedures; provided for the obligation of funds; and added a notice to applicants when a grant is approved. [27A:2-11-415]

CONTACT PERSON:

Carolyn Swifthurst, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2003:

SUBCHAPTER 5. WASTE TIRE RECYCLING

710:95-5-8. Transactions to which the fee is inapplicable

(a) The Oklahoma Waste Tire Recycling Fee is not applicable to sales for resale to holders of valid Oklahoma Sales Tax Permits who are in the business of selling tires. The sale for resale provision will only be valid if the purchaser holds an Oklahoma resale permit and actually resells the tires. The fee applies to tires sold to mechanics or others not holding sales tax permits.

(b) Pursuant to 27A O.S.Supp.1995, § 2-11-403(A)(5), the Oklahoma Waste Tire Recycling Fee is not applicable to the sale of a used tire by a tire dealer on which the waste tire fee has previously been paid, provided that the tire dealer can document that the tire carcass was one on which the fee was previously paid when the tire was originally purchased, either as a new tire or as a used tire, or when the vehicle upon which it was mounted was first registered in Oklahoma. This documentation may consist of a copy of the bill of sale, invoice, or other document showing when, where, by whom, and the circumstances under which the fee was collected.

(c) The Oklahoma Waste Tire Recycling Fee is not applicable to the transfer of a tire carcass by a tire owner to a tire recapper, who after completion of the recapping, delivers the recapped

tire back to the owner of the tire, since no sale of the tire has been made, but rather, a service has been performed.

(d) The Oklahoma Waste Tire Recycling Fee is not applicable to the sale of a recapped tire by a tire dealer where the fee has previously been paid and the documentation described in (b) of this Section has been obtained.

~~(e) Sales of new or used tires to a person who has been issued a Tire Recycling Fee Exemption Certificate by the Oklahoma Department of Environmental Quality pursuant to 27A O.S. § 2-11-403.1 are exempt from the Oklahoma Waste Tire Recycling Fee. Tire dealers making sales of tires to persons claiming exemption under this subsection must obtain a copy of the permit and maintain it in their records to substantiate the basis for the exemption granted. Dealers may not accept any tire carcasses from an exemption certificate holder.~~

~~(f) The sale of new or used tires by a tire dealer who manages the dealership's waste tires in an out of state recycling facility is exempt from the Oklahoma Waste Tire Recycling Fee, provided that the dealer has been issued a Tire Recycling Fee Exemption Certificate.~~

710:95-5-20. Procedures to request compensation for use by entities which process and utilize waste tires in erosion control, bank stabilization or other conservation projects

(a) **General provisions.** To be eligible for reimbursement pursuant to 27A O.S. §2-11-407.1, the entity seeking reimbursement must give notice to the Commission and make application, no more often than monthly on forms, or in the format, prescribed for those purposes.

(b) **Notice of intent to file compensation request.** The applicant must file a "Notice of Intent to File Waste Tire Indemnity Fund Compensation Request" to which is attached, a copy of the permit issued by the United States Army Corps of Engineers or a local Conservation District.

(c) **Contents of required affidavit.** The applicant must file an affidavit setting out:

(1) The number of tires having a rim diameter greater than 17 1/2" inches which were processed by use in the approved project.

(2) The number of tires having a rim diameter of 17 1/2" inches or less which were processed by use in the approved project.

(3) A sworn statement that all tires processed by use in the project having a rim diameter of 17 1/2" inches or less were only collected from tire dumps or landfills listed on the "Priority Cleanup List" defined at 27A O.S. § 2-11-402, or collected from community-wide cleanup events approved by DEQ.

(4) A sworn statement that collection and transportation of waste tires having a rim diameter greater than 17 1/2" inches which were used in the project were collected on a statewide basis.

~~(2-5)~~ A statement that the tires for which reimbursement is being claimed have actually been used at the approved site.

(3-6) A statement that the applicant has maintained records to show that all tires processed in accordance with the approved plan were collected from tire dumps, or landfills, as identified through placement on a priority enforcement list by the DEQ or from community-wide cleanup events approved by DEQ.

(4-7) A statement that the applicant is in compliance with the requirements promulgated by DEQ pursuant to the Oklahoma Environmental Quality Code regarding the storage, transportation and disposal of waste tires.

(5-8) A statement that the applicant is in compliance with all tax laws of the state of Oklahoma.

(6-9) A statement that the compensation shall be payable only for tires actually utilized in conformity with the purposes of the Oklahoma Waste Tire Recycling Act.

(7-10) The total amount of compensation requested.

(d) **Supporting documentation.** Copies of complete, accurate, and legible Oklahoma Waste Tire Tracking Manifests showing the types, amounts, and source of the tires utilized, for which reimbursement is being requested, must accompany the affidavit.

(e) **Other information may be required.** Additional documentation may be required by the Commission.

(f) **Sworn signature required.** The affidavit required by (b) of this Section must be signed by an owner, officer, or partner of the processor, stating, under penalty of perjury, that all the information contained in the affidavit and request is true and correct.

710:95-5-21. Procedure to be used by units of local or county government to request compensation for tires that are baled and used in approved engineering projects

(a) **General provisions.** In order to be compensated from the Waste Tire Recycling Indemnity Fund, a unit of local or county government must make application to the Commission, no more often than monthly, on forms prescribed for that purpose. The application for compensation shall provide the information described in (1) through (7) of this subsection.

- (1) Number of tires covered by the application;
- (2) Number of tires transported from dumps during the period of time covered by the application;
- (3) Number of tires transported pursuant to community-wide clean-up campaigns during the time period covered by the application;
- (4) Total number of tires baled;
- (5) Total amount of compensation requested for processing, equal to the total number of tires baled times Fifty Cents (\$.50);
- (6) A description of the approved engineering project and the location thereof; and,
- (7) A statement that none of the tires for which compensation is being requested has been obtained from manufacturers, retailers, wholesalers, retreaders, or parts dismantlers.

(b) **Other required information.** Additional documentation or information may be required by the Commission.

(c) **Sworn signature required.** The application must be signed by an employee of the government agency who has knowledge of the number of tires baled and of the approved engineering project, stating under penalty of perjury, that all the information contained in the application is true and correct.

SUBCHAPTER 6. OKLAHOMA SAFE PLAYGROUND SURFACES PROGRAM

710:95-6-4. Procedure to be used by public schools or institutions and state parks or recreation areas to request compensation

(a) **General Provisions.** In order to receive a matching grant from the Waste Tire Recycling Indemnity Fund, the applicant must provide the following information on the form prescribed and attach the required documentation. The application and documentation shall provide the information described in (1) through (6) of this subsection:

- (1) The applicants name, location, and qualifying type of entity;
- (2) If the applicant is a public institution, other than a public school, which provides care or education for children, the name and address of the applicant's accrediting agency;
- (3) The name and address of the firm which installed the playground surface and the date of the installation;
- (4) A statement, signed by an officer of the company which installed the playground surface, setting out the name and address of the Oklahoma facility that processed and produced the crumb rubber or waste tire material used in the playground surface, stating that the materials were produced solely from waste tires discarded in this state, and that the materials, as installed, meet the performance requirements of ASTM F 1292;
- (5) The total cost of the purchase and installation of the playground surfacing material, as supported by a copy of the contract between the applicant and the contractor, and evidence that the contracted amounts have been paid;
- (6) The name and signature of the principal of the school, the administrator of the other public educational institution or care facility, or the manager of the state park or recreational area, stating under penalty of perjury that the information contained in the application is true and correct.

(b) **Other required information.** Additional documentation or information may be required by the Commission.

710:95-6-5. Review and determination of requests for reimbursement or payment

(a) **Review and determination of requests for compensation.** Requests for reimbursements or payment should be sent to Oklahoma Tax Commission, Comptroller's Office, 2501 North Lincoln Blvd., Oklahoma City OK 73194. The application may be submitted at the time a contract for sale and installation of the playground surfacing material has been executed. Upon receipt of a proper request for reimbursement,

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the Oklahoma Tax Commission, shall review the request and determine whether the application reflects compliance with the statutory requirements of the Oklahoma Safe Playground Surfaces Act, and all applicable rules pertaining thereto promulgated by the Commission.—~~If approved, the applicant shall be reimbursed from the Fund. If the application is not approved, the applicant shall be notified in writing of the Commission's determination, and the reasons therefore.~~

(b) If approved, funds shall be obligated for the applicant and a notice of approval sent. Actual disbursement shall not be made until a notice of installation, signed by the contractor, has been received from the applicant.

(c) Any eligible entity which has been approved by the Tax Commission may assign the payment to a contractor.

(d) If the application is not approved, the applicant shall be notified in writing of the Commission's determination, and the reasons therefore.

~~(b-e)~~ **Reimbursements to be made on a first come, first served basis.** Applications for reimbursement will be processed on a first come first served basis, based on the date of the postmark. An application resubmitted after an initial disapproval shall be processed in the same fashion as a new submission, based upon the date of the postmark of the resubmitted application.

~~(e-f)~~ **Fiscal year limitation.** In the instance where applications totaling more than one million dollars (\$1,000,000.00) are received during a fiscal year, requests for reimbursements which would cause the total of reimbursements to exceed that amount will be held over until the start of the next fiscal year in which money for reimbursement is available.

[OAR Docket #03-1021; filed 5-21-03]

TITLE 712. OKLAHOMA COMMISSION FOR TEACHER PREPARATION CHAPTER 10. TEACHER PREPARATION PROGRAM ACCREDITATION

[OAR Docket #03-906]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Teacher Preparation Program Accreditation
712:10-5-1 [AMENDED]
712:10-5-2 [AMENDED]
712:10-5-3 [AMENDED]
Subchapter 7. Teacher Preparation Teacher Assessment
712:10-7-1 [AMENDED]
Appendix A [AMENDED]

AUTHORITY:
Oklahoma Teacher Preparation Act; 70 O.S. Sections 6-180 through 6-202;
Oklahoma Commission for Teacher Preparation.

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Superseded rules:
Subchapter 5. Teacher Preparation Program Accreditation
712:10-5-1 [AMENDED]
712:10-5-2 [AMENDED]
Subchapter 7. Teacher Preparation Teacher Assessment
712:10-7-1 [AMENDED]
Appendix A [AMENDED]

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INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:

Language changes by the National Council for Accreditation of Teacher Education dictated the need to change language in the program accreditation rules. Clarification in the number of hours of field experience required prior to student teaching was also necessary. Teacher assessment changes resulted due to the passing of SB 388 in the 2002 legislative session.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTION 308.1 (A), WITH AN EFFECTIVE DATE
OF JUNE 26, 2003:**

SUBCHAPTER 5. TEACHER PREPARATION PROGRAM ACCREDITATION

712:10-5-1. Teacher Preparation Program Accreditation and Review Process

(a) Oklahoma teacher education institutions function under an 'accreditation program' system which requires the evaluation of teacher education units and programs on a periodic basis.

(b) Beginning July 1, 1997 institutions which have no accredited teacher education program and which desire to initiate a certificate program shall follow the format outlined herein based on Standards for Oklahoma Accredited Teacher Education Programs and Institutional Plan (see 712:10-5-3). Institutional plans are defined as plans developed and prepared utilizing input from education stakeholders (teacher preparation faculty, arts and science faculty, teacher candidates, teachers, administrators, business and community leaders, and parents) which follow the general guidelines and standards for

pre-service teacher preparation programs outlined in sections 712:10-5-3. On July 1, 1997 the Oklahoma Commission for Teacher Preparation, hereafter referred to as the Commission, shall assume responsibility for accrediting all teacher education programs in Oklahoma's public and private institutions of higher education.

(c) The program accreditation system shall be a multifaceted system based on:

- (1) A competency-based teacher preparation program built around the Standards for Oklahoma Accredited Teacher Education Programs and State Department of Education Competencies, herein after referred to as SDE;
- (2) Institution plans as outlined in the Standards for Oklahoma Accredited Teacher Education Programs and Institution Plan Format;
- (3) On-site accreditation review team visits to the campuses of the institutions of higher education;
- (4) Analysis of data related to student success rates on the general education, professional education, and subject matter assessments;
- (5) Analysis of student satisfaction data;
- (6) Analysis of student/teacher candidate portfolios.

(d) Beginning January 1, 1997 all institutions of higher education with teacher education programs must submit an initial institutional plan outlining how the institution will respond to those standards identified in the Oklahoma Standards for Accredited Teacher Education Programs and Initial Institution Plan (See 712:10-5-3, and OS 70 sections 6-199 through 6-202.)

- (1) All initial plans will be reviewed by the Program Accreditation Committee, hereafter referred to as the PAC and recommendations forwarded for initial accreditation, continuing accreditation, accreditation with stipulations, continuing accreditation with probation, or denial of accreditation will be forwarded to the Commission within sixty days of submission.
- (2) All PAC members and a minimum of ten prospective members will receive performance training on how to evaluate the initial plans. Only those members demonstrating proficiency in evaluation will be allowed to evaluate the plans.
- (3) The performance-based training will be conducted by the National Council for Accreditation of Teacher Education, hereinafter referred to as NCATE, Board of Examiners from outside the State of Oklahoma and other training deemed appropriate by the Commission.
- (4) Any Commission member or Commission appointee who is involved in any evaluation and/or accreditation decision related to any teacher education unit and/or program must complete the performance-based training related to the review and accreditation of teacher education units and/or programs prior to voting and/or participating on any accreditation decisions.
- (5) Prior to being accredited each institution must meet the following preconditions for accreditation and provide the required documentation for each precondition. NCATE accredited institutions shall address changes

which have been made in the following preconditions areas since the initial NCATE accreditation visit.

(A) There is a written description of the professional education unit that is primarily responsible for the preparation of teachers and other professional education personnel.

- (i) Verification by an appropriate central administration officer of the unit with primary responsibility for professional education and the unit's authority.
- (ii) Chart depicting all programs for the preparation of school personnel in the institution, indicating the unit in which each is administratively located (e.g. School of Education, School of Music, School of Arts and Science, etc.), and the administrative unit's relationship to the professional education unit.
- (iii) Program summary that includes the number of graduates by program and level.
- (iv) Unit statement of mission, purpose or goals.
- (v) Summary of meetings and actions of the professional education unit for the preceding year (maximum of two pages.)

(B) A dean, director, or chair is officially designated to represent the unit and assigned the authority and responsibility for its overall administration and operation.

- (i) Job description for dean, director, chair.
- (ii) Chart depicting administrative and organizational structure of the unit.

(C) There are written policies and procedures upon which the operations of the unit rest.

- (i) Codified policies and operating procedures of the unit, such as policy manual or constitution and by-laws.

(D) The unit regularly monitors and evaluates, both internally and externally, its operation, scope, quality of its offerings, and effectiveness of its graduates.

- (i) Policies for conducting ongoing evaluation reviews.
- (ii) Summary of the findings of evaluation reports completed within the past five years documenting internal programs review (maximum of two pages.)
- (iii) Summary of findings of evaluation reports completed in the past three years documenting external program review, including follow-up study of graduates and employers (maximum of two pages).
- (iv) Summary of recent program modifications based on evaluation results (maximum of two pages).

(E) The unit has criteria for admission to basic teacher education program(s) include an assessment of basic skills.

- (i) List of basic skills that are assessed and the measures used to assess them.

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- (ii) Published criteria for admission to professional education programs.
 - (iii) Summary report of assessment results for students admitted for at least the past three years (maximum of two pages).
 - (F) The unit assesses the academic and professional competencies of education students at exit from all programs at all levels, through multiple evaluation methods.
 - (i) Listing of multiple assessment measures used to evaluate academic and professional competence of professional education graduates.
 - (ii) Summary of reports of competency assessment outcomes for at least the past three years.
 - (G) The unit submits program review for each certification program area. For areas in which there are NCATE approved guidelines, the NCATE approved guidelines shall be used. For areas in which there are no NCATE curriculum guidelines the program review shall be based upon the standards of the professional learned society which most closely aligns with the certification area and the Oklahoma State Department Full, Subject Matter Competencies.
 - (H) The institution is fully accredited by the appropriate institutional accrediting agency recognized by the Commission for Recognition of Postsecondary Accreditation and the U.S. Department of Education.
 - (i) A copy of the latest accreditation letter from the institutional accrediting agency showing that there is a reasonable assurance of the overall quality of the institution in the general areas of finance, administration, facilities, student personnel, faculty, and instruction.
 - (I) The institution is an equal opportunity employer and does not discriminate on the basis of race, sex, color, religion, age, or handicap (consistent with Section 702 of Title VII of the Civil Rights Act of 1964, which deals with exemptions for religious corporations, with respect to employment of individuals with specific religious convictions).
 - (J) A copy of the institution's official action pledging compliance with nondiscriminatory law and practice.
- (e) Beginning July 1, 1997 the Commission will become a performance-based partner with the Oklahoma State Regents for Higher Education (State Regents) and NCATE. All teacher education programs shall be expected to meet all NCATE unit and program standards, SDE competencies, as well as all additional standards established by the Oklahoma Commission for Teacher Preparation.
- (1) **Application form.** The application form containing the required information will be completed by the director of teacher education at the institution seeking Commission accreditation for the teacher education certificate programs.
 - (2) **Institutional plan.** The institutional plan shall be utilized by the Commission for program accreditation, State Regents program review, and NCATE accreditation.

An institutional plan addressing the standards as outlined in the Oklahoma Commission for Teacher Preparation Standards for Oklahoma Accredited Teacher Education Programs and Institution Plan and criteria established in these rules and as stipulated in OS 70 sections 6-180 through 202 will be sent to the Commission office along with the application form.

(3) **Records to be kept on file at the institution.** The following items and records shall be kept on file at the institution with the director/dean of teacher education. All records shall be available to the public under the Oklahoma Open Records Act:

- (A) Copy of the institution plan;
 - (B) Comments from the annual public forum held by the institution, the responses to comments, and how the comments were utilized in the modifications of the program;
 - (C) Copy of annual report to the Commission;
 - (D) Syllabi for courses in the areas of specialization, general education, and professional education will be kept on file with the institution; and
 - (E) Full faculty resumes will be on file for review. All levels of teaching personnel will be indicated.
- (4) **Timelines for evaluation process.**
- (A) The Oklahoma Commission for Teacher Preparation personnel will establish an accreditation visit schedule in collaboration with the State Regents, NCATE and the institution director of teacher education.
 - (B) Upon approval by the governing board of the institution, three copies of the institution report and supporting materials including the college catalog shall be sent to the Commission office 75 days prior to the accreditation visit. Upon receiving the names and addresses of the visiting accreditation review team, the institution shall send copies of all documentation to the members of the visiting accreditation review team.
 - (C) The visiting committee selection process shall be completed a minimum sixty (60) days prior to the accreditation visit.
 - (D) The on-site accreditation evaluation will be conducted over a three to four day period.
 - (E) After finalizing the team draft report which results from the accreditation visit, and within fourteen days of the accreditation visit, the team chair shall send the draft report to team members and Commission professional personnel for editing.
 - (F) Within twenty-one days of the visit the team members and the Commission office shall return their comments and recommendations on the report to the team chair. The chair makes corrections to the report, as appropriate, and sends a copy to the unit head at the institution for factual corrections.
 - (G) Within twenty-eight days of the visit but not less than five days of the receipt of the report the unit head sends factual corrections in writing to the team

chair. The chair makes changes at his/her discretion, finalizes the report and sends one copy to the Commission office. The report shall be in the format determined by the Commission.

(H) The Commission staff will copy and bind the report with a cover that includes the name of the institution, its location, and the date of the visit.

(I) Utilizing the procedures outlined in 712:10-5-1(e)(8) the Commission will make a final decision regarding the accreditation of the institution's certificate program(s). That decision will be based on the findings and recommendations of the CRC and the Commission Program Accreditation Committee and any additional information which may be presented by the institution under review.

(J) Three years after the last visit, a comprehensive review of all annual reports and portfolio reviews will be conducted. A third year status report outlining any areas of concern that the unit should address by the time of the next accreditation review team on-site visit shall be forwarded to the institution to assist in preparing for this review. For NCATE accredited institutions, the PAC will base its findings on reports prepared by NCATE and all annual reports, portfolio assessments, and any continuing ~~concerns or weaknesses~~ areas for improvement from the previous accreditation reviews. The PAC will develop the third year status report and submit to the Commission for appropriate action (see 712:10-5-3(b)(1-5)). For non-NCATE accredited institutions the Commission Program Accreditation Committee will review all annual reports, portfolio assessments, and any continuing ~~concerns or weaknesses~~ areas for improvement from the previous accreditation reviews. The PAC will develop the third year status report and submit to the Commission for appropriate action.

(K) All certification program reviews must be submitted to the Commission no later than eighteen months prior to the initial accreditation visit and twelve months prior to a continuing accreditation visit.

(5) **Selection of accreditation review team.** Selection of the accreditation review team will be coordinated by the Commission staff as soon as possible after the visitation dates are set. All accreditation review team members shall be determined within eight weeks prior to the accreditation review team visit. Selection of the accreditation review team shall be based on the following:

(A) All team members must have been trained by NCATE Board of Examiners in the assessment of NCATE standards and on the process for evaluating programs for the Commission.

(B) Experience and/or expertise in the certificate areas being evaluated.

(C) Accreditation team for initial accreditation. The membership of ~~an initial~~ a first accreditation review team shall be as follows:

(i) ~~Five representatives~~ Representatives from the NCATE Board of Examiners.

(ii) ~~Four state~~ State representatives appointed by the Commission-~~including~~:

(I) One pre-K-12 classroom teacher;

(II) One representative from higher education who is a member of a teacher education unit. For accreditation of private institutions the representative shall be from a private institution; for public institutions this representative shall be from a public institution;

(III) One representative from the Commission;

(IV) One member from the community-at-large;

(~~vii~~) For any institution requesting accreditation of a career technology program(s) an additional accreditation review team member ~~shall~~ may be recommended by the State Director of Career and Technology Education.

(~~iiiiv~~) Special Circumstances:

(I) For accreditation review teams requiring fewer members the Executive Director of the Commission shall collaborate with the Program Accreditation Committee, the director of teacher education at the institution being accredited, and NCATE and Commission staff to determine the team composition.

(II) NCATE approved Board of Examiners members from Oklahoma may be a state representative to an accreditation review team.

(~~ivv~~) Observers shall be determined by the Commission and from among representatives of the Oklahoma State Regents for Higher Education, State Department of Education, State Department for Career and Technology Education, professional organizations, and the community-at-large.

