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**Brad Henry, Governor**  
**M. Susan Savage,**  
**Secretary of State**  
**Peggy Coe, Managing Editor**

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

*[OAR Docket #03-3057]*

### **RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking

### **PROPOSED RULES:**

Subchapter 11. Importation of Livestock, Poultry, and Pets  
Part 11. Poultry and Other Avian Species [NEW]  
35:15-11-41 [NEW]

### **SUMMARY:**

The purpose of this rule is to provide specific and necessary importation restrictions on poultry and other avian species entering Oklahoma from or passing through states quarantined due to an outbreak of Exotic Newcastle Disease. This rule is to protect the Oklahoma poultry and avian species industries from the devastating effects caused by this foreign animal disease. This rule addresses recent importation problems, actions to be taken if birds become infected, and promotes the continued growth and economic development of the poultry and avian species industries in Oklahoma.

### **AUTHORITY:**

Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4 (2 & 7), 6-2, and 6-133

### **COMMENT PERIOD:**

Persons may submit written and oral comments to Dr. Burke Healey at 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4298 during the period from October 1, 2003, through November 5, 2003.

### **PUBLIC HEARING:**

A public hearing will be held at 9:00 a.m., November 5, 2003 in the Plant Industry and Consumer Services' conference room, located on the second floor of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Dr. Burke Healey at the above address during the period from October 1, 2003 through November 5, 2003.

### **COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained by contacting Dr. Burke Healey, Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4298.

### **RULE IMPACT STATEMENT:**

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

### **CONTACT PERSON:**

Dr. Burke Healey, (405) 522-6134

*[OAR Docket #03-3057; filed 9-2-03]*

## **TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 1. STATE BOARD OF EDUCATION**

*[OAR Docket #03-3054]*

### **RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking

### **PROPOSED RULES:**

Subchapter 5. Due Process  
210:1-5-8. [AMENDED]

### **SUMMARY:**

The rule amendments delete references to career teachers in the State Board of Education rules for due process hearings. In the past legislative session the law was changed to specify a different type of hearing for career teachers. It is, therefore, necessary to delete these rules as they are no longer applicable to career teachers. The changes are necessary to comply with House Bill 1767.

### **AUTHORITY:**

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

### **COMMENT PERIOD:**

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m. on December 17, 2003 at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

### **PUBLIC HEARING:**

A public hearing will be held at 11 a.m. on Thursday, December 18, 2003 at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons

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wishing to speak must sign in at the door of the State Board Room by 11:05 a.m.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

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

**RULE IMPACT STATEMENT:**

A Rule Impact Statement for the amendments has been prepared, as required by law, is available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

**CONTACT PERSON:**

Valerie Payne, 405-521-3308

*[OAR Docket #03-3054; filed 8-29-03]*

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

*[OAR Docket #03-3053]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 3. *Priority Academic Student Skills*  
210:15-3-45. [AMENDED]

**SUMMARY:**

The purpose of the amendments is to provide additional clarity and detail to the *Priority Academic Student Skills*, Oklahoma's core curriculum - 70 O.S. § 11-103.6(a). Also, the changes will align the core curriculum with current national curriculum standards. Providing clear academic curriculum standards aligned to state assessments will ensure all students to be better prepared for employment and/or postsecondary education. These revisions need to be made effective during the 2003-2004 school year.

**AUTHORITY:**

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

**COMMENT PERIOD:**

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m. on December 17, 2003 at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

**PUBLIC HEARING:**

A public hearing will be held at 11 a.m. on Thursday, December 18, 2003 at the Hodge Education Building, State

Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 11:05 a.m.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

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

**RULE IMPACT STATEMENT:**

A Rule Impact Statement for the amendments has been prepared, as required by law, is available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

**CONTACT PERSON:**

Valerie Payne, 405-521-3308

*[OAR Docket #03-3053; filed 8-29-03]*

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

*[OAR Docket #03-3056]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 9. Professional Standards: Teacher Education and Certification

Part 9. Teacher Certification

210:20-9-91. [AMENDED]

**SUMMARY:**

The proposed changes would require all first-time certified Oklahoma teachers to have on file with the Oklahoma State Board of Education a current Oklahoma criminal history record from the Oklahoma State Bureau of Investigation (OSBI) as well as a national fingerprint-based criminal history record provided by the Federal Bureau of Investigation (FBI). Oklahoma law, 70 O.S. § 6-190, requires the OSBI and FBI criminal history records for licensure, but does not list this requirement for certification.

**AUTHORITY:**

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

**COMMENT PERIOD:**

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m. on December 17, 2003 at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

**PUBLIC HEARING:**

A public hearing will be held at 11 a.m. on Thursday, December 18, 2003 at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room, Room 1-20, by 11:05 a.m.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

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

**RULE IMPACT STATEMENT:**

A Rule Impact Statement for the amendments has been prepared, as required by law, is available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

**CONTACT PERSON:**

Valerie Payne, 405-521-3308

[OAR Docket #03-3056; filed 8-29-03]

**TITLE 210. STATE DEPARTMENT OF EDUCATION  
CHAPTER 25. FINANCE**

[OAR Docket #03-3052]

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 5. Budgeting and Business Management  
210:25-5-4. [AMENDED]

**SUMMARY:**

The amendment changes the final submission date for financial data from September 15 to July 31, as authorized by new legislation (70 O.S. § 5-134.1). The amendments change financial reporting terminology and terminology to the current form of financial reporting. The amendments also change wording to coincide with revisions in the National Center for Education Statistics (NCES) Handbook *Financial Accounting for Local and State School Systems*.

**AUTHORITY:**

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

**COMMENT PERIOD:**

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m. on December 17, 2003 at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

**PUBLIC HEARING:**

A public hearing will be held at 11 a.m. on Thursday, December 18, 2003 at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 11:05 a.m.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

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

**RULE IMPACT STATEMENT:**

A Rule Impact Statement for the amendments has been prepared, as required by law, is available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

**CONTACT PERSON:**

Valerie Payne, 405-521-3308

[OAR Docket #03-3052; filed 8-29-03]

**TITLE 210. STATE DEPARTMENT OF EDUCATION  
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS**

[OAR Docket #03-3055]

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 9. Additional Standards for Secondary Schools.  
Part 7. Standard IV: Curriculum, Instruction, Assessment and Climate  
210:35-9-31. [AMENDED]

**SUMMARY:**

The rule changes allow district boards of education to except certain transfer students from out of state from certain high school graduation requirements. The changes also require district boards of education to report these exceptions to the State Department of Education.

**AUTHORITY:**

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

**COMMENT PERIOD:**

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m. on December 17, 2003 at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

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### **PUBLIC HEARING:**

A public hearing will be held at 11 a.m. on Thursday, December 18, 2003 at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 11:05 a.m.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

### **COPIES OF PROPOSED RULES:**

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

### **RULE IMPACT STATEMENT:**

A Rule Impact Statement for the amendments has been prepared, as required by law, is available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

### **CONTACT PERSON:**

Valerie Payne, 405-521-3308

*[OAR Docket #03-3055; filed 8-29-03]*

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## **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 234. MEDICAL MICROPIGMENTATION**

*[OAR Docket #03-3063]*

### **RULEMAKING ACTION:**

Notice of PERMANENT rulemaking

### **PROPOSED RULES:**

- Subchapter 3. Medical Micropigmentation Certification
- 310:234-3-1 Practice limitations [AMENDED]
- 310:234-3-3.1 Reciprocity [NEW]
- 310:234-3-4 Certification by completion of medical micropigmentation training program and certification testing process [AMENDED]
- 310:234-9-1.1 Medical Micropigmentation Records [NEW]

### **SUMMARY:**

Rule revisions are sought to comply with Senate Bill No. 340 signed by Governor Henry on June 4, 2003. The proposal amends the Medical Micropigmentation Rules by reducing the minimum number of hours of instruction from 450 hours to 300 hours. Language has been amended to reflect that the physician in whose office medical micropigmentation is being performed is to determine the level of supervision. Since the statutory change allows physicians to determine the level of supervision and micropigmentologists may work for more than one physician, language is necessary to identify contact

information for each supervising physician. This chapter will also provide an opportunity for other entities to offer medical micropigmentation training and will set out provisions for instructors. The proposal contains new language, which allows the State Department of Health, upon recommendation of the Medical Micropigmentation Advisory Committee, to approve applicants for certification by reciprocity if they have qualifications and training comparable to those under this act. Applicants would also have to verify two (2) years experience and a minimum of two hundred (200) procedures and would have successfully completed the Oklahoma Medical Micropigmentation Certification Exam.

### **AUTHORITY:**

Oklahoma State Board of Health; 63 O.S. Sections 1-104, 1-1453 and 1-1455.

### **COMMENT PERIOD:**

October 1, 2003 through November 13, 2003. Interested persons may informally discuss the proposed rules with Protective Health Services staff; or before November 13, 2003, may submit written comments to Rocky McElvany, Chief, Consumer Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; or before November 13, 2003, may send electronic mail to rockym@health.state.ok.us or may ask to present written or oral views at the hearing.

### **PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, November 13, 2003, which begins at 1:00 p.m. in Room 307 of the Oklahoma State Department of Health Building, 1000 NE 10th Street, Oklahoma City, OK 73117-1299.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before November 13, 2003, to Rocky McElvany, Chief, Consumer Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; or before November 13, 2003, may send electronic mail to rockym@health.state.ok.us

### **COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Consumer Health Services at the above address or by electronic mail request to rockym@health.state.ok.us

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement has been prepared and is available for review at the Consumer Health Services of Protective Health Services at the Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299.

**CONTACT PERSON:**

Rocky McElvany, Chief, Consumer Health Services,  
Oklahoma State Department of Health, (405) 271-5288

[OAR Docket #03-3063; filed 9-5-03]

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 281. IONIZING RADIATION  
REGULATIONS DIAGNOSTIC X-RAY  
SYSTEMS**

[OAR Docket #03-3064]

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Chapter 281. ~~Ionizing Radiation Regulations~~ Diagnostic X-Ray Systems [AMENDED]

**SUMMARY:**

The proposed rulemaking, which involves the addition and deletions of definitions and language to clarify existing regulations, amends or adds more than 30 sections of the rules. This proposal modifies the present Ionizing Radiation Regulations in order to correlate the regulations with the 1991 Nuclear Regulatory Commission 10 CFR Part 20 and the Conference of Radiation Control Program Directors' Suggested State Regulations for Control of Radiation (revised 2003). The proposed amended language removes all sections now regulated by the Oklahoma Department of Environmental Quality. The intent is to provide public and worker protection from over exposure to ionizing radiation produced by diagnostic x-ray systems. The title is changed from Ionizing Radiation Regulations to Diagnostic X-Ray Systems, because currently the Health Department only regulates diagnostic x-ray systems and not industrial x-ray machines or radioactive materials. In Subchapter 1, the proposed changes involve the addition of definitions and language to clarify existing definitions. Subchapter 3, section 4 requires that all changes in diagnostic x-ray systems at facilities are required to be accomplished at the time of permit renewal. Subchapter 5 contains revisions to language, clarifying existing regulations. Subchapter 7 in the regulations remains reserved. Subchapter 9 consists of the Standards for Protection Against Radiation, which incorporates changes regarding the radiation dose standards for individuals in restricted areas, determination of accumulated occupational doses, exposure to pregnant employees, personnel monitoring, records of surveys, reports of theft or loss of diagnostic x-ray systems, and notification of incidents regarding radiation. Subchapter 11 incorporates sections dealing with surveys, dose measurements, spot checks, operating procedures, and preventive maintenance services. This Chapter also contains deletions of exposure limits for mammography and the addition of suggested exposure limits for Computed Tomography. There are deletions and additional controls

for mammography, adoption of the Federal Mammography Quality Standards Act of 1994, reenacted in 1997, by reference, which includes mammography new exposure limits. Under general requirements for all human diagnostic x-ray systems, the addition of accuracy limits for kilovolts peak ("kVp") was implemented. Additions pertaining to Computed Tomography (CT) include setting mandatory annual inspections by a medical physicist, quarterly preventative services schedules, description of CT dose measurement phantoms and other general requirements. The revocation of Subchapters 13 and 15 are proposed since the Oklahoma Department of Environmental Quality presently regulates those subjects. The new Subchapter 17 involves the addition of teleradiology in healing arts to the rules by incorporated reference. Appendix A contains minor changes. The current Appendices B, C, and D are being revoked because they deal with radioactive materials, which are currently regulated by the Oklahoma Department of Environmental Quality. The new Appendix B is inserted to provide the minimum requirements for individuals who operate Computed Tomography X-Ray Systems.

**AUTHORITY:**

Oklahoma State Board of Health; 63 O.S. 2001, Sections 1-104 and 1-1505.

**COMMENT PERIOD:**

October 1, 2003 through November 13, 2003. Interested persons may discuss informally the proposed rules with staff of Consumer Protection Services; or may before November 13, 2003, submit written comment to Ted Evans, Director, Consumer Protection Division, Protective Health Services, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299; or may at the hearing ask to present written or oral views.

**PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, November 13, 2003, which begins at 1:00 p.m. in Room 307 of the State Health Department Building, 1000 N.E. 10th Street, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before November 13, 2003, to Ted Evans, Director, Consumer Protection Division, Consumer Health Services, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Consumer Protection Services at the above address or by electronic mail request to tede@health.state.ok.us

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., § 303(D), a rule impact statement is available for review at the Consumer Protection Division of

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Protective Health Services at the Oklahoma State Department of Health, 1000 Northeast 10<sup>th</sup> Street, Oklahoma City, Ok. 73117-1299.

**CONTACT PERSON:**

Ted Evans, Director, Consumer Protection Division, Consumer Health Services, (405) 271-5243

*[OAR Docket #03-3064; filed 9-5-03]*

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

*[OAR Docket #03-3065]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 7. Application for Licensure  
310:400-7-2.1 [NEW]
- Subchapter 9. Licensure Examinations  
310:400-9-7 [AMENDED]
- Subchapter 13. Fees  
310:400-13-2 [AMENDED]

**SUMMARY:**

The new language to Subchapter 7 provides for clarification regarding the re-application process for licensure after an application has been voided or a license has permanently expired or has been revoked. The amendments to Subchapter 9 provide for an additional testing opportunity for LMFT applicants in order to keep the licensure application active and to provide requirements for the frequency of exam(s) to be taken after the applicant has failed the exam. The amendments to Subchapter 13 allow for an increase of the late renewal fee. The proposed rules will offer direction for LMFT applicants/candidates and licensees regarding the re-application process for licensure, will afford LMFT applicants/candidates an additional testing opportunity due to the increased number of test dates offered by the testing company, will establish a testing schedule for LMFT applicants who fail the exam, and will increase the late renewal fee to \$100.00 to encourage licensees to operate with valid, unexpired licenses.

**AUTHORITY:**

Oklahoma State Board of Health; 59 O.S. 2001, Section 1925.5(A); 63 O.S. 2001, Section 1-106.1.

**COMMENT PERIOD:**

October 1, 2003 through November 13, 2003. Interested persons may discuss informally the proposed rules with staff of the Office of Professional Counselor Licensing; or may before November 13, 2003 submit written comment to Nena West, Director, Office of Professional Counselor Licensing, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299; or may at the hearing ask to present written or oral views.

**PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, November 13, 2003, which begins at 1:00 p.m. in Room 307 of the State Health Department Building, 1000 N.E. 10th Street, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before November 13, 2003 to Nena West, Director, Office of Professional Counselor Licensing, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from staff of the Office of Professional Counselor Licensing, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement will be prepared and will be available beginning October 1, 2003 at the same location listed above for reviewing and obtaining copies of the proposed rules.

**CONTACT PERSON:**

Nena West, Director, Office of Professional Counselor Licensing, (405) 271-6030

*[OAR Docket #03-3065; filed 9-5-03]*

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

*[OAR Docket #03-3066]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 7. Application Procedures  
310:405-7-4 [NEW]  
310:405-7-5 [NEW]  
310:405-7-6 [NEW]  
310:405-7-7 [NEW]
- Subchapter 13. Fees  
310:405-13-2 [AMENDED]

**SUMMARY:**

The new language to Subchapter 7 provides for clarification regarding the re-application process for licensure after an application has been voided or a license has permanently expired or has been revoked. The amendments to Subchapter 13 allow for an increase of the late renewal fee. The proposed

rules will offer direction for LPC applicants/candidates and licensees regarding the re-application process for licensure, and will increase the late renewal fee to \$80.00 to encourage licensees to operate with valid, unexpired licenses.

**AUTHORITY:**

Oklahoma State Board of Health; 59 O.S. 2001, Section 1905(A); 63 O.S. 2001, Section 1-106.1.

**COMMENT PERIOD:**

October 1, 2003 through November 13, 2003. Interested persons may discuss informally the proposed rules with staff of the Office of Professional Counselor Licensing; or may before November 13, 2003 submit written comment to Nena West, Director, Office of Professional Counselor Licensing, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299; or may at the hearing ask to present written or oral views.

**PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, November 13, 2003, which begins at 1:00 p.m. in Room 307 of the State Health Department Building, 1000 N.E. 10th Street, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before November 13, 2003 to Nena West, Director, Office of Professional Counselor Licensing, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from staff of the Office of Professional Counselor Licensing, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement will be prepared and will be available beginning October 1, 2003 at the same location listed above for reviewing and obtaining copies of the proposed rules.

**CONTACT PERSON:**

Nena West, Director, Office of Professional Counselor Licensing, (405) 271-6030

*[OAR Docket #03-3066; filed 9-5-03]*

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 555. NOTIFICATION OF COMMUNICABLE DISEASE RISK EXPOSURE REGULATIONS**

*[OAR Docket #03-3067]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- 310:555-1-1 Purpose [AMENDED]
- 310:555-1-2 Definitions [AMENDED]
- 310:555-1-3 Applicability [AMENDED]
- 310:555-1-4 Notification system [AMENDED]

**SUMMARY:**

The proposed changes will ensure direct communication of source patient test results from the testing facility to the exposed person or the physician or designee who is providing post exposure follow up to the exposed person. Antiviral medications are available which can prevent transmission of HIV to the exposed person, but these medications must be initiated within hours, rather than days of the exposure in order to be effective. Today, with the availability of Rapid HIV testing, which can provide HIV test results on the source patient within 20 minutes, providers can use these test results to quickly evaluate the need to treat the exposed person with antiviral medications. A process which promotes direct notification of source results to either the person exposed, or to the provider who is providing post exposure evaluation and/or counseling is necessary to facilitate timely administration of appropriate prophylaxis. This process will apply to risk exposures to a healthcare worker, emergency responder or funeral worker occurring outside of employment at a health care facility.

**AUTHORITY:**

Oklahoma State Board of Health; 63 O.S. 2001, Sections 1-104, 1-502, 1-502.1 (B), 1-502.2, and 1-502.3

**COMMENT PERIOD:**

October 1, 2003 through November 13, 2003. Interested persons may discuss informally the proposed rules with Jan Fox, HIV/STD Division; or may before November 13, 2003, submit written comment to Jan Fox, HIV/STD Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299; or may at the hearing ask to present written or oral views.

**PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, November 13, 2003, which begins at 1:00 p.m. in Room 307 of the State Health Department Building, 1000 N.E. 10th Street, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs,

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indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before September 18, 2003 to Jan Fox, HIV/STD Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, or by e-mail to Janf@health.state.ok.us.

### COPIES OF PROPOSED RULES:

The proposed rules may be obtained for review from staff of the HIV/STD Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

### RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement will be prepared and will be available beginning October 1, 2003 at the same location listed above for reviewing and obtaining copies of the proposed rules.

### CONTACT PERSON:

Jan Fox, HIV/STD Division, (405) 271-4636

*[OAR Docket #03-3067; filed 9-5-03]*

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

*[OAR Docket #03-3072]*

### RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

### PROPOSED RULES:

Chapter 60. Motor Vehicles [AMENDED]

### SUMMARY:

The 2002 Legislature enacted statutory changes which require additions, revocations, and amendments to the existing rules in the following areas:

Existing Sections 710:60-3-12 and 710:60-3-13 have been amended to conform to the provisions of Senate Bill 234, § 2, which provides for staggered registration of motorcycles and mopeds, to commence January 1, 2004. [47:1115(B)(4)]

Existing Section 710:60-3-20 has been amended to conform to statute and to ensure that all vehicular license plates are displayed in a fashion that will allow maximum visibility for law enforcement. [47:1113(A)(2)]

Existing Section 710:60-3-14 will be amended to reflect a change in policy that will combine the receipts issued for transfer of title fees and registration fees into one document, reflecting both fees paid, when applicable. The past practice of issuing separate receipts will be discontinued.

Existing Section 710:60-3-23 has been amended to implement Section 1 of House Bill 1251 which allowed a credit with respect to the registration fee of a vehicle which is a replacement for one destroyed by a tornado on May 8 or 9, 2003. [47:1132.3(C)]

New Section 710:60-3-114 has been added to clarify the nature and taxability of fractionation tanks under existing statutory schemes in conformity with a legal opinion from

the Commission's Office of the General Counsel. [OTC O-03-006]

Existing Section 710:60-5-30(9)(B) has been amended to implement House Bill 1712, § 4, which provided for on-site vehicle inspections by law enforcement personnel at salvage pools, salvage disposal sales or classic or antique auctions, where an there is a discrepancy in the VIN of an out-of-state vehicle being offered for sale. 47:1105(M)]

Existing Section 710:60-5-113 has been amended to conform to statute and to clarify the lien filing and release procedures related to all vehicles registered in Oklahoma. [47:1109(2)]

Existing Section 710:60-5-116(D) has been amended to conform to Senate Bill 702 which provided that proceedings for foreclosure under "Title 42" for the storage of junked vehicles could commence five (5) days after the lien has accrued, and Senate Bill 512, § 2, which amended the lien priorities for an owner of real property with a contractual possessory lien securing accrued storage or rental charges for a manufactured home, allowing the owner priority over a creditor with a perfected security interest fifteen (15) days from and after the date the secured creditor has been given notice of the abandoned or surrendered manufactured home. The provisions of SB512 are effective November 1, 2003. Prior law provided for a ten (10) day period between notice and priority. [42:91; 42:180(D)]

Existing Section 710:60-7-8 has been amended to implement Section 4 of House Bill 1251 which allowed a credit with respect to vehicle excise tax for a vehicle which is a replacement for one destroyed by a tornado on May 8 or 9, 2003. [47:2103.1(3)]

Existing Section 710:60-9-94 has been amended to clarify collection procedures for Motor License Agents who have received a dishonored check.

In addition, other rule changes are proposed to make clarifications of policy, to improve readability, to correct scrivener' errors, to update statutory citation, and to insure accurate internal cross-references.

### AUTHORITY:

47 O.S. §§ 1113(A)(2) and 1149; 68 O.S. §§203, 2110; Oklahoma Tax Commission

### COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m., November 4, 2003, to the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date, at the numbers provided below.