(I) Observers shall be actively involved in the data collection process, participate in the accreditation review team meetings, and assist the accreditation review team ~~with to understanding~~ understand state nuances. They may assist, but shall not be required to write any sections of the team report. They shall not be a voting member of the team.

(II) Observers are expected to participate in the entire visit and all assigned meetings and activities.

(III) The chair of the accreditation review team has the authority to dismiss any observer from the accreditation visit who does not participate in the entire site review and assigned activities.

(D) Accreditation team for continuing accreditation. The membership of a continuing accreditation review team shall be as follows:

(i) NCATE representatives as determined by NCATE;

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- (ii) State representatives which will number one less than the NCATE representatives;
- (iii) The Executive Director for the Commission for Teacher Preparation shall collaborate with the director of teacher education at the institution being reviewed, ~~and~~ NCATE, and with the PAC and Commission staff to determine the state committee representation;
- (iv) Observers shall be determined by the Commission and from among representatives of the Oklahoma State Regents for Higher Education, State Department of Education, and the community-at-large. If a Career and Technology program is offered at the institution ~~the~~ State Director of Career and Technology Education shall nominate a team member for any institution requesting accreditation of career and technology program(s);
- (v) Observers shall be actively involved in the data collection process, participate in the accreditation review team meetings, and assist the accreditation review team with understanding state nuances. They may assist but shall not be required to write any sections of the team report. They shall not be a voting member of the team.
- (vi) Observers are expected to participate in the entire visit and all assigned meetings and activities.
- (vii) The chair of the accreditation review team has the authority to dismiss any observer from the accreditation visit who does not participate in the entire site review and assigned activities.
- (E) Accreditation teams for non-NCATE accredited institutions shall be composed of state representatives.
- (F) The Executive Director for the Commission for Teacher Preparation shall collaborate with the director of teacher education at the institution requesting state accreditation, NCATE, ~~and~~ the State Regents, PAC and Commission staff to determine the team representation.
- (6) **Logistics of the accreditation visit.**
 - (A) Each institution shall arrange through the Commission for a pre-visit with the chair of the accreditation review team. The pre-visit should be conducted a minimum of sixty days prior to the team visit. The team chair must have received the continuing accreditation report prior to the pre-visit.
 - (B) If it is to be a joint NCATE and Commission visit, the state chair, the NCATE chair and the Commission staff member responsible for program accreditation shall be included in the pre-visit. Logistical arrangements shall be finalized during the pre-visit.
 - (C) For state accreditation only, the state chair and the Commission staff member responsible for program accreditation shall be included in the pre-visit. Logistical arrangements shall be finalized during the pre-visit.
 - (D) A visitation schedule will be prepared and distributed approximately four weeks prior to the scheduled visit. The schedule will be developed cooperatively by the director of teacher education and the Commission staff in cooperation with the team chair.
 - (E) The following stakeholders shall be interviewed during the accreditation visit:
 - (i) Key faculty from the teacher education and the arts and sciences units;
 - (ii) Administrators from the university teacher education and the arts and sciences units;
 - (iii) Other individuals identified by the institution;
 - (iv) Students (both in organized group settings and in informal settings such as in hallways, student lounges, student union, etc.);
 - (v) Field supervisors and cooperating teachers of student teaching and internships;
 - (vi) Practitioners from area schools including, but not limited to, principals, school personnel directors, and teachers; and
 - (vii) Recent graduates.
 - (F) The individuals to be interviewed should be representative of the student body being served, consideration shall be made relative to ethnicity, gender, age and individuals with disabilities. Individuals being interviewed, unless unit and/or institution faculty members and administrators, shall not be employed in the unit. This shall not apply to field supervisors receiving stipends for their services.
 - (G) The majority of those students being interviewed shall be students who are not receiving any form of graduate stipend. Students participating in the formal interview process and who are receiving graduate assistantships shall be identified in the list of students to be interviewed.
 - (H) The visitation schedule shall include:
 - (i) Dates of the accreditation visit;
 - (ii) Name, location, telephone number of lodging where reservations have been made for committee members;
 - (iii) Location of visiting team headquarters on the campus of the institution being evaluated;
 - (iv) Meeting time and place for team organizational meeting;
 - (v) Meeting time and place for formal team interviews with constituencies listed in 712:10-5-1(e)(6)(E);
 - (vi) Meeting time and place for team to complete writing assignments;
 - (vii) Meeting time and place for team to present the exit report; and
 - (viii) Fax, telephone, and e-mail addresses of members of the unit.
 - (I) The completed ~~a~~ accreditation review team report will be presented to the PAC, NCATE, and the Commission.

(J) Visiting team members will be reimbursed for expenses incurred according to state guidelines. Reimbursement forms must be completed by team members on the last day of the visit. All travel claims must be notarized prior to submission.

(7) **Preparation of the team report.** The accreditation review team work will culminate in preparation of a report outlining the findings of the team. Individual writing assignments will be completed prior to the conclusion of the visit. The report will reflect the team consensus on the review.

(A) The accreditation review team report is to be based on the following:

- (i) Validating and supporting documents, through interviews with students, faculty members, administrators, and school personnel;
- (ii) Validating the institution plan by visiting facilities and reviewing documents; and
- (iii) Specific guidelines and competencies for accredited teacher education programs.

(B) At the exit report, the accreditation review team will present a summary of its evaluation of the program. The summary will include:

- (i) ~~Strengths, concerns, and recommendations for improving~~ Area of improvement for the program;
- (ii) An indication that a specific timeline shall be established for bringing into compliance all standards which were not met if appropriate. The report shall also contain a statement that all standards must be brought into compliance by meeting the conditions set by the team and that full accreditation will not be granted until all conditions are met;
- (iii) The completed reports will be due to the NCATE and Commission office 30 days after the accreditation review team on-site visit; and
- (iv) The recommendation of the accreditation review team regarding the program will be made to the PAC and the Oklahoma Commission for Teacher Preparation within 30 days after having received the rejoinder [see 712:10-5-1(e)(8)(B)(iv)]. For NCATE accredited institutions, final accreditation decisions will be made after the NCATE Unit Accreditation Board has forwarded its accreditation ~~recommendation~~ decision to the Commission.

(8) **Recommendation process.**

(A) Two copies of the final draft of the accreditation review team report will be forwarded to the Commission and one copy to each of the accreditation review team members who will be given the opportunity to suggest corrections in their respective assignment areas. Additionally, the director of teacher education will be given the opportunity to offer input regarding corrections in factual information.

(B) The head of the unit, in consultation with the chief executive officer of the institution, is required

to acknowledge receipt of the report and is given the opportunity to prepare a rejoinder to the accreditation review team report. The unit can file the rejoinder and supplemental materials pertinent to the facts and conclusions found in the report of the accreditation review team.

(i) The institutional rejoinder to the accreditation review team report is a vital part of the evidence that the PAC considers as it makes its determination regarding initial and continuing accreditation. The PAC considers the initial/continuing accreditation report, accreditation review team report and the institutional rejoinder as it prepares its recommendations for the Program Accreditation Committee and subsequently to the full the Commission. The PAC may affirm the accreditation review team citations of ~~weaknesses~~ in areas for improvement or modify them based on evidence provided in the institutional rejoinder or to bring consistency to its decisions across institutions.

(ii) The purpose of the rejoinder is to clarify information presented in the accreditation review team report and to correct any factual errors in the report. If the judgments of the accreditation review team are being appealed by the unit, the rejoinder must indicate the grounds for such a stance and the available documentation to support it. This information should be summarized, cited, and included in an appendix as appropriate. The rejoinder should be concise, to the point, and complete.

(iii) The following conditions must be adhered to as the institutional rejoinder is prepared by the unit:

(I) All evidence must describe what existed at the time of the accreditation visit. Changes made by the unit after the visit cannot be considered by the PAC in its deliberations. Changes after the visit should be reported to the Commission for Teacher Preparation as part of the unit's annual report;

(II) All evidence must relate directly to the Standards For Oklahoma Accredited Teacher Education Programs and all procedures that applied at the time of the accreditation visit;

(III) The rejoinder must be factual in nature. All inaccurate information in the accreditation report should be corrected and appropriate documentation submitted with the rejoinder; and

(IV) When the unit does not respond, in writing, to the unmet standards and weaknesses in the accreditation report, the PAC assumes that the unit concurs with the accreditation review team citation and decision.

(iv) The institutional rejoinder should contain the following:

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- (I) Letter from the unit head to the Commission Executive Director acknowledging the receipt of the accreditation report;
- (II) Responses to the weakness statements. If there is evidence that a weakness does not exist, the appropriate documentation should be appended;
- (III) Perceptions of procedural concerns, if any, regarding the accreditation review team review or process that might have prejudiced the accreditation review team judgments; and
- (IV) Appendices that contain information to support any requests for reconsideration of the accreditation review team judgments. If the data were included in the institutional report and not given adequate consideration by the accreditation review team, the appropriate pages should be cited/reproduced; if the reference exceeds three pages in the institutional report, the page numbers should be cited and not duplicated.
- (v) The institutional rejoinder must be submitted to the Oklahoma Commission for Teacher Preparation within 30 days of the receipt of the accreditation review team report. When accreditation review team reports are sent to an institution during semester breaks, additional time to prepare the rejoinder will be considered. Additional time beyond the date indicated in the transmittal letter must be approved by the Commission Executive Director.
- (C) Final action on the reports and institutional accreditation will proceed according to Section 712:10-5-1(e).
- (D) Final action by the Commission may include the following actions:
 - (i) ~~Initial First~~ and Continuing Accreditation
 - (I) ~~Initial First~~ accreditation or continuing accreditation is granted to the education unit and program(s) if the Commission finds that standards have been adequately addressed to merit accreditation. ~~This status may be accompanied by statements of weakness, but nonetheless is unequivocal. This accreditation decision indicates that the unit meets each of the six NCATE standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the unit may describe progress made in addressing the areas for improvement cited in NCATE's action letter in preparation for its next visit. In its annual report the institution will be expected to address progress on weaknesses, the areas for improvement cited in the Commission accreditation report. This progress will be reviewed, annually, by the PAC.~~ Initial First accreditation

is retroactive to the semester in which the accreditation visit occurred.

- (ii) Provisional Accreditation (~~Initial~~) (First).
 - (I) ~~Provisional accreditation is granted to the education unit and program(s) if the commission finds that unit has not met one or more of the standards for accreditation and is not eligible for full initial accreditation. This accreditation decision indicates that the unit has not met one or more of the standards. When the PAC renders this decision, the unit has accredited status; but must satisfy provisions by meeting previously unmet standard(s) within an established time period.~~ Provisional accreditation is granted to the education unit and program(s) if the commission finds that unit has not met one or more of the standards for accreditation and is not eligible for full initial accreditation. This accreditation decision indicates that the unit has not met one or more of the standards. When the PAC renders this decision, the unit has accredited status; but must satisfy provisions by meeting previously unmet standard(s) within an established time period.
 - (II) ~~A second accreditation visit focused on the unmet standard(s) must be held within two years of the semester that the provisional accreditation decision was granted. If provisional accreditation is granted, the PAC will require (1) submission of documentation that addresses the unmet standard(s) within six months of the accreditation decision or (2) a focused visit on the unmet standard(s) within two years of the semester of the accreditation decision. When a decision is made by the PAC to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two year. If documentation is submitted under the terms specified in the above paragraph, the PAC may (1) grant accreditation or (2) require a focused visit within one year of the semester in which the documentation was reviewed by the PAC. After a focused visit, the PAC will (1) grant accreditation or (2) revoke accreditation.~~ A second accreditation visit focused on the unmet standard(s) must be held within two years of the semester that the provisional accreditation decision was granted. If provisional accreditation is granted, the PAC will require (1) submission of documentation that addresses the unmet standard(s) within six months of the accreditation decision or (2) a focused visit on the unmet standard(s) within two years of the semester of the accreditation decision. When a decision is made by the PAC to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two year. If documentation is submitted under the terms specified in the above paragraph, the PAC may (1) grant accreditation or (2) require a focused visit within one year of the semester in which the documentation was reviewed by the PAC. After a focused visit, the PAC will (1) grant accreditation or (2) revoke accreditation.
 - (III) ~~Following the provisional visit, a recommendation to accredit or deny accreditation will be brought to the Commission by the PAC. The five year cycle for accreditation will be based on the semester in which provisional accreditation was granted. If accreditation is granted, the next on-site visit is scheduled for five years following the semester in which the accreditation visit occurred. This scheduling establishes and maintains the unit's five-year accreditation cycle.~~ Following the provisional visit, a recommendation to accredit or deny accreditation will be brought to the Commission by the PAC. The five year cycle for accreditation will be based on the semester in which provisional accreditation was granted. If accreditation is granted, the next on-site visit is scheduled for five years following the semester in which the accreditation visit occurred. This scheduling establishes and maintains the unit's five-year accreditation cycle.
- (iii) Accreditation with Conditions (Continuing).
 - (I) ~~Accreditation with Conditions (Continuing) is granted to the education unit and program(s) if the Commission finds that the unit has not met one or more of the standards for continuing accreditation.~~ Accreditation with Conditions (Continuing) is granted to the education unit and program(s) if the Commission finds that the unit has not met one or more of the standards for continuing accreditation.
 - (II) ~~The unit maintains its accreditation status but must satisfy conditions by meeting previously unmet standards. This accreditation decision indicates that the unit has not met one or more of the NCATE standards. When the~~ The unit maintains its accreditation status but must satisfy conditions by meeting previously unmet standards. This accreditation decision indicates that the unit has not met one or more of the NCATE standards. When the

PAC renders this decision, the unit maintains its accredited status, but must satisfy conditions by meeting the previously unmet standard(s) within an established time period.

~~(III) A second accreditation visit focused on the unmet standard(s) must be held within two years of the semester that the provisional accreditation decision was granted. This visit will mirror the team composition process for initial accreditation.~~

(II) If accreditation with conditions is granted, the PAC will require (1) submission of documentation that addresses the unmet standard(s) within six months of the accreditation decision or (2) a focused visit on the unmet standard(s) within two years of the accreditation decision. When a decision is made by the PAC to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two years. If documentation is submitted under the terms specified in the above paragraph, the PAC may (1) continue accreditation or (2) require a focused visit within one year of the semester in which the documentation was reviewed by the PAC. After a focused visit, the PAC will (1) continue accreditation or (2) revoke accreditation.

~~(IV) Following the conditional visit, a recommendation for continuing accreditation will be based on the semester in which conditional accreditation was granted.~~

(III) If accreditation is granted, the next on-site visit is scheduled for five years following the semester in which the continuing accreditation visit occurred. This scheduling maintains the unit's original five-year accreditation cycle.

~~(iv) Continuing a~~ Accreditation with probation (Continuing).

(I) Continuing Accreditation with Probation is issued if the unit has serious and significant ~~weaknesses~~ areas for improvement related to the Standards for Oklahoma Accredited Teacher Education Programs. As a result of the continuing accreditation review, the PAC has determined that ~~weaknesses~~ areas for improvement with respect to standards will place an institution's accreditation in jeopardy if left uncorrected.

(II) All students who have been admitted to the program must be notified by mail, within 30 days of receipt of the PAC/Commission decision, as to the probationary accreditation status of unit and/or programs.

(III) For an institutions that is placed on probation an accreditation visit must be scheduled by the institution and take place within two

years of the semester in which the probationary decision was rendered. The professional education unit will remain accredited at least until the result of the rescheduled accreditation visit is known. This visit will mirror the team composition process for initial accreditation. All Oklahoma standards for accreditation of the teacher education unit and/or programs in effect at the time of the visit must be addressed by the unit, as part of this visit. Following the review, the PAC may decide to (1) continue accreditation, (2) continue accreditation with conditions, or (3) revoke accreditation.

(v) Denial of accreditation (~~Initial~~) (First).

(I) Denial of accreditation is rendered when the PAC finds that the professional education unit and/or programs have severe and/or numerous ~~deficiencies~~ areas for improvement that limit its capacity to offer quality programs.

(II) All students who have been admitted to the program must be notified by mail, within 30 days of receipt of the ~~PEC-PAC~~ PAC/Commission decision, as to the denial of program accreditation of the unit and programs.

(III) Institutions that are denied accreditation may recommend candidates for certification for one year from the end of the semester in which accreditation is denied.

(vi) Revocation of accreditation (Continuing).

(I) Revocation of accreditation terminates current accreditation after a two-year probationary visit if the PAC/Commission finds that critical ~~deficiencies~~ areas for improvement are not corrected. Accreditation will be terminated at the end of the semester in which the PAC/Commission revokes accreditation.

(II) All students who have been admitted to the program must be notified by mail, within 30 days of receipt of the PAC/Commission decision, as to the revocation of accreditation of the unit and programs.

(III) Institutions that lose their accreditation may recommend candidates for certification for one year from the end of the semester in which accreditation is revoked.

(IV) An on-site interim accreditation visit may be requested by the Appeals Board, hereinafter referred to as AB, acting on behalf of the Commission Administrative Committee. This visit would result from the committee's determination that compelling reasons exist to authorize reexamination of the accreditation of an institution's professional education unit and/or programs. If the AB determines that a complaint received by the committee needs to be investigated, the committee will authorize an interim accreditation review team visit to the campus. The interim accreditation review team

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will consist of one member from the initial or continuing accreditation review team and the remainder of the members will be appointed by the PAC following the guidelines outlined in 712-10-5(e)(5).

(V) The interim accreditation review team will prepare a report for the PAC. At the next PAC meeting following such a visit, the PAC will determine the institution's accreditation status.

(VI) The Commission may revoke accreditation if the unit and/or program(s) (a) no longer meets the Standards For Oklahoma Accredited Teacher Education Programs, (b) fails to submit annual reports and other documents required for accreditation; (c) misrepresents its accreditation status to the public; (d) fails to meet timelines of conditional or probationary accreditation or (e) fails over a three-year period to meet and maintain teacher candidate performance standards on the competency-based assessments as established by the Commission

(VII) All accreditation decisions shall be reported annually in the Commission annual report to the Education Oversight Board and all entities as outlined in OS 70 section 6-186.

(VIII) In the event that accreditation is denied or revoked, an institution may reapply for ~~initial~~ first accreditation following a three-year waiting period. Before an ~~initial~~ first visit may occur, a minimum of three years must have lapsed since accreditation was denied. Reapplication shall occur based on the Standards for Oklahoma Accredited Teacher Education Programs and Institutional Plan (See 712:10-5-3). All procedures for ~~initial~~ first accreditation will be followed during the reapplication process.

(9) Appeals Board.

(A) For NCATE accredited units the AB shall consider the recommendations of the NCATE appeals board for unit accreditation,

(B) For appeals related to program(s) and non-NCATE accredited institutions the following procedures shall be followed.

(C) Membership of Commission appeals board shall be:

- (i) Commission chair. The Commission Chair shall be the Chair of the Appeals Board;
- (ii) Chair of Program Accreditation Committee;
- (iii) Program subject matter expert(s). If the appeal is related to a specific program, the program expert shall be in the area(s) being appealed;
- (iv) One PK-12 school classroom teacher;
- (v) One member from the NCATE Board of Examiners;
- (vi) One teacher educator; and

(vii) One representative from the arts and sciences faculty or from school administration.

(D) The appeals board shall serve an initial term of two years, with the exception of the Commission Chair, Chair of the Program Accreditation Committee, and the program expert(s). The program subject matter expert(s) shall be appointed by the Commission Chair and serve on the AB only when an appeal is related to a program(s) appeal.

(10) Conditions for appeals.

(A) Any institution that is the object of an adverse decision, as determined by one of the Commission teacher education program review committees and/or unit accrediting committees, may appeal that decision to the Commission Appeals Board.

(B) An adverse decision is defined as the denial or revocation of program(s) or unit accreditation.

(C) An institution may also appeal, in writing, a provisional, conditional or probationary accreditation decision. Provisional, conditional or probationary accreditation does not terminate accreditation. An adverse decision may be appealed only on the following grounds:

- (i) Standards for Oklahoma Accredited Teacher Education Programs were disregarded by the review team;
- (ii) Stated procedures were not followed;
- (iii) Evidence favorable to the institution was provided to the accreditation review team but was not considered;
- (iv) Evidence was presented to the appropriate board in the form of a rejoinder or stipulation response but was not considered;
- (v) If a college or university believes that one or more of these four conditions was a factor in its accreditation, the only available means of redress is through the appeals process; or
- (vi) There was a lack of the full number of team members due to last minute emergencies; however, that factor alone is not sufficient to uphold an appeal.

(I) The institution must convincingly demonstrate that this fact made a difference in the accreditation decision.

(II) The institution shall prove actual prejudice to it and that the prejudice changed the accreditation decision.

(III) The fact that the institution did not recommend canceling the visit would be evidence that it, at least before the visit, believed that the assembled team would be sufficient to conduct a fair and complete visit.

(D) The findings and recommendations of the AB are received by the full Commission at its first meeting following the meeting of the AB.

(E) Subsequent actions shall be based on grounds upheld by the full Commission and may include, but are not limited to:

- (i) Assigning another accreditation review team to revisit an institution;
 - (ii) Reinstating accreditation or accreditation with provision, condition or probation; or
 - (iii) Upholding the initial recommendation for denial or revocation of accreditation.
- (F) The status of the appellant at the time of the visit remains unchanged until the appeals process has been exhausted.
- (11) **Process for appeal.** The following provisions govern the appellate process:
- (A) Within 15 days of receiving notice of the adverse decision, an institution electing to appeal an adverse decision of the Commission must present the Commission Executive Director and the board or committee which issued the adverse or probation decision written notification of its intention to appeal.
 - (B) No later than 30 days from the date that it submits its notification, the institution must submit a brief to the Executive Director which sets forth the specifics of its appeal and includes full documentation.
 - (C) The Commission Chair shall convene the AB within 30 days after an appeal brief has been filed. The AB will hear and act on the appeal within this time frame.
 - (D) The appellant shall have the right to present a 30-minute oral argument on its brief. The appellant shall also have the right to be represented by counsel during the appeal, but may not call witnesses or introduce new evidence on its own behalf.
 - (E) If the adverse decision appealed is provisional, conditional or probationary accreditation, the appellant's right to appeal is limited to the submission of written documentation.
 - (F) In the case of an accreditation decision review, the AB has the right to seek clarification of the accreditation review team report from the state team chair, and clarification of the PAC's deliberations from the chair of the PAC.
 - (G) In the case of an accreditation decision review, all evidence presented in the appellant's brief and considered by the AB must be confined to conditions existing at the time of the accreditation review team visit as cited in the final report, or in the case of a petition for stipulation removal, to conditions existing at the time the petition for stipulation removal was submitted.
- (12) **Cost of review.**
- (A) If the appeal leads to an affirmation of the Commission's original decision, the appellant will be liable for the expenses of the AB, the second accreditation review team visit, and all expenses related to the review. All expenses will be reimbursed according to state travel reimbursement guidelines.
 - (B) If the AB finds in favor of the institution, the Commission will be liable for expenses of the AB and second accreditation review team. All expenses will

be reimbursed according to state travel reimbursement guidelines.

(C) Access to Documents. In cases of accreditation decision review, team chairs, and the PAC chair serving as witnesses to hearings of the AB will be provided copies of pertinent action letters and reports. Appellant petitions of appeals are provided to all witnesses.

(13) **Continuing accreditation procedures.** Five-year continuing accreditation shall follow the same basic format as the NCATE Continuing Accreditation procedures. The accreditation review team will review such things as faculty qualifications and loads, financial support of the unit, follow-up procedures, clinical and field experiences, the residency program, faculty development procedures, and annual student assessment data.

(14) **Distribution of findings.**

(A) The accreditation review team chair shall mail one copy of the final draft of its report to the Commission office.

(B) The Commission will coordinate with NCATE (for NCATE accredited institutions) for distribution of reports to other team members.

(C) After the institution has received the reports, it has 30 days to submit a rejoinder to the Commission according to procedures outlined in 712:10-5-1(e)(8)(B).

(D) When the entire process has been completed the Commission will distribute the findings as outlined in 712:10-5-1(e)(8)(B).

712:10-5-2. Structure of Accreditation Committees

(a) A Program Accreditation Committee (PAC) of the Oklahoma Commission for Teacher Preparation carries out the responsibilities for overseeing the accreditation or continuing accreditation of institution teacher education programs. Committee members shall be selected by the Oklahoma Commission for Teacher Preparation and approved by Commission membership to serve on such a committee. Except for the Commission Executive Director and program(s) subject matter experts, the initial term of membership shall be two years.

(1) Members shall have completed a training seminar related to state and NCATE accreditation and any other training deemed appropriate by the Commission.

(2) Membership shall be comprised of:

(A) The Commission Executive Director;

(B) Three Commission members who are not members of either an Accreditation Team or the Appeals Board;

(i) The Commission chair shall appoint PAC Chair(s) from the three Commission members appointed to the PAC.

(C) Two pre-K-12 classroom teachers;

(D) The PAC chair(s) shall serve on the Commission Administrative Committee.

(E) Two teacher educators whose institutions will not be reviewed during the two-year term of appointment;

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- (F) One PK-12 public school administrator nominated by the State Superintendent of Public Instruction;
 - (G) One superintendent from an area-vocational school shall be nominated by the State Director of Career and Technology Education;
 - (H) Two arts and science faculty; one from a four year institution and one from a community college shall be nominated by the Chancellor for Higher Education; and
 - (I) The Commission Director of Program Accreditation shall serve in an advisory capacity.
- (3) A minimum of two PAC members may be reappointed to additional terms to allow for continuity.
 - (4) Discretion and ethical judgment shall be used in making recommendations.
 - (5) Meeting dates shall be established in compliance with the following criteria:
 - (A) The PAC shall schedule a minimum of four meeting dates per academic year: September, November, February, and April with subsequent recommendations to the Commission during October, December, March, and May.
 - (B) Other meetings shall be held as needed.
 - (C) Institutions with proposed programs for evaluation shall be notified of meeting dates four weeks in advance. Representatives from the institution(s) are encouraged to attend the meetings.
 - (6) Responsibilities and authority of the PAC shall be:
 - (A) Approving an institution's program reviews prior to submission to the Commission. ~~Submission of program reviews to NCATE is optional and NCATE;~~
 - (B) Reviewing the Accreditation Team Report, reviewing the NCATE Unit Accreditation Board recommendations and recommending program accreditation status to the Commission;
 - (C) Following all procedures outlined in 712:10-5-1(e);
 - (D) Recommending to the Commission changes in administrative rules, regulations, policies. and procedures;
 - (E) Ensuring training for all accreditation review team members and PAC members;
 - (F) Carrying-out a systematic review and development of the standards by which programs are approved;
 - (G) Monitoring the performance of accreditation review team members; and
 - (H) Recommending training needs for accreditation review team members, institution faculty members, and PAC members.
- (b) The curriculum review committees (CRC) shall review all program reviews and make recommendations to the PAC regarding the quality of the certification program(s) curriculum. These reviews will take place in conjunction with the college's/university's five year accreditation cycle, occurring

twelve months prior to a continuing accreditation visit and eighteen months prior to an initial accreditation visit.

- (1) Members of the CRC shall be approved by the Program Accreditation Committee.
 - (2) CRC members shall serve an initial term of two years.
 - (3) Two or more of the CRC members may be reappointed to additional terms to allow for continuity.
 - (4) Members shall have completed a training seminar on the program review process.
 - (5) Discretion and ethical judgment shall be used in making recommendations.
 - (6) A CRC member may be appointed to more than one committee.
 - (7) The CRC shall be comprised of ~~four~~ three members from ~~any two of~~ the following groups:
 - (A) Practicing PK-12 classroom teachers
 - (B) Practicing PK-12 administrators
 - (C) Higher education faculty members
 - (D) Parents and community members
- (c) The Commission Coordinator of Program Accreditation or designee shall chair each curriculum review committee.

712:10-5-3. Specific State Standards for Program Accreditation

- (a) The following standards apply to both undergraduate and graduate programs. The governance and administration of the total teacher education program standard is based on the premise that there must be a recognizable and functioning governance entity within the institution's administrative structure which has responsibility for designing, approving and continuously evaluating and developing teacher education programs. This governing unit may be a council, committee, department, school, college, or any other recognizable entity, which includes the administration of teacher education as one of its functions.
 - (1) The governing unit membership and responsibilities include the following:
 - (A) Membership on the teacher education governing unit shall be defined by written policy to include:
 - (i) A majority of the members who have a minimum of three years teaching experience in public schools;
 - (ii) A majority of the members in the governance unit who are currently teacher education faculty members;
 - (iii) Some faculty members who shall represent the arts and sciences;
 - (iv) A designated director of teacher education defined as the institution's official representative for teacher education. The authority and responsibilities of this individual shall be clearly defined in written policies; and
 - (v) A clearly defined process whereby faculty members and administrators become members and the terms of office.

- (B) The responsibilities of the teacher education governing unit shall be defined by written policy to include:
- (i) Responsibilities of the officers of the unit;
 - (ii) Responsibilities of the unit's standing committees; and
 - (iii) Responsibilities in the following areas as they are related to teacher education:
 - (I) Admission/retention in teacher education;
 - (II) Field experience and student teaching (admission and placement);
 - (III) Development of courses and program curricula; and Program review, evaluation and planning.
- (C) Program review, evaluation and revision responsibilities include:
- (i) The governance unit shall conduct at least one systematic review, evaluation, and when appropriate, revision of all teacher education programs within each five-year accreditation period;
 - (ii) The governance unit shall conduct an annual public forum pursuant to 712:10-5-1 and OS 70 section 6-185;
 - (iii) Periodic program reviews and revisions shall be based on, but not limited to, stated goals and objectives; and
 - (iv) The process for conducting program review, evaluation, and revision shall include, but not be limited to, participation by the following:
 - (I) Teacher education faculty and arts and science faculty;
 - (II) Graduates of the programs;
 - (III) Students currently in the program;
 - (IV) Teachers and administrators from the public schools;
 - (V) Parents of PK-12 students; and
 - (VI) Business and community leaders who are actively involved in assisting PK-12 schools.
- (D) Documentation related to the budget-making process and level of financial support shall include the following:
- (i) A clearly defined budget-making process for all teacher education programs; and
 - (ii) An analysis showing that the institution's financial support for programs in teacher education are maintained at a level appropriate for a professional preparation program.
- (b) Teacher education faculty standards are to be consistent with accreditation standards.
- (c) Student-related standards are to be consistent with accreditation standards.
- (d) Program decisions of the professional education unit are to be guided by a conceptual framework, which establishes the shared vision for the preparation of teacher candidates.
- (1) The conceptual framework must include the following structural elements: The mission of the institution and the teacher preparation program;
 - (A) The program's philosophy, purposes, professional commitments and dispositions;
 - (B) A knowledge base that provides the foundation for the framework;
 - (C) Performance expectations for candidates that align with professional, state and institutional standards; and
 - (D) A system by which candidate performance is regularly assessed.
 - (2) A description of the conceptual framework shall be submitted along with the institution's preconditions report by any institution seeking initial accreditation.
 - (3) A description of the conceptual framework shall be included in all institutional reports submitted prior to initial and continuing accreditation visits.
- (e) The following guidelines are to be used to collect and maintain data on each institution's teacher preparation program:
- (1) The institutional shall establish a process which seeks information and program input from teacher preparation faculty; faculty from arts and sciences and other program and disciplines which are appropriate; students within the teacher education program; teachers, administrators, parents, guardians or custodians of students; and business and community leaders.
 - (2) The institutional shall hold an annual public forum, subject to the provisions of the Oklahoma Open Meetings Act, regarding the content of the institutional plan; public comment on either the institution's teacher preparation plan or program will be solicited during the forum.
 - (3) The institutional plan shall be accessible to any interested party under the Oklahoma Open Records Act.
 - (4) The submitted institutional plan must be approved by the institution's governing board.
 - (5) Annual reviews and reports indicating program changes resulting from the evaluations.
- (f) The following policies, procedures and guidelines are used to direct the content and candidates experiences of each institution's teacher preparation program.
- (1) Programs require teacher candidates to have speaking and listening skills at a novice high level in a language other than English.
 - (2) General studies requirements for candidates include the arts, communication, history, literature, mathematics, philosophy, sciences, English, government, and the social sciences.
 - (3) Programs establish cohort or colleague groups within the institution to assist teacher candidates in achieving competencies, better adapting to the school environment and furthering professional growth.
 - (4) Candidates complete a well-planned sequence of courses and/or experiences in pedagogical studies that ensures student competency in the Oklahoma State Department of Education Full, Subject Matter Competencies for Teacher Licensure and Certification.

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- (5) The guidelines and standards for program reviews representing specialty organizations and national learned society standards are used in developing programs in each content area.
 - (6) Secondary and elementary/secondary teacher candidates have undergraduate majors or their equivalents, in a subject area.
 - (7) Teacher candidates in early childhood, elementary, and special education have subject area concentrations, which allow qualification as a generalist. To qualify as a generalist, candidates must document competency in mathematics, science, language arts, and social studies as identified in the NCATE curriculum guidelines and State Department of Education Full, Subject Matter Competencies for early childhood, elementary and special education.
 - (8) ~~Candidates complete a well-planned sequence of courses and/or experience in pedagogical studies that ensures student competency in the Oklahoma State Department of Education General Competencies for Teacher Licensure and Certification.~~ Teacher candidates must have a minimum of 45 hours of diverse field experiences prior to their student teaching experience.
 - (9) Teacher candidates are provided with advisement services to assist them in taking course work designed to maximize their opportunity for certification and employment. At a minimum, teacher candidates are made aware of the latest supply and demand information concerning teacher employment, state salary structure, and are encouraged to seek secondary endorsements if appropriate.
 - (10) Substantive collaboration and classroom interaction with students accompanies theoretical curriculum, thus allowing teacher candidates the opportunity to apply theory to actual classroom situations.
 - (11) Instruction integrates pedagogical competencies or skills with experiences in the school setting.
 - (12) Teacher candidates are provided with opportunities to have parental, family and community involvement within their pre-service programs.
 - (13) The unit establishes and publishes a set of criteria/competencies for exit from each professional education program. These criteria/competencies reflect the Oklahoma Department of Education General Teacher Competencies and subject matter competencies outlined in the NCATE curriculum folios and/or national (professional) learned societies guidelines.
 - (14) The unit establishes and publishes the criteria/competencies for exit and satisfactory completion of the residency program adhering to all rules and regulations established by the Oklahoma State Department of Education.
 - (15) A candidate's mastery of a program's stated exit criteria or competencies is assessed through the use of multiple sources of data such as culminating experience, portfolios, interviews, videotaped and observed performance in schools, standardized tests and course grades.
- (g) The following guidelines are to be used to facilitate the professional development of faculty:

- (1) Teacher education faculty continue their professional development during their tenure at an institution of higher education to ensure that the future teachers of Oklahoma are taught by professional educators fully trained in their areas of expertise. Professional development for teacher educators and arts and sciences faculty should be focused on the faculty members ability to model such effective teaching strategies as inquiry, group discussions and collaborative learning.
- (h) The following policies are to be used to evaluate individual program areas at each institution:
 - (1) The institution shall submit program reviews for each required program area based upon the guidelines and accreditation schedule of the Commission.
 - (2) Following the completion of each program evaluation, the institution will receive written notification of each program's status.
 - (3) For programs that are not in compliance with national and/or state competencies, a rejoinder will be submitted based on the timelines specified by the Commission.
 - (4) Programs that are not in compliance after the rejoinder process will have two years to bring the program into compliance. A follow-up review must be submitted no later than two years from the time the rejoinder report is received at the institution.
 - (5) Programs that are not in compliance following the evaluation of the two year follow-up review will no longer be eligible to recommend candidates for licensure and certification.
 - (6) An institution with a non-compliant program may apply to the PAC for a waiver if there is evidence that the non-compliant status of a program is due to transitioning national standards.

SUBCHAPTER 7. TEACHER PREPARATION TEACHER ASSESSMENT

712:10-7-1. Teacher assessment regulations

- (a) **Examinees-initial licensure and certification.**
- (1) Any individual who applies for a teaching license/certification must successfully complete the ~~general education and subject area components of the~~ competency examination as defined by the Oklahoma Commission for Teacher Preparation. (70 O.S. 1998 Supp., 6-182(14). ~~The components of the competency examination required for licensure are:~~ is made up of three components: the Oklahoma General Education Test (OGET), and the Oklahoma Subject Area Test (OSAT) and the Oklahoma Professional Teaching Exam (OPTE). See Appendix A for competency exam requirements by certification area and test codes.
- (2) ~~Any licensed teacher who applies for teacher certification must successfully complete the professional education portion of the competency exam. (SB0388) The final component of the competency examination is the Oklahoma Professional Teaching Exam (OPTE).~~

- (3) Competency exam requirements for the above are:
- (A) Art.
- (i) Art (PK 12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK 12); Oklahoma Subject Area Test (Art).
 - (ii) Art (PK 3)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Early Childhood); Oklahoma Subject Area Test (Art).
 - (iii) Art (1-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level); Oklahoma Subject Area Test (Art).
 - (iv) Art (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Art).
 - (v) Art (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Art).
- (B) Business Education (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Business Education).
- (C) Driver/Safety Education (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Driver/Safety Education).
- (D) Early Childhood Education (PK 3)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Early Childhood); Oklahoma Subject Area Test (Early Childhood).
- (E) Elementary Education (1-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level); Oklahoma Subject Area Test (Elementary Education).
- (F) English (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (English).
- (G) Family And Consumer Sciences (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Family and Consumer Science).
- (H) Foreign Language.
- (i) French (PK 12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK 12); Oklahoma Subject Area Test (French).
 - (ii) French (PK 3)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Early Childhood); Oklahoma Subject Area Test (French).
 - (iii) French (1-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level); Oklahoma Subject Area Test (French).
 - (iv) French (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle/Secondary); Oklahoma Subject Area Test (French).
 - (v) French (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (French).
 - (vi) German (PK 12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK 12); Oklahoma Subject Area Test (German).
 - (vii) German (PK 3)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Early Childhood); Oklahoma Subject Area Test (German).
 - (viii) German (1-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level); Oklahoma Subject Area Test (German).
 - (ix) German (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (German).
 - (x) German (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (German).
 - (xi) Latin (PK 12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK 12); Oklahoma Subject Area Test (Latin).
 - (xii) Latin (PK 3)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Early Childhood); Oklahoma Subject Area Test (Latin).
 - (xiii) Latin (1-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level); Oklahoma Subject Area Test (Latin).
 - (xiv) Latin (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Latin).
 - (xv) Latin (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Latin).
 - (xvi) Russian (PK 12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK 12); Oklahoma Subject Area Test (Russian).

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- (xviii) Russian (PK-3)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Early Childhood); Oklahoma Subject Area Test (Russian).
- (xviii) Russian (1-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level); Oklahoma Subject Area Test (Russian).
- (xix) Russian (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Russian).
- (xx) Russian (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Russian).
- (xxi) Spanish (PK-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK-12); Oklahoma Subject Area Test (Spanish).
- (xxii) Spanish (PK-3)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Early Childhood); Oklahoma Subject Area Test (Spanish).
- (xxiii) Spanish (1-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level); Oklahoma Subject Area Test (Spanish).
- (xxiv) Spanish (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Spanish).
- (xxv) Spanish (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Spanish).
- (I) Journalism (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Journalism).
- (J) Mathematics.
- (i) Middle Level Mathematics (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Middle Level/Intermediate Mathematics).
- (ii) Intermediate Mathematics (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Middle Level/Intermediate Mathematics).
- (iii) Advanced Mathematics (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Advanced Mathematics).
- (K) Middle Level.
- (i) Art (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Art).
- (ii) English (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Middle Level English).
- (iii) French (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (French).
- (iv) German (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (German).
- (v) Latin (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Latin).
- (vi) Russian (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Russian).
- (vii) Spanish (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Spanish).
- (viii) Mathematics (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Middle Level/Intermediate Mathematics).
- (ix) Music (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Instrumental/General Music or Vocal/General Music).
- (x) Physical Education/Health/Safety (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Physical Education/Health/Safety).
- (xi) Science (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle

- Level/Secondary); Oklahoma Subject Area Test (Middle Level Science).
- (xii) Social Studies (5-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Middle Level Social Studies).
- (xiii) Technology Education (5-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Technology Education).
- (L) Music.
- (i) Instrumental/General Music (PK-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK-12); Oklahoma Subject Area Test (Instrumental/General Music).
- (ii) Instrumental/General Music (PK-3) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Early Childhood); Oklahoma Subject Area Test (Instrumental/General Music).
- (iii) Instrumental/General Music (1-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level); Oklahoma Subject Area Test (Instrumental/General Music).
- (iv) Instrumental/General Music (5-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Instrumental/General Music).
- (v) Instrumental/General Music (6-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Instrumental/General Music).
- (vi) Vocal/General Music (PK-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK-12); Oklahoma Subject Area Test (Vocal/General Music).
- (vii) Vocal/General Music (PK-3) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Early Childhood); Oklahoma Subject Area Test (Vocal/General Music).
- (viii) Vocal/General Music (1-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level); Oklahoma Subject Area Test (Vocal/General Music).
- (ix) Vocal/General Music (5-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Vocal/General Music).
- (x) Vocal/General Music (6-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Vocal/General Music).
- (M) Physical Education/Health/Safety.
- (i) Physical Education/Health/Safety (PK-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK-12); Oklahoma Subject Area Test (Physical Education/Health/Safety).
- (ii) Physical Education/Health/Safety (PK-3) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Early Childhood); Oklahoma Subject Area Test (Physical Education/Health/Safety).
- (iii) Physical Education/Health/Safety (1-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level); Oklahoma Subject Area Test (Physical Education/Health/Safety).
- (iv) Physical Education/Health/Safety (5-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Physical Education/Health/Safety).
- (v) Physical Education/Health/Safety (6-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Physical Education/Health/Safety).
- (N) Science.
- (i) Biological Sciences (6-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Biological Sciences).
- (ii) Chemistry (6-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Chemistry).
- (iii) Earth Science (6-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Earth Science).
- (iv) Physical Science (6-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Physical Science).
- (v) Physics (6-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Physics).
- (vi) Middle Level Science (5-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Middle Level Science).
- (O) Social Studies.