### PUBLIC HEARING:

A public hearing will be held to provide an additional means by which suggestions may be offered on the content of the proposed rules, **2:00 p.m. November 6, 2003**, at the main offices of the Oklahoma Tax Commission, M. C. Connors Building, Room 1-24, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma.

Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

**REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

Although nothing in this **rulemaking action** has been determined to **adversely** impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with 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:**

Interested persons may inspect proposed rules at the offices of the Oklahoma Tax Commission, Tax Policy Division, 5th floor, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma. Copies of proposed rules may be obtained without charge from the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

**RULE IMPACT STATEMENT:**

A Rule Impact Statement will be prepared and will be available for review from and after October 16, 2003, from the same source listed above for obtaining copies of proposed rules.

**CONTACT PERSON:**

Carolyn Swifthurst, Agency Liaison. Phone: 405-521-3133; FAX: 405-522-0063; Email: cswifthurst@oktax.state.ok.us

[OAR Docket #03-3072; filed 9-5-03]

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

[OAR Docket #03-3073]

**RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking.

**PROPOSED RULES:**

Subchapter 4. Registration Pursuant to the International Registration Plan [AMENDED]

**SUMMARY:**

Ongoing efforts to refine the administration of IRP provisions in Oklahoma require amendments to existing rules in the following areas:

Existing Section 710:60-4-4. *Proof of Ownership* will be amended to clarify that a lease-purchase agreement may serve as documentation of ownership, but not a lease with an option to purchase.

Existing Section 710:60-4-6. *Registration as an Owner-Operator* will be amended to include a definition for "owner-operator", furnish further explanation of the factors which will be looked at to establish that a registrant can be located in Oklahoma, and provide a more detailed description of lease requirements.

Existing Section 710:60-4-16. *Application Disapproval* will be amended to address issues and questions which have arisen in conjunction with the administration of existing procedures, particularly with respect to various forms of temporary operating credentials.

Existing Section 710:60-4-17. *Temporary Operating Authority* will be amended to require that all fees be paid prior to issuance of temporary operating authority to new accounts.

Existing Section 710:60-4-20. *Incorporation by Reference* is amended to insure accurate and current citation and references to materials being incorporated.

**AUTHORITY:**

47 O.S. § 1149, 1120(G); 68 O.S. § 203; Oklahoma Tax Commission

**COMMENT PERIOD:**

Persons wishing to make written submissions may do so by 4:30 p.m., November 4, 2003, to the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date, at the numbers provided below.

**PUBLIC HEARING:**

A public hearing will be held to provide an additional means by which suggestions may be offered on the content of the proposed rules, **2:00 p.m. November 6, 2003**, at the main offices of the Oklahoma Tax Commission, M. C. Connors Building, Room 1-24, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma.

Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

**REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

Although nothing in this **rulemaking action** has been determined to **adversely** impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with 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:**

Interested persons may inspect proposed rules at the offices of the Oklahoma Tax Commission, Tax Policy Division, 5th floor, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma. Copies of proposed rules may be obtained without charge from the Oklahoma Tax Commission,

## Notices of Rulemaking Intent

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Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

**RULE IMPACT STATEMENT:**

Rule Impact Statement(s) will be prepared and will be available for review from and after October 16, 2003, from the same source listed above for obtaining copies of proposed rules.

**CONTACT PERSON:**

Carolyn Swifthurst, Agency Liaison. Phone:  
405-521-3133; FAX: 405-522-0063; Email:  
cswifthurst@oktax.state.ok.us

*[OAR Docket #03-3073; filed 9-5-03]*

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# 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.*

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**TITLE 345. COMMITTEE FOR INCENTIVE  
AWARDS FOR STATE EMPLOYEES  
CHAPTER 10. PRODUCTIVITY  
ENHANCEMENT PROGRAM**

*[OAR Docket #03-3068]*

**RULEMAKING ACTION:**

Gubernatorial approval.

**RULES:**

Subchapter 1. General Provisions

345:10-1-2. Definitions [NEW]

Subchapter 3. Organization

345:10-3-1. Incentive Awards for State Employees  
Committee [AMENDED]

Subchapter 5. Types of Awards

345:10-5-2. Individual incentive compensation  
[AMENDED]

**GUBERNATORIAL APPROVAL:**

June 4, 2003

*[OAR Docket #03-3068; filed 9-5-03]*

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

*[OAR Docket #03-3049A]*

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 3. General Provider Policies

Part 3. General Medical Program Information

317:30-3-57. [AMENDED]

Subchapter 5. Individual Providers and Specialties

Part 5. Pharmacists

317:30-5-72. [AMENDED]

Part 63. Ambulatory Surgical Centers

317:30-5-566. [AMENDED]

(Reference APA WF # 03-20A)

### AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Article 10, Section 23 of the Oklahoma Constitution

### DATES:

#### Adoption:

June 12, 2003

#### Approved by Governor:

June 26, 2003

#### Effective:

Immediately upon Governor's approval or July 1, 2003, whichever is later

#### Expiration:

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

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 5. Individual Providers and Specialties

Part 5. Pharmacists

317:30-5-72. [AMENDED]

(Reference APA WF # 03-13A)

#### Gubernatorial approval:

May 26, 2003

#### Register publication:

20 Ok Reg 2762

#### Docket number:

03-3001

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions which will reduce the prescription drug benefit for adult Medicaid recipients who are served by the 1915(c) Home and Community Based Waivers. The state constitution requires all agencies to maintain a balanced budget. An emergency rule is necessary in order for the Agency to maintain a balanced budget as failure to do so would lead to a

breach of the state constitution. Agency staff estimates a total annual savings of \$16.7 million with a state share savings of \$4.9 million for the reduction in compensable HCB Service Waiver prescriptions. The revisions to blood and blood fractions coverage will be budget neutral.

### ANALYSIS:

Agency rules are revised to: (1) reduce the number of Medicaid compensable prescription drugs for adults served by the 1915(c) Home and Community Based Services Waivers; and (2) reflect current medical practice regarding the administration of blood and blood fractions. Current rules allow adults served by the HCB Services Waivers to receive an unlimited number of medically necessary prescribed drugs each month. Article 10, Section 23 of the Oklahoma Constitution, states that all State agencies must maintain a balanced budget. Due to state government budget constraints, the OHCA Board in emergency action voted on September 18, 2002, to approve the prescription reduction effective October 1, 2002 in order to comply with Article 10, Section 23 of the Oklahoma Constitution. The reduction will expire July 1, 2003, unless the Board approves rule revisions through the Administrative Procedures Act. In order for the Agency to accomplish the necessary financial reductions to comply with the state constitution, rules are in need of revision. Revisions include a more practical application of blood and blood fractions in outpatient settings. Existing rules limit outpatient coverage for blood and blood fractions to individuals "suffering from a congenital or acquired disease of the blood" which does not reflect current standard medical practices. Other revisions are incorporated due to superseding emergency rules previously approved by the Governor on May 26, 2003 (APA WF 03-13A). Those revisions eliminated the Medically Needy program effective July 1, 2003.

### CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR JULY 1, 2003, WHICHEVER IS LATER:**

## SUBCHAPTER 3. GENERAL PROVIDER POLICIES

### PART 3. GENERAL MEDICAL PROGRAM INFORMATION

#### 317:30-3-57. General Medicaid coverages - categorically needy

The following are general Medicaid coverages for the categorically needy:

## Emergency Adoptions

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- (1) Inpatient hospital services other than those provided in an institution for mental diseases.
  - (A) Adult coverage limited to ~~24~~ the compensable inpatient hospital days ~~per State fiscal year (July 1 through June 30) described at OAC 317:30-5-41.~~
  - (B) Coverage for persons under 21 years of age is not limited. All admissions must be medically necessary. All psychiatric admissions require prior authorization for an approved length of stay.
- (2) Emergency department services.
- (3) Dialysis in an outpatient hospital or free standing dialysis facility.
- (4) Outpatient therapeutic radiology or chemotherapy for proven malignancies or opportunistic infections.
- (5) Outpatient surgical services - facility payment for selected outpatient surgical procedures to hospitals which have a contract with the Authority.
- (6) Outpatient Mental Health Services for medical and remedial care including services provided on an outpatient basis by certified hospital based facilities who are also qualified mental health clinics.
- (7) Rural health clinic services and other ambulatory services furnished by rural health clinic.
- (8) Optometrists' services - only as listed in Subchapter 5, Part 45, Optometrist specific rules of this Chapter.
- (9) Maternity Clinic Services through the Oklahoma State Health Department.
- (10) Outpatient diagnostic x-rays and lab services. Other outpatient services provided adults, not specifically addressed, are covered only when prior authorized by the ~~agency's Medical Professional Services Units of the Oklahoma Health Care Authority Authorization Unit.~~
- (11) One screening mammogram (~~76092~~) and one follow-up mammogram (~~76090 and 76091~~) every year for women beginning at age 30. Additional follow-up mammograms are covered when medically necessary. Additional follow-up mammograms require a prior authorization from the ~~agency's Medical Professional Services Division of the Oklahoma Health Care Authority Authorization Unit.~~
- (12) Nursing facility services (other than services in an institution for tuberculosis or mental diseases).
- (13) Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) are available for each eligible individual under 21 years of age to provide access to regularly scheduled examinations and evaluations of the general physical and mental health, growth, development, and nutritional status of infants, children, and youth. Federal regulations also require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the State Plan, as long as federal funds are available for these services. These services must be necessary to ameliorate or correct defects and physical or mental illnesses or conditions and will require prior authorization. EPSDT services include payment for:
  - (A) Child health screening examinations for eligible children by a medical or osteopathic physician.
  - (i) Scheduled screenings include:
    - (I) ~~Six~~ six screenings during the first year of life;
    - (II) two screenings in the second year;
    - (III) one screening yearly for ages 2 thru 5 years; and
    - (IV) one screening every other year for ages 6 thru 20 years.
  - (ii) Interperiodic screenings outside the periodicity schedule for screening examinations are allowed at necessary intervals when a medical condition is suspected.
- (B) Diagnostic x-rays, lab, and/or injections when prescribed by a physician.
- (C) Immunizations.
- (D) Outpatient care.
- (E) Dental services, including inpatient services in an eligible participating hospital, outpatient dental screening every 12 months, two bite wing x-rays, and/or oral prophylaxis one each 12 months; emergency services for relief of pain and/or acute infection; limited restoration, repair and/or replacement of dental defects after the treatment plan submitted by dentist has been authorized.
- (F) Optometrists' services. The EPSDT periodicity schedule provides for at least one visual screening and glasses each 12 months. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal. Interperiodic screenings and glasses at intervals outside the periodicity schedule for optometrists are allowed when a visual condition is suspected.
- (G) Hearing services include hearing evaluation at least once every 12 months, hearing aid evaluation if indicated and purchase of a hearing aid when prescribed by a state licensed audiologist who holds a certificate of clinical competence from the American Speech and Hearing Association and preauthorized. Interperiodic hearing examinations are allowed at intervals outside the periodicity schedule when a hearing condition is suspected.
- (H) Prescribed drugs.
- (I) Outpatient Psychological services for eligible individuals under 21 years of age must be prior authorized. Payment is made to eligible psychologists who are duly licensed to practice. Outpatient testing and diagnosis is limited to one hour per patient each 12 months. Additional hours may be prior authorized.
- (J) Inpatient Psychotherapy Services. Payment is made to eligible psychologists and psychiatrists. Inpatient psychotherapy by a psychologist must be prior authorized.
- (K) Inpatient psychological testing for eligible individuals under 21 years of age. Limited to one hour per recipient each 12 months. If medically necessary, additional hours must be prior authorized. Payment is made to eligible psychologists who are duly licensed to practice.

- (L) Transportation. Provided when necessary in connection with examination or treatment when not otherwise available.
- (M) Inpatient hospital services.
- (N) Medical supplies, equipment, appliances and prosthetic devices beyond the normal scope of Medicaid.
- (O) EPSDT services furnished in a qualified child health center.
- (14) Family planning services and supplies for individuals of child-bearing age, including counseling, insertion of intrauterine device and sterilization for persons 21 years of age and over who are legally competent, not institutionalized and have signed the "Consent Form" at least 30 days prior to procedure. Reversal of sterilization procedures for the purposes of conception are not covered. Reversal of sterilization procedures may be covered when medically indicated and substantiating documentation is attached to the claim. The Norplant System for birth control is covered; however, removal of the Norplant System prior to five years is covered only when documented as medically necessary. Reinsertion of Norplant contraceptive will be considered on a case by case basis.
- (15) Family planning centers.
- (16) Physicians' services whether furnished in the office, the patient's home, a hospital, a nursing facility, ICF/MR, or elsewhere. For adults, payment will be made for up to ~~24~~ the limited number of compensable hospital days paid on hospital claims during a state fiscal year for each individual recipient described at OAC 317:30-5-41. These days will be maintained on the recipient record. Physician claims for hospital visits will be paid until the last compensable hospital day is captured. After 24 ~~the~~ limited number of hospital days have been captured, inpatient physician services will not be paid beyond the last compensable hospital day. Office visits for adults are limited to two per month except when in connection with emergency medical conditions.
- (17) Medical care and any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law. See applicable provider section for limitations to covered services for:
- (A) Podiatrists' services
  - (B) Optometrists' services
  - (C) Psychologists' services
  - (D) Certified Registered Nurse Anesthetists
  - (E) Certified Nurse Midwives
  - (F) Advanced Practice Nurses
- (18) Free-standing ambulatory surgery centers.
- (19) Prescribed drugs not to exceed three prescriptions per month. ~~Medically necessary prescribed drugs for persons in nursing facilities, ICF/MR's, Home and Community Based Waivers, and the Advantage Program Waiver. Prescriptions are not limited for persons under 21 years of age. Exceptions to the three prescription limit are:~~
- ~~(A) unlimited medically necessary monthly prescriptions for:~~
    - ~~(i) individuals under the age of 21 years; and~~
    - ~~(ii) residents of Nursing Facilities or Intermediate Care Facilities for the Mentally Retarded.~~
  - ~~(B) two additional medically necessary prescriptions per month to the three covered under the State Plan are allowed for adults receiving services under the §1915(c) Home and Community Based Services Waivers.~~
- (20) Rental and/or purchase of durable medical equipment.
- (21) Adaptive equipment, when prior authorized, for persons residing in private ICF/MR's.
- (22) Dental services for persons residing in private ICF/MR's in accordance with the scope of dental services for persons under age 21.
- (23) Prosthetic devices limited to catheters and catheter accessories, colostomy and urostomy bags and accessories, tracheostomy accessories, nerve stimulators, hyperalimentation and accessories, home dialysis equipment and supplies, oxygen/oxygen concentrator equipment and supplies, respirator or ventilator equipment and supplies, and those devices inserted during the course of a surgical procedure.
- (24) Standard medical supplies.
- (25) Eyeglasses under EPSDT for individuals under age 21. Payment is also made for glasses for children with congenital aphakia or following cataract removal.
- ~~(26) Payment to blood banks for blood when not included in the hospital per diem cost.~~
- ~~(27) Blood and blood fractions for eligible persons suffering from a congenital or acquired disease of the blood when administered on an outpatient basis.~~
- ~~(28) Inpatient services for individuals age 65 or older in institutions for mental diseases, limited to those persons whose Medicare, Part A benefits are exhausted for this particular service and/or those persons who are not eligible for Medicare services.~~
- ~~(29) Nursing facility services, limited to individuals preauthorized and approved by OHCA for such care.~~
- ~~(30) Inpatient psychiatric facility admissions for individuals under 21 are limited to an approved length of stay effective July 1, 1992, with provision for requests for extensions.~~
- ~~(31) Transportation and subsistence (room and board) to and from providers of medical services to meet patient's needs (ambulance or bus, etc.), to obtain medical treatment.~~
- ~~(32) Extended services for pregnant women including all pregnancy-related and postpartum services to continue to be provided, as though the women were pregnant, for 60 days after the pregnancy ends, beginning on the last date of pregnancy.~~
- ~~(33) Nursing facility services for patients under 21 years of age.~~

## Emergency Adoptions

(~~3433~~) Personal care in recipient's home, prescribed in accordance with a plan of treatment and rendered by a qualified person under supervision of an R.N.

(~~3534~~) Part A deductible and Part B medicare Coinsurance and/or deductible.

(~~3635~~) Home and Community Based Waiver Services for the mentally retarded.

(~~3736~~) Home health services limited to 36 visits per year and standard supplies for 1 month in a 12-month period. The visits may be any combination of Registered Nurse and nurse aide visits, not to exceed 36 per year.

(~~3837~~) Organ and tissue transplantation services for children and adults, limited to bone marrow, stem cells, cornea, heart, kidney, liver, lung, SPK (simultaneous pancreas kidney), PAK (pancreas after kidney), and heart-lung, are covered services based upon the conditions listed in (A)-(D) of this paragraph:

(A) All transplantation services, except kidney and cornea, must be prior authorized to be compensable.

(B) To be prior authorized all procedures are reviewed based on appropriate medical criteria.

(C) To be compensable under the Medicaid program all organ transplants must be performed at a Medicare approved transplantation center.

(D) Finally, procedures considered experimental or investigational are not covered.

(~~3938~~) Home and community-based waiver services for mentally retarded individuals who were determined to be inappropriately placed in a NF (Alternative Disposition Plan - ADP).

(~~4039~~) Case Management services for the chronically and/or severely mentally ill.

(~~4140~~) Emergency medical services including emergency labor and delivery for illegal or ineligible aliens.

(~~4241~~) Services delivered in Federally Qualified Health Centers. Payment will be made on an encounter basis. An encounter is all medical or dental services provided by the center in one day.

(~~4342~~) Early Intervention services for children ages 0-3.

(~~4443~~) Residential Behavior Management in therapeutic foster care setting.

(~~4544~~) Birthing center services.

(~~4645~~) Case management services through the Department of Mental Health and Substance Abuse.

(~~4746~~) Home and Community-Based Waiver services in limited geographic areas for aged or physically disabled individuals.

(~~4847~~) Outpatient ambulatory services for persons infected with tuberculosis.

### SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

#### PART 5. PHARMACISTS

#### 317:30-5-72. Categories of service eligibility

(a) **Coverage for adults.** (~~1~~) ~~Categorically needy.~~ Prescription drugs for categorically needy adults are covered as set forth in this subsection.

(~~A1~~) With the exception of (~~B~~) (~~2~~) and (~~C~~) (~~3~~) of this ~~paragraph subsection~~, categorically needy adults are eligible for three covered prescriptions per month.

(~~B2~~) ~~For categorically related adults who are residents of Nursing Facilities, private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) or who are persons eligible under any Home and Community Based Waiver program (for example the Developmentally Disabled Waiver, the ADvantage Waiver, or the In Home Support Waiver) are eligible for all medically necessary prescriptions subject to the limitations set forth in OAC 317:30-5-72.1, OAC 317:30-5-77.2 and OAC 317:30-5-77.3. Subject to the limitations set forth in OAC 317:30-5-72.1, OAC 317:30-5-77.2, and OAC 317:30-5-77.3, exceptions to the three medically necessary prescriptions per month limit are:~~

(~~A~~) Unlimited monthly medically necessary prescriptions for categorically related individuals who are residents of Nursing Facilities or Intermediate Care Facilities for the Mentally Retarded; and

(~~B~~) two additional medically necessary prescriptions per month to the three covered under the State Plan are allowed for adults receiving services under the §1915(c) Home and Community Based Services Waivers.

(~~C3~~) Drugs exempt from the three prescription limit include: Antineoplastics, anti-retroviral agents for persons diagnosed with Acquired Immune Deficiency Syndrome (AIDS) or who have tested positive for the Human Immunodeficiency Virus (HIV), certain prescriptions ~~which~~ that require frequent laboratory monitoring, birth control prescriptions, over the counter contraceptives, hemophilia drugs, compensable smoking cessation products, certain solutions used in compounds (i.e. sodium chloride, sterile water, etc.), and drugs used for the treatment of tuberculosis ~~are excluded from the prescription limitation.~~ For purposes of this Section, exclusion from the three prescription limit means claims filed for any of these prescriptions will not count toward the three prescriptions allowed per month.

(~~2~~) **Medically needy.** ~~With the exception of individuals who are eligible under OAC 317:35-7-45 (individuals eligible because of catastrophic illness), medically needy adults are not covered in the prescription drug program. For those individuals who are eligible because of catastrophic illness coverage the prescription drug benefit is limited to three drugs per month. Eligibility for catastrophic illness is a portion of Oklahoma's medically needy program.~~

(~~A~~) Each medically needy applicant classified as having a catastrophic illness, within that definition, who meets the Medicaid standards of eligibility receives a medical ID card.

~~(B) If a medically needy adult is approved under the catastrophic provision with a spenddown, all prescriptions will be applied toward the spenddown until the full amount is met.~~

~~(b) Coverage for children (categorically and medically needy).~~ Prescription drugs for Medicaid eligible individuals under 21 years of age are not limited.

(c) **Individuals eligible for Part B of Medicare.** Individuals eligible for Part B of Medicare are eligible for a prescription drug benefit.

**PART 63. AMBULATORY SURGICAL CENTERS**

**317:30-5-566. Outpatient surgery services**

The covered facility services are defined as those services furnished by an ASC or OHF in connection with a covered surgical procedure.

(1) **Services included.** Services included in the facility reimbursement rate are:

(A) Nursing, technicians, and other related services. These include all services in connection with covered procedures furnished by nurses and technical personnel who are employees of the facility. In addition to the nursing staff, this category would include orderlies and others involved in patient care.

(B) Use by the patient of the facility. This category includes operating and recovery rooms, patient preparation areas, waiting rooms, and other areas used by the patient or offered for use by the patient's relatives in connection with surgical services.

(C) Drugs, biologicals, surgical dressings, supplies, splints, casts, appliances and equipment. This category includes all supplies and equipment commonly furnished by the facility in connection with surgical procedures, including any drugs and biologicals administered while the patient is in the facility. Surgical dressings, other supplies, splints, and casts include only those furnished by the facility at the time of surgery. Additional supplies and materials furnished later would generally be furnished as incident to a physician's service and not as a facility service. Supplies include those required for both the patient and facility personnel, i.e., gowns, masks, drapes, hoses, scalpels, etc., whether disposable or reusable.

(D) Diagnostic or therapeutic items and services directly related to the surgical procedures. Payment to the facility includes items and services furnished by facility staff in connection with covered surgical procedures. These diagnostic tests include but are not limited to tests such as urinalysis, blood hemoglobin or hematocrit, CBC and fasting blood sugar, etc.

(E) Administrative, recordkeeping and housekeeping items and services. These include the general administrative functions necessary to run the facility, such as scheduling, cleaning, utilities, rent, etc.