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- (i) ~~United States History/Oklahoma History/Government/Economics (6-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (United States History/Oklahoma History/Government/Economics).~~
- (ii) ~~World History/Geography (6-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (World History/Geography).~~
- (iii) ~~Psychology/Sociology (6-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Psychology/Sociology).~~
- (iv) ~~Middle Level Social Studies (5-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Middle Level Social Studies).~~
- (P) ~~Special Education:~~
 - (i) ~~Mild/Moderate Disabilities (PK-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK-12); Oklahoma Subject Area Test (Mild/Moderate Disabilities).~~
 - (ii) ~~Mild/Moderate Disabilities (PK-3) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Early Childhood); Oklahoma Subject Area Test (Mild/Moderate Disabilities).~~
 - (iii) ~~Mild/Moderate Disabilities (1-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level); Oklahoma Subject Area Test (Mild/Moderate Disabilities).~~
 - (iv) ~~Mild/Moderate Disabilities (5-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Mild/Moderate Disabilities).~~
 - (v) ~~Mild/Moderate Disabilities (6-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Mild/Moderate Disabilities).~~
 - (vi) ~~Severe Profound/Multiple — Disabilities (PK-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK-12); Oklahoma Subject Area Test (Severe Profound/Multiple Disabilities).~~
 - (vii) ~~Severe Profound/Multiple — Disabilities (PK-3) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Early Childhood); Oklahoma Subject Area Test (Severe Profound/Multiple Disabilities).~~
 - (viii) ~~Severe Profound/Multiple — Disabilities (1-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level); Oklahoma Subject Area Test (Severe Profound/Multiple Disabilities).~~
 - (ix) ~~Severe Profound/Multiple — Disabilities (5-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Severe Profound/Multiple Disabilities).~~
 - (x) ~~Severe Profound/Multiple — Disabilities (6-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Severe Profound/Multiple Disabilities).~~
 - (xi) ~~Deaf/Hard of Hearing (PK-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK-12) Oklahoma Subject Area Test (Deaf/Hard of Hearing).~~
 - (xii) ~~Deaf/Hard of Hearing (PK-3) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Early Childhood); Oklahoma Subject Area Test (Deaf/Hard of Hearing).~~
 - (xiii) ~~Deaf/Hard of Hearing (1-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level); Oklahoma Subject Area Test (Deaf/Hard of Hearing).~~
 - (xiv) ~~Deaf/Hard of Hearing (5-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Deaf/Hard of Hearing).~~
 - (xv) ~~Deaf/Hard of Hearing (6-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Deaf/Hard of Hearing).~~
 - (xvi) ~~Blind/Visual Impairment (PK-12) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK-12) Oklahoma Subject Area Test (Blind/Visual Impairment).~~
 - (xvii) ~~Blind/Visual Impairment (PK-3) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Early Childhood); Oklahoma Subject Area Test (Blind/Visual Impairment).~~
 - (xviii) ~~Blind/Visual Impairment (1-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level); Oklahoma Subject Area Test (Blind/Visual Impairment).~~
 - (xix) ~~Blind/Visual Impairment (5-8) — Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level~~

- or Middle Level/Secondary); Oklahoma Subject Area Test (Blind/Visual Impairment).
- (xx) Blind/Visual Impairment (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Blind/Visual Impairment).
- (Q) Speech/Drama/Debate (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Speech/Drama/Debate).
- (R) Vocational-technical Education:
- (i) Agricultural Education (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Agricultural Education).
 - (ii) Marketing Education (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Marketing Education).
 - (iii) Technology Education (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Technology Education).
 - (iv) Middle Level Technology Education (5-8)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Elementary/Middle Level or Middle Level/Secondary); Oklahoma Subject Area Test (Technology Education).
 - (v) Vocational Business Education (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Business Education).
 - (vi) Vocational Family and Consumer Sciences (6-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (Middle Level/Secondary); Oklahoma Subject Area Test (Family and Consumer Sciences).
- (4) Assessment requirements for initial administrator certification (individuals seeking their first certification in educational administration) are as follows:
- (A) Elementary Principal—Oklahoma Subject Area Test (Principal Common Core and Elementary Principal Specialty Test).
 - (B) Middle Level Principal—Oklahoma Subject Area Test (Principal Common Core and Middle Level Principal Specialty Test).
 - (C) Secondary Principal—Oklahoma Subject Area Test (Principal Common Core and Secondary Principal Specialty Test).
 - (D) Superintendent—Oklahoma Subject Area Test (Superintendent).
- (5) Assessment requirements for a license in an advanced certification area for individuals who do not have current teacher certification: are the general education component, the Oklahoma General Education Test (OGET), and the subject area component, the Oklahoma Subject Area Test (OSAT), of the competency examination.
- (6) Any licensed teacher who applies for certification in an advanced certification area must successfully complete the professional education component of the competency exam, the Oklahoma Professional Teaching Exam (OPTE).
- (7) Competency exam requirements for the above are:
- (A) Library Media Specialist (PK-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK-12); Oklahoma Subject Area Test (Library Media Specialist)
 - (B) Psychometrist (PK-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK-12); Oklahoma Subject Area Test (Psychometrist).
 - (C) Reading Specialist (PK-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK-12); Oklahoma Subject Area Test (Reading Specialist).
 - (D) School Counselor (PK-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK-12); Oklahoma Subject Area Test (School Counselor). Competency for School Counselor may also be verified by the Nationally Certified School Counselor (NCSC) credential. Individuals with such credential shall be exempt from Oklahoma assessment requirements.
 - (E) School Psychologist (PK-12)—Oklahoma General Education Test; Oklahoma Professional Teaching Examination (PK-12); Oklahoma Subject Area Test (School Psychologist). Individuals who currently hold National School Psychologists Certification (NSPC) shall be exempt from Oklahoma assessment requirements.
 - (F) Speech Language Pathology (PK-12)—Oklahoma Subject Area Test (Speech Language Pathology). Individuals holding a Certificate of Clinical Competence (CCC) for Speech Language Pathology as verified by the American Speech and Hearing Association shall be exempt from Oklahoma assessment requirements.
- (8) Assessment requirements for advanced certification for individuals who have current teacher certification:
- (A) Library Media Specialist (PK-12)—Oklahoma Subject Area Test (Library Media Specialist).
 - (B) Psychometrist (PK-12)—Oklahoma Subject Area Test (Psychometrist).
 - (C) Reading Specialist (PK-12)—Oklahoma Subject Area Test (Reading Specialist).
 - (D) School Counselor (PK-12)—Oklahoma Subject Area Test (School Counselor). Competency for

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School Counselor may also be verified by the Nationally Certified School Counselor Credential (NCSC). Individuals with such a credential shall be exempt from Oklahoma assessment requirements.

~~(E) School Psychologist (PK-12) — Oklahoma Subject Area Test (School Psychologist). Individuals holding valid National School Psychologists Certification (NSPC) shall be exempt from Oklahoma assessment requirements.~~

~~(F) Speech-Language Pathology (PK-12) Oklahoma Subject Area Test (Speech Language Pathology). Individuals holding a Certificate of Clinical Competence (CCC) for Speech Language Pathology as verified by the American Speech and Hearing Association shall be exempt from Oklahoma assessment requirements.~~

(b) Examinees - additional certification.

(1) Individuals wishing to add an additional certification to an existing teaching credential may do so by taking the Oklahoma Subject Area Test for the field of the desired certification. See Appendix A for competency exam requirements by certification area and test codes.

(A) Assessment requirements for the above are:

- (i) ~~Art Oklahoma Subject Area Test (Art).~~
- (ii) ~~Business Education — Oklahoma Subject Area Test (Business Education).~~
- (iii) ~~Driver Safety Education — Oklahoma Subject Area Test (Driver Safety Education).~~
- (iv) ~~Early Childhood Education — Oklahoma Subject Area Test (Early Childhood Education).~~
- (v) ~~Elementary Education — Oklahoma Subject Area Test (Elementary Education).~~
- (vi) ~~English Oklahoma Subject Area Test (English).~~
- (vii) ~~Family & Consumer Science Oklahoma Subject Area Test (Family & Consumer Science).~~
- (viii) ~~Journalism — Oklahoma Subject Area Test (Journalism)~~
- (ix) ~~Physical Education/Health/Safety — Oklahoma Subject Area Test (Physical Education/Health/Safety)~~
- (x) ~~Speech/Drama/Debate — Oklahoma Subject Area Test (Speech/Drama/Debate)~~
- (xi) ~~French — Oklahoma Subject Area Test (French).~~
- (xii) ~~German — Oklahoma Subject Area Test (German).~~
- (xiii) ~~Latin — Oklahoma Subject Area Test (Latin).~~
- (xiv) ~~Russian — Oklahoma Subject Area Test (Russian).~~
- (xv) ~~Spanish — Oklahoma Subject Area Test (Spanish).~~
- (xvi) ~~Advanced Math — Oklahoma Subject Area Test (Advanced Math).~~
- (xvii) ~~Intermediate Math — Oklahoma Subject Area Test (Intermediate Math).~~
- (xviii) ~~Middle Level Math — Oklahoma Subject Area Test (Middle Level Math).~~

~~(xix) Middle Level English — Oklahoma Subject Area Test (Middle Level English).~~

~~(xx) Middle Level Science — Oklahoma Subject Area Test (Middle Level Science).~~

~~(xxi) Middle Level Social Studies — Oklahoma Subject Area Test (Middle Level Social Studies).~~

~~(xxii) Instrumental/General Music — Oklahoma Subject Area Test (Instrumental/General Music).~~

~~(xxiii) Vocal/General Music — Oklahoma Subject Area Test (Vocal/General Music).~~

~~(xxiv) Biological Sciences — Oklahoma Subject Area Test (Biological Sciences).~~

~~(xxv) Chemistry — Oklahoma Subject Area Test (Chemistry).~~

~~(xxvi) Earth Science — Oklahoma Subject Area Test (Earth Science).~~

~~(xxvii) Physical Science — Oklahoma Subject Area Test (Physical Science).~~

~~(xxviii) Physics — Oklahoma Subject Area Test (Physics).~~

~~(xxix) U.S. — History/OK — History/Government/Economics — Oklahoma Subject Area Test (U.S. History/OK History/Government/Economics).~~

~~(xxx) World History/Geography — Oklahoma Subject Area Test (World History/Geography).~~

~~(xxxi) Psychology/Sociology — Oklahoma Subject Area Test (Psychology/Sociology).~~

~~(xxxii) Blind/Visual Impairment — Oklahoma Subject Area Test (Blind/Visual Impairment).~~

~~(xxxiii) Deaf/Hard of Hearing — Oklahoma Subject Area Test (Deaf/Hard of Hearing).~~

~~(xxxiv) Mild-Moderate Disabilities — Oklahoma Subject Area Test (Mild-Moderate Disabilities).~~

~~(xxxv) Severe Profound/Multiple — Disabilities — Oklahoma Subject Area Test (Severe Profound/Multiple Disabilities).~~

~~(xxxvi) Agricultural Education — Oklahoma Subject Area Test (Agricultural Education).~~

~~(xxxvii) Marketing Educations — Oklahoma Subject Area Test (Marketing Educations).~~

~~(xxxviii) Technology Education — Oklahoma Subject Area Test (Technology Education).~~

~~(xxxix) Vocational Business Education — Oklahoma Subject Area Test (Vocational Business Education).~~

~~(xxxx) Vocational Family & Consumer Sciences — Oklahoma Subject Area Test (Vocational Family & Consumer Sciences).~~

(c) Examinees - alternative preparation program.

(1) Individuals seeking a teaching license certification via the Alternative Preparation Program shall ~~meet the same assessment requirements as all other individuals seeking initial licensure/certification~~ must successfully complete the Oklahoma General Education Test and the Oklahoma Subject Area Test in their recommended certification area. A licensed teacher via the Alternative Preparation Program seeking a standard certificate

must successfully complete the Oklahoma Professional Teaching Exam. See Appendix A for competency exam requirements by certification area and test codes.

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APPENDIX A. COMPETENCY EXAM REQUIREMENTS BY CERTIFICATION AREAS [NEW]

Subject Area and Grade Level	OGET	OSAT	OPTE
Advanced Mathematics			
6-12	74	11	72 or 76
Agricultural Education			
6-12	74	42	72 or 76
Art			
PK-3	74	2	70
1-8	74	2	71
6-12	74	2	72
PK-12	74	2	73 or 75 or 76
Biological Sciences			
6-12	74	10	72 or 76
Blind/Visual Impairment			
PK-3	74	28	70
1-8	74	28	71
6-12	74	28	72
PK-12	74	28	73 or 75 or 76
Business Education			
6-12	74	40	72 or 76
Chemistry			
6-12	74	4	72 or 76
Deaf/Hard of Hearing			
PK-3	74	30	70
1-8	74	30	71
6-12	74	30	72
PK-12	74	30	73 or 75 or 76
Driver/Safety Education			
6-12	74	36	72 or 76
Early Childhood Education			
PK-3	74	05	70 or 75
Earth Science			
6-12	74	08	72 or 76
Elementary Education			
1-8	74	06 or 50 & 51	71 or 75
English			
6-12	74	07	72 or 76
Family/Consumer Science			
6-12	74	09	72 or 76
French			
PK-3	74	20	70

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PK-3	74	21	70
1-8	74	21	71
6-12	74	21	72
PK-12	74	21	73 or 75 or 76
Instrumental Music			
PK-3	74	01	70
1-8	74	01	71
6-12	74	01	72
PK-12	74	01	73 or 75 or 76
Intermediate Mathematics			
6-12	74	25	72 or 76
Journalism			
6-12	74	37	72 or 76
Latin			
PK-3	74	23	70
1-8	74	23	71
6-12	74	23	72
PK-12	74	23	73 or 75 or 76
Marketing Education			
6-12	74	41	72 or 76
Middle Level English			
5-8	74	24	71 or 72 or 75 or 76
Middle Level Math			
5-8	74	25	71 or 72 or 75 or 76
Middle Level Science			
5-8	74	26	71 or 72 or 75 or 76
Middle Level Social Studies			
5-8	74	27	71 or 72 or 75 or 76
Mild-Moderate Disabilities			
PK-3	74	29	70
1-8	74	29	71
6-12	74	29	72
PK-12	74	29	73 or 75 or 76
Physical Education/Health/Safety			
PK-3	74	12	70
1-8	74	12	71
6-12	74	12	72
PK-12	74	12	73 or 75 or 76
Physical Science			
6-12	74	13	72 or 76
Physics			
6-12	74	14	72 or 76
Psychology/Sociology			

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1-8	74	22	71
6-12	74	22	72
PK-12	74	22	73 or 75 or 76
Severe-Profound/Multiple Disabilities			
PK-3	74	31	70
1-8	74	31	71
6-12	74	31	72
PK-12	74	31	73 or 75 or 76
Spanish			
PK-3	74	19	70
1-8	74	19	71
6-12	74	19	72
PK-12	74	19	73 or 75 or 76
Speech/Drama/Debate			
6-12	74	16	72 or 76
Technology Education			
6-12	74	43	72 or 76
US History/US Govt/OK Hist/Econ			
6-12	74	17	72 or 76
Vocal Music			
PK-3	74	03	70
1-8	74	03	71
6-12	74	03	72
PK-12	74	03	73 or 75 or 76
Vocational Business Education			
6-12	74	40	72 or 76
Vocational Family and Consumer Sciences			
6-12	74	09	72 or 76
World History/Geography			
6-12	74	17	72 or 76

Psychometrist	74	34	73 or 75 or 76
Reading Specialist	74	15	73 or 75 or 76
School Counselor***	74	39	73 or 75 or 76
School Psychologist**	74	33	73 or 75 or 76
Speech-Language Pathologist*		35	
Advanced Certification Areas (with a current teacher certificate)			
Library-Media Specialist		38	
Psychometrist		34	
Reading Specialist		15	
School Counselor***		39	
School Psychologist**		33	
Speech-Language Pathologist*		35	
Administrator Certification Areas			
Elementary Principal		44 and 45	
Middle Level Principal		44 and 46	
Secondary Principal		44 and 47	
Superintendent		48	

***Candidates with a Certificate of Clinical Competence (CCC) for Speech Language Pathology are exempt from Oklahoma assessment requirements.**

****Candidates with National School Psychologists Certification (NSPC) are exempt from Oklahoma assessment requirements.**

*****Candidates with the Nationally Certified School Counselor (NCSC) credential are exempt from Oklahoma assessment requirements.**

TEST CODES

Test (OSAT)	Test Code
Advanced Mathematics	11
Agricultural Education	42
Art	02
Biological Sciences	10
Blind/Visual Impairment	28
Business Education	40
Chemistry	04
Deaf/Hard of Hearing	30
Driver/Safety Education	36
Early Childhood Education	05
Earth Science	08
Elementary Education	06 or

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Subtest – Red/Lang Arts/Soc Studies (50) Subtest – Math/Science/Health/Fine Arts (51)	50 & 51
English	07
Family and Consumer Sciences	09
French	20
German	21
Instrumental/General Music	01
Journalism	37
Latin	23
Marketing Education	41
Middle Level English	24
Middle Level/Intermediate Mathematics	25
Middle Level Science	26
Middle Level Social Studies	27
Mild-Moderate Disabilities	29
Physical Education/Health/Safety	12
Physical Science	13
Physics	14
Psychology/Sociology	32
Russian	22
Severe-Profound/Multiple Disabilities	31
Spanish	19
Speech/Drama/Debate	16
Superintendent	48
Technology Education	43
US History/OK History/Government/Education	17
Vocal/General Music	03
Vocational Business Education	40
Vocational Family and Consumer Sciences	09
World History/Geography	18

Test (OSAT – Advanced Programs)	Test Code
Library-Media Specialist	38
Psychometrist	34
Reading Specialist	15
School Counselor	39
School Psychologist	33
Speech-Language Pathologist	35
Test (OSAT-Administrator)	Test Code
Principal Common Core	44
Elementary Principal Speciality Test	45
Middle Level Principal Speciality Test	46
Secondary Principal Speciality Test	47
Superintendent	48
Test (OGET)	Test Code
Oklahoma General Education Test	74
Test (OPTE)	Test Code
OPTE: Early Childhood (PK-3)	70
OPTE: Elementary/Middle Level (1-8 or 5-8)	71
OPTE: Middle Level/Secondary (6-12 or 5-8)	72
OPTE: PK-12	73
OPTE: PK-8	75
OPTE: 6-12	76

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TITLE 735. STATE TREASURER CHAPTER 80. UNCLAIMED PROPERTY

[OAR Docket #03-905]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

735:80-7-2 [AMENDED]

AUTHORITY:

State Treasurer, 62 O.S., §§ 517.1 - 517.7.

DATES:

Comment period:

February 3, 2003 through March 6, 2003

Public hearing:

March 6, 2003

Adoption:

March 7, 2003

Submitted to Governor:

March 12, 2003

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March 12, 2003

Submitted to Senate:

March 12, 2003

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April 24, 2003

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Failure to the Legislature to disapprove the rules resulted in approval on May 7, 2003

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May 7, 2003

Effective:

June 26, 2003

SUPERSEDED EMERGENCY ACTIONS:

na

INCORPORATIONS BY REFERENCE:

na

ANALYSIS:

The amendment to 735:80-7-2 will add a sentence to clarify the purpose and authority for requiring the disclosure of Social Security numbers and tax I.D. numbers. Death certificates will no longer be required for claiming property when a probate has been properly filed or completed. A provision will be amended which currently prevents a lawful owner of unclaimed mineral proceeds, to transfer the right to receive those proceeds to a purchaser or other transferee. Notice to the grantor will be provided by the grantor instead.

CONTACT PERSON:

Susan Bateman, Office of the State Treasurer, 2300 North Lincoln Boulevard, Room 217, Oklahoma City, Oklahoma 73105-4895, telephone number (405) 521-3191

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 12, 2003.

735:80-7-2. Proof of ownership

(a) Information required to prove ownership of unclaimed property may consist of a copy of the claimant's driver's license or other identification, a document proving Social Security or Federal Employer Number and, one or more of the documents itemized below. A document proving Social Security or Federal Employer Identification Number (or both) may be required to administer the State's tax laws. The OST Unclaimed Property Division will consider all documents submitted in making a reasonable assessment of whether a valid claim of ownership has been presented.

- (1) Copy of birth certificate(s);
 - (2) Copy of will(s);
 - (3) Copy of probate distribution(s);
 - (4) Copy of marriage certificate(s);
 - (5) Copy of divorce decree(s);
 - (6) Copy of documentation providing a connection with the reported address or business for the year cited as the "Date of last Transaction" in the holder's report;
 - (7) Copy of Letters Testamentary;
 - (8) Notarized copy of contract if a representative is claimant;
 - (9) Copy of guardianship or trust agreement;
 - (10) A letter from the holder authorizing release of funds reported and remitted by the holder;
 - (11) Proof of payment by holder to owner in the form of:
 - (A) A copy of front and back of a canceled check; or
 - (B) List of documentation furnished in support of payment of claim; or
 - (C) Both of the above items A and B.
 - (12) Affidavit executed by an individual other than the claimant having knowledge of, and in support of, a claim when requested information or documentation is not available;
 - (13) Other documentation that may be used in support of the claim. This documentation may be an income tax return, adoption records, court records, CD's, stale dated checks, an affidavit of proof of death and heirship from a disinterested party, etc.
- (b) In addition to items set out in (a) of this Section, the documents described in this subsection needed to establish ownership may be requested:
- (1) Checking accounts: A check (blank or canceled) showing the account number for that bank, or a statement on that account which contains the account number;
 - (2) Savings account: A copy of the passbook, deposit slip, monthly statement, quarterly statement, or "1099 Int" Form issued by the bank, showing the account number or correspondence referencing the account number;
 - (3) Safe-Deposit box: A copy of the safe-deposit box rental receipt or correspondence referencing that rental;
 - (4) Wages: Copies of W-2 forms, 1099's, state income tax returns, federal income tax returns, or other tax records or correspondence relating to that employment;
 - (5) Stock and/or dividends: Copies of a stock certificate of the business entity reported, correspondence relating to that stock certificate or a statement from the broker showing purchase or sale of that stock;
 - (6) Bearer bonds and certificates of deposit: A copy of the record of purchase;
 - (7) Insurance: A copy of the policy, or correspondence relating to that policy by policy number;
 - (8) Mineral proceeds: One or more of the following as specified in the letter requesting documents:
 - (A) Mineral deed;
 - (B) Surface deed which includes mineral retained, sold, or purchased;
 - (C) Probate inventory;

- (D) Oil and gas lease;
 - (E) Purchase documents for an overriding royalty interest;
 - (F) Current Division Order;
 - (G) Certification of current pay status; or
 - (H) A letter from the holder authorizing release of funds reported and remitted by the holder.
- (9) Court Clerk funds: A copy of the court decree or court order for the case that was the source of the funds. (i.e., probate, condemnation, quiet title, divorce, child support, appearance bond, etc.)
- (10) Vendor checks: Copies of accounts receivable billing, invoices, bills of lading or correspondence with the holder reporting and remitting the funds that show a business relationship for each payment, or a statement that the funds are still considered to be due and owing on the account;
- (11) Property held for deceased owners: If the listed owner is deceased, ~~a copy of the death certificate and one of the following documents~~ is required:
- (A) For property valued at more than Ten Thousand Dollars (\$10,000.00), a certified copy of Letters of Administration or Letters Testamentary naming claimant as the personal representative of the listed owner, or a certified copy of the Decree of Distribution of the estate of the listed owner, determining claimant's entitlement to receive unclaimed property.
 - (B) For property valued at Ten Thousand Dollars (\$10,000.00) or less, a copy of the death certificate and a signed affidavit executed by the claimant, stating that:
 - (i) The claimant is entitled to receive unclaimed property;
 - (ii) The reason for entitlement to such property; i.e., exact relationship with the listed owner and the basis of the entitlement;
 - (iii) That there has been no probate of the estate of the deceased owner;
 - (iv) That no such probate is contemplated; and
 - (v) That claimant will indemnify the State for any loss, including attorney fees, should another claimant assert a prior right to the property.
 - (C) A copy of the death certificate and an Affidavit signed by the claimant or a person authorized to act in the claimant's legal capacity by a limited power of attorney which specifically grants authority to make the claim under 60 O.S. §674.2 will be accepted. [See: 60 O.S. §674.2]
- (12) Cashier's checks: Cashier's Checks shall be claimed by the payee as the owner unless the purchaser submits sufficient documentation to prove a superior claim. An indemnity bond may be required if, due to insufficient owner and property information, the claimant is unable to provide satisfactory proof of ownership of property.
- (13) Claims by heirfinders or agents of listed owner:

(A) If the claim is based on a contract with the owner or heir of the owner, the heirfinder shall provide:

- (i) A copy of the contract showing the percentage of the value of the funds or property charged for services (not to exceed 25%), names, current addresses, and social security numbers or Federal Employer Identification numbers of all parties to the contract; and
- (ii) An executed special power of attorney from the owner or heir of the owner, which specifically authorizes the person to make an unclaimed property claim under the Oklahoma Unclaimed Property Act, Title 60 O.S. §651 et seq. to file a claim on his or her behalf.

(B) The Unclaimed Property Division may contact the owner(s) or claimant(s) to make sure that the owner or the claimant is aware of the full amount of unclaimed property involved. The claim form(s) shall be signed by the owner(s) or claimant(s) or by a person duly authorized to make the claim on his or her behalf by special power of attorney which specifically authorizes the person to make the claim under the Oklahoma Unclaimed Property Act, Title 60 O.S. §651 et seq.

(C) A claim made by an heirfinder or an agent of a listed owner will require the same items of proof as would a claim made by the owner.

(14) Claims based on transfer of mineral interest:

(A) Where a mineral interest has been sold by the owner(s) or the heir(s), all monies ~~reported to OST~~ accrued prior to the date of delivery of deed, conveyance, or assignment which have been reported as unclaimed property or forced pooled monies will be paid to the grantor(s) - ~~Monies and monies~~ reported after the date of delivery of deed, conveyance, or assignment will be paid to the grantee(s). ~~If the owner(s) is deceased and the mineral interest has been sold by the heir(s), the unclaimed monies will be distributed to the heir(s) in accordance with subsection (b)(11) of this Section except: -~~

(i) Monies accrued prior to the date of delivery of deed, conveyance, or assignment which have been reported will be paid to the grantee if the deed, conveyance, or assignment clearly states grantee is entitled to such monies;

(ii) The grantee provides an affidavit setting forth:

(I) The reasons grantee is entitled to monies accrued prior to the date of delivery of deed, conveyance, or assignment;

(II) Reasonable notice has been given to grantor at his or her last known address of the existence of monies reported which accrued prior to the date of delivery of deed, conveyance, or assignment;

(III) The name and last known of address of grantor; and

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(iii) Grantee provides evidence that reasonable notice has been given to grantor at his or her last known address, advising grantor that monies attributable to the conveyed mineral interest have been reported, which accrued prior to the date of delivery of the deed, conveyance, or assignment, and the grantor may contact OST to obtain further information concerning said monies.

(B) If the owner(s) is deceased and the heir(s) is entitled to monies accrued prior to date of delivery of deed, conveyance, or assignment, the unclaimed monies will be distributed to the heir(s) in accordance with subsection (b)(11) of this Section.

(C) The purchaser of the mineral interest will provide current mailing address(es) of the owner(s) or the heir(s) so that OST can pay all monies reported prior to the date of delivery of the deed.

[OAR Docket #03-905; filed 5-14-03]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 10. SPORT FISHING RULES

[OAR Docket #03-931]

RULEMAKING ACTION:

PERMANENT Final Adoption

RULES:

Subchapter 5. Area Restrictions
800:10-5-2. Department fishing areas [AMENDED]

STATUTORY AUTHORITY:

Title 29 O.S., Section 3-103, 4-138 (HB 2374) and 5-401; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:

Comment period:

December 2, 2002 through January 3, 2003

Public Hearings:

No public hearing were held or requested. No comments were received.

Adoption:

March 3, 2003

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March 17, 2003

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Failure of the Legislature to disapprove the rules resulted in approval on May 1, 2003.

Final adoption:

May 1, 2003

Effective date:

July 1, 2003

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATED BY REFERENCE:

n/a

ANALYSIS:

As authorized in House Bill 2374, this rule will create the "Blue River Conservation Passport", establish the annual fee at One Dollar (\$1.00) above the cost of an annual resident fishing license. The public will benefit from continued upkeep and maintenance of the area. The "Passport" could also

reduce problems with vandalism and destruction associated with access to the area at no charge.

CONTACT PERSON:

Kim Erickson, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-3721. Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003.

SUBCHAPTER 5. AREA RESTRICTIONS

800:10-5-2. Department fishing areas

The following rules and restrictions govern public use on all Department Fishing Areas, including:

(1) **Department owned lakes and access areas.** The following rules apply:

(A) Camping is permitted, but limited to three (3) days duration at all areas, except at the Kiamichi River Access Area where no overnight camping is permitted and at Lakes Watonga, Carl Etling, Wayne Wallace, and the Illinois River Access Areas where camping shall be limited to fourteen (14) consecutive days. Camping is permitted only in designated camping areas.

(B) Boats and motors are permitted. All boats and motors must comply with existing state boat regulations and boat operators must obey Oklahoma State Boat Laws. All boats must be operated at no-wake speed (six '6' miles per hour or less) and may not be left on the water or the areas longer than the limit on camping.

(C) Water skiing is prohibited.

(D) Disposal of trash, refuse and debris is prohibited, except in designated trash containers. This includes organic and inorganic materials.

(E) Commercial concessions and private developments on Department property are prohibited. Soliciting, advertising or promoting any commercial or private activity is prohibited. The use of these areas for any commercial operation in any way is prohibited.

(F) Dogs must be kept on a leash at all times, except when used to hunt with, during legal open hunting seasons on those areas where hunting is permitted.

(G) Boat houses, ramps, docks and other facilities may not be constructed on Department property without specific approval of the Oklahoma Wildlife Conservation Commission.

(H) It shall be unlawful to drive, occupy or park any motor driven vehicle, including automobiles, trucks, mini bikes, motorcycles, etc., except on maintained

roads, (unless posted as "no parking zones"), designated parking areas, and designated camping areas. It shall be unlawful to operate any vehicle in a manner to create a public nuisance or to park in a "no parking zone." Operators must be licensed drivers.

(I) Cutting or defacing of trees and vegetation shall be prohibited. Removal of any vegetation, soil, rocks, water or minerals is prohibited except under written approval of the Department Director.

(J) Vandalism, theft, and damage to State property is prohibited.

(K) No person shall use threatening, abusive, or indecent language, participate in a disorder assemblage, nor publicly appear nude or intoxicated on any lands owned or managed by the Oklahoma Department of Wildlife Conservation.

(L) After 10:00 p.m., and until 5:00 a.m., all Department fishing areas will be restricted to fishing and fishing related activities only, and hunting if permitted by Commission.

(M) Swimming is not permitted unless a designated swimming area is established by the Wildlife Conservation Commission.

(N) All forms of hunting are permitted on Lakes Vincent, Hall, Jap Beaver, Burtshi, Dahlgren, Nanih Waiya, Ozzie Cobb, Schooler, Chambers, American Horse, and Vanderwork during open hunting seasons which occur during the period of September 1 through March 1, including migratory bird seasons. Hunting is restricted to shotguns, long bow and arrows only, except rifles are also permitted for the taking of deer on Lake Vincent area (area within boundary fence) during the deer gun season. Hunting and shooting other than that provided above is prohibited. The Director may designate "closed areas" for purposes of safety and/or security.

(O) Fishing is permitted in accordance with provisions provided in OAC 800:10, Subchapter 1. The Director may designate "closed areas" for purposes of safety and/or security.

(P) No person may fish with more than two (2) poles, except during trout seasons at "Designated Trout Areas" where no person may fish with more than one (1) pole.

(Q) Trotlines, throwlines, limblines, juglines, nets, seines, yo-yo's, spearguns, and the taking of any fish by noodling and the taking of bait minnows by any method is prohibited, except cast nets may be used to take bait for personal use at Lake Carl Etling.

(2) Blue River Public Fishing and Hunting Area.

The following rules apply:

(A) Hunting shall be permitted during regular hunting seasons and is restricted to shotgun and long bow and arrow only. No other use or other firearms are permitted.

(B) Blue River PFHA is closed to all except emergency traffic from 10:00 p.m. to 6:00 a.m. throughout the year.

(C) Fishing is permitted in accordance with provisions provided in OAC 800:10, Subchapter 1.

(D) Trotlines, throwlines, noodling, limblines, spearguns, juglines, nets, seines, and yo-yo's are prohibited throughout the year.

(E) No person may fish with more than two (2) poles, except only one (1) pole and line or rod and reel is permitted during the designated trout season.

(F) The following special rules pertain to the Carl R. and Ruth Walker Landrum Wilderness and Plaster Wildlife Management Unit:

(i) no camping

(ii) areas closed from 10:00 p.m. to 6:00 a.m.

(iii) no swimming

(iv) walk-in access only (except where wheelchair access is provided).

(G) The Blue River Campground Area is closed to swimming, effective January 1, 1990, unless suitable agreement can be reached between the Department and an acceptable second party who would be responsible for managing a designated swimming area for a three month season, annually. The Department will assume no cost or liability for development and operation of a designated swimming area.

(H) Effective July 1, 2000 the following rules apply to camping at the Blue River Campground Area:

(i) Camping is restricted to 14 days in a 30 consecutive day period. The Area Manager may grant extensions by issuing a permit for camping beyond the 14 day limit. Such extensions shall be based upon degree of area use, anticipated weekend or holiday occupancy and recreation season. Extensions shall be requested 48 hours prior to the requested date of the extension.

(ii) Camping is permitted only in designated camping areas.

(iii) No person shall leave a vehicle, camper, tent or any personal property unattended for more than a 48-hour period without approval of the Area Manager.

(iv) If property must be removed, it will be at owners expense and liability. The unauthorized placement of camping equipment or other items on a campsite and/or personal appearance without overnight occupancy at a campsite for the purpose of reserving a designated campsite for future occupancy is prohibited.

(I) Each person, not otherwise exempt by statute, entering or using the Blue River Public Fishing and Hunting Area shall be required to have a "Blue River Conservation Passport" in their possession while in the area. The Wildlife Commission hereby establishes and assesses an annual fee for the Passport which shall be one dollar (\$1.00) above the cost of an annual resident fishing license. No fishing or hunting

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privileges of any kind are provided or implied with the Passport.

[OAR Docket #03-931; filed 5-19-03]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 25. WILDLIFE RULES

[OAR Docket #03-928]

RULEMAKING ACTION:

PERMANENT Final Adoption

RULES:

Subchapter 3. Hunting on Corps of Engineers Lands
800:25-3-1. [AMENDED]
800:25-3-2. [AMENDED]
800:25-3-3. [AMENDED]
800:25-3-5. [AMENDED]
800:25-3-6. [REVOKED]
Subchapter 7. General Hunting Seasons
Part 1. General Provisions
800:25-7-3. [AMENDED]
Part 13. Deer
800:25-7-52. [AMENDED]
800:25-7-55. [NEW]
Part 14. Elk
800:25-7-57. [AMENDED]
Part 18. Management of Private Lands
800:25-7-75. [AMENDED]
Part 19. Seasons on Areas Owned or Managed by the Oklahoma
Department of Wildlife Conservation and the U.S. Fish and Wildlife
Service
800:25-7-142. [AMENDED]
Subchapter 9. Controlled Hunts
Part 1. Guidelines
800:25-9-3. [AMENDED]
800:25-9-5. [AMENDED]
Subchapter 26. Scientific Collectors Permits [NEW]
800:25-26-1. [NEW]
800:25-26-2. [NEW]
800:25-26-3. [NEW]
800:25-26-4. [NEW]
Subchapter 29. Oklahoma Deer Management Assistance Program
800:25-29-2. [AMENDED]
800:25-29-3. [AMENDED]
Subchapter 30. Wildlife Depredation and Agricultural Crops
800:25-30-5. [AMENDED]

AUTHORITY:

Title 29 O.S., Section 3-103 and 5-401; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:

Comment period:

December 2, 2002 through January 17, 2003

Public Hearings:

Public Hearings were held January 13 - 16, 2003 in the following cities: McAlester, Lawton, Ada, Enid, Idabel, Oklahoma City, Okmulgee, Tulsa, Canute, and Woodward.

Adoption:

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March 7, 2003

Submitted to Senate:

March 7, 2003

Gubernatorial approval:

April 21, 2003

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 1, 2003.

Final adoption:

May 1, 2003

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July 1, 2003

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATED BY REFERENCE:

n/a

ANALYSIS:

The proposed rule amendments are designed to better manage the various wildlife species, increase hunting opportunity on COE property and several Wildlife Management Areas, improve hunter safety, create a three day special use permit for nonhunting activities, and simplify requirements for checking elk.

CONTACT PERSON:

Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-2739. Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003.

SUBCHAPTER 3. HUNTING ON CORPS OF ENGINEERS LANDS

800:25-3-1. Purpose

This Subchapter provides for certain types of hunting during legal open seasons on U.S. Army Corps of Engineers owned and managed lands. Corps of Engineers lands open to hunting, but not licensed to the Oklahoma Department of Wildlife Conservation are open during the dates and under the same regulations as Department managed lands at the respective projects unless otherwise provided.

800:25-3-2. Areas open to shotgun with pellets and bow and arrow only

The following Corps of Engineers areas are open to shotgun with pellets and bow and arrow only.

- (1) Canton Lake: A 80-acre unit above State Highway 58A in the Sandy Cove Area.
- (2) Keystone Lake:
 - (A) A 460-acre unit including land north and south of the Cowskin North Recreation Area.
 - (B) A 200-acre unit on the west side of the north end of the U.S. Highway 64 bridge.
 - (C) A 530-acre unit north of the New Mannford Ramp area.
 - (D) A 480-acre unit east of the Cimarron Park area.
 - (E) A 100-acre unit north and south of the Pawnee Cove Access Point.
 - (F) A 450-acre unit south and east of the town of Prue.
 - (G) A 200-acre unit in the Old Mannford Ramp area.

- (H) A 280-acre unit on the south side of the road ending at Washington Irving North.
- (I) A 120-acre unit west and south of the Sinnett Cemetery and south of the old Keystone road.
- (J) A 200-acre unit south of Highway 51 on Bakers Branch.
- (3) Hugo Lake: except archery only during all deer seasons.
- (A) A 2373-acre unit in the Kiamichi Park Area.
- (B) A 418-acre unit in the Salt Creek Area.
- (C) A 478-acre unit in the Wilson Point Area.
- (D) A 481-acre unit in the Virgil Point Area.
- (E) A 280-acre unit in the Sawyer Bluff Area.
- (F) A 60-acre unit in the Rattan Landing Area.
- (G) A 500-acre unit in the embankment area above Hugo Dam.
- (4) Tenkiller Ferry Lake:
- (A) A 110-acre unit north of the asphalt road and east of OK Highway ~~100~~10A.
- (B) A 310-acre unit south and east of OK highway 100.
- (5) Copan Lake: except archery only during all deer seasons.
- (A) A 650-acre unit below the dam.
- (B) A 100-acre unit east and southeast of Copan Point Park.
- (C) Three islands north of Washington Cove Park.
- (6) Fort Gibson Lake:
- (A) A 300-acre unit on the north side of North Bay.
- (B) A 800-acre unit on the south side of the Chouteau Creek, starting at U.S. highway 69 and running east and south to State Highway 33.
- (C) A 320-acre unit across the lake from the Chouteau Bend Recreation Area.
- (D) A 480-acre unit on the west side of Mallard Bay.
- (E) A 432-acre unit lying east of the Junction of Snug Harbor road and Whitehorn Cove road.
- (F) A 424-acre unit in Section 13 of the Blue Bill Point housing addition.
- (G) A 160-acre unit west of the town of Murphy.
- (H) A 650-acre unit on Pryor Creek beginning on the east side of State Highway 69 in sections 29, 30 & 31.
- (I) A 190-acre unit in the south $\frac{1}{2}$ of section 12, north of the Blue Bill Recreation Area.
- (J) A 120-acre unit west of the town of Hulbert.
- (7) Sardis:
- (A) A 950-acre unit in the Potato Hills Area.
- (B) A 100-acre unit in the Sardis Cove Area.
- (8) Webbers Falls Lock and Dam:
- (A) A 37-acre unit on the peninsula north of the lock and dam.
- (B) A 150-acre unit in the Hopewell Park Area.
- (C) A 50-acre unit in the Arrowhead Park Area, only open for hunting December I through February 28.
- (D) A 150-acre unit in the Brewer's Bend Area, only open for hunting December 1 through February 28.
- (E) A 50-acre unit south of the Spaniard Creek Area.
- (F) A 60-acre unit off lock view access road and south of the project office.
- (G) A 400-acre unit in the Three Forks Area.
- (9) Lake Texoma:
- (A) A 355-acre unit in the Bums Run Area.
- (B) A 457-acre unit below Denison Dam.
- (C) A 60-acre unit in the Willow Springs Area.
- (D) A 150-acre unit in the Kansas Creek Area.
- (E) A 100-acre unit on the north side of Alberta Creek.
- (F) A 110-acre unit on the Limestone Creek Area.
- (G) A 250-acre unit on the Treasure Island, North Island Group.
- (H) A 500-acre unit southwest of McLaughlin Creek.
- (I) A 110-acre unit in the Washita Point Area.
- (J) A 1200-acre unit north of Newberry Creek.
- (K) A 300-acre unit south of the Butcher Pen Area.
- (L) A 800-acre unit on either side of highway 70 on the east side of the lake.
- (M) A 1,000-acre unit in the Lakeside area.
- (N) A 208-acre unit west of Platter.
- (10) Kaw Lake:
- (A) A 280-acre unit in the Traders Bend Area.
- (B) A 320-acre unit in the Sarge Creek Cove Area.
- (C) A 220-acre unit in the Burbank Landing Area.
- (D) A 110-acre unit between Sandy Park Swim Beach and Osage Cove.
- (E) A 100-acre unit in the Bear Creek Cove, open for hunting only from 15 September through 15 February.
- (11) Eufaula Lake: Open for archery 1 October through 28 February, open for shotgun with pellets from 1 November through 28 February.
- (A) A 320-acre unit in the Brooken Cove Area.
- (B) A 137-acre unit in the highway 31 Landing Area.
- (C) A 98-acre unit in Holiday Cove Area.
- (D) A 100-acre unit below the dam on the north side of the river.
- (E) A 200-acre unit in the Juniper Creek Area.
- (F) A 600-acre unit know as Duchess Creek Island, except restricted to shotgun with slugs only during deer gun season.
- (G) A 500-acre unit in the Bunny Creek Area.
- (H) A 400-acre unit in the Gentry Creek Area.
- (I) A 400-acre unit in the Belle Starr North Area.
- (12) Chouteau Lock and Dam (L&D 17): A 150-acre unit in the Tullahassee Loop Area.
- (13) Hulah Lake:
- (A) A 200-acre unit in the Turkey Creek Point Area.
- (B) A 60-acre unit below Hulah Dam.

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- (C) A 375-acre unit in the Caney Bend Area.
- (14) Wister Lake: A 400-acre unit east of the uncontrolled spillway and Glendale Dike.
- (15) Oologah Lake:
- (A) A 800-acre unit on the east side of Blue Creek Park.
 - (B) A 180 acre-unit on the south side of Spencer Creek Park.
 - (C) A 120-acre unit east of Double Creek Park.
 - (D) A 640-acre island, known as Goose Island, southeast of Sunnyside Ramp.
- (16) Waurika Lake: All lands presently designated as open to public hunting, except fall turkey hunting is archery only. Spring turkey hunting is prohibited.

800:25-3-3. Areas open to archery only

The following areas are open to archery only:

- (1) Birch Lake: A 450-acre unit in the Birch cove, Outlet Park and Twin cove areas.
- (2) Kaw Lake:
- (A) A 400-acre unit in the Washunga Bay Area.
 - (B) A 600-acre unit in the McFadden Cove Area and below the dam embankment access road.
 - (C) A 236-acre unit in the Osage cove Area open from December 1 to December 31.
 - (D) A 60-acre unit south of Kaw City and west of Pioneer Park.
- (3) Fort Gibson:
- (A) A 515-acre unit on the south side of Mallard Bay.
 - (B) A 360-acre unit on the north side of the mouth of North Bay.
 - (C) A 50-acre unit south of Jackson Bay Area.
 - (D) A ~~400~~150-acre area on the northeast end of Ranger Creek.
 - ~~(E) A 120-acre unit on the south side of North Bay and southwest of Wagoner Park.~~
 - (FE) A 488-acre unit in Section 34 southwest of Whitehorn Cove on the south side of Whitehorn Cove Concession, open Dec 1 - 31 only.
 - ~~(GF) A 150-acre unit in the NW 1/4 of Section 29, T18N, R19E.~~
 - (HG) A 320-acre unit South of North Bay and North of Wagoner City Park.
 - (HH) A 140-acre unit North of Long Bay and South of Wagoner City Park.
 - (I) A 70-acre area on the upper end of Pryor Creek adjacent to the east side of State Highway 69.
 - (J) A 36-acre area in Sec 6, T16N, R20E.
 - (K) A 77-acre area on the north shore of Ranger Creek.
 - (L) A 166-acre area west of Taylor Ferry South park in Sec 20 & 21, T17N, R19E.
- (4) Copan Lake:
- (A) A 50-acre unit north of Copan Point Park.
 - (B) A 50-acre unit north of the Post Oak area.

- (C) A 5-acre unit west of Post Oak Park between the old and new Hwy 10.
- (D) A 340-acre unit north of the Washington Cove Park.
- (5) Heyburn Lake: A 120-acre unit on the south side of the Dam Site Area and west of the outlet channel.
- (6) Skiatook Lake:
- (A) A 138-acre unit in the Osage Park Area.
 - (B) A 200-acre unit area below Skiatook Dam extending to the south to Tall Chief Cove Area.
- (7) Hulah Lake: A 40-acre unit south of the Hulah State Park office.
- (8) Eufaula Lake: October 1 - February 28:
- (A) A 150-acre unit in Gentry Creek.
 - ~~(B) A 200-acre unit in the Belle Starr North Area.~~
 - ~~(CB) A 435-acre unit in the Belle Starr South Recreation Area from December 1 - February 28.~~
- (9) Pine Creek Lake:
- ~~(A) A 500-acre unit north of Little River Park.~~ A 200-acre unit north of Highway 3 and south of the old highway.
 - (B) A 120-acre unit west of Little River Park.
 - ~~(C) A 530-acre unit southwest of Pine Creek Cove.~~
 - ~~(D) A 280-acre unit below the dam.~~
- (10) Fort Supply: A 183-acre unit in the south portion of Fort Supply Park.