(F) Blood, blood plasma, platelets, etc. Under normal circumstances, blood and blood products

fractions furnished during the course of the procedure will be included in the payment for the facility charge. In cases of patients with congenital or acquired blood disorders, additional payment can be made within the scope of the Authority's Medical Programs.

(G) Materials for anesthesia. These include the anesthetic and any materials necessary for its administration.

(2) **Services not included in facility reimbursement rates are:**

(A) Physicians' services. This category includes most services performed in the facility which are not considered facility services. The term physicians' services includes any pre/post-operative services, such as office visits, consultations, diagnostic tests, removal of stitches, changing of dressings, or other services which the individual physician usually includes in a set "global" fee for a given surgical procedure.

(B) The sale, lease or rental of durable medical equipment (DME) to patients for use in their homes. If the facility furnishes items of DME to patients it should be treated as a DME supplier and this requires a separate contract and separate claim form. Coverage of DME is limited to the scope of the Authority's Medical Programs.

(C) Prosthetic devices. Prosthetic devices, whether implanted, inserted, or otherwise applied by covered surgical procedures are not included in the facility payment. One of the more common prostheses is intraocular lenses (IOL's). These should be billed as a separate line item.

(D) Ambulance services. If the facility furnishes ambulance services, they are covered separately as ambulance services if otherwise compensable under the Authority's Medical Programs. This requires a separate contract and a separate claim form.

(E) Leg, arm, back and neck braces. These items are not included in the facility payment. Payment is limited to the scope of the Authority's Medical Programs.

(F) Artificial legs, arms and eyes. This equipment is not considered part of a facility service and is not included in the facility payment rate. Payment is limited to the scope of the Authority's Medical Programs.

(G) Services of an independent laboratory. Payment for laboratory services is limited to the scope of the Authority's Medical Programs.

(H) Reimbursement - facility services. The facility services are reimbursed according to the group in which the surgical procedure is listed. If more than one surgical procedure is performed at the same setting, reimbursement will be made for only the major procedure. Reimbursement will be made at a state-wide payment rate based on Medicare's established groups as adapted for Medicaid.

(3) **Compensable procedures.** The List of Covered Surgical Procedures in (1) of this Section sets out those

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procedures for which the Authority will recognize a facility charge if otherwise compensable under the Authority's Medical Programs. If a procedure code is not on the list the Authority will not pay a facility charge.

(A) The inclusion of a procedure on this list does not in any way change any of the overall coverage limitations or exclusions of the Medicaid program. For instance, the program generally excludes coverage for cosmetic surgery, surgery for obesity, sexual reassignment, and removal of benign skin lesions. This list sets out the coverage and payment provisions if the procedure is otherwise compensable.

(B) The procedures are listed by body system, HCPCS codes, a brief description of the procedure and the applicable group payment rate.

(C) The HCPCS codes further identify the compensable procedures and should be used in billing.

*[OAR Docket #03-3049A; filed 8-28-03]*

access to needed medical, social, education and other services essential to meeting basic human needs.

The number of children who are repeat users of high end (acute and residential) hospital psychiatric care continues to increase. Revisions are designed enable the behavioral health case management providers to perform more effective services that should result in a decrease in the repeat utilization of costly hospital services. The proposed changes divide behavioral health case management into two service types, direct and indirect. Direct services activities would be face to face interaction with either the child and/or the child's parent/guardian/family member or service providers. Indirect services activities would be paid at a lower rate and include non face-to-face activities such as phone calls, monitoring of client's progress, and the case manager's travel time to or from activities necessary for the implementation of the service plan. The revisions will increase the case manager's ability to monitor the client's use of community services more effectively in order to assure that resources are maximized. Allowing the case manager to travel to the client's home, when other methods have been unsuccessful, will encourage case managers to continually assess the needs of the child and help divert the client from inpatient services. If a problem is identified, the case manager can then work quickly to align community services, and, in doing so, avoid hospital placement. The current rule disallows this type of monitoring and discourages the case manager from making regular contact. Rule revisions are needed to allow payment for indirect behavioral health case management services in order to decrease the utilization of inpatient services by seriously emotionally disturbed children.

#### CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR JULY 1, 2003, WHICHEVER IS LATER:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 67. BEHAVIORAL HEALTH CASE MANAGEMENT SERVICES FOR INDIVIDUALS UNDER 21 YEARS OF AGE

#### 317:30-5-595. Eligible providers

Services are provided by case management agencies established for the purpose of providing case management services.

~~(1) **Program requirements.** Programs must be reviewed in the areas of substance abuse and/or mental health by the Department of Mental Health and Substance Abuse Services (DMHSAS) as an agent of the OHCA in accordance with a current Interagency Agreement for such purposes. The program must be found to be in compliance with the applicable approved OHCA standards for the purpose of providing case management services. Only organizations that have submitted a completed OHCA Case Management Provider Application to DMHSAS before July 1, 2003, will be eligible to be reviewed by DMHSAS for such purposes. On or after July 1, 2003, any organization seeking to be a provider of case management services not having a valid Memorandum of Agreement as an OHCA case management provider,~~

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

*[OAR Docket #03-3050]*

#### RULEMAKING ACTION:

EMERGENCY adoption

#### RULES:

Subchapter 5. Individual Providers and Specialties

Part 67. Behavioral Health Case Management Services for Individuals

Under 21 Years of Age

317:30-5-595. through 317:30-5-596.1. [AMENDED]

317:30-5-596.2. [NEW]

317:30-5-597. [AMENDED]

317:30-5-599. [AMENDED]

(Reference APA WF 03-14)

#### 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:

June 12, 2003

##### Approved by Governor:

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##### Effective:

Immediately upon Governor's approval or July 1, 2003, whichever is later

##### 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 rule revisions to implement cost containment measures in the area of Behavioral Health services.

#### ANALYSIS:

Medical Providers-Fee for Service, Case Management Services for Under 21 specific, rules are revised to allow payment for indirect behavioral health case management services in order to decrease the utilization of inpatient services by seriously emotionally disturbed children. Behavioral health case management services are provided to assist eligible individuals in gaining

~~or a completed OHCA Case Management Provider Application with DMHSAS, must demonstrate JCAHO, CARF, COA, or AOA accreditation. Beginning July 1, 2004, the DMHSAS review, in accordance with the above referenced DMHSAS/OHCA Interagency Agreement, will no longer qualify any organization to be a provider of case management services. As set forth in the current DMHSAS/OHCA Interagency Agreement, reviews conducted by DMHSAS will be limited to determinations that applications for initial and/or continued case management provider status meets standards approved by OHCA in accordance with protocol approved by OHCA.~~

(2) **Provider agency requirements.** The agency must demonstrate its capacity to deliver behavioral health case management services in terms of the following items:

(A) ~~Case management staff to serve the target group on a 24-hour on-call basis. On or after July 1, 2003, any organization seeking to be a provider of behavioral health case management services not having a valid Memorandum of Agreement as an OHCA case management provider, or a completed OHCA Case Management Provider Application with DMHSAS, must demonstrate appropriate JCAHO, CARF, COA, or AOA accreditation. Beginning July 1, 2004, the DMHSAS review, in accordance with DMHSAS/OHCA Interagency Agreement, will no longer qualify any organization to be a provider of behavioral health case management services. As set forth in the current DMHSAS/OHCA Interagency Agreement, reviews conducted by DMHSAS will be limited to determinations that applications for initial and/or continued behavioral health case management provider status meets standards approved by OHCA in accordance with protocol approved by OHCA.~~

(B) ~~Administrative capacity to fulfill State and Federal requirements. On or after July 1, 2004, OHCA will require agencies to have accreditation appropriate to behavioral health case management from JCAHO, CARF, COA, or AOA, and maintain the standards of the accreditation at all times.~~

(C) ~~Maintenance of programmatic and financial records. Program records should show that the agency is able to develop and maintain assessment records. The financial records should include development of a management system which tracks costs associated with worker activities. OHCA reserves the right to obtain a copy of any accreditation audit and/or site visit reports from the provider and/or the accreditation agency.~~

(D) ~~Be an agency which agrees to comply with applicable Federal and State regulations, as set forth in the contractual agreement. Agencies that are eligible to contract with OHCA to provide behavioral health case management services to eligible individuals under the age of 21 must be community based with a history of serving seriously emotionally disturbed (SED) children and their families.~~

(E) ~~On or after July 1, 2004, OHCA will require agencies to have accreditation appropriate to case management from JCAHO, CARF, COA, or AOA, and meet the standards of the accreditation agency at all times. The agency must be able to demonstrate the ability to develop and maintain appropriate patient records including but not limited to assessments, service plans, and progress notes. The financial records should include development of a management system which tracks costs associated with worker activities.~~

(F) ~~An agency must agree to follow the Department of Mental Health and Substance Abuse Services established behavioral health case management rules found in OAC 450:50.~~

(G) ~~An agency's behavioral health case management staff must serve the target group on a 24 hour on call basis.~~

(H) ~~An agency must agree to comply with applicable Federal and State regulations, as set forth in the contractual agreement.~~

(I) ~~Agencies will be required to maintain the Code of Federal Regulations (CFR) requirements as required by the Health Care Financing Administration Centers for Medicare and Medicaid Services (CMS) at all times.~~

(G) ~~OHCA reserves the right to obtain a copy of any accreditation audit and/or site visit reports from the provider and/or the accreditation agency.~~

(H) ~~Agencies that are eligible to contract with OHCA to provide case management services to consumers under the age of 21 must be community based with a history of serving children and their families. Consumers under the age of 21 must be in imminent risk of out-of-home placement for psychiatric reasons or substance abuse or in out-of-home placement due to psychiatric or substance abuse reasons.~~

(J) ~~Hospitals who are providers of inpatient psychiatric acute or residential services for children are ineligible to contract with OHCA to provide children's behavioral health case management services.~~

(3) **Application to become a provider by the Department of Mental Health.** ~~On or before July 1, 2003, an application as an eligible provider for case management services must be requested from the Department of Mental Health and Substance Abuse Services. This process is in addition to any other application submitted to the Department of Mental Health. The application will be reviewed and the provider will be notified within ten days from receipt of application of the determination. An application must be submitted prior to the beginning of each contract period.~~

(4) **Memorandum of agreement.** ~~The Oklahoma Health Care Authority and the Department of Mental Health and Substance Abuse Services have developed a memorandum of agreement that provides for responsibility of payment of the Medicaid state share required for federal financial participation. In accordance with this agreement, DMHSAS has agreed to pay the state~~

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share for case management services provided by Public facilities and DMHSAS facilities.

(5) **Provider types.**

(A) **Public facilities.** Public facilities are the regionally based Community Mental Health Centers. DMHSAS is responsible for the State's share of Medicaid services. Reimbursement will be at the Public rate.

(B) **DMHSAS Contracted facilities.** DMHSAS Contracted facilities are those facilities who contract with the DMHSAS to provide services. These facilities receive an appropriation from the DMHSAS and report to DMHSAS via the OMHS system. DMHSAS is responsible for the State's share of Medicaid services. Reimbursement will be at the Public rate.

(C) **Private facilities.** Private facilities are those facilities that contract directly with the Oklahoma Health Care Authority to provide case management services. The State's share of Medicaid services is included in the OHCA budget. Reimbursement will be at the Private rate.

(6) **Service provider education and experience requirements before July 1, 2001.** For case management services to be compensable by Medicaid, the case manager performing the service must maintain current case management certification from the Department of Mental Health and Substance Abuse Services. For those case managers who are certified on or before July 1, 2001, the following educational and experience requirements apply:

(A) Associates degree in a related human service field; OR

(B) Two years of college education plus two years or more human service experience; OR

(C) Bachelor's degree in a related human service field plus one year or more human service experience; OR

(D) Master's degree in a related human service field.

(7) **Service provider education and experience requirements after July 1, 2001.** The following educational and experience requirements apply after July 1, 2001. For behavioral health case management services to be compensable by Medicaid, the case manager performing the service must have and maintain a current children's behavioral health case manager certification from the Department of Mental Health and Substance Abuse Services (refer to OAC 450:50) and have a:

(A) Bachelor's or Master's degree in a mental health related field including, but not limited to psychology, social work, occupational therapy, family studies, sociology, criminal justice, school guidance and counseling; OR

(B) A current license as a registered nurse in Oklahoma; OR

(C) Certification as an alcohol and drug counselor allowed to provide substance abuse case management to those with alcohol and/or other drug dependencies

or addictions as a primary or secondary DSMIV Axis I diagnosis; AND

(D) Current case management certification from the Department of Mental Health and Substance Abuse Services.

**317:30-5-596. Coverage by category**

Payment is made for behavioral health case management service services as set forth in this Section.

(1) **Adults.** Coverage for adults is found in OAC 317:30-5-586.

(2) **Children.** Payment is made for services to persons under age 21 as follows:

(A) **Description of behavioral health case management services.** Services under behavioral health case management are not comparable in amount, duration and scope. The target group for initial behavioral health case management services are persons under age 21 who are in imminent risk of out of home placement hospitalization for psychiatric reasons or substance abuse reasons or are in out of home placement receiving treatment in an inpatient psychiatric hospital and nearing discharge due to psychiatric or substance abuse reasons. All behavioral health case management services will be subject to medical necessity criteria. The criteria will be applied to each individual case by an agent designated by the Oklahoma Health Care Authority.

(i) **Case Behavioral health case management services are provided to assist consumers eligible individuals** in gaining access to needed medical, social, educational and other services essential to meeting basic human needs. The behavioral health case manager provides referral, linkage and advocacy on behalf of the consumer child to gain access to appropriate community resources. The behavioral health case manager must monitor the progress in gaining access to services and continued appropriate utilization of necessary community resources. Behavioral case management is designed to promote recovery, maintain community tenure, and Case management is designed to assist individuals in accessing services for themselves following the case management guidelines established by the Department of Mental Health and Substance Abuse Services. In order to be compensable, the service must be performed utilizing the DMHSAS Strengths Based model of case management. This model of case management assists individuals in identifying and securing the range of resources, both environmental and personal, needed to live in a normally interdependent way in the community. The focus for the helping process is on strengths, interests, abilities, knowledge and capacities of each person, not on their diagnosis, weakness or deficits. The relationship between the service recipient and the behavioral health case manager

is characterized by mutuality, collaboration, and partnership. Helping activities are designed to occur primarily in the community, but may take place in the behavioral health case manager's office, if more appropriate. The community based behavioral health case management agency will coordinate with the child and family by phone or face-to-face, to identify immediate needs for return to home/community no more than two business days after notification that the family requests case management services. The case manager will conduct a face-to-face follow-up appointment with the child and family within 72 hours of discharge. The case manager will provide linkage/referral to physicians/medication services, counseling services, rehabilitation and/or support services as described in the case management service plan. During the follow-up phase of these referrals or links, the behavioral health case manager will provide aggressive outreach if appointments or contacts are missed within 24 hours of the missed appointments. Community/home based case management to assess the needs for services will be scheduled as reflected in the case management service plan, but not less than one time per month. The consumer recipient/parent/guardian has the right to refuse behavioral health case management and cannot be restricted from other services because of a refusal of behavioral health case management services.

(ii) ~~Provision of case management services will not restrict a consumer's free choice of providers. Eligible recipients will have the freedom to choose a case management provider as well as providers of other medical care. An eligible recipient/parent/guardian will not be restricted and will have the freedom to choose a behavioral health case management provider as well as providers of other medical care.~~

(iii) In order to ensure that behavioral health case management services appropriately meet the needs of the child and family and are not duplicated by other staff, behavioral health case management activities will be provided in accordance with a comprehensive and individualized treatment/service service plan. The development of this plan includes clinical staff participation, thus ensuring that staff knows a client has a case manager.

(iv) The treatment service plan includes must include goals and objectives that are measurable and time limited and must describe the specific activities to be performed. The plan also includes specific activities. Time spent in planning case management activities or service development is compensated if the consumer is present. If there are outpatient behavioral health services in

~~addition to case management services, the treatment plan must be reviewed and signed by the responsible mental health professional, consumer, and physician (if applicable). Behavioral health case management service plan development is compensable if the time is spent communicating with the child, parent/guardian/family member or provider of other services. The plan must be developed with participation by, as well as, reviewed and signed by the child (only if over 16 years of age), the parent or guardian, the behavioral health case manager, and a mental health professional as defined in OAC 317:30-240(c).~~

(v) Medicaid reimbursable behavioral health case management services include the following:

(I) Gathering necessary psychological, educational, medical, and social information for the purpose of service plan development.

(II) Face-to-face meetings with the child and/or the parent/guardian/family member for the implementation of activities delineated in the service plan.

(III) Face-to-face meetings with treatment or service providers, necessary for the implementation of activities delineated in the service plan.

(IV) Supportive activities such as non face-to-face communication with the child and/or parent/guardian/family member or the behavioral health case manager's travel time to and from meetings for the purpose of development or implementation of the service plan.

(V) Non face-to-face communication with treatment or service providers necessary for the implementation of activities delineated in the service plan.

(ivvi) Medicaid reimbursable behavioral health case management does not include the following activities:

(I) Physically escorting or transporting a consumer child or family to scheduled appointments or staying with the client consumer child during an appointment; or

(II) ~~Monitoring financial goals~~ Managing finances; or

(III) Providing specific services such as shopping or paying bills; or

(IV) Delivering bus tickets, food stamps, money, etc.; or

(V) ~~Services to nursing home consumers;~~

~~or~~ (VI) Counseling, ~~or~~ rehabilitative services, psychiatric assessment, or discharge planning; or

(VII) Filling out forms, applications, etc., on behalf of the consumer child when the consumer child is not present; or

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~~(VII)~~ Filling out Medicaid forms, applications, etc., or;

~~(VIII)~~ Mentoring or tutoring; or

~~(IX)~~ Services being provided or available from DHS/OJA caseworker; or Provision of behavioral health case management services to the same family by two separate behavioral health case management agencies.

~~(X)~~ Service to children receiving residential behavior management services in a foster home or group home setting; or

~~(XI)~~ Services to consumers residing in ICF/MR facilities.

(B) **Providers.** Case management services must be provided by a Community Mental Health Center or other qualifying provider agency of case management. Two different provider agencies may not bill case management service(s) for the same consumer on the same day.

(B) The following Medicaid recipients are not eligible for behavioral health case management services:

(i) Children/families for whom behavioral health case management services are available through DHS/OJA staff without special arrangements with DHS, OJA, and OHCA;

(ii) Children receiving services in Residential Behavior Management Services (RBMS) in a foster care or group home setting;

(iii) Residents of ICF/MR and nursing facilities; and

(iv) Children receiving Home and Community Based Waiver services.

(3) **Adults.** Coverage for adults is found in OAC 317:30-5-585.

(4) **Individuals eligible for Part B of Medicare.** Case management services provided to Medicare eligible recipients should be filed directly with the fiscal agent.

### 317:30-5-596.1. Prior authorization

(a) Prior authorization of behavioral health case management services and requirements to be authorized to provide case management services is mandatory. The provider must request prior authorization from the OHCA or its designated agent. ~~In order for the services to be prior authorized, consumer information requested must be submitted. Consumer information includes but is not limited to the following:~~

~~(1) Complete multi-axial DSM-IV diagnosis with supportive documentation and mental status examination summary; and~~

~~(2) Treatment history; and~~

~~(3) Current psycho-social information; and~~

~~(4) Psychiatric history; and~~

~~(5) Fully developed case management service plan, with goals, objectives, and time frames for services.~~

(b) Medicaid recipients who are eligible for services will be considered for prior authorization after receipt of complete and appropriate information submitted by the provider in accordance with the guidelines for behavioral health case

management services developed by OHCA or its designated agent. ~~Based on diagnosis, functional assessment, history and other Medicaid services being received, the Medicaid recipient may be approved to receive case management services. Medicaid recipients who reside in nursing facilities, residential behavior management services, group or foster homes, or ICF/MR's may not receive Medicaid compensable case management services.~~ A Medicaid recipient may be approved for a time frame of one to six months. The OHCA (or its designated agent) will review the initial request for completeness and appropriateness in accordance with the guidelines for prior authorization in the Behavioral Health Case Management Manual. ~~The provider will be notified within 24 hours (excluding weekends and holidays) if the request is incomplete, deficient, or inappropriate, and, if so, additional information will be requested. A completed request will be reviewed and processed within 72 working hours.~~ An initial request for case management services requires the provider to submit specific documentation to OHCA or its designated agent. A fully developed service plan is not required at the time of initial request. The provider will be given a time frame to develop the service plan while working with the child and his/her family and corresponding units of service will be approved prior to the completion of the service plan. The provider will be required to engage with the child/family within 72 hours of discharge from an inpatient psychiatric hospital and/or within 72 hours of receiving the request for services from the family or other community resource. The expectation is for the behavioral health case manager to immediately engage with the child/family to prevent hospital readmission and to refer to needed community resources. ~~Extension Requests requests~~ will be reviewed by licensed master's prepared therapists (Licensed Clinical Social Workers, Licensed Professional Counselors, Licensed Marriage and Family Therapists, Licensed Behavioral Practitioners) with experience in behavioral health care, Licensed Registered Nurses with experience in behavioral health care, Psychiatrists (M.D. and D.O.), or Psychologists possessing current state licensure.

(c) A prior authorization decision may be appealed by the provider or consumer client if filed within five working days of receipt of the decision. The first level of appeal is to request a reconsideration from OHCA's designated agent. If the appeal is not satisfactorily resolved during reconsideration, the provider or consumer client may submit an appeal to the OHCA through its standard grievance process (refer to OAC 317:2).

(d) Providers seeking prior authorization will follow OHCA's designated agent's Outpatient Behavioral Health Prior Authorization Manual prior authorization process guidelines for submitting behavioral health case management requests on behalf of the Medicaid recipient.

### 317:30-5-596.2. Direct and indirect case management services

Case management services are provided using one of two categories of service.

(1) **Direct case management services.** For Direct case management services the behavioral health case manager performs face to face interactions with either the child and/or the child's parent/guardian/family member or service providers necessary for the implementation of activities delineated in the service plan. Service plan development, when performed face to face, is considered direct behavioral health case management.

(2) **Indirect behavioral health case management.** For Indirect case management services the behavioral health case manager performs non face to face services related to the child's case, excluding those activities cited as non Medicaid compensable in OAC 317:30-5-596(2)(vi). Examples of indirect behavioral health case management are phone calls, monitoring of client progress and the case manager's travel time to or from activities necessary for the implementation of the service plan. Other indirect services may be communication through letters, memorandums or e-mail to treatment or other service providers necessary for the implementation of activities delineated in the service plan. Electronic communication documentation must be encrypted and meet HIPAA guidelines.

**317:30-5-597. Reimbursement**

(a) Reimbursement for case management services is determined using a Relative Value Unit system (RVU) fee schedule. A monetary conversion factor (CF) will be used to determine the overall level of payments to providers. The conversion factor uses the 1996 baseline payment data, adjusted to reduce Medicaid's payment of fixed costs. The formula for calculating the rates is as follows:  $RVU \times CF = Rate$ .