800:25-3-5. Areas open to all firearms other than centerfire

The following areas are open to all legal firearms other than centerfire rifles and handguns:

- (1) Tenkiller Lake:
- (A) A 320-acre unit between Tenkiller State Park and Cato Creek Landing public use area.
 - (B) A 300-acre unit southeast of Etta Bend.
- (2) Robert S. Kerr Lock and Dam (L&D 15):
- (A) A 90-acre unit in Little SanBois Creek Public Use Area.
 - (B) A 160-acre unit on the eastern portion of Cowlington Point Public Use Area.
 - (C) A 200-acre unit on the eastern portion of Short Mountain Cove Public Use Area.
 - (D) A 160-acre unit south of the Carters Landing Area.
 - (E) A 135-acre unit in the Applegate Cove Area.
- (3) Chouteau L&D 17:
- (A) All lands from U.S. Hwy 51 north to Newt Graham L&D 18.
 - (B) All lands from the MD&T Railroad below Lock 17 north to Hwy 69 on the east side of the Verdigris River, except the area from 600 feet above and below Lock 17.
 - (C) All lands from 600 feet below Chouteau Dam downstream to the Muskogee Turnpike on the west side of the Verdigris River.

800:25-3-6. Areas open to firearms, other than centerfire rifles [REVOKED]

~~The following area is open to all legal firearms, other than centerfire rifles: A 25-acre area on the south side of Robert S. Kerr dam, downstream to old Hwy 59.~~

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 1. GENERAL PROVISIONS

800:25-7-3. General provisions

(a) Any person hunting any wildlife in open areas during the deer gun, deer primitive, elk or antelope season with a shotgun and rifled slug, or any rifle or handgun larger than a .22 caliber long rifle, must possess a valid deer, elk or antelope license appropriate for that season unless otherwise exempt. Any person hunting feral hogs in open areas during the deer gun, deer primitive, elk or antelope season with a shotgun and rifled slug, or any rifle or handgun larger than a .22 caliber rimfire, must possess a filled or unfilled deer, elk or antelope license appropriate for that season unless otherwise exempt.

(b) No person while in the field may possess or attempt to harvest any wildlife, except waterfowl and crane, with shotgun utilizing shot larger than conventional BB.

(c) ~~All deer gun and primitive firearms season and deer gun seasons~~ hunters must conspicuously wear both a head covering and an outer garment above the waistline, both totaling 500 square inches or more of clothing, both consisting of daylight fluorescent orange color totaling not less than 400 square inches [Title 29 O.S., Section 5-205, Part A]. All other hunters, except those hunting waterfowl, crow or crane, or while hunting furbearing animals at night must wear either a head covering or upper garment of fluorescent orange clothing during the ~~deer gun and~~ deer primitive firearms season and deer gun seasons. Persons hunting prairie chickens on John Dahl Wildlife Management Area are exempt.

(d) For purposes of pheasant, turkey and deer regulations, "final destination" shall be the hunter's residence or place of consumption.

(e) No person may possess any game bird, animal or other wildlife, or portions thereof that have been taken by another person unless such game bird, animal or other wildlife, contain information giving the taker's name, address, license number, date taken and the number and kind of game bird, animal or wildlife. In addition, information on deer and turkey must include location of the check station where checked. The person's name and address receiving said wildlife must also appear on the written information.

(f) No person shall concentrate, drive, molest, hunt, take, capture or kill; or attempt to take any wildlife by the aid of any fire or smoke whether man-made or natural.

(g) No person may hunt, chase, capture, shoot at, wound or kill any bear, moose or Rocky Mountain bighorn sheep, except as otherwise provided by statute or Commission rule.

(h) Private landowner regulations regarding any items covered by these rules may be more restrictive, but not less restrictive than these rules.

(i) Dogs may be used in taking all game species in these rules except deer, elk, antelope and turkey.

(j) Except as otherwise provided for by law or Commission rule, nothing shall prohibit the year round pursuit of game, which may be lawfully hunted with the use of hunting dogs, for dog training or sport only. However unless otherwise provided, no person in pursuit of game with hunting dogs outside of the regular harvest season shall have in their possession the means to harvest such game.

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 13. DEER

800:25-7-52. Deer - primitive firearms (muzzleloading)

The following hunting dates, open areas, bag limits and legal means of taking apply to deer hunting with primitive firearms:

(1) **Dates.** The dates for the deer primitive firearms seasons shall be the fourth Saturday in October continuing nine days through Sunday.

(2) **Open areas.** The season is open statewide.

(3) **Bag limit.** The bag limit shall be one antlered deer and on designated days and areas, two antlerless deer. Antlerless areas and days will be determined annually and published in the Hunting Regulation brochure. No more than one antlered and two antlerless deer may be taken, and only with the appropriate tags. A separate antlerless tag is required to hunt for each antlerless deer on all designated days and in all designated areas, except an unfilled buck tag may be used to harvest an antlerless deer in designated areas on the last day of the primitive season.

(4) **Legal means of taking.** The legal means of taking deer with primitive firearms shall be as follows:

(A) Muzzleloading firearms forty caliber or larger fired by flintlock or percussion cap with single slug or ball. Smoothbore muzzleloading shotguns of 20 gauge or larger firing a single projectile are also legal.

(B) Metallic or optical sights are permitted.

(C) Black powder or equivalent only.

(D) Black powder firearms loaded from the breech are illegal.

(E) Muzzleloading pistols (single shot or revolver) with characteristics as described for firearms are permissible, ~~as a secondary firearm, but may be used only for killing a downed animal.~~

(F) Archery equipment described as legal for the deer archery season may be used during the primitive firearms season. The hunter shall have the option of hunting with a primitive tag or an archery tag. If hunting with a primitive tag, the bag limit is one antlered deer, except as otherwise provided.

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(G) Persons hunting with archery equipment with either archery or primitive tags are required to wear either the upper garment or head covering as described in 800:25-7-3(c).

800:25-7-55. Deer-Youth Gun Season

(a) Age Requirements. All youth under 18 years of age on the first day of the calendar year and eligible to purchase an antlerless youth deer gun permit. All participants are required to be accompanied by an adult, 18 years or older, who would be a nonhunting partner. Nonhunting partner does not need a hunting license.

(b) Dates. The dates for the youth season shall be the 3rd Friday, Saturday and Sunday in October.

(c) Open Areas. The season is open statewide.

(d) Bag Limit. One (1) antlerless deer. An unfilled antlerless youth deer gun permit shall be valid during the regular deer gun season in designated antlerless zones.

(e) Legal means of taking. All rifles (conventional or muzzleloader), handguns, shotguns or bows legal during the deer gun season shall also be legal during the youth deer season.

PART 14. ELK

800:25-7-57. Dates, open areas, bag limit and hunting hours

The following dates, open areas, bag limit and hunting hours apply to elk hunting:

(1) **Dates.** Hunting dates will be established by the Oklahoma Wildlife Conservation Commission and will be published in the Oklahoma Hunting Regulation Brochure.

(2) **Open areas.** The season is open only on private land in Caddo, Comanche and Kiowa Counties.

(3) **Bag limit.** The bag limit is one elk. Antler and sex restrictions will be established by the Oklahoma Wildlife Conservation Commission and will be published in the Oklahoma Hunting Regulation Brochure.

(4) **Hunting hours.** The hunting hours are the same as those established for the deer gun season.

(5) **Tagging and checking.** The following provisions apply to the tagging and checking of elk:

(A) Persons taking an elk shall securely attach their name and license number immediately to the carcass.

(B) Before the elk is transported from the hunt area, all elk must be checked at the locations listed in the Oklahoma Hunting Regulation Brochure.

(C) Evidence of sex (head) must not be removed from the carcass until the carcass has been checked. However, carcasses may be checked in quartered with the sex organs naturally attached and head accompanying the carcass. Elk tags must remain with the carcass through processing and/or storage at commercial processing or storage facilities.

PART 18. MANAGEMENT OF PRIVATE LANDS

800:25-7-75. General provisions

The following general provisions apply to privately owned lands that are managed by the Oklahoma Department of Wildlife Conservation.

(1) *An annual Special Use Permit (Access Permit) of \$15.00 plus \$1.00 vendor fee for resident and \$24.00 plus \$1.00 vendor fee for nonresident will be required of all persons who on or after January 1, 1997, hunt, fish or otherwise use private lands in 4,000 acre blocks or larger leased an/or administered by the Wildlife Department unless otherwise provided*

(2) *Legal residents of Oklahoma who are under 18 years of age on the first day of the current calendar year or are 64 years of age or older shall be exempt from the Special Use Permit (Access Permit) requirements.*

(3) *A Three(3) Day Special Use Permit of \$4.50 plus \$.50 vendor fee for residents is available to allow residents to use the private land administered by the Department of Wildlife Conservation for non-hunting or non-fishing related activities unless exempt. [Oklahoma Statute as Section 4-136 of Title 29]*

PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

800:25-7-142. Sequoyah NWR

The following hunting and trapping seasons apply to the Sequoyah NWR: Unless otherwise provided, hunting is permitted with shotguns using federally approved nontoxic shot in designated areas on Saturdays, Sundays, Mondays and Tuesdays only. Contact refuge for special restrictions.

(1) Quail: Same as statewide season dates, except ~~closed during deer gun season.~~ closes January 31.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Closed season.

(B) Gun: Closed season.

(5) Turkey - Spring: Closed season.

(6) Squirrel: Same as statewide season dates, except opens September 1.

(7) Rabbit: Opens same as statewide season dates ~~and closes the last day of the waterfowl season.~~ except closes January 31.

(8) Crow: Closed season.

(9) Dove: Same as statewide season dates.

(10) Rail ~~and gallinule~~: Same as statewide season dates.

(11) Common snipe: Same as statewide season dates.

(12) Woodcock: Same as statewide season dates.

(13) Deer - archery: Closed season.

(14) Deer - primitive firearms: Controlled Hunts only.

(15) Deer - gun: Closed season.

(16) Trapping: Closed season.

(17) Pursuit with hounds: Closed season.

(18) Predator/furbearer calling: Closed season.

- (19) Waterfowl: Contact refuge for special restrictions.

SUBCHAPTER 9. CONTROLLED HUNTS

PART 1. GUIDELINES

800:25-9-3. Applications and instructions

The following is the application and instructions for participating in controlled hunts:

- (1) The number of names allowed per application will be determined for each hunt annually.
- (2) Those persons who are drawn for elk hunts in 1985 or any year thereafter shall be disqualified from participating in elk hunts for a period of ten (10) years from the year of selection. Those persons who are drawn for antelope hunts in 1992 and any year thereafter shall be disqualified from participating in antelope hunts for a period of ten (10) years from the year of selection. Those persons drawn for an elk hunt or antelope hunt in 2002 ~~and/or~~ any year thereafter shall be disqualified from participating in the elk or antelope hunt for the remainder of their lifetime.
- (3) Minimum age for participating in controlled hunts on Wildlife Management Areas is 14 years (except special youth hunts) with Hunter Safety Certification. Minimum age shall be 18 years for hunts on the McAlester AAP and Wichita Mountains NWR. Proof of certification and age are required at check-in upon entering hunt areas.
- (4) Applications and instructions for permits will be available annually from hunting and fishing license dealers throughout the state, or by writing the Oklahoma Department of Wildlife Conservation, P.O. Box 53465, Oklahoma City, Oklahoma 73152.
- (5) Applicants must provide the personal data requested and specifying the category and hunt numbers desired.
- (6) Persons may enter each category once. Any applicants appearing on more than one application in any one category may be disqualified from all current hunts and may be barred from participating in all hunt drawings for a period of five (5) years.
- (7) Nonambulatory hunt applicants must provide certification of a medical doctor that the applicant has single or double amputation of legs or have paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord.

800:25-9-5. Permit and fees

The following is the permit process and fee information for participation in controlled hunts:

- (1) Applicants must send a \$5.00 application fee with the application to be entered in controlled hunt drawings. The fee is nonrefundable and there are no exemptions.
- (2) An internet access fee may also be applied.

(3) Successful applicants in a controlled hunt must obtain the appropriate a special \$7.00 hunt permit, nonresidents \$50.00, in addition to any deer, antelope or elk licenses, in addition, nonresidents must obtain a \$50.00 special hunt permit. tags. Resident lifetime license holders are exempt from the \$7.00 special hunt permit.

(4) Successful hunt applicants must obtain their permits within two weeks of notification of selection by sending a money order or certified check for the required amount to the Oklahoma City office of the Department of Wildlife Conservation. Envelopes will be provided each successful applicant for this purpose. No personal checks or cash will be accepted by mail. Applicants wishing to claim their permits at the Oklahoma City office in person may use cash. Those applicants selected for antelope hunts must purchase their tags and permit at the designated check-in site. Oklahoma Department of Wildlife Conservation issued resident lifetime hunting or lifetime combination license holder will not be charged a fee for their permits or tags, however, Federal fees are required to be paid.

(5) Both residents and nonresidents participating in controlled hunts on the Deep Fork NWR, Little River NWR, Tishomingo National Wildlife Refuge, Sequoyah NWR, Washita NWR, Wichita Mountains National Wildlife Refuge, Salt Plains National Wildlife Refuge and McAlester Army Ammunition Plant will be required to pay a Federal Area User Fee as established by the respective Federal area. Controlled youth hunt participants at Washita NWR are exempt from the user fee.

(6) Prior to applying for Oklahoma Department of Wildlife Conservation controlled hunts, applicants must purchase an Oklahoma hunting license during the current calendar year of the controlled hunt drawings.

(7) Applicants must provide personal data requested and specify the category and hunt number desired.

SUBCHAPTER 26. SCIENTIFIC COLLECTOR PERMITS

800:25-26-1. Purpose

The purpose of this Subchapter is to establish application procedures for obtaining a permit for the collection of fish and wildlife species for scientific purposes.

800:25-26-2. Application and fees

(a) Anyone sampling or collecting fish or wildlife, or their nests or eggs for scientific purposes, must first have authorization from the Department. A fee will be charged to cover the costs of processing and handling the issuance of the permit. The issuance of a scientific collector permit shall constitute written authority from the Department for such collection activities.

(b) The following are the procedures for obtaining a scientific collector permit

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- (1) Applications may be obtained by contacting the Oklahoma Department of Wildlife Conservation at P.O. Box 53465, Oklahoma City, 73152 or by appearance at Department Headquarters, 1801 N. Lincoln Blvd.
- (2) All permits issued will be charged a five dollar (\$5.00) fee.
- (3) The application must be accompanied by a letter of recommendation from at least one well-known scientist, or from any well-known scientific institution, who will vouch for the applicant's integrity and character. The letter must contain a brief statement about the purpose of the project.
- (4) Permits expire at the end of each calendar year. A new application must be filed each time an applicant applies for a permit. A letter of recommendation may be required for each application.

800:25-26-3. Use

- (a) A copy of the approved application must be carried with the collector permit when sampling or collecting in the field.
- (b) The permit holder must notify the Law Enforcement Division at least twenty-four hours prior to the time of sampling or collecting in any county. Notification must be made prior to each trip, unless prior arrangements to the contrary have been made with the Game Warden(s) in the counties involved.
- (c) Instructors in charge of educational classes may take classes into the field and allow students to collect in their presence under their permit. If students collect or sample fish or wildlife when the instructor is not present, they must have their own permit. Students collecting or sampling in the field, under the permit of an instructor, and in the presence of an instructor, are not required to have a hunting or fishing license, or individual permit except as provided in (5)
- (d) Except as stipulated in (5), persons who sample or collect fish or wildlife under a scientific collector permit are not required to possess a fishing or hunting license.
- (e) The permit does not authorize the holder to collect game, furbearing, or predatory species with firearms, bows and arrows, or fish with any hook and line method without a valid Oklahoma hunting and/or fishing license. The following species may not be taken under a scientific collector permit: deer, bear, elk, antelope, or wild turkey.
- (f) This permit does not authorize sampling or collecting on State or Federal Refuge or Wilderness Areas.
- (g) Only those specific species, areas, and methods approved by the Department will be covered by the permit. Any variations from the above rules must be covered by specific written approval by the Director and said approval shall be attached to and carried with the permit.
- (h) A Scientific Collector's permit shall not be used to collect those species of wildlife for which a statewide closed season has been established by the Oklahoma Wildlife Commission, unless specifically authorized.
- (i) A Federal Permit is required in addition to the state permit, if migratory birds, threatened or endangered species are to be collected.

800:25-26-4. Reporting

- (a) The permit holder must submit a report listing all fish and wildlife collected within thirty (30) days of the end of the calendar year.
- (b) Failure to submit a report, even if no fish or wildlife were collected, is cause for revoking the permit. No renewals will be issued without receipt of completed report forms.

SUBCHAPTER 29. OKLAHOMA DEER MANAGEMENT ASSISTANCE PROGRAM

800:25-29-2. Qualifications and procedures

The following are the qualifications and procedures for participating in the Deer Management Assistance Program (DMAP):

- (1) **Minimum acreage.** The minimum acreage is 1000 acres, although all reasonable requests will be evaluated. Applicants with less than 1000 acres will be allowed to form a cooperative with adjacent landowners to meet the minimum requirements.
- (2) **Application procedure.** Landowners wishing to enroll lands in DMAP will submit to the Department an application on forms provided by the Department by May 15 annually. The application will include a complete legal description of the property to be enrolled. Following review in Oklahoma City, applications will be forwarded to appropriate ODWC personnel for an on site inspection. Following inspection, if deer harvest objectives can be met with the current number of antlerless hunting days available, the request will be denied and the application fee refunded. If not, the recommended number of tags needed will be determined and the applicant will be notified of approval by September 1st.
- (3) **Season length.** ~~Deer gun season on properties enrolled in DMAP shall be concurrent with the statewide deer gun season and extend seven (7) additional antlerless days following the end of the statewide deer gun season.~~ Deer seasons on properties enrolled in DMAP shall be concurrent with the deer archery, primitive firearms season (with only weapons legal for such seasons), deer gun season and extend seven (7) additional days following the end of the statewide deer gun season, and any special antlerless deer gun season regardless of zone.

800:25-29-3. Landowner responsibilities

The following are the responsibilities of landowners participating in the Deer Management Assistance Program (DMAP):

- (1) **Enrollment fees.** An annual enrollment fee payable at time of application is required. Permits are not transferable and may be used only on the specific area for which they are issued. An antlerless tag is required in addition to the permit. Annual enrollment fees shall be based on the acreage of the property enrolled. Two different levels will be available as follows:

(A) Level 1: 1,000 - 4,999 acres, \$200.00 enrollment fee.

(B) Level 2: 5,000+ acres, \$400.00 enrollment fee.

(2) **Tagging.** DMAP permits will consist of readily identifiable, colored tag stock. ~~Tags will be valid throughout the entire gun or primitive firearms season as recommended.~~ Upon harvesting an antlerless deer on lands enrolled in the DMAP program, the permit and antlerless deer tag will be immediately attached to the animal. Antlerless deer harvested using DMAP permits will be bonus deer and will not be a part of the regular season bag limit. Unused permits will be returned to the supervising biologist ~~by December 10 immediately following the close of all legal deer seasons.~~ No rebate or refund for unused tags or permits will be made.

(3) **Checking.** Each DMAP cooperator will be responsible for keeping accurate records of all deer harvested on designated DMAP lands. Cooperators must collect biological data on all harvested deer as may be required by the department. Special forms and detailed instructions will be provided for that purpose. Cooperator records must be submitted to the local biologist ~~by December 10 immediately following the close of all legal deer seasons.~~ Failure to provide proper records, lack of cooperation, or other non-compliance may result in cancellation of the program on those lands involved.

SUBCHAPTER 30. WILDLIFE DEPREDATION ON AGRICULTURAL CROPS

800:25-30-5. DCAP (Damage Control Assistance Permits)

(a) Achieving an adequate harvest of antlerless deer is widely recognized as the most economical, long-term solution to reducing deer damage. Special antlerless deer permits may be made available to landowners who have documented depredation to agricultural crops (completed complaint and damage investigation procedures). Each permit will allow the holder of an antlerless deer tag or lifetime hunting/combination license to harvest one (1) antlerless deer on any day during the ~~9-day primitive and gun seasons statewide deer primitive, deer gun, and special antlerless deer gun seasons.~~ Permits will be issued free of charge based on the acreage, crop planted, and amount of damage sustained. All antlerless deer harvested must be tagged immediately with the self-locking, numbered tag, and will be considered bonus deer. Except for antlerless hunt zone restrictions on the day of harvest, all other regulations pertaining to muzzleloader and deer gun seasons shall apply. Permits may be used only on specific properties for which they are issued.

(b) All deer harvested under DCAP must be recorded in the record book provided. Record books and unused tags must be returned to Game Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd. Oklahoma City,

OK 73105 within 10 days following the close of the deer gun season.

[OAR Docket #03-928; filed 5-19-03]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 25. WILDLIFE RULES

[OAR Docket #03-929]

RULEMAKING ACTION:

PERMANENT Final Adoption

RULES:

Subchapter 7. General Hunting Seasons

Part 13. Deer

800:25-7-51. [AMENDED]

800:25-7-53. [AMENDED]

STATUTORY AUTHORITY:

Title 29 O.S., Section 3-103 and 5-401; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:

Comment period:

December 2, 2002 through January 17, 2003

Public Hearings:

Public Hearings were held January 13 - 16, 2003 in the following cities: McAlester, Lawton, Ada, Enid, Idabel, Oklahoma City, Okmulgee, Tulsa, Canute, and Woodward.

Adoption:

March 3, 2003

Submitted to Governor:

March 7, 2003

Submitted to House:

March 7, 2003

Submitted to Senate:

March 7, 2003

Gubernatorial approval:

April 21, 2003

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 1, 2003.

Final adoption:

May 1, 2003

Effective date:

July 1, 2003

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATED BY REFERENCE:

n/a

ANALYSIS:

The proposed rule amendments would allow for a sixteen (16) day deer gun season and would allow archery season to run concurrent with deer gun season. The deer herd in Oklahoma is stable and increasing in most regions of the state. A sixteen (16) day deer gun season will provide additional hunter opportunity. ODWC surveys indicate that the majority of both hunters and landowners favor a longer deer gun season.

CONTACT PERSON:

Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-3721. Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003.