(b) Each unit of case management is provided using one of two categories of service. These categories are Direct and Indirect Case Management services. The rate for Direct case management service is the rate described in (a) of this Section. The rate for Indirect case management service is based on the Direct case management rate less a provider negotiated amount.

(c) Case management services are reimbursed using a 15 minute unit of service.

**317:30-5-599. Documentation of records**

All behavioral health case management services rendered must be reflected by documentation in the records. In addition to a complete behavioral health case management service plan, Documentation documentation of each session must include but is not limited to:

- (1) goals and objectives addressed,
- (2) progress toward goals and objectives,
- (3) start and stop times,
- (4) date,
- (5) staff signature and credentials, and at least one of the following:

(A) specific activities performed by the behavioral health case manager on behalf of the child related to linkage, referral, or monitoring;

(B) specific activities related to the monitoring of the child's progress on the goals and objectives contained in the service plan; and

(C) specific activities necessary for service plan development.

~~(6) specific resources to which the consumer was referred.~~

[OAR Docket #03-3050; filed 8-28-03]

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

[OAR Docket #03-3046]

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 5. Individual Providers and Specialties

Part 79. Dentists

317:30-5-697. [AMENDED]

(Reference APA WF # 03-16)

**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:**

June 12, 2003

**Approved by Governor:**

June 26, 2003

**Effective:**

Immediately upon Governor's approval or July 1, 2003, whichever is later

**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 rule revisions that will benefit oral surgeons who will now be able to use standard billing codes that are the same as the industry standard. Revisions will help to retain and recruit new Oral Surgeons as Medicaid contracted providers which in turn will increase the availability of specialized services for young Medicaid patients.

**ANALYSIS:**

Medical Providers-Fee for Service, Dentist specific, rules are being revised to streamline the process for the billing of oral surgery services. Current rules do not allow oral surgeons to use industry standard practices when billing for services. By allowing the use of the CPT codes and the HCFA-1500 form for claims, the need for a prior authorization for several oral surgery services will be eliminated. Oral Surgeons will benefit from the rule by being able to use industry standard billing practices when filing Medicaid claims. Providers no longer will be required to submit study models and panorex type radiographs for prior approval of all oral surgery procedures. Revisions will be advantageous to the Agency in that the Agency will have the ability to more accurately track oral surgery services and save staff time required to handle prior authorization requests for services. Medicaid eligible children will also benefit by being able to receive needed oral surgery services in a more timely manner. Rule revisions are need to streamline the billing process for oral surgery services.

**CONTACT PERSON:**

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR JULY 1, 2003, WHICHEVER IS LATER:

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 79. DENTISTS

#### 317:30-5-697. Oral surgery procedures

Some elective oral surgery procedures require a written report or treatment plan be reviewed by the Authority's OHCA Dental Consultant prior to surgery to determine if the service is within the scope of the Dental Program. ~~All maxillofacial bone and joint surgeries for deformities and dysfunctions must be prior authorized. Study models and panorex type radiographs must be submitted to the OHCA Dental Consultant for approval prior to the procedure being performed. All oral surgeons may bill on the HCFA-1500 using CPT codes or the ADA dental claim form using the HCPCS, Level II, Dental codes.~~

- ~~(1) All oral surgeons must use the dental claim form and the dental codes contained in this manual.~~
- ~~(2) All assistant surgery must be prior authorized. Requests for prior authorization (form MS MA 5) must be filed with the MS MA 5 from the primary surgeon.~~

[OAR Docket #03-3046; filed 8-28-03]

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

[OAR Docket #03-3048]

#### RULEMAKING ACTION:

EMERGENCY adoption

#### RULES:

Subchapter 5. Individual Providers and Specialties

Part 85. ADvantage Program Waiver Services

317:30-5-763. [AMENDED]

Part 95. Agency Personal Care Services

317:30-5-952. [AMENDED]

(Reference APA WF # 03-21)

#### 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:

June 12, 2003

##### Approved by Governor:

June 26, 2003

##### Effective:

Immediately upon Governor's approval or July 1, 2003, whichever is later

#### 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 rule revisions to improve the availability of ADvantage Case Management services in under served areas of the state. Through the ADvantage Program, individuals, who require nursing facility level of care, are able to remain at home, if they so desire, and receive necessary services at home or in the community rather than within an institutional setting. Without adequate services that allow the ADvantage recipients to continue to live in the community, some clients residing in very rural or difficult to serve geographic areas of the state will be forced into nursing homes.

#### ANALYSIS:

The Oklahoma Department of Human Services has requested rule revisions to the Medical Providers-Fee for Service, ADvantage Program Waiver and Agency Personal Care Services specific, rules to provide for a new category for ADvantage Case Management services for very rural/difficult services areas. ADvantage Case Management is a service that assists Home and Community Based ADvantage Waiver clients in gaining access to needed waiver, state plan and other services. Case Management coordinates needed medical, social, educational and other services, regardless of the funding source. A Centers for Medicare and Medicaid Services (CMS) review of the ADvantage Program found a shortage of the availability of case management services and case management capacity to monitor the delivery of services, primarily in very rural western and eastern Oklahoma counties. The Case Management capacity problem has recently intensified with the elimination of the Eldercare Program. The Department of Human Services, which pays the state share of the service, has proposed a higher reimbursement rate for services provided to clients who, in general, reside in a county with a population density equal to or less than 25 persons per square mile. A Rates and Standards Hearing recently changed the rate structure and increased the reimbursement rate. Without the proposed rate structure change and rate increase, the remaining ADvantage Case Management providers will not have the resources to expand into counties currently being served solely by Eldercare Program providers. Additional revisions will clarify the definition of Case Management and Skilled Nursing services as they relate to the ADvantage Waiver and revise the billing periods for services to coincide with HIPAA regulations.

#### CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR JULY 1, 2003, WHICHEVER IS LATER:

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 85. ADVANTAGE PROGRAM WAIVER SERVICES

#### 317:30-5-763. Description of services

Services included in the ADvantage Program are as follows:

- (1) **Case Management.**

(A) Case Management services are ~~those which services that assist recipients a client~~ in gaining access to ~~necessary waiver and other Medicaid services~~ medical, social educational or other services, regardless of payment source of services, that may benefit the client in maintaining health and safety. Case managers ~~will~~ initiate and oversee necessary assessments and reassessments to establish or reestablish waiver eligibility and appropriateness of services. Case managers ~~will~~ develop the ~~recipient's~~ client's plan of care, listing only services which are necessary to prevent institutionalization of the ~~recipient~~ client, as determined through assessments. Case managers ~~will~~ initiate the addition of necessary services or deletion of unnecessary services, as dictated by the ~~recipient's~~ client's condition and available support. Case managers ~~will~~ monitor the ~~recipient's~~ client's condition to ensure delivery and appropriateness of services and ~~will~~ initiate plan of care reviews. ~~Case managers will assist the recipient in accessing medical, social, educational or any other services which may benefit the recipient. If a client requires hospital or nursing facility services, the case manager assists the client in accessing institutional care and, as appropriate, periodically monitors the client's progress during the institutional stay and helps the client transition from institution to home by updating the service plan and preparing services to start on the date the client is discharged from the institution.~~

(B) Providers may only claim time for billable Case Management activities described as follows:

(i) A billable case management activity is any task or function defined under OAC 317:30-5-763(1)(A) that only an ADvantage case manager because of skill, training or authority, can perform on behalf of a client;

(ii) Ancillary activities such as clerical tasks like mailing, copying, filing, faxing, drive time or supervisory/administrative activities are not billable case management activities, although the administrative cost of these activities and other normal and customary business overhead costs have been included in the reimbursement rate for billable activities;

(iii) If a client is in a hospital or nursing facility and the case manager provides transitional case management services to the client and the client returns home with ADvantage services, case management services provided during the institutional stay, if delivered within a maximum of 180 days immediately preceding the client's return home, may be authorized for reimbursement and are to be claimed as delivered on the day of re-entry into the ADvantage Program.

~~(BC)~~ Case Management services are prior authorized and billed per 45-minute 15-minute unit of service using the rate associated with the location of residence of the client served.

(i) Standard Rate: Case Management services are billed using a Standard rate for reimbursement for billable service activities provided to a client who resides in a county with population density greater than 25 persons per square mile.

(ii) Very Rural/Difficult Service Area Rate: Case Management services are billed using a Very Rural/Difficult Service Area rate for billable service activities provided to a client who resides in a county with population density equal to or less than 25 persons per square mile. An exception would be services to clients that reside in AA identified zip codes in Osage County adjacent to metropolitan areas of Tulsa and Washington Counties. Services to these clients are prior authorized and billed using the Standard rate.

(iii) The United States 2000 Census, Oklahoma Counties population data is the source for determination of whether a client resides in a county with a population density equal to or less than 25 persons per square mile, or resides in a county with a population density greater than 25 persons per square mile.

(2) **Respite.**

(A) Respite services are provided to ~~individuals~~ clients who are unable to care for themselves. They are provided on a short-term basis because of the absence or need for relief of the primary caregiver. Payment for respite care does not include room and board costs unless more than seven hours are provided in a nursing facility. Respite care will only be utilized when other sources of care and support have been exhausted. Respite care will only be listed on the plan of care when it is necessary to prevent institutionalization of the ~~individual~~ client. Units of services are limited to the number of units approved on the plan of care.

(B) ~~In-Home Respite is an hourly rate services are billed per 15-minute unit service. A~~ Within any one-day period, a minimum of two hours eight units must be provided with a maximum of seven hours 28 units provided. If ~~The service is provided in the recipient's client's home.~~

~~(C) Facility Based Respite is filed as an hourly rate. A minimum of two hours must be provided with a maximum of seven hours. It is only provided in an Adult Day Health Care Facility.~~

~~(DC)~~ Facility-Based Extended Respite is filed for a per diem rate, if provided in Nursing Facility. Extended Respite must be at least eight hours in duration.

~~(ED)~~ In-Home Extended Respite is filed for a per diem rate. A minimum of eight hours must be provided in the ~~recipient's~~ client's home.

(3) **Adult Day Health Care.**

(A) Adult Day Health Care is furnished on a regularly scheduled basis for one or more days per week, at least four hours per day in an outpatient setting. It

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provides both health and social services which are necessary to ensure the optimal functioning of the client. Physical, occupational, respiratory and/or speech therapies may only be provided as an enhancement to the basic Adult Day Health Care service when authorized by the plan of care and billed as a separate procedure. Meals provided as part of this service shall not constitute a full nutritional regimen. Transportation between ~~recipient's~~ the client's residence and the service setting is provided as a part of Adult Day Health Care. Personal Care service enhancement in Adult Day Health Care is assistance in bathing and/or hair washing authorized by the plan of care and billed as a separate procedure. Most assistance with activities of daily living, such as eating, mobility, toileting and nail care, are services that are integral to the Adult Day Health Care service and are covered by the Adult Day Health Care basic reimbursement rate. Assistance with bathing and/or hair care is not a usual and customary adult day health care service. Enhanced personal care in adult day health care for assistance with bathing and/or hair washing will be authorized when an ADvantage waiver ~~consumer~~ client who uses adult day health care requires assistance with bathing and/or hair washing to maintain health and safety.

(B) Adult Day Health Care is a per diem rate, if six or more hours are provided in a day. If fewer than six hours but at least one hour of service are provided in a day, the service is billed in ~~one hour~~ 15-minute units. The number of units of service a ~~recipient~~ client may receive is limited to the number of units approved on the ~~recipient's~~ client's approved plan of care.

(C) Adult Day Health Care Therapy Enhancement is a ~~20-minute~~ maximum one session per day unit of service ~~per week~~.

(D) Adult Day Health Personal Care Enhancement is a maximum one per day unit of bathing and/or hair washing service.

#### (4) **Environmental Modifications.**

(A) Environmental Modifications are physical adaptations to the home, required by the ~~recipient's~~ client's plan of care, which are necessary to ensure the health, welfare and safety of the individual, or which enable the individual to function with greater independence in the home and without which, the recipient would require institutionalization. Adaptations or improvements to the home which are not of direct medical or remedial benefit to the waiver client are excluded.

(B) All services require prior authorization.

#### (5) **Specialized Medical Equipment and Supplies.**

(A) Specialized Medical Equipment and Supplies are devices, controls, or appliances specified in the plan of care, which enable ~~recipients~~ clients to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. Also included are items necessary for life support, ancillary supplies

and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid state plan. This service shall exclude any equipment and/or supply items which are not of direct medical or remedial benefit to the waiver client. This service is necessary to prevent institutionalization.

(B) Specialized Medical Equipment and Supplies are billed using the appropriate HCPC procedure code ~~and a modifier~~. All services must be prior authorized.

#### (6) **Comprehensive Home Care.** Comprehensive Home Care is an integrated service-delivery package which includes case management, personal care, skilled nursing, in-home respite and advanced supportive/restorative assistance.

(A) Comprehensive Home Care is provided by an agency which has been trained and certified by the Long Term Care Authority to provide an integrated service delivery system. Comprehensive Home Care is case management in combination with one or more of the following services:

- (i) personal care,
- (ii) in-home respite,
- (iii) skilled nursing, and/or
- (iv) advanced supportive/restorative services.

(B) All services must be provided in the home and must be sufficient to achieve, maintain or improve the ~~consumer's~~ client's ability to carry out daily living activities. However, 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. The sub-component services of Comprehensive Home Care are the same as described in (A) of this paragraph (see subparagraph (1)(A) of this section for ~~case management~~ Case Management services, OAC 317:35-15-2 for ~~personal care~~ Personal Care service, subparagraph (8)(A) of this section for ~~skilled nursing~~ Skilled Nursing, subparagraph (2)(A) of this section for In-Home Respite, and subparagraph (7)(A) of this section for Advanced Supportive/Restorative Assistance).

#### (7) **Advanced Supportive/Restorative Assistance.**

(A) Advanced Supportive/Restorative Assistance services are maintenance services to assist a ~~recipient~~ client who has a chronic, yet stable, condition. The service assists with activities of daily living which require devices and procedures related to altered body functions. This service is for maintenance only and is not utilized as a treatment service.

(B) Advanced Supportive/Restorative Assistance service is billed per ~~one hour~~ 15-minute unit of service. The number of units of this service a ~~recipient~~ client may receive is limited to the number of units approved on the plan of care.

#### (8) **Skilled Nursing.**

(A) Skilled Nursing services are services of a maintenance or preventive nature provided to ~~re-~~clients with stable, chronic conditions. These services are not intended to be treatment for an acute health condition and may not include services which would be reimbursable under either Medicaid or Medicare's Home Health Program. This service primarily provides nurse supervision to the Personal Care Assistant or to the Advanced Supportive/Restorative Assistance Aide, assessment of the ~~recipient's~~client's health and assessment of services to meet the ~~recipient's~~client's needs as specified in the plan of care. ~~In addition, these services may include one or more of the following where appropriate to meet the needs of the client and authorized by the client's Case Manager: A skilled nursing assessment/evaluation on-site visit is made to each client for whom Advanced Supportive/Restorative Assistance services are authorized to evaluate the condition of the client. A monthly visit report will be made to the ADvantage Program case manager, to report the client's condition or other significant information concerning each advanced supportive/restorative care client.~~

(i) The ADvantage Program case manager may recommend authorization of Skilled Nursing services for assessment/evaluation of:

(I) the client's general health, functional ability and needs and/or

(II) the adequacy of personal care and or advanced supportive/restorative assistance services to meet the client's needs including providing on-the-job training and competency testing for personal care or advanced supportive/restorative care aides in accordance with rules and regulations for delegation of nursing tasks as established by the Oklahoma Board of Nursing.

(ii) In addition to assessment/evaluation, the ADvantage Program case manager may recommend authorization of Skilled Nursing services for the following:

(~~ii~~) filling a one-week supply of insulin syringes for a blind diabetic who can self-inject the medication but cannot fill his own syringe. This service would include monitoring the ~~patient's~~client's continued ability to self-administer the insulin;

(~~ii~~) setting up oral medications in divided daily compartments for a ~~recipient~~client who self-administers prescribed medications but needs assistance and monitoring due to a minimal level of disorientation or confusion;

(~~iii~~) monitoring a ~~recipient's~~client's skin condition when a client is at risk of skin breakdown due to immobility or incontinence, or the ~~recipient~~client has a chronic stage II decubitus requiring maintenance care and monitoring;

(iv) ~~conducting general health evaluations;~~  
(~~iv~~) providing nail care for the diabetic client or client with circulatory or neurological deficiency;

(v) ~~making a monthly on-site visit to each recipient for whom advanced supportive/restorative care services are authorized to evaluate the condition of the recipient. A monthly visit report will be made to the ADvantage Program case manager, to report the recipient's condition or other significant information concerning each advanced supportive/restorative care recipient;~~

(v) providing consultation and education to the ~~consumer~~client, ~~consumer's~~client's family and/or other informal caregivers identified in the service plan, regarding the nature of the chronic condition. Provide skills training (including return skills demonstration to establish competency) for preventive and rehabilitative care procedures to the ~~consumer~~client, family and/or other informal caregivers as specified in the service plan; and

(viii) ~~providing on-the-job training and competency testing for advanced supportive/restorative care aides in accordance with rules and regulations for delegation of nursing tasks as established by the Oklahoma Board of Nursing. The ADvantage Program case manager may recommend authorization of R.N. visits in other similar situations.~~

(B) ~~Skilled Nursing service is filed billed for an assessment/evaluation per assessment or, for non-assessment services, billed for the first hour unit of service and for each 45-minute 15-minute unit of service provided after the first hour. An agreement by a provider to produce a nurse evaluation is an agreement, as well, to provide the nurse assessment identified Medicaid in-home care services for which the provider is certified and contracted. Reimbursement for a nurse evaluation shall be denied if the provider that produced the nurse evaluation fails to provide the nurse assessment identified Medicaid in-home care services for which the provider is certified and contracted.~~

(9) **Home Delivered Meals.**

(A) Home Delivered Meals provide one meal per day brought to the ~~recipient's~~client's home. Each meal has a nutritional content equal to one third of the Recommended Daily Allowance. Meals are only provided to ~~recipients~~clients who are unable to prepare meals and lack an informal provider to do meal preparation.

(B) Home Delivered Meals are billed per meal/unit. The limit of the number of units a ~~recipient~~client is allowed to receive is limited on the ~~recipient's~~client's plan of care.

(10) **Occupational Therapy services.**

(A) Occupational Therapy services are those services that increase functional independence by

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enhancing the development of adaptive skills and performance capacities of individuals clients with physical disabilities and related psychological and cognitive impairments. Services are provided in the consumer's client's home and are intended to help the consumer client achieve greater independence to reside and participate in the community. Treatment involves the therapeutic use of self-care, work and play activities and may include modification of the tasks or environment to enable the patient client to achieve maximum independence, prevent further disability, and maintain health. Under a physician's order, a licensed occupational therapist evaluates the recipient's client's rehabilitation potential and develops an appropriate written therapeutic regimen. The regimen utilizes paraprofessional occupational therapy assistant services, within the limits of their practice, working under the supervision of the licensed occupational therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the recipient's client's rehabilitative progress and will report to the recipient's client's case manager and physician to coordinate necessary addition and/or deletion of services, based on the consumer's client's condition and ongoing rehabilitation potential.

(B) Occupational Therapy services are billed per ~~15-minute~~ 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

### (11) Physical Therapy services.

(A) Physical Therapy services are those services that prevent physical disability through the evaluation and rehabilitation of individuals clients disabled by pain, disease or injury. Services are provided in the consumer's client's home and are intended to help the consumer client achieve greater independence to reside and participate in the community. Treatment involves use of physical therapeutic means such as massage, manipulation, therapeutic exercise, cold or heat therapy, hydrotherapy, electrical stimulation and light therapy. Under a physician's order, a licensed physical therapist evaluates the recipient's client's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional physical therapy assistant services, within the limits of their practice, working under the supervision of the licensed physical therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the recipient's client's rehabilitative progress and will report to the recipient's client's case manager and physician to coordinate necessary addition and/or deletion of services, based on the consumer's client's condition and ongoing rehabilitation potential.

(B) Physical Therapy services are billed per ~~15-minute~~ 15-minute units of service. Payment is not allowed solely for written reports or record documentation.

### (12) ~~Comprehensive home care~~ Home Care (CHC) personal care Personal Care.

(A) Comprehensive Home Care Personal Care is equal to ~~personal care~~ Personal Care as defined in OAC 317:35-15-2. Comprehensive Home Care (CHC) Personal Care is assistance to ~~an individual~~ a client 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 client 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.

(B) Comprehensive Home Care (CHC) Personal Care services are billed per ~~one hour~~ 15-minute unit of service.

### (13) Speech and Language Therapy Services.

(A) Speech/Language Therapy services are those that prevent speech and language communication disability through the evaluation and rehabilitation of individuals clients disabled by pain, disease or injury. Services are provided in the consumer's client's home and are intended to help the consumer client achieve greater independence to reside and participate in the community. Services involve use of therapeutic means such as evaluation, specialized treatment, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a licensed Speech/Language therapist evaluates the recipient's client's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional therapy assistant services within the limits of their practice, working under the supervision of the licensed speech/language therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the recipient's client's rehabilitative progress and will report to the recipient's client's case manager and physician to coordinate necessary addition and/or deletion of services, based on the consumer's client's condition and ongoing rehabilitation potential.

(B) Speech/Language Therapy services are billed per ~~15-minute~~ 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

### (14) Respiratory Therapy Services.

(A) Respiratory therapy services are provided for ~~an individual~~ a client who, but for the availability

of in-home respiratory services, would require respiratory care as an inpatient in a hospital or nursing facility. Services are provided in the consumer's client's home under the care of a physician who is familiar with the technical and medical components of home ventilator support and the physician must determine medically that in-home respiratory care is safe and feasible for the recipient client. Treatment involved use of therapeutic means such as: evaluation, respiratory treatments, chest physiotherapy, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a registered respiratory therapist evaluates the recipient client and develops an appropriate, written therapeutic regimen. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the recipient's client's progress and will report to the recipient's client's case manager and physician to coordinate necessary addition and/or deletion of services, based on the consumer's client's condition and ongoing rehabilitation potential.

(B) Respiratory Therapy services are billed per ~~15-minute~~ 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

**(15) Hospice Services.**

(A) Hospice is palliative and/or comfort care provided to the consumer client and his/her family when a physician certifies that the consumer client has a terminal illness and has six ~~(6)~~ months or less to live and orders Hospice Care. A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. The consumer client signs a statement choosing hospice care instead of routine medical care that has the objective to treat and cure the consumer's client's illness. Once the consumer client has elected hospice care, the hospice medical team assumes responsibility for the consumer's client's medical care for the terminal illness in the home environment. Hospice care services include nursing care, physician services, medical equipment and supplies, drugs for symptom control and pain relief, home health aide and personal care services, physical, occupational and/or speech therapy, medical social services, dietary counseling and grief and bereavement counseling to the consumer and/or family. A Hospice plan of care must be developed by the hospice team in conjunction with the consumer's client's ADvantage case manager before hospice services are provided. The hospice services must be related to the palliation or management of the consumer's client's terminal illness, symptom control, or to enable the individual to maintain activities of daily living and basic functional skills. ADvantage

Hospice may be provided to the consumer client in a Nursing Facility (NF) only when the consumer client is placed in the NF for ADvantage Facility Based Extended Respite. Hospice provided as part of Facility Based Extended Respite may not be reimbursed for more than five ~~(5)~~ days during any ~~thirty (30)~~ 30 day period. A consumer client that is eligible for Medicare Hospice provided as a Medicare Part A benefit, is not eligible to receive ADvantage Hospice services. (B) Hospice services are billed per diem of service for days covered by a Hospice plan of care and during which the Hospice provider is responsible for providing Hospice services as needed by the consumer client or consumer's client's family.

**PART 95. AGENCY PERSONAL CARE SERVICES**

**317:30-5-952. Prior authorization**

Each client 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 client, 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 client is eligible to receive is limited to the service time amounts approved on the nurse's prior authorization or on the AA certified ADvantage Program Service Plan converted to 15-minute units. Services provided without prior authorization are not compensable.

*[OAR Docket #03-3048; filed 8-28-03]*

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

*[OAR Docket #03-3051]*

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 5. Individual Providers and Specialties

Part 5. Pharmacists

317:30-5-77.2. [AMENDED]

(Reference APA WF # 03-25)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Title 42 U.S.C. Section 1396r-8

**DATES:**

**Adoption:**

July 10, 2003

**Approved by Governor:**

August 23, 2003

**Effective:**

Immediately upon Governor's approval or September 1, 2003 whichever is later

# Emergency Adoptions

## Expiration:

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

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

Subchapter 5. Individual Providers and Specialties

Part 5. Pharmacists

317:30-5-77.2. [AMENDED]

(Reference APA WF # 03-01)

### Gubernatorial approval:

May 26, 2003

### Register publication:

20 Ok Reg 2771

### Docket number:

03-3004

## INCORPORATIONS BY REFERENCE:

N/A

## FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to manage the rapid rise in prescription costs for Medicaid recipients. The state constitution requires all agencies to maintain a balanced budget. An emergency rule is necessary in order for the Agency to maintain a balanced budget as failure to do so would lead to a breach of the state constitution. Agency staff estimate an annual total savings of \$297,724 with an annual state share savings of \$89,317 for the drug Singulair™ alone. More savings will be realized as additional drugs meet this same criteria.

## ANALYSIS:

Medical Providers-Fee for Service, Pharmacists specific, rules are revised to amend coverage of certain drug products which may be FDA approved for more than one indication or usage. These drugs may be subject to a scope-based prior authorization when at least one of the approved indications places that drug into a therapeutic category or treatment class for which a prior authorization is required. Recently, the asthma drug Singulair™ has been approved for the treatment of allergic rhinitis. Because other products for allergic rhinitis require prior authorization, it is necessary to determine the condition to be treated with this drug before payment is approved. By verifying the intended use of the drug, all drugs used to treat a specific condition will be subject to the same rules of coverage. According to Article 10, Section 23 of the Oklahoma Constitution, all state agencies must maintain a balanced budget. In order for the Agency to accomplish the necessary financial reductions, rules are in need of revision to require a prior authorization for certain multiple indication drugs.

## CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR SEPTEMBER 1, 2003 WHICHEVER IS LATER:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 5. PHARMACISTS

#### 317:30-5-77.2. Prior authorization

(a) **Definition.** The term prior authorization means an authorization by OHCA to the pharmacist to fill the prescription before it is filled by the pharmacist.

(b) **Process.** Because of the required interaction between a prescribing provider (such as a physician) and a pharmacist

to receive a prior authorization, OHCA allows a pharmacist up to a 30 calendar day period from the point of sale notification to provide the data necessary for OHCA to make a decision regarding prior authorization. Should a pharmacist fill a prescription prior to the actual authorization he/she takes a business risk that the claim for filling the prescription will be denied. In the case that information regarding the prior authorization is not provided within the 30 day calendar period, claims will be denied.

(c) **Documentation.** OHCA administers a prior authorization program through a contract with an agent. Prior Authorization requests with clinical exceptions must be mailed or faxed to the Medication Authorization unit of the agent. Other authorization requests, claims processing questions and questions pertaining to DUR alerts must be addressed by contacting the Pharmacy help desk. Authorization requests with complete information are reviewed and a response returned to the dispensing pharmacy within 24 hours.

(d) **Emergencies.** In an emergency situation the Health Care Authority will authorize a 72 hour supply of medications to a client. The authorization for a 72 hour emergency supply of medications does not count against the Medicaid limit described in OAC 317:30-5-72(a)(1).

(e) **Utilization and scope.** There are three reasons for the use of prior authorization: utilization controls, product based controls, and scope controls. Scope controls refer to constraints used to insure a drug is used for approved indications and is therapeutically appropriate.

#### (1) Utilization.

(A) **Quantity.** Toradol is covered for eligible individuals for a quantity up to 22 tablets or a 5 day supply which ever is less, each month. Prior authorization is required when additional coverage is medically necessary beyond this limit.

#### (B) Duration.

(i) **H2 antagonists/proton pump inhibitors/carafate.** H2 receptor antagonists and Carafate are covered for eligible individuals for 90 days of therapy in the previous 360 days. H2 antagonists and Carafate do not require prior authorization when prescribed at the recommended doses or lower after the 90 day limit. The following are recommended doses for these drugs.

(I) Drug name: Ranitidine (Zantac):  
300mg per day

(II) Drug name: Cimetidine (Tagamet):  
800mg per day

(III) Drug name: Famotidine (Pepcid):  
20mg per day

(IV) Drug name: Nizatidine (Axid):  
150mg per day

(V) Drug name: Sucralfate (Carafate):  
1000mg four times per day

(ii) **Smoking cessation products.** A 90-day smoking cessation benefit consisting of Zyban, prescription nicotine patches, or Zyban/patch combination is covered once per twelve months

when prior authorized. Any additional coverage is considered on a case by case basis.

(iii) **Benzodiazepines and barbiturates.** Barbiturates and Benzodiazepines are covered for eligible individuals for 90 days of therapy in the previous 360 days. Prior authorization is required when additional coverage is medically necessary beyond this limit.

(iv) **Hypnotics.** Ambien a hypnotic medication similar in activity to benzodiazepines is covered for eligible individuals for 90 days of therapy in the previous 360 days. Prior authorization is required when additional coverage is medically necessary beyond this limit.

(2) **Scope.**

(A) **Antihistamines.** Legend antihistamines are covered only after a previous trial with an over-the-counter antihistamine. Over-the-counter non-sedating antihistamines are a covered benefit for children under 21 years of age. The trial should be with an antihistamine that exhibits comparable characteristics to the legend alternative. Also, the trial should have been in the last ~~three months~~ month and be of adequate dose and duration. A fourteen day trial of an over-the-counter non-sedating antihistamine is required prior to approval of a legend product for all clients. ~~Non sedating antihistamines for children under 21 years of age are exempt from the prior authorization program as put forth in Oklahoma Statutes.~~

(B) **Growth Hormone.** Growth Hormone is a covered medication via the prior authorization program provided the patient meets the applicable criteria for initiation and continuance of treatment. The following are the specific indications in which growth hormone therapy will be considered for coverage:

- (i) the treatment of short stature, Turner's syndrome, hypoglycemia related growth hormone deficiency;
- (ii) physiologic replacement for adults who previously met growth hormone deficiency guidelines as children; and
- (iii) catabolic wasting in AIDS patients.

(C) **Anorexiant.** Limited anorexiant coverage is available for the treatment of Attention Deficit Hyperactivity Disorder (ADHD) and Narcolepsy. All products require prior authorization for use in adults. ~~The Anorexiant~~ anorexiant are divided into three categories. The first category requires no prior authorization for children and includes Methylphenidate immediate and controlled release formulations, Dextroamphetamine immediate and controlled release formulations, and the immediate release formulation of Adderall™, including generic equivalents. The second category requires a prior authorization for children and adults and also requires a previous trial with both Methylphenidate and Dextroamphetamine. The products in this category are

Pemoline and Methamphetamine. The third category includes Concerta, Metadate CD, and Adderall XR. These drugs require prior authorization for children and adults and a previous trial with a medication from the first category. The prescribing physician must complete and sign the petition for prior authorization. Authorizations will be issued for a one year period.

(D) **TB related medications.** Drugs prescribed for the treatment of TB related morbidities not listed in OAC 317:30-3-46 require prior authorization.

(E) **Clonidine (Plavix™).** Clonidine is covered for eligible individuals through the prior authorization process. Authorization will be granted to individuals with diagnoses for which an approved indication exists and the individual has a contra-indication for aspirin use or has a therapeutic failure with previous aspirin therapy.

(F) **Multiple indication medications.** Medications which have been approved by the FDA for multiple indications may be subject to a scope-based prior authorization when at least one of the approved indications places that drug into a therapeutic category or treatment class for which a prior authorization is required. Prior authorizations for these drugs may be structured as step therapy or a tiered approach as recommended by the Drug Utilization Review Board and approved by the OHCA Board of Directors.

*[OAR Docket #03-3051; filed 8-28-03]*

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

*[OAR Docket #03-3047]*

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 5. Individual Providers and Specialties

Part 5. Pharmacists

317:30-5-77.3. [AMENDED]

(Reference APA WF # 03-09)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Article 10, Section 23 of the Oklahoma Constitution; Title 42 U.S.C. Section 1396r-8

**DATES:**

**Adoption:**

July 10, 2003

**Approved by Governor:**

August 21, 2003

**Effective:**

Immediately upon Governor's approval or September 1, 2003, whichever is later

**Expiration:**

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

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

# Emergency Adoptions

## INCORPORATIONS BY REFERENCE:

N/A

## FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to manage the rapid rise in prescription costs for Medicaid recipients. The state constitution requires all agencies to maintain a balanced budget. An emergency rule is necessary in order for the Agency to maintain a balanced budget as failure to do so would lead to a breach of the state constitution. Because the proposed rules allow voluntary participation by manufacturers, it is difficult to establish an estimated savings. However, any participation in the supplemental rebate program will generate additional state funds.

## ANALYSIS:

Medical Providers-Fee for Service, Pharmacists specific, rules are revised to establish a state supplemental drug rebate program within the existing Product Based Prior Authorization Program. Revisions also allow for a review and potential exception process for drugs not residing in the PBPA program. It helps ensure that public funds are expended appropriately in exchange for cost-effective pharmacotherapy. Pharmacists and physicians will be less burdened with paperwork if drug manufacturers are allowed to participate as partners with the agency in this program. Drug manufacturers may see a decrease in revenue from paying the supplemental rebates, but they may also see an increase in market share for products that would otherwise require prior authorization. According to Article 10, Section 23 of the Oklahoma Constitution, all state agencies must maintain a balanced budget. In order for the Agency to accomplish the necessary financial reductions, rules are in need of revision to establish a state supplemental drug rebate program.

## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR SEPTEMBER 1, 2003, WHICHEVER IS LATER:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 5. PHARMACISTS

#### 317:30-5-77.3. Product

(a) The Oklahoma Health Care Authority utilizes a prior authorization system subject to their authority under 42 U.S.C. §1396r-8 and 63 Okla. Stat. §5030.3(B). The prior authorization program is not a drug formulary which is separately authorized in 42 U.S.C. §1396r-8. Drugs are placed into two or more tiers based on similarities in clinical efficacy, side-effect profile and cost-effectiveness after recommendation by the Drug Utilization Review Board and OHCA Board approval. Drugs placed in tier number one require no prior authorization. Drugs placed in tier number two or any tier other than tier number one require prior authorization.

(1) ~~Two~~ Three exceptions exist to the requirement of prior authorization:

- (A) failed trial (or trials) with a tier one product, ~~or~~
- (B) a clinical exception in the particular therapeutic category, or

(C) the manufacturer or labeler of a product may opt to participate in the state supplemental drug rebate program to move a product from a higher tier to tier one which will remove the required prior authorization for that product.

(i) After a drug or drug category has been added to the Product Based Prior Authorization program, OHCA or its contractor may establish a cost-effective benchmark value for each therapeutic category or individual drug. The benchmark value may be calculated based on an average cost, an average cost per day, a weighted average cost per day or any other generally accepted economic formula. A single formula for all drugs or drug categories is not required. Supplemental rebate offers from manufacturers which are greater than the minimum required supplemental rebate will be accepted and may establish a new benchmark rebate value.

(ii) Manufacturers of products assigned to tiers number two and higher may choose to pay a supplemental rebate to the state in order to avoid a prior authorization on their product or products assigned to the higher tier.

(iii) Supplemental rebate agreements shall be in effect for one year and may be terminated at the option of either party with a 60 day notice. Supplemental rebate agreements are subject to the approval of CMS. Termination of a Supplemental Rebate agreement will result in the specific product reverting to the previously assigned higher tier in the PBPA program.

(iv) The supplemental unit rebate amount for a tier two or higher product will be calculated by subtracting the federal rebate amount per unit from the benchmark rebate amount per unit.

(v) Supplemental rebates will be invoiced concurrent with the federal rebates and are subject to the same terms with respect to payment due dates, interest, and penalties for non-payment as specified at 42 U.S.C. Section 1396r-8. All terms and conditions not specifically listed in federal or state law shall be included in the supplemental rebate agreement as approved by CMS.

(vi) Drugs or drug categories which are not part of the Product Based Prior Authorization program as outlined in 63 O.S. Section 5030.5 may be eligible for supplemental rebate participation. The OHCA Drug Utilization Review Board shall determine supplemental rebate eligibility for drugs or drug categories after considering clinical efficacy, side effect profile, cost-effectiveness and other applicable criteria.

(2) All clinical exceptions are recommended by the Drug Utilization Review Board.

(b) Additional therapeutic categories of drugs will be subject to subsection (a) of this Section if recommended by the Drug Utilization Review Board, considered by the Medical Advisory

Committee and approved by the OHCA Board. For example, two existing therapeutic categories of drugs are currently subject to prior authorization: anti-secretory or ulcer drugs (proton-pump inhibitors and H2 Blockers) and non-steroidal, anti-inflammatory drugs (NSAIDs).

(1) With respect to anti-secretory or ulcer drugs, there are two tiers of drugs in this therapeutic classification.

(A) The clinical exceptions for anti-secretory or ulcer drugs in tier number two are demonstrated by the following conditions:

- (i) *H. pylori* eradication; or
- (ii) prophylaxis or treatment of NSAID-induced ulcer; or
- (iii) erosive esophagitis or maintenance of healed erosive esophagitis; or
- (iv) GERD (Gastroesophageal Reflux Disease) complications (e.g. esophageal strictures, dysphagia, Barrett's esophagus); or
- (v) scleroderma.

(B) These clinical conditions are demonstrated by documentation sent by the prescribing physician and pharmacist. New clinical exceptions are subject to DUR Board recommendation and approval by the OHCA Board.

(2) With respect to non-steroidal, anti-inflammatory drugs (NSAIDs), there are two tiers of drugs in this therapeutic classification.

(A) The clinical exceptions for non-steroidal, anti-inflammatory drugs in tier number two are demonstrated by the following conditions:

- (i) history of upper GI bleeding; or
- (ii) history of NSAID-induced ulcer, or
- (iii) active peptic ulcer disease, or
- (iv) concurrent use of warfarin, or
- (v) concurrent chronic use of oral corticosteroids, or
- (vi) chronic NSAID therapy in elderly or debilitated patients, or
- (vii) Indomethacin (management of gout).

(B) These clinical conditions are demonstrated by documentation sent by the prescribing physician and pharmacist. New clinical exceptions are subject to DUR Board recommendations and approval by the OHCA Board.

*[OAR Docket #03-3047; filed 8-28-03]*

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

*[OAR Docket #03-3049]*

**RULEMAKING ACTION:**  
EMERGENCY adoption

**RULES:**  
Subchapter 3. Coverage and Exclusions

317:35-3-2. [AMENDED]  
**(Reference APA WF # 03-20B)**

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Article 10, Section 23 of the Oklahoma Constitution

**DATES:**

**Adoption:**

June 12, 2003

**Approved by Governor:**

June 26, 2003

**Effective:**

Immediately upon Governor's approval or July 1, 2003, whichever is later

**Expiration:**

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

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 3. Coverage and Exclusions

317:35-3-2. [AMENDED]

**(Reference APA WF # 03-13B)**

**Gubernatorial approval:**

May 26, 2003

**Register publication:**

20 OK Reg 2775

**Docket number:**

03-3006

**INCORPORATIONS BY REFERENCE:**

N/A

**FINDING OF EMERGENCY:**

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions which reduces certain benefits for Medicaid eligible recipients. The state constitution requires all agencies to maintain a balanced budget. An emergency rule is necessary in order for the Agency to maintain a balanced budget as failure to do so would lead to a breach of the state constitution. Agency staff estimates the following savings for the three benefit reductions: (1) HCB Service Waiver prescriptions will have a total annual savings of \$16.7 million with a state share savings of \$4.9 million; (2) reduction of inpatient hospital days will result in a total annual savings of \$4,049,459 with a state share savings of \$1,201,879; and (3) elimination of adult dental service will result in a total annual savings of \$592,164 with a state share savings of \$175,754.

**ANALYSIS:**

Agency rules are revised to: (1) reduce the number of Medicaid compensable prescription drugs for adults served by the 1915(c) Home and Community Based Services Waivers; (2) reduce the annual number of compensable in-patient hospital days for adults from 24 to 15; (3) eliminate optional adult dental services unless the individual resides in an Intermediate Care Facility for the Mentally Retarded; and (4) reflect current medical practice regarding the administration of blood and blood fractions. Current rules allow adults served by the HCB Services Waivers to receive an unlimited number of medically necessary prescribed drugs each month. Medicaid eligible adults are entitled to receive up to 24 days of inpatient hospital services per year as well as necessary emergency dental extractions according to existing rules. Article 10, Section 23 of the Oklahoma Constitution, states that all state agencies must maintain a balanced budget. Due to state government budget constraints, the OHCA Board voted on December 12, 2002, to approve these three recipient benefit reductions.

Rules are also revised to allow for a more practical application of blood and blood fractions in outpatient settings. Existing rules limit outpatient coverage for blood and blood fractions to individuals "suffering from a congenital or acquired disease of the blood" which does not reflect current standard medical practices.

The proposed revisions are needed to remove duplicate language in OAC 317:35 as these rules are found in OAC 317:30. In doing so the needed reductions are eliminated from OAC 317:35 allowing the Agency to accomplish the necessary financial reductions. Other revisions are incorporated due to superseding emergency rules previously approved by the Governor on May 26, 2003 (APA WF 03-13B). Those revisions eliminated the Medically Needy program effective July 1, 2003.

**CONTACT PERSON:**

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# Emergency Adoptions

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR JULY 1, 2003, WHICHEVER IS LATER:

## SUBCHAPTER 3. COVERAGE AND EXCLUSIONS

### 317:35-3-2. ~~Amount, duration and scope of coverage for Title XIX Medicaid transportation and subsistence~~

Coverage for Medicaid shall be as follows:

~~(1) Inpatient hospital services. Payment is made for compensable inpatient medical and surgical services to hospitals which contract with the Authority. General acute care inpatient hospital services are limited to 24 days per adult per State fiscal year (July 1 through June 30). For persons under the age of 21, inpatient hospital services are not limited. All psychiatric admissions for children require prior authorization for an approved length of stay.~~

~~(2) Outpatient hospital services. Payment is made for the following outpatient hospital services:~~

~~(A) Emergency department services for persons over age 21 are covered. Payment is made at a case rate which includes all non-physician services provided during the visit.~~

~~(B) Dialysis.~~

~~(C) Therapeutic radiology or chemotherapy.~~

~~(D) Chemotherapeutic agents and therapeutic radiology related to the treatment of opportunistic infections.~~

~~(E) Outpatient surgical services (Ambulatory Surgery). Services are limited to selected surgical procedures performed on an outpatient basis.~~

~~(F) Outpatient behavioral health services. These services are medical and remedial care services provided on an outpatient basis by appropriately accredited hospital based facilities who are also contracted as providers of Outpatient Behavioral Health Services. Services include:~~

- ~~(i) crisis intervention services,~~
- ~~(ii) treatment plan development,~~
- ~~(iii) psychological testing,~~
- ~~(iv) individual counseling,~~
- ~~(v) group counseling,~~
- ~~(vi) rehabilitative treatment services,~~
- ~~(vii) treatment plan review,~~
- ~~(viii) medical review,~~
- ~~(ix) case management,~~
- ~~(x) family counseling,~~
- ~~(xi) individual rehabilitation, and~~
- ~~(xii) nursing facility behavioral health rehabilitative services.~~

~~(G) Ambulatory services related to the treatment of persons infected with tuberculosis (TB). Ambulatory services related to the treatment of TB are not limited to the scope of the Medicaid program, but services that exceed the scope require prior authorization.~~

~~(H) Outpatient hospital services, not specifically addressed, are covered only when prior authorized by the Medical Professional Services Unit of the Oklahoma Health Care Authority.~~

~~(3) Rural health clinic services. Payment for Rural Health Clinic Services (RHCS) is made within limits of other providers for the same services and is limited to services specified in certification.~~

~~(4) Other laboratory and x ray services. Payment is made for diagnostic x ray and laboratory services provided in a physician's office or similar facility other than outpatient hospital.~~

~~(5) Nursing facility services. See Long Term Care (Subchapter 19 of this Chapter) for coverage of nursing facility services. For coverage of drugs see (15) of this subsection for the definition of Prescribed Drugs for individuals receiving nursing facility services.~~

~~(6) Early and Periodic Screening, Diagnosis and Treatment of individuals under 21 years of age. The Oklahoma EPSDT Program is a comprehensive child health program, designed for ensuring the availability of and access to required health care resources and helping parents and guardians of Medicaid eligible children to effectively use these resources. An effective EPSDT program assures that health problems found are diagnosed and treated early before they become more complex and their treatment more costly. The receipt of an identified EPSDT screening makes the Medicaid child eligible for all necessary follow-up care that is within the scope of the Medicaid program. Necessary follow-up care identified by an EPSDT screening to correct or ameliorate defects and physical and mental illness and conditions beyond the scope of Medicaid and for which there is Federal matching funds available under Medicaid are allowed when prior authorized. Coverage under EPSDT includes the following:~~

~~(A) Child health screening examination by a licensed physician, medical or osteopathic.~~

~~(i) Scheduled screenings include:~~

~~(I) six screenings during the first year of life;~~

~~(II) two screenings in the second year;~~

~~(III) one screening yearly for age 2 through 5 years; and~~

~~(IV) one screening every other year for ages 6 through 20 years.~~

~~(ii) Interperiodic screenings at necessary intervals outside the periodicity schedule for child health screening examinations are allowed when a medical condition is suspected.~~

~~(B) Diagnostic x ray, laboratory, and/or injections when prescribed by a physician.~~

~~(C) Immunizations.~~

~~(D) Outpatient care.~~

(E) Dental services, inpatient services in an eligible participating hospital, including admission history and physical, two outpatient dental screenings, two bite wing x-rays, and/or two oral Prophylaxis each 12 months; emergency services for relief of pain and/or acute infection; limited restoration, repair and/or replacement of dental defects after the treatment plan submitted by dentist has been authorized. Interperiodic screenings at intervals outside the periodicity schedule for dental examinations are allowed when a dental condition is suspected.