Permanent Final Adoptions

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 13. DEER

800:25-7-51. Deer - archery

The following hunting dates, open areas, bag limits and legal means of taking apply to hunting deer with archery:

- (1) **Dates.** The dates for the deer archery season shall be October 1 through the Friday preceding the November deer gun season and the day following the November deer gun season through January 15. During the period from January 1 - January 15 antlerless deer are the only legal deer.
- (2) **Open areas.** The season is open statewide.
- (3) **Bag Limit.** Four (4) deer including no more than two (2) antlered deer. A separate tag is required for each deer to be hunted or harvested. All deer taken are included in the combined season statewide bag limit.
- (4) **Legal means of taking.** The legal means of taking deer with archery shall be as follows:
 - (A) Legal bows. A legal bow is any bow, except the crossbow, of forty pounds or more draw weight.
 - (B) Legal arrows for deer shall be fitted with broadhead hunting type points not less than 7/8 inches wide and not less than 1 1/2 inches long.
 - (C) Any device that permits a bow to be held mechanically at full or partial draw is prohibited.
 - (D) Laser sights are prohibited.
 - (E) Hand-held releases are permitted.
 - (F) No person shall carry or use any firearm in conjunction with any bow and arrow during the archery deer season while hunting deer with bow and arrow. Except, under the provisions of the Oklahoma Self-Defense Act.
 - (G) Crossbows. A crossbow is defined as having a draw weight of 100 pounds. Bolts must be equipped with broadhead hunting type points not less than 7/8 inches wide and bolts must be a minimum of 14 inches in length. Crossbows must be equipped with safety devices. Laser sights are prohibited. Leverage gaining devices are permitted. No crossbow may be transported in a motorized vehicle unless uncocked or disassembled.

800:25-7-53. Deer - gun

The following hunting dates, bag limits and legal means of taking apply to hunting deer with gun:

- (1) **Dates.** The dates for the deer gun season shall be the Saturday prior to Thanksgiving ~~through the Sunday following Thanksgiving,~~ and run for sixteen (16) consecutive days in management zones as designated by Commission resolution.
- (2) **Bag limit.** The bag limit shall be one antlered deer, and on designated days and areas, two antlerless deer. Antlerless areas and days will be determined annually and published in the Hunting Regulation brochure. No more

than one antlered and two antlerless deer may be taken, and only with appropriate tags. A separate antlerless tag is required to hunt for each antlerless deer on all designated days and in all designated areas, except an unfilled buck tag may be used to harvest an antlerless deer in designated areas on the last day of the gun season.

(3) **Legal means of taking.** The legal means of taking deer with gun shall be as follows:

- (A) Rifles (conventional or muzzleloader), handguns, shotguns or bow and arrows see 800:25-7-54. All public lands within the state are open to rifles, handguns, shotguns or bows unless otherwise specified.
- (B) Muzzleloading firearms that are legal for the muzzleloading season shall also be legal in all areas open to rifles, except black powder firearms loaded from the breech are also legal. Metallic and/or optical sights may also be used on muzzleloading firearms during the deer gun season. Muzzleloading pistols (single shot or revolver) with characteristics that are described for rifles are permissible, ~~as a secondary firearm, but may be used only for killing a downed animal.~~
- (C) Hunters choosing to hunt with ~~archery~~ or primitive must possess appropriate deer gun tag and comply with fluorescent clothing and bag limit requirements as set for the Deer Gun Season.
- (D) Laser sights are illegal.
- (4) **Zone Management Hunts**
 - (A) Dates and open areas: The Commission may, by Resolution, establish an antlerless deer gun season at any time in designated management zones or on designated Wildlife Management Areas, as published in the current Oklahoma Hunting Guide and Regulations, during the period of December 15 - January 6 or other dates as established by the Commission.
 - (B) Bag Limit: One (1) antlerless deer. Antlerless deer taken during the late firearms season are considered bonus deer and do not count against the statewide deer bag limit. Unfilled deer gun tags for the traditional deer gun season or controlled hunts are not valid for the late gun season.
 - (C) Legal means of taking: Same as deer gun season.
- (5) **The harvest of antlerless mule deer shall be prohibited during the deer gun seasons.**

[OAR Docket #03-929; filed 5-19-03]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 25. WILDLIFE RULES

[OAR Docket #03-930]

RULEMAKING ACTION:
PERMANENT Final Adoption

RULES:

Subchapter 7. General Hunting Seasons
Part 19. Seasons on Areas Owned or managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
800:25-7-86.1. [NEW]
800:25-7-103. [REVOKED]
800:25-7-104. [REVOKED]
800:25-7-105. [REVOKED]
800:25-7-105.1. [REVOKED]
800:25-7-105.2. [REVOKED]
Subchapter 24. Import of Cervids [NEW]
800:25-24-1. [NEW]
800:25-24-2. [NEW]
800:25-24-3. [NEW]
Subchapter 35. Private Lands Fish and Wildlife Habitat Conservation and Improvement Program Programs [AMENDED]
800:25-35-1. [AMENDED]
800:25-35-2. [AMENDED]
800:25-35-3. [AMENDED]
800:25-35-4. [AMENDED]
800:25-35-5. [AMENDED]
800:25-35-6. [AMENDED]
800:25-35-7. [REVOKED]
800:25-35-8. [REVOKED]

STATUTORY AUTHORITY:

Title 29 O.S., Section 3-103, 5-401 and 3-312; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:

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December 2, 2002 through January 3, 2003

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No public hearing were held or requested. No comments were received.

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March 7, 2003

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Failure of the Legislature to disapprove the rules resulted in approval on May 1, 2003.

Final adoption:

May 1, 2003

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SUPERSEDED EMERGENCY ACTIONS:

Superseded Rules:

Subchapter 7. General Hunting Seasons
Part 19. Seasons on Areas Owned or managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
800:25-7-86.1. [NEW]
800:25-7-103. [REVOKED]
800:25-7-104. [REVOKED]
800:25-7-105. [REVOKED]
800:25-7-105.1. [REVOKED]
800:25-7-105.2. [REVOKED]

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Subchapter 24. Import of Cervids [NEW]
800:25-24-1. [NEW]
800:25-24-2. [NEW]
800:25-24-3. [NEW]

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02-1261

INCORPORATED BY REFERENCE:

Incorporated standards:

n/a

Availability:

n/a

ANALYSIS:

Part 19.: These rules are in accordance with the Memorandum of Understanding reached between the Oklahoma Army National Guard and the Oklahoma Department of Wildlife Conservation. These rules would allow for maximum controlled public access for wildlife activities after January 1, 2003 and would rename the area as the Camp Gruber Maneuver Training Center-Light (CGMTC-L). The Oklahoma Department of Wildlife Conservation license to manage the Camp Gruber MTC expired December 31, 2002 and will not be renewed. The ODWC staff and the Camp Gruber staff have reached a tentative agreement regarding public hunting opportunities on Camp Gruber commencing January 1, 2003.

Subchapter 24.: These rules are in conjunction with the Oklahoma Department of Agriculture to establish rules which place restriction on the importation of deer and elk species into Oklahoma from states where Chronic Wasting Disease has been documented. Chronic Wasting Disease (CWD) has been documented in Colorado. Several states surrounding Oklahoma have promulgated similar rules to protect native cervids from exposure to imported CWD positive cervids.

Subchapter 35.: These rules would modify existing rules for Private lands fish and Wildlife Habitat Conservation and Improvement Programs and provide for all types of private land projects the Department may choose to enter into. The need to adopt these rules is to expand provisions of existing rules to address the full range of potential private land projects ODWC may enter into.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003.

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

800:25-7-86.1. Camp Gruber Maneuver Training Center (CGMTC)

The following hunting and trapping seasons apply to designated open areas on Camp Gruber MTC.

- (1) Quail: Open the Monday following the close of deer gun season, closes same as statewide date.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:

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(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Closed season.

(5) Turkey-Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed from opening day of deer archery season through deer gun season.

(7) Rabbit: Same as statewide season dates, except closed from opening day of deer archery season through deer gun season.

(8) Crow: Same as statewide season dates, except closed from opening day of deer archery season through deer gun season.

(9) Dove: Same as statewide season dates, except closed from opening day of deer archery season through deer gun season.

(10) Rail and gallinule: Same as statewide season dates, except closed from opening day of deer archery season through deer gun season.

(11) Common snipe: Open the Monday following the close of deer gun season, closes same as statewide date.

(12) Woodcock: Open the Monday following the close of deer gun season, closes same as statewide date.

(13) Deer-archery: Same as statewide season dates.

(14) Deer-primitive firearms: Same as statewide season dates, except open to antlerless hunting the first 2 days only.

(15) Deer-gun: Same as statewide dates, except closed to antlerless deer hunting.

(16) Trapping: Same as statewide season dates.

(17) Pursuit with hounds: Same as statewide dates, except closed from opening day of deer archery season through deer gun season. In addition, closed during spring turkey season.

(18) Predator/furbearer calling: Same as statewide dates, except closed from opening day of deer archery season through deer gun season. In addition, closed during spring turkey season.

(19) Waterfowl: Same as statewide season dates except closed opening day of deer archery season through deer gun season.

800:25-7-103. Gruber Area No.1-102, 301, 302, 405, 406 [REVOKED]

The following hunting and trapping seasons apply to the Gruber Area No. 1: All land west of Highway 10 and the Black Hollow Area South to Hilltop Road and Wildhorse Road.

(1) Quail: Open the Monday following the close of deer gun season, closes same as statewide date.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey Fall:

(A) Archery: Same as statewide season dates, either sex.

(B) Gun: Closed season.

(5) Turkey Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed from opening day of archery season through deer gun season. In addition, closed during spring turkey season.

(7) Rabbit: Same as statewide season dates, except closed from opening day of archery season through deer gun season.

(8) Crow: Same as statewide season dates, except closed from opening day of archery season through deer gun season.

(9) Dove: Same as statewide season dates, except closed from opening day of archery season through deer gun season.

(10) Rail and gallinule: Same as statewide season dates, except closed from opening day of archery season through deer gun season.

(11) Common snipe: Open the Monday following the close of deer gun season, closes same as statewide date.

(12) Woodcock: Open the Monday following the close of deer gun season, closes same as statewide date.

(13) Deer archery: Same as statewide season dates.

(14) Deer-primitive firearms: Same as statewide season dates, except open to antlerless hunting the first 2 days only.

(15) Deer-gun: Same as statewide dates, except closed to antlerless deer hunting.

(16) Trapping: Same as statewide season dates.

(17) Pursuit with hounds: Same as statewide dates, except closed from opening day of archery season through deer gun season. In addition, closed during spring turkey season.

(18) Predator/furbearer calling: Same as statewide dates, except closed from opening day of archery season through deer gun season. In addition, closed during spring turkey season.

(19) Waterfowl: Same as statewide season dates except closed opening day of archery season through deer gun season. In addition, closed during spring turkey season.

800:25-7-104. Gruber Area No. 2 - 103, 104 [REVOKED]

The following hunting and trapping seasons apply to Gruber Area No. 2: South of Contonement Area 103, West side of 104.

(1) Quail: Weekdays walk in only; weekend drive in open the Monday following deer gun season through December 31.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey Fall: Area open to walk in weekdays only; drive in weekends.

(A) Archery: Either sex during open archery deer season.

(B) Gun: Closed season.

(5) Turkey Spring: Same as statewide season dates, 1 tom limit. Walk in only.

- (6) Squirrel: Weekdays walk in only; open the Monday following the close of deer gun season through December 31 and open weekends of December to drive in.
- (7) Rabbit: Weekdays walk in only; open the Monday following the close of deer gun season through December 31 and open weekends of December to drive in.
- (8) Crow: Open December 9-31, walk in only weekdays—drive in weekends.
- (9) Dove: Closed season.
- (10) Rail and gallinule: Closed season.
- (11) Common Snipe: Open the Monday following the close of deer gun season through December 31, weekdays walk in only, weekends drive in.
- (12) Woodcock: Open the Monday following the close of deer gun season through December 31, weekdays walk in only, weekends drive in.
- (13) Deer archery: Same as statewide season dates, and area is open to walk in weekdays only, drive in weekends.
- (14) Deer primitive firearms: Same as statewide season dates, except open to antlerless hunting the first 2 days only and area is open to drive in.
- (15) Deer gun: Same as statewide season dates, and area is open to drive in, closed to antlerless hunting.
- (16) Trapping: Open December 1-31 only, open to walk in weekdays only, drive in weekends.
- (17) Pursuit with hounds: Open December 1-31 only, open to walk in weekdays only, drive in weekends.
- (18) Predator/furbearer calling: Open December 1-31 only, open to walk in weekdays only, drive in weekends.
- (19) Waterfowl: Same as statewide season dates, except only open in December.

800:25-7-105. Gruber area No. 3 - 201, 403, 404 [REVOKED]

The following hunting and trapping seasons apply to the Gruber Area No. 3:

- (1) Quail: Open the Monday following the close of the deer gun season through December 31.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey—Fall:
 - (A) Archery: Same as statewide season dates, either sex.
 - (B) Gun: Closed season.
- (5) Turkey—Spring: 1 tom limit, area is only open the last 9 days in April and Easter weekend if it falls within the scheduled season.
- (6) Squirrel: Open the Monday following the close of the deer gun season through December 31.
- (7) Rabbit: Open the Monday following the close of the deer gun season through December 31.
- (8) Crow: Open December 9-31.
- (9) Dove: Closed season.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Open the Monday following the close of the deer gun season through December 31.
- (12) Woodcock: Open the Monday following the close of the deer gun season through December 31.

- (13) Deer archery: Same as statewide season dates.
- (14) Deer primitive firearms: Same as statewide season dates except open to antlerless hunting the first 2 days only.
- (15) Deer gun: Same as statewide dates, except closed to antlerless hunting.
- (16) Trapping: Open December 1-31.
- (17) Pursuit with hounds: Open December 1-31.
- (18) Predator/furbearer calling: Open December 1-31.
- (19) Waterfowl: Same as statewide season dates, except only open in December.

800:25-7-105.1. Gruber Area No. 4 - 404 [REVOKED]

The following hunting and trapping season apply to the Gruber Area No. 4: East of Highway 10, South of 57 Guard Line, North of Contonement Area, West of North/South Road—Area 404.

- (1) Quail: Open the Monday following the close of the deer gun season through December 31, except closed the first 2 weekends of December.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey—Fall
 - (A) Archery: Same as statewide season dates, either sex, except closed first 2 weekends of October, November and December.
 - (B) Gun: Closed season.
- (5) Turkey Spring: Open the last 9 days in April and Easter weekend if it falls within the scheduled season, 1 tom limit.
- (6) Squirrel: Open the Monday following the close of the deer gun season through December 31, except closed the first 2 weekends of December.
- (7) Rabbit: Open the Monday following the close of the deer gun season through December 31, except closed the first 2 weekends of December.
- (8) Crow: Open December 9-31, except closed the first 2 weekends of December.
- (9) Dove: Closed season.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Open the Monday following the close of the deer gun season through December 31, except closed the first 2 weekends of December.
- (12) Woodcock: Open the Monday following the close of the deer gun season through December 31, except closed the first 2 weekends of December.
- (13) Deer archery: Same as statewide season dates, except closed the first 2 weekends of October, November and December.
- (14) Deer primitive firearms: Same as statewide season dates, except open to antlerless hunting the first 2 days only and closed the first 2 weekends of November.
- (15) Deer gun: Same as statewide season dates, except closed to antlerless deer hunting.
- (16) Trapping: Open December 1-31, except closed first 2 weekends of December.
- (17) Pursuit with hounds: Open December 1-31, except closed first 2 weekends of December.

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- (18) ~~Predator/furbearer calling: Open December 1-31, except closed first 2 weekends of December.~~
(19) ~~Waterfowl: Same as statewide season dates, except only in December.~~

800:25-7-105.2. Gruber Area No. 5 - 101, 104 [REVOKED]

~~The following hunting and trapping seasons apply to the Gruber Area No. 5: (No Mans Land) 101 and East side of 104, South and East of Greenleaf Lake.~~

- ~~(1) Quail: Closed season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey—Fall Closed season.
(B) Gun: Closed season.
(5) Turkey—Spring: Open to special hunt permittee. Permits will be issued by drawing.
(6) Squirrel: Closed season.
(7) Rabbit: Closed season.
(8) Crow: Closed season.
(9) Dove: Closed season.
(10) Rail and gallinule: Closed season.
(11) Common snipe: Closed season.
(12) Woodcock: Closed season.
(13) Deer archery: Controlled hunts only.
(14) Deer primitive firearms: Controlled hunts only.
(15) Deer gun: Controlled hunts only.
(16) Trapping: Closed season.
(17) Pursuit with hounds: Closed season.
(18) Predator/furbearer calling: Closed season.
(19) Waterfowl: Closed season.~~

SUBCHAPTER 24. IMPORT OF CERVIDS

800:25-24-1. Purpose

The purpose of this Subchapter is to establish requirements for the importation of animals in the family Cervidae that will protect Oklahoma's native deer and elk population from the threat of chronic wasting disease (CWD).

800:25-24-2. Definition

For the purposes of this rule, the family Cervidae shall include white-tailed deer, mule deer, black-tailed deer, and elk.

800:25-24-3. Requirements

The following restrictions apply to the importation of animals in the family Cervidae.

- (1) Import authorization is suspended for animals in the family Cervidae which originate from any state or Canadian province where chronic wasting disease has been identified in free-ranging native cervids.
(2) In cases where the source herd originates from a state or Canadian province where CWD has not been identified, import will be granted only if the source herd is a

participant in a CWD surveillance and certification program which conforms to standards described in Subchapters 11 and 47 of Title 35 of the Oklahoma Administrative Code.

SUBCHAPTER 35. PRIVATE LANDS FISH AND WILDLIFE HABITAT CONSERVATION AND IMPROVEMENT PROGRAMS

800:25-35-1. Purpose

This Subchapter establishes—a private lands fish and wildlife habitat conservation and improvement programs to further the maintenance, protection, enhancement, and restoration of fish and wildlife habitats and associated species on private lands by providing funds to be made available to qualifying participants to complete fish and/or wildlife habitat conservation and improvement projects on private lands. The financial responsibilities of all participants will be dependent on the guidelines of the individual program as adopted by the Wildlife Conservation Commission. program By annually providing funds to be made available on a cost share basis to qualifying landowners/lessees to complete wildlife habitat improvement projects on private lands. The Department's share will be up to 50 percent with a maximum contribution of 5% of program funding for each approved project.

800:25-35-2. Incentives

- (a) ~~Cost sharing.~~ The Department's share of up to 50 percent on approved projects is not to exceed 5% of program funding annually to any one individual landowner/lessee. **Financial assistance.** The Department may provide financial assistance to qualifying participants.
(b) ~~Annual participation.~~ Cost sharing for approved projects shall be awarded only one time annually to any individual. **Technical assistance.** The Department and other partnering agencies may provide technical assistance to qualifying participants to assist with the maintenance, protection, enhancement, and restoration of fish and wildlife habitats and associated wildlife species of concern or interest.
(c) ~~Landowner/lessee share.~~ A landowner's or lessee's labor, use of equipment, materials and so on, may be considered as a part of, or all of his share. **Personnel, Equipment, Material, and Supplies Assistance.** The Department may provide personnel, equipment, materials, and/or supplies to qualifying participants for the maintenance, protection, enhancement, and restoration of fish and wildlife habitats and associated wildlife species of concern or interest.
(d) ~~Other—cost share—conservation—programs.~~ A landowner's or lessee's share plus the Department's share may be matched with other cost share conservation programs. **Educational assistance.** The Department and other partnering agencies may provide educational assistance to participants on habitat and species conservation programs.

(e) Qualifying participants. A qualifying participant's labor, use of equipment, materials and/or supplies may be considered as part or all of qualifying participant's contribution to the project.

800:25-35-3. Approved projects By preferred region of the state, contract requirements and cost sharing and conservation improvement contract requirements

(a) Approved projects list. The following projects may be approved for Private Lands Fish and Wildlife Habitat Conservation and Improvement Programs

- (1) Aquatic Habitat protection, Statewide maintenance, protection, enhancement, or restoration.
- (2) Riparian Habitat improvement (Habitat development) Statewide maintenance, protection, enhancement, or restoration
- (3) Upland Habitat improvement (Watering Facilities) NW SW maintenance, protection, enhancement, or restoration
- (4) Wetland Habitat management Statewide maintenance, protection, enhancement, or restoration
- (5) Timber management NE SE Forest Habitat maintenance, protection, enhancement, or restoration.
- (6) Wetland (creation, enhancement, restoration) Statewide Any other project which is deemed appropriate by the Department. Preferred region for activity described does not exclude any region.

(b) Conservation improvement contract requirements

- (1) Qualifying participant shall be the owner of record or lessee with both authority and operational control over the lands proposed for a conservation improvement contract for the term of the contract.
- (2) Qualifying participant agrees to comply with all provisions of the conservation improvement contract.
- (3) All conservation improvement contracts and financial records shall be retained by the qualifying participants for at least five fiscal years and made available for audit to state and/or federal government personnel upon request.
- (4) The Department shall have the right to amend, modify, terminate, revoke or supplement the conservation improvement contract.
- (5) All conservation improvement contracts shall provide a public purpose.

800:25-35-4. Application

(a) Landowner or lessee application. A landowner or lessee may initiate contact by either calling Game Division's central office or by writing to Game Division, Attention: Private Lands Wildlife Habitat Improvement Program, during the period January 1 - June 1, annually. Application. A person or entity may contact the Oklahoma Department of Wildlife Conservation for information regarding Private Lands Fish and Wildlife Habitat Conservation and Improvement Programs.

(b) Program participation. The procedures for participating in the program will be explained and a pamphlet describing

the program and an application will be mailed to interested parties. any particular conservation improvement program will be explained and written information describing the program and an application will be provided to interested parties.

(c) Information covered in application. Requested information includes: legal description of property, driving directions from nearest town, objective(s) (including species of interest), current use of property (include a map), planned activity, and asks if applicant is willing to enter into a 10 year maintenance agreement. Awarding of available funds. Available funds may be obligated to approved qualified participants in order of ranking based on criteria established and approved for each particular conservation improvement program. In the event funds are exhausted prior to meeting all approved qualified participant requests, a list of unfunded qualified participants may be maintained, and if additional funds are made available, the next ranking qualifying participant may be funded.

(d) Availability of funds. In the event funding is exhausted prior to June 1, potential applicants will be advised funds are no longer available and to contact the Game Division after January 1 of the following year.

(e) Application review. Upon receipt of the completed application, the reviewing biologist an authorized Department representative will assign a file number and forward the application to the appropriate Game Division region. The biologist authorized Department representative assigned to evaluate the proposal will determine from the application if the applicant's objectives fulfill program requirements.

(f) On site evaluation. If program requirements are fulfilled, the biologist appropriate, an authorized Department representative will meet with the applicant on site. The biologist authorized Department representative will evaluate the proposed activity or plan, and complete the Private Lands Wildlife Habitat Improvement Plan. assist the applicant in completing the appropriate Private Lands Fish and Wildlife Habitat Conservation and Improvement Programs application.