(F) Optometrists' services. The periodicity schedule provides for a minimum of one visual screening or visual analysis and one pair of glasses once each 12 months. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal. Interperiodic screenings and glasses at intervals outside the periodicity schedule for optometrists' examinations are allowed when a vision condition is suspected.

(G) Hearing evaluation once every 12 months, hearing aid evaluation if indicated as a result of the hearing evaluation, and purchase of a hearing aid when prescribed by a state licensed audiologist who holds a certificate of clinical competence from the American Speech and Hearing Association and preauthorized. Interperiodic screenings at intervals outside the periodicity schedule for hearing examinations are allowed when a hearing condition is suspected.

(H) Prescription drugs. The number of prescriptions per month is not limited for eligible individuals under 21 years of age.

(I) Psychological services -- for eligible individuals under 21 years of age, payment is made for individual psychotherapy, family therapy, and group therapy. Four hours of psychological testing is covered each year, per recipient. Additional hours are covered when prior authorized. Services may be covered if provided in provider's office, patient's home, or hospital. Inpatient psychotherapy and testing are compensable when not a part of the per diem reimbursable cost of the facility.

(J) Transportation -- provided when necessary in connection with examination or treatment when not otherwise available.

(K) Medical supplies, equipment, appliances and prosthetic devices beyond the normal scope of Medicaid are covered.

(L) Inpatient hospital services are not limited. All psychiatric admissions require prior authorization for an approved length of stay.

(M) EPSDT services furnished in a qualified child health center include child health screening examination, dental screening examination, child health encounter, dental encounter, child health diagnostic encounter, child guidance treatment encounter, multi-disciplinary review, immunizations, dental sealants,

hearing evaluations, audiometric tests and ear impression molds.

(N) Early intervention services provided by early intervention centers include:

- (i) audiology services;
- (ii) family training and counseling;
- (iii) health services necessary to enable a child to benefit from the other early intervention services during the time the child is receiving these services;
- (iv) medical services only for diagnostic or evaluation purposes by a licensed physician to determine a child's developmental status and need for early intervention services;
- (v) nursing services;
- (vi) nutrition services;
- (vii) occupational therapy;
- (viii) physical therapy;
- (ix) psychological services;
- (x) social work services;
- (xi) speech language pathology; and
- (xii) early intervention case management services.

(7) Family planning services and supplies. Payment is made for counseling, insertion of intrauterine devices and other family planning products, and sterilizations for persons 21 years of age and over who are legally competent, not institutionalized and have signed the "Consent Form" within the prescribed time limit. Payment is also made for Family Planning Center services. The Family Planning Centers must be certified by the Oklahoma State Department of Health.

(A) Services include:

- (i) initial examination;
- (ii) annual examination;
- (iii) encounter visit;
- (iv) vasectomy services; and
- (v) tubal ligations.

(B) Vasectomies and tubal ligations are limited to persons 21 years of age and over.

(C) Reversal of sterilization procedures for the purposes of conception are not covered. Reversal of sterilization procedures may be covered when medically necessary and substantiating documentation is attached to the claim.

(8) Physicians' services whether furnished in the office, the patient's home, a hospital, a nursing facility or elsewhere. Payment is made for compensable medical and surgical outpatient and inpatient services. Hospital visits for adults are limited to one per day for 24 compensable inpatient hospital days per individual, each State fiscal year. (SEE EPSDT (6) of this Section for exceptions for children). Office visits, home visits or elsewhere are limited to two per month, per patient regardless of the number of physicians and two visits per month in a nursing facility. The following services are excluded from number of visits limitation per month:

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- (A) Services for persons age 21 and older in connection with an emergency department visit.
  - (B) EPSDT services for persons under age 21 (including additional office visits).
  - (C) Family Planning services.
  - (D) Ambulatory services related to the treatment of tuberculosis (TB). Services related to the treatment of TB are not limited to the scope of Title XIX, but services that exceed the scope require prior authorization.
- (9) Podiatrists' services.
- (10) Optometrists' services. Payment is made to optometrists for medical services (visits) within the scope of the optometric practice as defined by State law for these services. Visits are subject to the two per month outpatient visit limitation.
- (11) Psychological services. Services by a psychologist are not covered for adult recipients.
- (12) Home health services. Home health services and standard medical supplies are available.
- (13) Clinic services. The following clinic services are covered:
- (A) **Maternity Clinic Services.** Maternity clinic services furnished in clinics certified by the Oklahoma State Department of Health.
  - (B) **Free standing ambulatory surgery center.** Payment is made for a facility fee for certain surgical procedures performed in Medicare certified free standing ambulatory surgical centers which have contracts on file with the Authority.
  - (C) **Renal dialysis facilities.** Payment is made for dialysis services provided by Medicare certified renal dialysis facilities which have contracts on file with the Authority.
  - (D) **Coverage for tuberculosis infected individuals.**
    - (i) Individuals may be eligible for coverage under the Authority's Optional Medicaid Coverage for Categorically Needy Individuals Infected with Tuberculosis (TB). In addition to a written statement verifying tuberculosis infection by a medical practitioner, the individual must meet income and resource requirements.
    - (ii) Individuals certified eligible for this program may only receive TB related services. They are not eligible for the full range of Medicaid services available to other Medicaid recipients unless a separate determination is made.
    - (iii) TB related services include:
      - (I) Medications;
      - (II) Physician services;
      - (III) Outpatient hospital;
      - (IV) Rural Health Clinic services;
      - (V) Federally Qualified Health Center services;
      - (VI) Laboratory and x ray services;
      - (VII) Clinic services and FQHC services;
      - (VIII) Case Management services; and

- (IX) Direct observed therapy.
- (14) Dental services. Dental coverage for adults is limited to emergency extractions.
- (15) Prescribed drugs. Payment is made to pharmacies with whom the Authority has a contract on behalf of categorically needy recipients up to a maximum of three prescriptions (new or refill) per month per eligible recipient. The number of prescriptions per month is not limited for eligible individuals under 21 years of age or for drugs used for the treatment of tuberculosis. Drugs prescribed for the treatment of TB not listed in OAC 317:30-3-47.1 require prior authorization from the University of Oklahoma College of Pharmacy using form "Petition for TB Related Therapy". Prescription quantities are limited to a 34 day supply or 100 dosage units, whichever is greater, and only drugs approved by the Food and Drug Administration (FDA) and included in the Drug Rebate Agreement Program are covered.

- (A) Payment is made on behalf of medically needy recipients suffering from a catastrophic illness for drugs. A catastrophic illness is a terminal illness which can be expected, with reasonable medical judgement, to result in death within six months. Catastrophic illness also includes malignancies which are inoperable or have widespread metastases and are unresponsive to palliative therapy, severe incapacitating burn or injury for which the duration of anticipated active treatment is six months or more, psychotic disorders, congenital or acquired disease of the blood which require the use of blood or blood products, and immunosuppressive drugs for transplant patients. Catastrophic illness does not include mental illness other than psychotic disorders, cerebral vascular accident (CVA), hormone dependent tumors, isotope sensitive tumors and malignancies with metastases which have not been apparent for five years. These services will not exceed the limits placed on the same services which are provided to the categorically needy. For any case having spenddown, the spenddown is applied to the first claim(s) filed.
  - (B) For individuals in nursing facilities, intermediate care facilities for the mentally retarded, Home and Community Based Waivers or the ADvantage Program Waiver, additional medically necessary prescriptions are covered.
- (16) Prosthetic devices. Limited to catheters and catheter accessories, colostomy and urostomy bags and accessories, tracheostomy accessories, nerve stimulators, hyperalimentation and accessories, home dialysis equipment and supplies, oxygen/oxygen concentrator equipment and supplies, respirator or ventilator equipment and supplies, and those devices inserted during the course of a surgical procedure.
- (17) Eyeglasses. Eyeglasses are not covered for adults.
- (18) Blood and blood fractions.
- (A) Blood and blood fractions inpatient—payment is made to blood banks for blood when the cost of blood is not included in the hospital per diem cost.

~~(B) Blood and blood fractions outpatient—payment is made for blood and blood fractions on behalf of an eligible recipient who is suffering from a congenital or acquired disease of the blood which requires the use of blood or blood fractions. Payment may be made to physician, clinics, outpatient hospitals or blood banks.~~

~~(19) Services for individuals 65 or older in institutions for mental diseases. See Subchapter 9 of this Chapter for coverage of services for individuals 65 or older in institutions for mental diseases.~~

~~(20) Outpatient behavioral health services. Payment is made for medical and remedial care services provided on an outpatient basis by hospital providers who are also contracted to provide Outpatient Behavioral Health Services. Services include:~~

- ~~(A) crisis intervention services,~~
- ~~(B) community based structured emergency care,~~
- ~~(C) treatment plan development,~~
- ~~(D) psychological testing,~~
- ~~(E) individual counseling group counseling,~~
- ~~(F) rehabilitative treatment services,~~
- ~~(G) treatment plan review,~~
- ~~(H) medical review,~~
- ~~(I) case management,~~
- ~~(J) family therapy, and~~
- ~~(K) nursing facility behavioral health rehabilitative services.~~

~~(21) Long Term Care in a Nursing Facility, Intermediate Care Facility for the Mentally Retarded, or in home Personal Care.~~

~~(22) Inpatient psychiatric facility services for individuals under 22. Payment is made for services in an institution which is accredited as a psychiatric facility or program by the Joint Commission on Accreditation of Hospitals in behalf of individuals whose plan of treatment and certification of need meets the requirements of 1905(a) of the Social Security Act as amended.~~

~~(23) Transportation and subsistence. The Oklahoma Health Care Authority (OHCA) is responsible for assuring that necessary transportation is available to all eligible Medicaid recipients who are not otherwise covered through their Managed Care Plan and who are in need of Medicaid medical services. Reimbursement for transportation costs must be prior authorized by the local Department of Human Services' (DHS) county director. Transportation costs must be for a medically necessary examination or treatment and only when transportation is not otherwise available. Payment through Medicaid may be made for transportation by private vehicle, bus, taxi, ambulance or airplane. Payment is made for a private vehicle at the Medicaid fee schedule rate and for public carrier at the public carrier rate. Individuals transporting more than one authorized recipient, from and to one destination and back, at the same time are reimbursed for only one trip. When transporting more than one authorized recipient, from and to and back to different locations, at the same time, reimbursement is made for one round~~

trip. Beginning June 1, 1999, the Oklahoma Health Care Authority (OHCA) will begin a pilot transportation broker project with the Metropolitan Tulsa Transit Authority (MTTA) known as SoonerRide. SoonerRide will exclude individuals who are enrolled in a Managed Care Organization (MCO) through OHCA, those individuals who are categorized as institutionalized, and those individuals who are categorized as Qualified Medicare Beneficiaries Plus (QMBP), Specified Low Income Medicare Beneficiaries (SLMB), Qualifying Individuals-1 and 2. Clients seeking medically necessary non-emergency transportation will be required to contact the SoonerRide reservation center. Contact will be made via a toll-free phone number which will be answered Monday through Saturday, 8 a.m. to 6 p.m. Whenever possible, the client is required to notify SoonerRide at least 72 hours prior to the appointment. The client will be asked to furnish the SoonerRide reservation center the case number, home address, the time and date of the medical appointment, the address of the medical provider, and any physical/mental limitations which will impact the type of transportation needed. SoonerRide will make arrangements for the most appropriate, least costly transportation. SoonerRide will verify appointments when appropriate. The SoonerRide contractor will be responsible for recruiting providers in each county and ensuring that all transportation providers meet all appropriate regulations for the provision of public transportation. Provider qualifications will include, but is not limited to, verification of liability insurance and drug testing. All non-emergency transportation will be arranged by SoonerRide. If the client disagrees with the transportation arranged or denied by SoonerRide, an appeal should be filed with SoonerRide within 48 hours of the notification. The appropriateness of transportation may be appealed only to the extent that the transportation does not meet the medical needs of the client. Dissatisfaction with the use of public transportation, shared rides, type of vehicle, etc., is not appropriate grounds for appeal. The Oklahoma Health Care Authority will make the final decision on any disputes which cannot be settled between the client and SoonerRide. As provider networks are developed, SoonerRide will be expanded to include additional counties. Before a county is phased into SoonerRide, county officials and clients will be notified. A public meeting will be held prior to inclusion of each new county.

~~(iA)~~ Reimbursement for transportation by a private vehicle (privately owned, leased or rented) may be made directly to the client or to another person providing the private transportation for the client. Authorization cannot be made to a DHS or OHCA employee or the spouse of a DHS or OHCA employee, unless he/she is a certified volunteer, or any employee of another county, state or federal agency who is providing the transportation as a part of the regular duties within that agency. Private transportation is authorized at the Medicaid fee schedule rate from and to the transporter's point of origin. Claim for payment is filed on a travel reimbursement form,

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after it has been documented that the individual kept the appointment(s) for the medical services. Transportation by a private vehicle may be authorized when the recipient:

**(A1) Authorization for transportation by private vehicle.**

(iA) Reimbursement for transportation by a private vehicle (privately owned, leased or rented) may be made directly to the client or to another person providing the private transportation for the client. Authorization cannot be made to a DHS or OHCA employee or the spouse of a DHS or OHCA employee, unless he/she is a certified volunteer, or any employee of another county, state or federal agency who is providing the transportation as a part of the regular duties within that agency. Private transportation is authorized at the Medicaid fee schedule rate from and to the transporter's point of origin. Claim for payment is filed on a travel reimbursement form, after it has been documented that the individual kept the appointment(s) for the medical services. Transportation by a private vehicle may be authorized when the recipient:

(Hi) lives in a rural area where needed Medicaid medical examination or treatment is not available and the recipient must travel outside his/her local community to receive the needed medical services.

(Hii) receives Medicaid medical services within his/her own community, and it has been documented that the transportation cannot be made available through the individual's own efforts or through community volunteer resources.

(iiB) The distances for which reimbursement is claimed may not exceed the distances set forth in the latest Transportation Commission road map. Travel claimed between points not shown on the official map shall be based on actual odometer readings. Vicinity travel is entered on travel claims as a separate item from road map mileage, for city and rural traveling within a small area, and is computed using mileage on the basis of actual odometer readings.

(iiiC) Travel is reimbursed on the basis of the actual number of miles traveled from the transporter's point of origin to the first official call, subsequent official calls, and return to the point of origin. Recipients or transporters returning to a destination other than the original starting point (with local DHS County Director approval) must provide a brief explanation on the travel reimbursement form.

(ivD) Reimbursement for out-of-state transportation (not to exceed 100 map miles) that is medically necessary and would not require reimbursement for per diem may be authorized when the transportation is deemed in the best interest of the recipient and the OHCA.

**(B2) Reimbursement for public transportation.**

(iA) **Authorization for transportation by bus.** Transportation by bus is authorized when it is necessary for an eligible individual to receive treatment in a medical facility. (If the services of an escort are necessary, see ~~(F)~~ of this paragraph ~~(6)~~ of this Section).

(iiB) **Authorization for transportation by taxi.** Taxi service may be authorized only when transportation cannot be arranged through the individual's own efforts or through community resources. When taxi service is necessary to transport recipients to and from their home to the medical provider or to the nearest point of common carrier access or a common carrier to the medical provider, reimbursement is paid on the basis of actual expenses. A memo giving a detailed explanation of why the taxi service had to be used must be attached to the travel reimbursement form. Taxicab charges must be itemized on the travel reimbursement form and are reimbursed only upon justification as to the necessity of their use.

~~(C3)~~ **Transportation by ambulance (ground, air ambulance or helicopter).** Transportation by ambulance is compensable for individuals eligible for Medicaid benefits when other available transportation does not meet the medical needs of the individual. Payment is made for ambulance transportation to and/or from a medical facility (a physician's office or clinic is not considered a medical facility) for medical care compensable under Medicaid.

~~(D4)~~ **Transportation by airplane.** When an individual's medical condition is such that transportation out-of-state by a commercial airline is required, approval for airfare must be secured by telephoning the OHCA, Medical Authorization Unit, who will make the necessary flight arrangements.

~~(E5)~~ **Subsistence (sleeping accommodations and meals).** An individual who is eligible for transportation to or from a medical facility to obtain medical services may receive assistance with the necessary expenses of lodging and meals from Medicaid funds. If the individual does not have the funds for the necessary subsistence, authorization is made by the local office on Room and Board Order form. The individual may choose to pay for the lodging and meals and be reimbursed by filing a travel reimbursement form. Any subsistence expense claimed on the travel reimbursement form must be documented with receipts, and reimbursement cannot exceed state per diem amounts. Payment for meals is based on a daily per diem and may be used for breakfast, lunch or dinner, or all three meals, whichever is required.

~~(F6)~~ **Escort assistance required.** Payment for transportation and subsistence of one escort may be authorized if the service is required. Only one escort may be authorized. It is the responsibility of the Department of Human Services' social worker to determine this necessity. The decision should be based on the following circumstances:

(iA) when the individual's health does not permit traveling alone; and

(iiB) when the individual seeking medical services is a minor child.

(24) Nurse-midwife services. Payment is made in behalf of categorically needy and medically needy individuals for certified nurse-midwife services provided during the maternity cycle which includes pregnancy, labor, birth and the postpartum period.

(25) Transplants. Organ and tissue transplantation services for children and adults, limited to bone marrow, stem cells, cornea, heart, kidney, liver, lung, SPK (simultaneous pancreas kidney), PAK (pancreas after kidney), and heart-lung, are covered services based upon the conditions listed in (A)-(D) of this paragraph:

(A) All transplantation services, except kidney and cornea, must be prior authorized to be compensable.

(B) To be prior authorized all procedures are reviewed based on appropriate medical criteria.

(C) To be compensable under the Medicaid program all organ transplants must be performed at a Medicare approved transplantation center.

(D) Finally, procedures considered experimental or investigational are not covered.

(26) Durable medical equipment.

(27) Services in a Federally Qualified Health Center. Payment is made on an encounter basis which includes all services provided by the center in one day. Covered services include a medical encounter, dental encounter, EPSDT screening, dental screening, vision screening, hearing screening and family planning encounter.

(28) Advanced practice nurse. Payment is made for primary health care.

(29) Certified registered nurse anesthetists. Payment is made for inpatient and outpatient anesthesia services which are in the scope of Medicaid and under the state law for Certified Registered Nurse Anesthetists.

(30) Coverage for Qualified Medicare Beneficiaries Plus (QMBP). Individuals determined eligible as QMBP's are eligible under Medicaid as ABD-related categorically needy individuals.

(31) Case management services.

(A) **Case management services for the chronically and/or severely mentally ill (Adults).** Case management services to the chronically and/or severely mentally ill are provided by case management agencies established for the purpose of providing these services and are certified by the Department of Mental Health and Substance Abuse. Case management services provided are to assist clients gaining access to needed medical, social, educational and other services essential to meeting basic human needs.

(B) **Case management services for persons under age 21.** Case management services to persons under age 21 who are in imminent risk of out-of-home placement due to psychiatric or substance abuse reasons are provided by case management agencies established for the purpose of providing these services and are certified by the Department of Mental Health and Substance Abuse. Case management services provided are to assist clients gaining access to needed

medical, social, educational and other services essential to meeting basic human needs.

(C) **Early Intervention Case Management Services.** Early Intervention (EI) Case Management Services are provided by Early Intervention case managers certified by the Oklahoma State Department of Education for the purpose of providing case management services to developmentally delayed infants and toddlers, ages 0 to age 3.

(D) **Case management services for high risk pregnant women.** Case management services are provided to high risk pregnant women by agencies certified by the Oklahoma State Health Department for the purposes of locating, coordinating and monitoring appropriate services for an individual.

(E) **Case management services for individuals infected with tuberculosis.** Case management services are provided to persons infected with tuberculosis by case managers certified by the Oklahoma State Department of Health. Case management services provided are services which will assist individuals eligible in gaining access to needed medical, social, educational and other services. See OAC 317:30-5-921 for these case management services.

(32) Coverage for Qualified Disabled and Working Individuals. Individuals determined eligible as Qualified Disabled and Working Individuals (QDWI) are eligible under Title XIX for Medicare Part A premiums only.

(33) Coverage for Specified Low Income Medicare Beneficiaries. Individuals determined eligible as Specified Low Income Medicare Beneficiaries (SLMB) are eligible under Title XIX for payment of Medicare Part B premiums only.

(34) Coverage for Qualifying Individuals.

(A) Individuals determined eligible as Qualifying Individuals 1 (QI-1) are eligible under Title XIX for payment of Medicare Part B premiums only.

(B) Individuals determined eligible as Qualifying Individuals 2 (QI-2) are eligible under Title XIX for payment of the amount attributable to the shift of some home health benefits from Medicare Part A to Medicare Part B.

[OAR Docket #03-3049; filed 8-28-03]

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

[OAR Docket #03-3060]

**RULEMAKING ACTION:**  
EMERGENCY adoption

**RULES:**  
Subchapter 8. Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule [NEW]  
340:2-8-1 through 340:2-8-14 [NEW]  
(Reference APA WF # 03-17)

# Emergency Adoptions

## AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Parts 160 and Subparts A and E of Part 164 of Title 45 of the Code of Federal Regulations, the Health Insurance Portability and Accountability Act (HIPAA).

## DATES:

### Adoption:

July 22, 2003

### Approved by Governor:

August 21, 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:

Emergency approval is requested as the Oklahoma Department of Human Services (OKDHS) finds that compelling public interest exists to preserve the health, safety, and welfare of Oklahoma citizens by implementing rules to prevent the unauthorized use and disclosure of sensitive health information. Without approval of the proposed rules, OKDHS will be out of compliance with HIPAA.

## ANALYSIS:

The purpose of the proposed rules is to implement provisions of the HIPAA that protect client health information and allow clients the right to exercise more control over their protected health information.

## CONTACT PERSON:

Dena Thayerat (405)521-4326

**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 8. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) PRIVACY RULE**

### **340:2-8-1. Legal basis and purpose**

(a) Part 160 and Subparts A and E of Part 164 of Title 45 of the Code of Federal Regulations constitute the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, which provides protection for the privacy of health information.

(b) The purpose of this Subchapter is to describe the Oklahoma Department of Human Services (OKDHS) privacy policies contained in the Privacy Rule. OKDHS privacy policies are intended to:

- (1) protect clients' medical records and other personal health information;
- (2) give clients more control over their protected health information (PHI);
- (3) set boundaries on the use and disclosure of PHI; and
- (4) hold violators accountable.

(c) Employees who violate OKDHS privacy policies are disciplined in accordance with DHS:2-1-7(g)(2)(A) and may be subject to sanctions set forth by the Department of Health and Human Services.

### **340:2-8-2. Definitions**

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

**"Authorization"** means a document that contains:

(A) the name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;

(B) the name or other specific identification of the person(s), or class of persons, to whom Oklahoma Department of Human Services (OKDHS) may make the requested use or disclosure;

(C) a description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose;

(D) an expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement "end of the research study," "none," or similar language is sufficient if the authorization is for a use or disclosure of protected health information for research, including for the creation and maintenance of a research database or research repository;

(E) the signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of the representative's authority to act for the individual must also be provided; and

(F) the individual's right to revoke the authorization in writing.

**"Disclosure"** means the release of protected health information to another entity or individual.

**"Health care operations"** means certain administrative, financial, legal, and quality improvement activities that are necessary to run the organization and to support the core functions of treatment and payment. Some common activities include quality assessment activities, case management, care coordination, and fraud and abuse investigation.

**"Payment"** means the various activities of health care providers to obtain payment or be reimbursed for their services. Some common activities include determining eligibility for a plan, adjudicating claims, risk adjustments, billing and collecting activities, medical necessity reviews, and utilization reviews.

**"Personal representative"** means an individual who:

(A) is a parent, legal guardian, or legal custodian appointed by a court;

(B) has the authority to act on behalf of a deceased individual or his or her estate;

(C) has been given authority to act on behalf of an individual with regard to health care through a power of attorney, medical directive, or guardianship; or

(D) has been designated by an adult as his or her personal representative with regard to health care.

A personal representative is treated the same as the client.

**"Privacy notice"** means a form that notifies an individual:

(A) how his or her health information is handled by OKDHS; and

(B) what his or her rights are regarding protected health information.

**"Protected health information (PHI)"** means any health-related information that is used to individually identify a person by virtue of its containing one or more individual identifiers, such as name, Social Security number, telephone number, case number, or postal zip code. It applies to information transmitted or maintained in any form or medium, including electronic, paper, or oral.

**"Treatment"** means the provision, coordination, or management of health care and related services. This includes consultation between health care providers regarding a client or the referral of a client from one health care provider to another.

**"Treatment, payment, operations (TPO)"** means "routine" uses and disclosures of PHI.

**"Use"** means, with respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

**340:2-8-3. Training**

Oklahoma Department of Human Services (OKDHS) offers two forms of training regarding the Health Insurance Portability and Accountability (HIPAA) Privacy Rule and how the regulations relate to specific job functions. Every OKDHS employee whose job function is affected by the Privacy Rule is required to complete an available training course.

**340:2-8-4. Client privacy rights**

(a) Oklahoma Department of Human Services (OKDHS) clients have the right to:

(1) access, inspect, and obtain a copy of their own protected health information (PHI) in OKDHS files or records consistent with federal and state law except for:

(A) psychotherapy notes that are not specifically released by the originator of the notes;

(B) information compiled for use in civil, criminal, or administrative proceedings; and

(C) information that OKDHS believes can cause harm to the client or to any other person. For this exception, clients have the right to have the decision reviewed by a licensed health care professional or other designated staff not directly involved in making the original denial decision;

(2) receive an accounting of disclosures OKDHS has made of his or her PHI for up to six years prior to the requesting date, except for disclosures made for the purposes of treatment, payment, or health care operations activities; and

(3) submit complaints if they believe or suspect that OKDHS has improperly used or disclosed their PHI.

(b) Clients may ask OKDHS to take specific actions regarding the use or disclosure of his or her PHI and OKDHS may

either approve or deny the request. Specifically, clients have the right to request:

(1) that OKDHS restrict uses and disclosures of his or her PHI to those activities related to treatment, payment, and operations, unless the restriction adversely affects the quality of the client's care or prevents OKDHS from making or obtaining payment for services;

(2) to receive information from OKDHS by alternative means, such as mail, e-mail, fax, or telephone, or at alternative locations; and

(3) that OKDHS amend their PHI.

(c) Clients have the right to receive Form HIPAA-1, Privacy Notice.

**340:2-8-5. Privacy officer**

(a) The Oklahoma Department of Human Services (OKDHS) has designated a privacy officer to perform the required functions as specified in the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. The contact information is: Oklahoma Department of Human Services, Privacy Officer, P.O. Box 53025, Oklahoma City, OK 73152.

(b) The privacy officer is responsible for:

(1) the development and implementation of OKDHS privacy policies;

(2) making decisions regarding the use and or disclosure of protected health information (PHI) when requested for the purpose of:

(A) judicial and administrative proceedings;

(B) law enforcement investigations;

(C) research; and

(D) marketing;

(3) reviewing a denial for a client's access to his or her own PHI for reasons indicated in OAC 340:2-8-4(a)(1)(C), and taking appropriate action following the review;

(4) receiving complaints regarding the use or disclosure of PHI from external and internal sources, and taking the appropriate action following the review;

(5) ensuring proper business associate agreements contain the appropriate language and provisions as required by the Privacy Rule; and

(6) receiving complaints regarding business associate activities or practices, and taking appropriate action following the review.

**340:2-8-6. Uses and disclosures without authorization**

Unless prohibited or limited by federal or state laws, Oklahoma Department of Human Services (OKDHS) may use or disclose protected health information (PHI) without written authorization for the circumstances explained in this Section.

(1) Individual access. OKDHS may disclose information to individuals who have requested disclosure of their own PHI in accordance with OAC 340:2-8-4(a)(1).

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(2) **Required by law.** OKDHS may use or disclose PHI without authorization if the law requires such disclosure and the use or disclosure complies with, and is limited to, the relevant requirements of such law.

(3) **Treatment, payment, or health care operations.** OKDHS may use or disclose PHI without authorization:

(A) for its own treatment, payment, or health care operations;

(B) to another covered entity or health care provider for the payment activities of the entity that receives the PHI;

(C) to another covered entity for the health care activities of that entity, if:

(i) both that entity and OKDHS have or have had a relationship with the individual who is the subject of the PHI; and

(ii) the PHI pertains to such relationship.

(4) **Psychotherapy notes.** OKDHS may use or disclose psychotherapy notes generated by OKDHS:

(A) in training programs where students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills;

(B) when a health oversight agency uses or discloses in connection with oversight of the originator of the notes; or

(C) to the extent authorized under state law to defend OKDHS in a legal action or other proceeding brought by the individual.

(5) **Public health activities.** OKDHS may disclose an individual's PHI to appropriate entities or persons for governmental public health activities and purposes, including but not limited to a:

(A) governmental public health authority that is authorized by law to collect or receive the PHI for the purpose of preventing or controlling disease, injury, or disability. This includes reporting vital events such as:

(i) birth or death; or

(ii) abuse or neglect of a vulnerable adult;

(B) governmental public health authority, or other appropriate government authority, that is authorized by law to receive report of child abuse or neglect; or

(C) person who may have been exposed to a communicable disease, or may be at risk of contracting or spreading disease or condition, if OKDHS is authorized by law to notify such person as necessary in conducting a public health intervention or investigation.

(6) **Health oversight activities.** OKDHS may disclose PHI for health oversight activities authorized by law, including audits; civil, criminal, or administrative investigations, prosecutions or actions; licensing or disciplinary actions; Medicaid fraud; or other activities necessary for oversight.

(7) **Judicial and administrative proceedings.** Unless prohibited by applicable federal and state law, OKDHS

may disclose PHI for judicial or administrative proceedings as required by law, in response to an order of a court, a subpoena, a discovery request, or other lawful process.

(8) **Law enforcement purposes.** OKDHS discloses PHI only when required by federal or state laws.

(9) **Deceased persons.** OKDHS discloses PHI to a coroner or medical examiner only when required by federal or state laws.

(10) **Organ or tissue donation.** If a client is an organ donor, OKDHS may disclose PHI to an entity that participates in transplantation activities.

(11) **To avert a serious threat to health or safety.** OKDHS discloses PHI if:

(A) OKDHS believes in good faith that the PHI is necessary to prevent or lessen a serious or imminent threat to the health or safety of a person or the public; and

(B) the report is to a person(s) reasonably able to prevent or lessen the threat, including to the target of the threat.

### **340:2-8-7. Authorization**

(a) A valid authorization is required to disclose protected health information (PHI) unless it is:

(1) for the purposes of treatment, payment, or health care operations; or

(2) listed specifically in OAC 340:2-8-6.

(b) An authorization is considered valid if:

(1) it contains the elements described at OAC 340:2-4-2;

(2) the expiration date has not passed; and

(3) the authorization is signed by the client, parent, guardian, or court-ordered personal representative of the client.

(c) A client may revoke an authorization if the revocation is in writing.

### **340:2-8-8. Disclosures to friends and relatives**

(a) If the client has been informed in advance and has been given the opportunity to either agree or to refuse or restrict the disclosure, Oklahoma Department of Human Services (OKDHS) may disclose protected health information (PHI) to friends and relatives of the client to the extent allowed by the client. The disclosure must only reveal PHI that directly relates to such person's involvement with the client's care or payment for such care.

(b) If the client is not present, or the opportunity to object to the disclosure cannot practicably be provided due to the client's incapacity or an emergency situation, OKDHS determines, using professional judgment, whether the disclosure is in the client's best interests. If disclosure is in the client's best interest, then the minimum necessary disclosure may be made. If disclosure is not in the client's best interest, then no disclosure is made.

(c) Oral permission to disclose PHI to friends and relatives is not sufficient when the client is referred to or receiving substance abuse treatment, mental health, or vocational rehabilitation services. Written authorization is required under those circumstances.

### **340:2-8-9. Personal representative**

(a) A personal representative must be authorized under state law to act on behalf of the client with respect to use or disclosure of protected health information (PHI).

(b) Oklahoma Department of Human Services (OKDHS) treats a personal representative the same as the client unless:

- (1) there is reasonable belief that the client has been or may be subjected to domestic violence, abuse, or neglect by the personal representative; or
- (2) by using professional judgment, it is determined that it is not in the best interest of the client to treat the person as a personal representative.

### **340:2-8-10. Minimum necessary standards**

Oklahoma Department of Human Services (OKDHS) limits request for, use of, and disclosure of protected health information (PHI) to that which is reasonably necessary to accomplish the intended purpose of the use or disclosure. This minimum necessary standard will not be used to impede the essential activities of treatment, payment, or health care operations.

- (1) The minimum necessary standard applies to:
  - (A) the use of PHI within OKDHS employees who:
    - (i) do not need PHI to perform their job duties must not access PHI; and
    - (ii) need PHI to perform their job duties must access PHI to the least extent necessary;
  - (B) disclosure of PHI to a third party in response to a request; and
  - (C) the request of PHI from another covered entity.
- (2) The minimum necessary standard does not apply to:
  - (A) disclosures to or requests by a health care provider for treatment;
  - (B) disclosures made to the individual;
  - (C) disclosures made in accordance with a valid authorization;
  - (D) disclosures made to the United States Secretary of Health and Human Services for the purposes of compliance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule; or
  - (E) uses or disclosures that are required by law.

### **340:2-8-11. Safeguarding protected health information**

(a) If Oklahoma Department of Human Services (OKDHS) staff is familiar with the person or entity requesting protected health information (PHI), OKDHS verifies the authority of the person or entity to receive the information. If OKDHS staff is

not familiar with the person or entity requesting PHI, OKDHS verifies identity and authority of the person or entity to receive the information.

(b) OKDHS staff must exercise care to avoid incidental disclosures of PHI through oral communications.

(c) Appointment reminders may be left on answering machines and voice mail systems, unless the client has requested an alternate means of communication.

(d) Faxing PHI is allowed when:

- (1) only the minimum necessary PHI is sent;
- (2) the information is not sensitive or it is an emergency situation;
- (3) the information is accompanied by Form HIPAA-8, Health Information Fax Cover Sheet; and
- (4) reasonable efforts are made to ensure the fax transmission is sent to the correct destination.

(e) Photocopying PHI is done only when necessary for treatment, payment, or health care operations, when authorized by the client or the client's personal representative, or when required by law.

(f) PHI must be discarded in accordance with OAC 340:2-21-35.

(g) Client's case records and other forms of PHI must be filed and kept safe from unauthorized access.

(h) Clients and visitors must be appropriately escorted in a secured area to ensure there is not unauthorized access to PHI.

(i) Computer monitors must be positioned to prevent unauthorized observation or access. Unattended computers must be returned to a password protected screen saver.

(j) Correspondence, including email and fax, that includes PHI is allowed if limited to the minimum necessary standard.

### **340:2-8-12. Business associate**

(a) A business associate is defined as an individual or entity who:

- (1) performs on behalf of Oklahoma Department of Human Services (OKDHS) any function or activity involving the use or disclosure of protected health information (PHI); and
- (2) is not a member of the OKDHS workforce.

(b) The definition of "function or activity" includes:

- (1) claims processing or administration;
- (2) data analysis and data processing;
- (3) utilization review;
- (4) quality assurance; and
- (5) billing, actuarial accounting, and other financial services.

(c) OKDHS discloses a client's PHI to a business associate, and allows a business associate to create or receive PHI on behalf of OKDHS.

(d) OKDHS enters into a contractual agreement with a business associate. The contract includes the appropriate language and provisions required by the federal Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule regarding the proper use and disclosure of PHI.

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## **340:2-8-13. Uses and disclosures for research or marketing purposes**

(a) Oklahoma Department of Human Services (OKDHS) must obtain a valid authorization for any use or disclosure of protected health information (PHI) for research purposes.

(b) OKDHS must obtain a valid authorization for any use or disclosure of PHI for marketing purposes unless the communication is in the form of face-to-face contact made by OKDHS staff.

## **340:2-8-14. Privacy complaints**

(a) A client or employee wishing to file a complaint regarding the use or disclosure of protected health information (PHI) is instructed to contact the Oklahoma Department of Human Services (OKDHS) privacy officer.

(b) A client or employee who requests an alternative means of filing a complaint regarding the use or disclosure of PHI, is instructed to contact the federal Department of Health and Human Services.

(c) OKDHS will not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any individual for:

- (1) filing a privacy violation complaint;
- (2) testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing conducted by a government enforcement agency; or
- (3) opposing any act or practice made unlawful by the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, provided the manner of opposition does not involve a disclosure of PHI.

*[OAR Docket #03-3060; filed 9-4-03]*

## **TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 20. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)**

*[OAR Docket #03-3061]*

### **RULEMAKING ACTION:**

EMERGENCY adoption

### **RULES:**

Subchapter 1. Low Income Home Energy Assistance Program

340:20-1-10 through 340:20-1-11 [AMENDED]

340:20-1-17 [AMENDED]

(Reference APA WF # 03-18)

### **AUTHORITY:**

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Title XXVI of Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981.

### **DATES:**

#### **Adoption:**

July 22, 2003

#### **Approved by Governor:**

August 21, 2003

#### **Effective:**

October 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 Emergency approval is requested as OKDHS finds compelling public interest exists in making accurate eligibility determinations as required by federal block grant guidelines. Without approval, the use of misleading rules concerning the treatment of illegal alien income may cause staff to miscalculate household income resulting in erroneous certifications and incorrect benefit amounts.

### **ANALYSIS:**

The proposed revisions to Chapter 20 provide Oklahoma Department of Human Services (OKDHS) staff with guidance regarding illegal alien ineligibility, treatment of illegal alien income, and revises Energy Crisis Assistance Program (ECAP) income guidelines.

340:20-1-10 is revised to allow an illegal alien to reside in an eligible household.

340:20-1-11 is revised to explain the treatment of illegal alien income and reflect the correct rule cites.

340:20-1-17 is revised to simplify the ECAP income criteria.

### **CONTACT PERSON:**

Dena Thayer at (405)521-4326

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF OCTOBER 1, 2003:**

## **SUBCHAPTER 1. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM**

### **340:20-1-10. Program factors**

(a) **Home energy.** Home energy refers to a household's source of energy used for heating or cooling in a residential dwelling.

(b) **Primary energy source.** The primary energy source during winter months is the fuel used by the household for heating. If a cooling program is implemented during the summer months, the fuel type used for cooling is the primary energy source. In the event funds are available to assist with cooling through the Energy Crisis Assistance Program (ECAP), the primary energy source becomes the fuel used by the household for cooling. If an "interim period" is implemented between heating and cooling programs or as part of ECAP, the client may choose the primary energy source.

(c) **Household.** The term "household" refers to any individual or group of individuals who are living together as one economic unit and for whom residential energy is customarily purchased in common, or who make undesignated payments for energy in the form of rent. There is one authorization for heating assistance per household.

(d) **Subsidized household.** A "~~Subsidized Household~~ subsidized household" is a household that receives assistance through a utility allowance(s) to cover all or part of their energy cost, ~~or~~ and/or which receives assistance in paying their rent or house payment on a regular basis. The assistance can be from

a government agency, such as a local housing authority, or a private individual, usually a relative, who helps an individual or family pay their utility bills, or the rent or house payment, or allows them to live rent free. Eligible subsidized households with out-of-pocket utility expenses receive the same ~~Heating Assistance~~ heating assistance benefit as unsubsidized households.

(e) **Vulnerability.** A household is vulnerable if it is responsible, either totally or partially, for the cost of home energy. A vulnerable household includes a household whose source of home energy has been temporarily discontinued.

(1) **Apartment rental rates.** If apartment rental rates in college or university-owned apartment complexes are deliberately set lower than other apartments in the community in order to help the student, the household is considered a subsidized household. ~~The county may need to contact the campus housing office(s) to determine if rental rates have been set lower for college or university-owned apartments.~~

(2) **Non-vulnerability.** Non-vulnerable households are those which do not bear any of the expense of home energy.

(A) Examples of non-vulnerable living arrangements include:

- (i) congregate or domiciliary facilities, such as nursing facilities and college or university dormitory, fraternity, or sorority housing;
- (ii) households whose primary energy source is totally paid by someone other than a household member; and
- (iii) subsidized households whose heating costs are included in their rent.

(B) Some subsidized households may be assessed an "energy surcharge" during the operation of the Low Income Home Energy Assistance Program. These households might be eligible for ~~Heating Assistance~~ heating assistance if they can document assessment of the surcharge.

(f) **Eligible households.** All households must ~~meet the following conditions:~~

- (1) be vulnerable by being totally or partially responsible for the cost of home energy; ~~and~~
- (2) ~~must~~ not exceed the income and resource standards as shown on Oklahoma Department of Human Services (OKDHS) Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size. The income amounts are established at 110% of the applicable Federal Poverty Guidelines;
- (3) must include at least one citizen or legal alien as defined in OAC 340:20-1-8; and
- (4) may include an illegal alien.

(g) **Benefit amount.** The household benefit amount is based upon the household's size, income, and type of fuel. The benefit amount is not changed during the program year due to changes in household composition, income, or fuel type. However, it is adjusted after the end of the heating application period if the total number of households finally approved for

heating assistance in relation to the total federal funding available for heating assistance payments requires an adjustment.

- (1) There is no difference in the benefit levels between subsidized and unsubsidized households.
- (2) Subsidized households whose heating costs are included in their rent are not vulnerable unless assessed a surcharge. Refer to OAC 340:20-1-10(e)(2).

**340:20-1-11. Income and liquid resources**

(a) **Income.** Gross earned and unearned income less exclusions are considered in determining financial eligibility. Income which is received on an annual basis is prorated over 12 months to arrive at the average monthly income. If the income is not received on a regular monthly basis, refer to OAC ~~340:10-3-29~~ 340:10-3-31. Total income is rounded to the nearest dollar. When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is considered. When an illegal alien is part of an eligible household, The the portion of earned and unearned income of a legal or an illegal adult alien countable for household income is computed as outlined in (1) - (5) of this subsection.

- (1) Deduct TANE standard work related expense \$120 for each employed household member from the gross earned income ~~for net earned income.~~
- (2) Add ~~net earned income~~ to the unearned income of the alien.
- (3) Subtract the need standard on Oklahoma Department of Human Services Appendix C-1, Schedule of Maximum Income, Resource, and Payment Standards Schedule IX, for the appropriate number of persons. Persons counted for the need standard are the alien and his or her alien dependents who:
  - (A) are claimable for federal personal income taxes;
  - (B) live in the same household; and
  - (C) are not included in determining the Low Income Home Energy Assistance Program (LIHEAP) benefit level because they are aliens.

(4) Subtract the actual amounts paid by the alien to dependents not living in the household as well as actual child support and alimony payments to non-household members. This is the amount considered available to the LIHEAP household.

~~(5) The remaining amount is considered available to the LIHEAP household.~~

- (b) **Income disregards.** In determining income, disregard:
  - (1) the ~~Food Stamp~~ food stamp benefit amount under the Food Stamp Act of 1977;
  - (2) any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
  - (3) educational grants, including work study, or scholarships, ~~and the like~~, that are contingent upon the student regularly attending school. The student's classification, whether graduate or undergraduate, is not a factor;
  - (4) loans, regardless of use, if a bona fide debt or obligation to pay can be established. Criteria to establish a

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loan as bona fide ~~include~~ includes an acknowledgment of obligation to repay or evidence that the loan is from an individual or financial institution in the loan business. If the loan is from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay, with or without interest, is required to indicate that the loan is bona fide;

(5) Indian payments including judgment funds or funds held in trust and distributed per capita by the Secretary of the Interior Bureau of Indian Affairs (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. Also, disregard 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 per capita payments, for example, headrights of Osage tribe, income from mineral leases, or other tribal business ventures, are disregarded as long as they meet the distribution requirements as stated in this paragraph. However, any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

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

(7) benefits from State and Community Programs on Aging [Title III]. Income from the Older American Community Service Employment Act [Title V], including American Association of Retired Persons (AARP) and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as earned income. ~~Both Title III and Title V are under the Older Americans Act of 1965 amended by P.L. 100-175 to become the Older Americans Act amendments of 1987;~~

(8) unearned income received by a ~~TANF~~ child receiving Temporary Assistance for Needy Families (TANF), such as a needs based payment, cash assistance, compensation in lieu of wages, or allowance, from a program funded by the ~~Job Training and Partnership Act (JTPA)~~ Workforce Investment Act (WIA) including Job Corps income, and ~~JTPA WIA~~ earned income received as wages, not to exceed six months in any calendar year;

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

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

(11) the value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;

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

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

(14) earnings of a minor dependent child who is a full-time student;

(15) ~~government~~ rental or housing subsidies by governmental agencies, for example, United States Department of Housing and Urban Development (HUD), received ~~in-kind in-kind~~ or in cash for rent, mortgage payments, or utilities;

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

(17) advance payments of Earned Income Tax Credit (EITC) or refunds of EITC as a result of filing a ~~Federal~~ federal income tax return;

(18) refunds of state EITC as a result of filing a state income tax return;

~~(19)~~ payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the IN RE Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.) are not considered as income or as a resource in determining eligibility for or the amount of the benefit;

~~(20)~~ payments received for Emergency Assistance to Needy Families with Children;

~~(21)~~ Medicare ~~Buy-in Premium~~ buy-in premium;

~~(22)~~ work related expenses that are applicable under the TANF Program;

~~(23)~~ payments made by others on the household's behalf;

~~(24)~~ in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages;

~~(25)~~ payments made under the Radiation Exposure Compensation Act (P.L. 101-426) enacted October 15, 1990;

~~(26)~~ 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;

~~(27)~~ interests of individual Native Americans in trust or restricted lands;

~~(28)~~ income up to \$2,000 per year received by individual Native Americans, which is derived from leases or other uses of individually-owned trust or restricted lands. Any remaining disbursements from the trust or the restricted lands are considered as income; ~~and~~

~~(29)~~ payments made to individuals because of their status as victims of Nazi persecution; and

(30) monetary allowances as described in United States Code (USC) Section 1823(c) of Title 38 of the United

States Code (USC) provided to certain individuals who are children of Vietnam War veterans.