(g) Failure to meet program requirements. If the applicants' objectives do not fulfill program requirements, the applicant will be contacted and so advised. The application will be either rejected by the biologist or modified and resubmitted by the applicant. The applicant may then modify and resubmit the application for further consideration.

800:25-35-5. Wildlife habitat improvement plan evaluation of proposed activity Contract review and approval

(a) Plan and evaluation form. The plan and evaluation form address; summary of proposed objective(s), suitability of site for proposed objective(s), procedures to accomplish proposed objective(s), itemized list of estimated costs, total estimated costs, landowner responsibility, Department responsibility, tentative start and completion dates, and probability of project meeting proposed objective(s). Project submission. The applicant shall submit the completed application and proposed conservation improvement contract to the Department.

(b) Review of plan and evaluation, additional review. The biologist will review with the applicant and explain the wildlife

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improvement plan and evaluation, and describe the proposal review procedures. The biologist will also review the contract content and reimbursement procedures. Review committee. A review committee shall be appointed by the appropriate Division Chief or Section Head. The committee shall review each application and proposed conservation improvement contract. The committee may revise, amend, and/or modify proposed conservation improvement contracts.

(c) Contract approval and awarding of contract. The committee recommended conservation improvement contract shall be forwarded to the appropriate Division Chief or Section Head for review. The appropriate Division Chief or Section Head will authorize the final awarding of contract.

800:25-35-6. Proposal review Reimbursement or Incentive Payment

(a) Project submission. The completed application and proposed wildlife habitat improvement plan and evaluation must be submitted by the first day of the following month in order to be approved during that period.

(b) Office procedure. Proposed plans (proposals) will be handled initially by the secretarial staff. Each proposal will have a file number corresponding with the application file number. Applications and proposals will be filed separately, names of applicants will not appear on the proposal. Proposals will be judged solely on content.

(c) Review committee. A review committee appointed by the Game Division Chief will meet as soon after the application deadline as practical. The committee will review each proposal to ensure it fulfills program guidelines. To avoid possible bias, the review committee will consist of personnel not involved in preparation of project proposals.

(d) Plan approval, contract award. If the proposal is approved by the committee with final approval by the Game Division Chief, contracts will be awarded on a first come, first serve basis, until either funds are exhausted or June 1, annually.

(e) Plan rejection. If the proposal does not fulfill program guidelines, the plan will be returned to the biologist preparing the proposal for clarification and possible resubmitting. The biologist is responsible for initial acceptance and proposal content. Reimbursement or incentive payments made to qualified participants are accomplished by completion of the reimbursement form, completed by the qualified participant at time of project completion as verified by an authorized Department representative. This form itemizes the cost of each activity as approved in each Private Lands Fish and Wildlife Habitat Improvement Programs contract and lists total expenses incurred or incentive payments as specified in each conservation improvement contract.

800:25-35-7. Contract [REVOKED]

(a) Responsibilities of participant and Oklahoma Department of Wildlife Conservation. The participant agrees to: accomplish the habitat developments described in the private lands wildlife habitat improvement plan on or before the completion date, bear initial costs of all developments,

to maintain said developments(s) for ten years beginning on the actual completion date of the development(s), allow a representative of the Oklahoma Department of Wildlife Conservation to inspect and evaluate the development(s) on an annual basis or at the discretion of the Oklahoma Department of Wildlife Conservation during the 10 year maintenance agreement, refund to Oklahoma Department of Wildlife Conservation all funds awarded in the agreement in the event that the participant or his agents, lessees, or successors fail to maintain the development(s) in an operative state as determined by the Oklahoma Department of Wildlife Conservation. The Department agrees to: reimburse the participant a fixed amount up to 50 percent of the actual costs of the approved project as stated in the private lands wildlife habitat improvement plan up to a maximum of 5% of program funding. Make payment within 60 days of completion of the development(s) subject to verification by an Oklahoma Department of Wildlife Conservation representative and upon receipt of a completed request for reimbursement.

(b) Intended purpose of plan. The plan reflects the intended purposes of both the statute and the participant but by no means shall be construed as an all encompassing land use plan being proposed by the Oklahoma Department of Wildlife Conservation.

800:25-35-8. Reimbursement [REVOKED]

Reimbursement of participant is accomplished by completion of the reimbursement form, completed by the participant at time of project completion as verified by the Department biologist. This form itemizes cost of each activity as approved in the habitat improvement plan and lists total expense incurred.

[OAR Docket #03-930; filed 5-19-03]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 30. DEPARTMENT OF WILDLIFE LANDS MANAGEMENT

[OAR Docket #03-927]

RULEMAKING ACTION:

PERMANENT Final Adoption

RULES:

Subchapter 1. Use of Department Managed Lands
800:30-1-2. [AMENDED]
800:30-1-4. [AMENDED]
800:30-1-5. [AMENDED]
800:30-1-20. [AMENDED]

STATUTORY AUTHORITY:

Title 29 O.S., Section 3-103 and 5-401; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

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December 2, 2002 through January 17, 2003

Public Hearings:

Public Hearings were held January 13 - 16, 2003 in the following cities: McAlester, Lawton, Ada, Enid, Idabel, Oklahoma City, Okmulgee, Tulsa, Canute, and Woodward.

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May 1, 2003
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July 1, 2003
SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATED BY REFERENCE:
Incorporated standards:
n/a
Availability:
n/a
ANALYSIS:
Rule contains housekeeping measures to clean up language regarding Gruber in relation to the Memorandum of Understanding with the Oklahoma Army National Guard on Camp Gruber, close various management areas to air driven water craft and reduce hunter conflicts due to lengthened quail season.
CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-3721. Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2003.

SUBCHAPTER 1. USE OF DEPARTMENT MANAGED LANDS

800:30-1-2. Use restrictions

The following restrictions apply to Oklahoma Department of Wildlife managed lands:

- (1) **Wildlife Management Areas.** All lands owned, licensed, leased or under the management of the Wildlife Division of the Oklahoma Department of Wildlife Conservation, except for the McCurtain County Wilderness Area, are designated Wildlife Management Areas (WMA) to accurately reflect the overall objectives for these lands and the results of management activities conducted thereon. Depending on the specific management objectives, all or parts of any particular wildlife management area may also be designated as a public hunting area, game management area or migratory bird refuge, or wetland development unit.
- (2) **Public Hunting Areas.** On a Public Hunting Area (PHA portion), all legal forms of wildlife harvest are permitted under statewide hunting, fishing and furbearer regulations unless specific regulations for the area indicate otherwise.

- (3) **Game Management Areas.** A Game Management Area (GMA portion) is closed to all wildlife harvest, except as specifically permitted by Commission action.
- (4) **Migratory Bird Refuges.** A designated Migratory Bird Refuge or Waterfowl Refuge Portion (WRP) is closed to all public use and access during the period of October 15 - January 31, except as specifically permitted by Commission action or special hunt permittee's on days of their hunt unless specifically noted otherwise. In addition, unless otherwise provided, all shotgun hunting is restricted to federally approved nontoxic shot and the possession of lead shot is prohibited.
- (5) **Wetland Development Units.** Areas designated as Wetland Development Units (WDU) are open for hunting as published annually in the Oklahoma Waterfowl Regulations booklet or the Oklahoma Hunting Regulations booklet. Shooting hours for waterfowl are ½ hour before official sunrise until 1 p.m. daily. Unless otherwise provided, all shotgun hunting is restricted to federally approved nontoxic shot and the possession of lead shot is prohibited.
- (6) **Wilderness Area.** On the Wilderness Area, there shall be no public entry except by persons possessing prior written permission from the Director of the Department of Wildlife Conservation or his designated representatives; Department employees; or by the Oklahoma Board of Agriculture, Division of Forestry personnel engaged in fire protection or suppression activities. The self-guided nature trail on the McCurtain County Wilderness Area does not fall under these restrictions.
- (7) **Closed areas.** Closed areas within larger management units may not be open to specific types of hunting or other activities on a year-round basis. Other uses may be permissible according to the above priorities insofar as they do not conflict with the specific objectives assigned to these closed areas. Those areas are:
 - (A) ~~That portion of Gruber WMA commonly known as the "Cantonment Area".~~
 - (B) An 80-acre portion of Canton WMA described as N/2 NE/4 of Section 3, T19N, R14W; Dewey County. Prairie Dog Refuge -closed to prairie dog hunting.
 - (C) ~~That portion of Fort Cobb WMA above the normal water elevation in SE/4 SE/4 of Section 30 and NE/4 of Section 31 and N/2 of Section 32, all in T9N, R12W, Caddo County.~~
 - (D) All recreation areas located on National Forest lands including Cedar Lake, Billy Creek and Winding Stair in the Ouachita WMA, Kulli and Bokohoma in the Ouachita WMA, Skipout, Spring Creek and Dead Indian in Black Kettle WMA are closed to hunting.
 - (E) That portion of the Corps of Engineer's Lock and Dam 17 (Chouteau) project under license to the Oklahoma Department of Wildlife Conservation in Sections 4, 9, and 10, T16N, R18E, Wagoner County; all licensed lands lying south and west of the center of the Navigation Channel, as described by the Corps

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of Engineer's, and north of the paved road leading to Lock and Dam 17 are closed to all hunting and access (Vann's Lake Refuge). Except for special hunt permittees on the days of their hunt and non-hunting public use that is permitted year-round on the Jean Pierre Chouteau Hiking Trail and the Vann's Lake Marsh Trail. Fishing is permitted west of new Highway 69 between June 1 and February 1 and east of old Hwy 69 year-round. It shall be further unlawful to enter the "Vann's Lake Refuge" at any time with a firearm, except for special hunt permittee's on the days of their hunt.

(~~FD~~) A parcel described at Lots 9-10-12-13 and the SW/4 of the SW/4 of Section 6 T26N, R8W, Grant County known as the Van Osdol Wildlife Management Area.

(~~GE~~) The following described lands at Robbers Cave Wildlife Management Area are closed to all hunting: That portion of Sections 18 and 19 lying west of Coon Creek Road and the Northeast quarter and the North half of the Southeast quarter of Section 25.

800:30-1-4. Camping

(a) Camping is limited to a maximum of 14 days, except at areas open only to hunter camping for special season. Camping on these areas is limited to 2 days longer than the period which the camper (hunter) is authorized to hunt.

(b) All dogs or other pets must be kept on a leash or otherwise confined while in a camping area.

(c) No overnight camping is permitted on the following areas unless otherwise authorized by the Department:

- (1) Altus-Lugert WMA.
- (2) Canton WMA (refuge portion).
- (3) Cherokee (GMA portion).
- (4) Chickasaw NRA (Arbuckle).
- (5) Fort Gibson WMA (PHA Portion).
- (6) Heyburn (refuge portion).
- (7) Hulah (refuge portion).
- (8) Hugo WMA (refuge portion).
- (9) Major County Lands.
- (10) McCurtain County Wilderness.
- (11) Okmulgee WMA (GMA portion).
- (12) Sparrowhawk WMA.
- (13) Spavinaw Hills WMA (GMA portion).
- (14) Tenkiller WMA.
- (15) Van Osdol WMA.
- (16) Waurika WMA (refuge portion).
- (17) Wister WMA (refuge portion).
- (18) Gist WMA
- (19) Red Slough WMA

(d) Only hunter and fishermen camping is permitted, and only in designated camping areas on:

- (1) Atoka WMA (includes PHA portion).
- (2) Beaver River WMA.
- (3) Candy WMA.
- (4) Canton WMA (except refuge portion).
- (5) Cherokee WMA (PHA portion).

- (6) Copan WMA.
- (7) Ellis County WMA.
- (8) Eufaula WMA.
- (9) Fort Cobb WMA.
- (10) Fort Gibson (except refuge portion).
- (11) Fort Supply WMA.
- (~~12~~) ~~Gruber camping permitted only during hunting seasons.~~

- (~~13~~~~12~~) Heyburn WMA (except refuge portion).
- (~~14~~~~13~~) Hickory Creek WMA.
- (~~15~~~~14~~) Hugo WMA (except refuge portion).
- (~~16~~~~15~~) Hulah WMA.
- (~~17~~~~16~~) James Collins WMA.
- (~~18~~~~17~~) John Dahl WMA (camping is permitted only during hunting seasons).
- (~~19~~~~18~~) Kaw WMA.
- (~~20~~~~19~~) Lexington WMA.
- (~~21~~~~20~~) McClellan-Kerr Navigation System WMA on Lock and Dams 15,16, and 17.
- (~~22~~~~21~~) Mountain Park WMA.
- (~~23~~~~22~~) Okmulgee WMA (PHA portion, i.e, the area north and east of the Deep Fork River).
- (~~24~~~~23~~) Optima WMA.
- (~~25~~~~24~~) Ouachita WMA (Homer L. Johnston portion), camping permitted during deer and turkey seasons in designated camping areas.
- (~~26~~~~25~~) Packsaddle WMA, camping permitted only during open hunting seasons.
- (~~27~~~~26~~) Pushmataha WMA.
- (~~28~~~~27~~) Sandy Sanders WMA.
- (~~29~~~~28~~) Skiatook WMA.
- (~~30~~~~29~~) Spavinaw WMA (PHA portion), camping permitted only during open hunting seasons on area.
- (~~31~~~~30~~) Texoma-Washita Arm WMA.
- (~~32~~~~31~~) Tishomingo WMA.
- (~~33~~~~32~~) Broken Bow WMA.
- (~~34~~~~33~~) Cooper WMA.
- (~~35~~~~34~~) Osage WMA (Rock Creek Unit).

(e) Hunter camping is permitted only in designated camping areas and only during specified hunting seasons at:

- (1) Robbers Cave WMA, camping only during open deer and turkey seasons.
- (2) Cookson Hills WMA, hunter camping only during special deer seasons.
- (3) Osage WMA (Western Wall Primitive Area), camping only during controlled hunts.

(f) Hunter and fishermen camping is permitted only within fifty yards of roads designated as open for public use at:

- (1) Broken Bow WMA.
- (2) Fobb Bottom WMA.
- (3) Gary Sherrer WMA, camping permitted only during open hunting season on area.
- (4) Keystone WMA.
- (5) Love Valley WMA.
- (6) Oologah WMA.
- (7) Pine Creek WMA.
- (8) Stringtown WMA, camping permitted only during open hunting season on area.

- (9) Wister WMA, (except refuge portion).
- (10) Deep Fork WMA.
- (g) Camping permitted in accordance with U.S. Forest Service regulations at:
 - (1) Ouachita WMA (Ouachita National Forest), except Homer L. Johnston Unit.
 - (2) Tiak WMA (Ouachita National Forest).
 - (3) Black Kettle WMA (Cibola National Forest) - Black Kettle National Grasslands.
 - (4) Rita Blanca (Cibola National Forest) - Rita Blanca National Grasslands.
- (h) Camping is permitted except during specified seasons when hunter-only camping is permitted at: McGee Creek WMA.
- (i) Quiet shall be maintained in all camping areas between the hours of 11:00 p.m. and 7:00 a.m. Excessive noise during such times which unreasonably disturbs persons is prohibited.

800:30-1-5. Vehicles

- (a) Except as otherwise provided, all motorized vehicles are required to stay on roads designated as open for public or hunter use. There are no exceptions for motorcycles, four-wheel drive vehicles, snowmobiles or all terrain vehicles. Travel on roads which are gated and locked or designated as closed is prohibited, unless otherwise specified in annual regulations for nonambulatory persons holding valid permits.
- (b) Only those vehicles registered as legal to operate on Oklahoma public roadways may be used or parked on lands owned or managed by the Oklahoma Department of Wildlife Conservation, except on specified areas designated for off-road use; unless otherwise provided for nonambulatory persons holding valid permits. All vehicles used by nonambulatory permittees must conspicuously display a sticker designating the vehicle is being used by a nonambulatory permittee and motor vehicle permittees must conspicuously display a sticker designating the vehicle is being used by a motor vehicle hunt permittee.
- (c) Maximum speed limit shall be 25 mph unless otherwise posted.
- (d) Off-road vehicle (ORV) and All-Terrain vehicle (ATV) use on the Ouachita WMA shall be regulated by the following:
 - (1) ORV/ATVs may not be ridden or parked on any open or closed forest service roads except for agricultural purposes.
 - (2) ORVs/ATVs must comply with state laws insofar as licensing is concerned on Forest Service roads.
 - (3) ORVs/ATVs are permitted only in the general forest areas except in wilderness or botanical areas and in other areas marked "closed".
- (e) Off-road vehicle use on the Black Kettle and Rita Blanca WMAs (Cibola National Forest) is regulated by the U.S. Forest Service.
- (f) Off-road vehicle use on the Honobia Creek WMA and Three Rivers WMA shall be regulated by the following:
 - (1) Off-Road Vehicles (ORV) and All-Terrain Vehicles (ATV) may be ridden on roads owned and maintained by John Hancock Mutual Life Insurance Company or Weyerhaeuser Company and managed by the Oklahoma

Department of Wildlife as the Honobia Creek WMA and Three Rivers WMA. ORV/ATV use on county or state roads within the confines of the Honobia Creek WMA and Three Rivers WMA must comply with state requirements for street legal vehicles.

- (2) Off-road travel by any motor vehicle, including ORVs and ATVs is prohibited.
- (3) Motor vehicle travel, including ORVs and ATVs, on roads which are gated and locked, closed by an earthen mound, or otherwise designed as closed is prohibited.
- (g) It is unlawful for any person to hunt, chase, capture, shoot, attempt to shoot, wound or kill any wildlife from a motor driven vehicle on any Department managed areas, except as provided for persons holding a nonambulatory motor vehicle hunting permit.
- (h) It is unlawful for any person to transport a loaded firearm on any Department managed area. Crossbow permittees may not transport a cocked crossbow nor may the bolt be loaded while being transported in a motor vehicle. In addition, no person may take, catch, capture, kill or pursue wildlife or otherwise attempt to use for any purpose a vehicle mounted spotlight or other powerful light at night for any purpose on Department managed lands, except as otherwise provided for hunting of furbearers and predators, taking of frogs, or for navigational purposes while in a water conveyance.
- (i) Grassy Slough WMA, Hackberry Flat WMA, Red Slough WMA and Whitegrass Flats WMA ~~is~~ are closed to all air driven water craft.
- (j) It shall be unlawful for any person to use, transport, park, or unload any personal watercraft within the land and/or water boundaries of the Fort Gibson Wildlife Management Area.

800:30-1-20. Restricted public use areas

- (a) The following Wildlife Management Areas are closed to all non-hunting activities except hunter camping (areas where camping is allowed) during the period October 1 - ~~January 31~~ February 15: Beaver River, Canton, Lexington, Okmulgee, and Ellis County except fishing and angler camping is permitted at Lake Vincent, Fort Supply and Sandy Sanders.
- (b) The Following Wildlife Management Areas are closed to all non-hunting activities except hunter camping (on areas where camping is allowed) during the period October 1 - ~~January 31~~ February 15 and spring turkey season: Atoka, Cherokee, Cookson, ~~Gruber~~, James Collins, McGee Creek, Osage (Rock Creek Unit), Osage (Western Wall Primitive Area), Pushmataha, and Spavinaw.
- (c) The following areas are open to non-hunting activities during the daylight hours only August 1-31: Cherokee GMA, Cookson WMA.
- (d) The following areas are restricted to shotgun or bow and arrow only: Blue River Hunting and Fishing Area, Fort Cobb WMA, and Optima NWR.
- (e) Off-road use of a vehicle on public lands is prohibited except for nonambulatory permittee on designated areas open to nonambulatory permittee and area roads designated as open to nonambulatory permittee and motor vehicle hunt permittee. Only those persons who are unable to walk due to:
 - (1) a single or double leg amputation;

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- (2) paralysis or lower extremity(ies) and/or;
- (3) disease or injury and must use a wheelchair as their primary source of mobility are eligible to receive a nonambulatory permit for use on Department managed lands.
- (f) Public lands not specifically listed as open are closed.
- (g) Nonambulatory permittee may ride ORV/ATV from parking area or campsite to designated nonambulatory areas on Wildlife Management Areas. Firearms must be unloaded and/or cased while on roads. Use on county or state roads must comply with Title 47 requirements.
- (h) Nonambulatory permittee may carry firearms with ammunition in magazine only, while upland game hunting from an ATV while on designated nonambulatory areas on Wildlife Management Areas.
- (i) Off-road travel by nonambulatory permittee with ORV/ATV designated areas of Wildlife Management Areas. ORV/ATV vehicles will be restricted to utility type vehicles weighing less than 1,250 pounds.
- (j) The use of air boats is prohibited on the Washita Arm Waterfowl Development Area.
- (k) Lake Dahlgren shall be closed to all other activities during Lexington Wildlife Management Area designated controlled hunt dates.
- (l) All training of bird dogs on Department managed lands is closed from June 1 through August 31 annually.

[OAR Docket #03-927; filed 5-19-03]

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

1:2003-12.

EXECUTIVE ORDER 2003-12

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American flags on State property at half staff from 8:00 a.m. until 5:00 p.m. on Thursday, May 22, 2003, to honor Judge Alan J. Couch, who died on Monday, May 19, 2003.

Judge Couch was born in Tulsa, Oklahoma. He was a member of the Oklahoma Bar Association and the Cleveland County Bar Association. He served as Associate District Judge of Cleveland County from 1972 until his death. As chairman of the original Oklahoma Supreme Court Juvenile Justice Oversight Committee, he taught and designed programs for judges, attorneys and court workers across the United States. Judge Couch founded Oklahoma's first Court Appointed Special Advocate program that protects neglected children. In addition, he founded the nation's first Divorce Visitation Arbitration program that assists families of divorce.

Judge Couch received numerous awards and honors for his work, including the Oklahoma Bar Association's Liberty Bell Award for outstanding contributions to the Administration of Justice. In 1996, he received the Norman Human Rights Award.

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 21st day of May, 2003.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #03-1022; filed 5-22-03]

1:2003-13.

EXECUTIVE ORDER 2003-13

I, Brad Henry, Governor of the State of Oklahoma, in observation of Memorial Day, hereby direct the appropriate steps be taken to fly the American and Oklahoma flags at the State Capitol Building at half staff from 8:00 a.m. until noon on Monday, May 26, 2003, to honor those Americans who gave their lives for the freedom we enjoy today.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented at the State Capitol Building.

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 21st day of May, 2003.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #03-1023; filed 5-22-03]