(c) **Resources.** Liquid resources, such as cash on hand, checking or savings accounts, certificates of deposits, stocks or bonds, cannot exceed the allowable resource level. For households that are not categorically eligible, liquid resources cannot exceed \$2,000 for one person, \$3,000 for two persons and \$50 for each additional person in the household. The applicant's statement is accepted as verification unless the information received is inconsistent or questionable.

**340:20-1-17. Energy Crisis Assistance**

(a) **Energy Crisis Assistance.** Energy crisis situations are handled through Expedited Services (ES) during the regular heating assistance program, and through the Energy Crisis Assistance Program (ECAP) in March. All applications for Energy Crisis Assistance must be made by contacting the ~~county~~ local Oklahoma Department of Human Services (OKDHS) office. The procedures and eligibility conditions in (1) through (8) of this subsection apply to both ES and ECAP.

(1) If a household is approved for Energy Crisis Assistance, either ES or ECAP, assistance is provided to resolve the crisis situation within 48 hours from the time of application.

(2) If the crisis situation is verified by a designated authority as life-threatening, the application must be processed so that assistance is provided to resolve the crisis situation within 18 hours following application provided, the household is eligible for crisis assistance benefits. The life-threatening decision must be documented in detail in the case record. Authority for designating a crisis situation as life-threatening is limited to a:

- (A) physician;
- (B) public health official;
- (C) licensed practitioner of the healing arts; or
- (D) OKDHS county director.

(3) Following verification of the crisis and determination of eligibility, the certifying worker contacts the fuel supplier as soon as possible to request delivery of fuel. Form LIHEAP-37-J, Notice of Eligibility For Energy Crisis Assistance, is then issued to the supplier or to the client to take to the supplier.

(4) ES and ECAP are utilized for households having an energy crisis who do not exceed the income and liquid resource standards. Income and resource criteria for Energy Crisis Assistance are the same as for heating assistance found in OAC 340:20-1-11 except if the energy crisis is due to garnishment or recoupment of an overpayment, other than OKDHS, the computation to determine net income is: the garnishment or recoupment amount is subtracted to arrive at net income for ES or ECAP.

- (A) ~~gross earned income;~~
- (B) ~~minus the garnishment or recoupment amount;~~
- (C) ~~minus the Temporary Assistance for Needy Families (TANF) standard work-related expense;~~
- (D) ~~plus unearned income;~~
- (E) ~~equals net income for ES and ECAP.~~

(5) A household that exceeds income and liquid resource standards is ineligible. Even if income and liquid resources are equal to or below the standard, the worker must verify that the energy crisis need cannot be met by available income and liquid resources. The household also must have had service discontinued or terminated by the seasonal primary energy supplier, or received a:

- (A) notice of a scheduled cut-off within 72 hours;
- (B) notice of a refusal to provide additional energy needs by the supplier when supply of fuel will be depleted within 72 hours or less; or
- (C) information regarding fee for a new connection.

(6) The worker must ascertain why the energy bill has not been paid. For a household to be eligible for ES or ECAP, some precipitating factor must exist which caused the household's inability to pay their energy bill. Simply not paying the bill when there was no household crisis does not qualify a household for ES or ECAP. Factors preventing payment of the energy bill include, but are not limited to, situations causing the household to make a choice between paying the energy bill and:

- (A) purchasing sufficient food for the household;
- (B) paying for emergency situations such as medical expenses or disaster recovery; or
- (C) providing clothing for children in the household.

(7) Counties must use discretion in determining what constitutes good cause for a household not paying the utility bill. Any practical reason is ~~is~~ acceptable. If in doubt, the Family Support Services Division (FSSD), Low Income Home Energy Assistance Program (LIHEAP) Unit, is available for consultation.

(8) If the energy supplier will not establish or restore service for the amount of the ES or ECAP payment, combined with whatever other resource is available or can be developed, the crisis payment cannot be authorized.

(9) All payments for crisis assistance are made directly to energy suppliers with rare exceptions.

(b) **Expedited Services (ES).** During the open application period in December, energy crisis situations are addressed by approving eligible households for ES.

(1) A household approved for ES is not eligible for a heating assistance payment in February. ~~Also, if a household which has already been approved for heating assistance, either through pre-certification or regular assistance is approved for ES, the heating assistance authorization on the 105H screen must be closed.~~ The ES benefit from the Estimated Benefit Level Matrix is the appropriate amount based on the ~~Agency's~~ best estimate by OKDHS of the total amount of federal funds that will be available in relation to the number of households expected to be approved.

(2) ES payments are made weekly after the heating assistance application period begins in December. The household benefit level for ES and heating assistance is the same unless it is necessary to adjust the heating assistance

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benefit, either up or down, before the February payment is made.

(c) **Energy Crisis Assistance Program (ECAP).** Based upon previous years' program experience, reasonable funds are reserved until March 15 of each year for ECAP. All ECAP applications must be made on Form LIHEAP-1-B, Application for Low Income Home Energy Assistance. The authorized benefit for ECAP is limited to a one-time-only payment for the amount necessary to connect, restore, or maintain energy service to the household. The authorized benefit cannot include the cost of propane or butane tank delivery. In instances where the maximum amount of ECAP and other available emergency programs do not meet the crisis, the case must be documented as having a feasible plan for maintaining or restoring service before an ECAP payment can be authorized. Payment may only be authorized for the seasonal primary source of energy, although it is possible for the primary energy source to change in some situations. If an interim period is implemented, the client may choose the primary energy source. If a cooling program is implemented, payment is only authorized for the primary energy source for cooling. [OAC 340:20-1-10(b)]

[OAR Docket #03-3061; filed 9-4-03]

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

[OAR Docket #03-3059]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 5. Plan of Service

340:40-5-1 [AMENDED]

Subchapter 7. Eligibility

340:40-7-1 [AMENDED]

340:40-7-6 [AMENDED]

340:40-7-8 [AMENDED]

340:40-7-11 through 340:40-7-13 [AMENDED]

(Reference APA WF # 03-19)

### 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 [Pub. L. 104-193]; the Balanced Budget Act of 1997 [Pub. L. 105-33]; and 45 Code of Federal Regulations (CFR) Parts 98 and 99.

### DATES:

#### Adoption:

July 30, 2003

#### Approved by Governor:

July 30, 2003

#### Effective:

Immediately upon Governor's approval or August 1, 2003, whichever is later.

#### Expiration:

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

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 5. Plan of Service

340:40-5-1 [AMENDED]

Subchapter 7. Eligibility

340:40-7-1 [AMENDED]

340:40-7-6 [AMENDED]

340:40-7-8 [AMENDED]

340:40-7-11 through 340:40-7-13 [AMENDED]

(Reference APA WF # 03-15)

#### Gubernatorial approval:

June 26, 2003

#### Register publication:

20 Ok Reg 2800

#### Docket number:

03-2096

#### INCORPORATIONS BY REFERENCE:

n/a

#### FINDING OF EMERGENCY:

Emergency approval is requested as the Agency finds an imminent peril to the preservation of the public health, safety, and welfare of families with children exists for those who receive or expect to receive child care benefits. Without approval of the proposed rules, some families eligible for child care benefits will have their child care benefits closed, denied, or reduced.

#### ANALYSIS:

These rule revisions supersede the rules approved by the Governor on June 26, 2003. The purpose of the proposed rules is to adopt superseding rules which restore the methods used to compute income to determine child care family share co-payment. The category of pre-determined eligibility for child care assistance is restored to a zero co-payment for persons receiving public assistance or Supplemental Security Income (SSI).

#### CONTACT PERSON:

Dena Thayer at (405)521-4326

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D) AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR AUGUST 1, 2003, WHICHEVER IS LATER:**

## SUBCHAPTER 5. PLAN OF SERVICE

### 340:40-5-1. Plan of service

(a) **Plan of service.** Providing child care is part of an overall plan of service designed to help the parent(s) or caretaker(s) with whom the child(ren) lives to achieve his or her maximum potential for self-support. Quality child care services assure the parent(s) or caretaker(s) that each child has adequate care which affords developmental and learning experiences while the parent(s) or caretaker(s) is engaged in self-support activities. ~~The worker helps the client to become more independent by suggesting ways to increase household income and identifying strengths in the client's life. The Family Support Services (FSS) worker and the Child Welfare staff freely share information to develop a plan that best meets the needs of the family when both are working with the family.~~

(b) **Plan components.** The plan of service consists of many components that all link to form a goal-directed plan of care. These components include:

- (1) the name, age, and grade level of the child(ren) for whom child care is needed;
- (2) need for child care;
- (3) the days and hours for which care is approved, including travel time;
- (4) whether care is approved on a weekly, full-time, blended, or part-time care basis;

- (5) whether there is an appropriate, feasible alternative to Oklahoma Department of Human Services (~~DHS~~OKDHS) subsidized child care;
- (6) that the plan to increase the client's income is in place;
- (7) a back up plan for care when the child(ren) cannot go to the authorized child care provider;
- (8) the name, address, and telephone number of a person ~~who could be called to call~~ on in case of an emergency;
- (9) a plan to help the client choose a child care provider;
- (10) a discussion about the family share co-payment ~~the family must pay toward the cost of child care~~, if one is required;
- (11) a discussion of any other social service needs of the family; and
- (12) a discussion of the client's responsibilities and rights when using subsidized child care.
- (c) **Alternative to subsidized child care.** The worker explores with the client whether there is an appropriate, feasible alternative to ~~DHS~~ OKDHS subsidized child care. The client has a choice whether to use this alternative unless the alternative is a spouse or the natural or adoptive parent of the child(ren) who lives in the home and who does not meet a need factor. Possible alternatives include:
- (1) care by a dependable relative who is able and willing to assume responsibility for care and supervision of the child(ren) for part of the day;
  - (2) care in a free or low cost facility, such as a preschool, prekindergarten, kindergarten, Head Start, Early Head Start, or tribal child care program;
  - (3) dependent care expenses paid directly by a Temporary Assistance for Needy Families client which are considered as earned income exemptions; and
  - (4) for a school age child(ren), the possible rearrangement of the parent's or caretaker's employment or training schedule to coincide with the hours the child(ren) is in school.
- (d) **Plan to increase income.** At each application or review, the client and the worker discuss ways the client can increase income to the household. The client and worker identify together the goals child care helps the family achieve. Together they estimate when the family can assume progressively greater responsibility for the cost of child care. The worker makes referrals to other agencies as appropriate.
- (e) **Back up plan.** The worker discusses with the client the back up plan for child care he or she has in place if the child(ren) cannot go to the usual provider for some reason such as illness, school holidays, or another unforeseen emergency. The back up plan includes the name and address of a person the client feels he or she can rely on when the normal plan of care cannot be used.
- (f) **Emergency contact.** Form FSS-1, Comprehensive Application and Review, or Form K-2, Application for Child Care Services, includes the name, phone number, and address of a person ~~who can be contacted to contact~~ in case of emergency when the primary parent or caretaker cannot be reached.
- (g) **Choice of provider.** The worker documents the choice of provider on Form FSS-1 or Form K-2. He or she calls the chosen provider to ensure acceptance of the child(ren) does not cause the provider to exceed his or her licensed capacity after describing the days and hours care is needed. If the client does not choose a provider at the time of the request, the worker provides the client with information to help in making the choice. The client can choose a family child care home regardless of star level. The client cannot choose a child care:
- (1) facility that does not have a valid contract with ~~DHS~~ OKDHS;
  - (2) facility in which the client or his or her spouse has an ownership interest;
  - (3) home in which the child resides;
  - (4) home in which the client also works during the hours his or her child(ren) is in care;
  - (5) center in which the client works and has job responsibilities which include care of the child(ren) for whom child care is requested;
  - (6) provider who is related to the client and only accepts a relative's child(ren);
  - (7) provider who does not allow parental access during the hours the provider is caring for children;
  - (8) provider who is receiving state or federal funds, such as Head Start, Early Head Start, or public schools unless:
    - (A) all parents are charged a fee for the hours subsidy payment is requested; and
    - (B) the program is offering extended day or full year services. Programs operating only during typical school or Head Start hours are not eligible;
  - (9) provider caring for a school age child during the regular school day when such student could be attending a public or private school during those hours; or
  - (10) center which is a one star facility unless there ~~is~~ are no one star plus, two, or three star centers in the community or one of the special exception criteria are met. Special exception criteria are:
    - (A) the child(ren) was already approved for care at this one star center prior to January 1, 2003. The child(ren) can remain at this facility unless the ~~child~~ child(ren) stops attending there for more than 30 days. The ~~child~~ child(ren) can also be approved at this same facility again if the only reason the ~~child~~ child(ren) did not attend for more than 30 days was because of a school break or due to circumstances beyond the control of the 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 (10)(A) of this subsection for the same one star child care provider; or
    - (C) the parent or guardian demonstrates that ~~they~~ do ~~there~~ is not ~~have~~ another child care option that meets the family's needs.
- (h) **Family share co-payment.** The worker uses ~~DHS~~ OKDHS Appendix C-4, Child Care Eligibility/Rates Schedule, to determine the family share co-payment paid by clients who are income eligible. The family share co-payment is applied before ~~DHS~~ OKDHS pays a child care subsidy. The amounts the family and ~~DHS~~ OKDHS pay toward the cost of

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care varies depending on the plan of service, family size, income, and the number of children receiving child care services.

(i) **Social services requests.** When a client requests help in meeting the social services needs listed on Form FSS-1 or Form K-2, the worker provides all available information to aid a client in meeting these needs.

(j) **Client rights and responsibilities.**

(1) The client has ~~a~~ the right to an explanation by the worker of the "Client Child Care Responsibilities and Service Plan Agreement" listed on Form FSS-1 or Form K-2 before signing the form.

(2) The worker must advise the client that a child care request is not approved back to the date of request unless the interview is conducted and verification is provided on that same date.

(3) The client has ~~a~~ the right to ask for a fair hearing if he or she disagrees with an action taken on the case.

(4) The client is advised by the worker that the provider may charge the client extra for special fees such as enrollment or transportation fees as long as these fees are posted and also charged to the general public. The provider is:

(A) not contractually allowed to charge the client more for days and hours covered in the child care plan even if the hours are more than customary for a full-time day; and

(B) not allowed to charge the client for days the child(ren) is not in attendance.

(5) The client is advised he or she is required to cooperate with the ~~DHS~~ OKDHS Office of Inspector General in any audit or investigation of possible overpayments by the client or by his or her chosen provider.

## SUBCHAPTER 7. ELIGIBILITY

### 340:40-7-1. Categories of eligibility

An individual may be predetermined eligible for child care services, determined income eligible based on the gross income of the household or have dual eligibility with his or her tribe.

(1) **Predetermined eligible.** A person is predetermined eligible for child care services with a zero family share co-payment when he or she is a recipient of public assistance or Supplemental Security Income (SSI). Public assistance is defined as receiving a State Supplemental Payment, Temporary Assistance for Needy Families (TANF), or Refugee Cash Assistance. This definition also includes children receiving non-cash vouchers from the TANF program.

(A) The Administration for Children and Families requires that the Department guarantee child care for dependent children under 13 years of age when that care is needed to help a TANF eligible family member accept employment, remain employed, or participate in an approved education or training activity.

(B) All TANF recipients who currently receive child care services for reasons of employment are

eligible for child care under the Child Care and Development Fund or for the cost of child care to be considered as an earned income exemption while continuing to receive cash benefits.

(2) **Income eligible.** Households who are not predetermined eligible for child care services must meet income eligibility guidelines listed on DHS Appendix C-4, Child Care Eligibility/Rates Schedule, for their household size, to receive help with child care costs.

(3) **Transitional child care.** Per Section 230.61 of Title 56 of the Oklahoma Statutes, a TANF recipient who becomes employed is eligible for transitional child care services for 24 months following the date of employment unless:

(A) the employer provides child care benefits; or

(B) the monthly salary received from the employer exceeds the monthly allowance of assistance pursuant to the TANF program plus the cost of child care and medical insurance to which the recipient would be entitled.

(4) **TANF families in the Work Supplementation Program.** TANF families in the Work Supplementation Program are treated as income eligible families.

(5) **Dual eligibility.** An individual may have dual eligibility for both the child care subsidy program through ~~the Department~~ OKDHS and through his or her Indian tribe. The child care provider cannot receive payment from both programs simultaneously. However, the client can be approved for the child care subsidy program and the tribe may pay the client's family share co-payment.

### 340:40-7-6. Household composition and income consideration

(a) **Household composition and income consideration.** To establish a child's eligibility for subsidized child care, it is necessary to define who must be considered part of household composition for income consideration. Individuals who must be included are:

(1) the natural or adoptive parent(s) of the child(ren) who ~~is living~~ lives in the home and for whom child care is needed;

(2) the caretaker(s) of the minor child(ren) who needs child care if that caretaker is legally and financially responsible for the child(ren);

(3) all minor children ~~residing who live~~ in the home for whom the payee is financially responsible child care is requested and their siblings;

(4) the stepparent of the minor child(ren) who is living in the home and for whom child care is needed;

(5) any non-relative adult of the opposite sex who is living in the home with the natural or adoptive parent; and

(6) any child(ren) of the non-relative adult of the opposite sex who is living in the home with the natural or adoptive parent.

(b) **Periods of absence.** When a household member is out of the home due to a temporary absence, he or she is still considered a household member as long as he or she plans to return to the home. Examples of temporary absence include:

- (1) a hospitalization for physical or mental health reasons;
  - (2) incarceration;
  - (3) attending school;
  - (4) military service; ~~and~~
  - (5) vacation time for a child; ~~and~~
  - (6) working or looking for a job away from home.
- (c) **Definition of household composition terms.** The ~~social services specialist worker~~ determines household composition for income considerations using the definition of terms listed in (1) - through (6) of this subsection.
- (1) ~~Adults are~~ An adult is an emancipated minor or persons person 18 years of age or older. A child who is also a parent is ~~treated as~~ considered an adult.
  - (2) A child is any unmarried, unemancipated, non-parental person under 18 years of age.
  - (3) A child who has married or voluntarily left the parental home for any reason and established independent living arrangements, other than being away from home for school or health reasons, is considered emancipated and treated as an adult. Once a child is emancipated, the emancipation is permanent.
  - (4) Spouses are persons married by ceremony or ~~common-law~~ common-law and who are living together, or living separately on a temporary basis with no intentions of severing the marital relationship, or who are involuntarily separated.
  - (5) A non-relative adult is defined as any person over 18 years of age or an emancipated minor who is not related to the parent or caretaker by blood, adoption, or marriage.
  - (6) The term legally and financially responsible adult is defined as a parent or stepparent of the child(ren) for whom child care is needed. The term also includes other caretaker adults who are ~~court-ordered~~ court-ordered to be legally and financially responsible for the child.
- (d) **Joint or shared custody.** When parents separate or divorce and share custody of their child(ren), either voluntarily or through a court order, the ~~social services specialist worker~~ considers each parent's eligibility separately as well as his or her income. If only one parent qualifies for subsidized child care, only the days and hours of care needed while that parent has physical custody of the child(ren) is approved.

**340:40-7-8. Defining the need factor for child care services**

- (a) **Employment.** Employment means the adult earns wages for work performed if the adult is part of the household for income purposes.
- (1) If the adult is not making at least minimum wage for the number of hours he or she is working, the worker counsels with the individual regarding increasing income. If counseling is unsuccessful, child care benefits can be reduced or terminated. A person employed and working from his or her own home ~~can receive~~ may be approved for child care services in an out-of-home child care home or center.
  - (2) Job search meets the definition of employment and child care may be approved only when a recipient who

has received child care services for at least 30 days loses employment or successfully completes a formal education or training program and requests child care assistance to look for a job. Child care may be approved for a maximum of 30 calendar days from the date the client loses employment or successfully completes a formal education or training program. Job search may be approved no more than twice per calendar year.

- (b) **Training.** Job skills training includes vocational training and "hands-on" work experience to develop technical skills, knowledge, and abilities in specific occupational areas. All training programs must include qualitative measures to evaluate the participant's progress. Examples include competency gains, proficiency levels, and certificates of completion.
- (c) **Formal education program.** A formal education program is defined as a course of study which leads to the attainment of an associate's or bachelor's degree.
- (d) **Temporary Assistance for Needy Families (TANF) Work activity.** When a client receives TANF assistance, child care may be provided for any activity outlined in the client's Form TW-2, TANF Work/Personal Responsibility Agreement. Need is also met when the individual is waiting to enter an approved TANF Work activity. Approval is limited to a time period not to exceed:
  - (1) two weeks; or
  - (2) one month on an exception basis where child care arrangements or other services would otherwise be lost and the subsequent activity is scheduled to begin within that period.
- (e) **TANF applicant job search.** TANF applicants referred for immediate employment are eligible for child care for job search. TANF applicants are advised:
  - (1) child care for job search is limited to 20 days which must be used within 30 calendar days from the date of request;
  - (2) in-home child care arrangements are not available for TANF applicants;
  - (3) child care may only be used during the times the applicant is actually looking for a job; and
  - (4) he or she must notify the county office immediately upon securing employment.
- (f) **Food Stamp Employment and Training (E&T) recipients.** Income eligible food stamp recipients who live in a Food Stamp E&T county may receive voucher-authorized child care for E&T activities if child care services are necessary for the parent or caretaker to participate in the E&T activities. Participants are eligible for a maximum of \$160 per month per child.
  - (1) Child care services are available whether the parent or caretaker is a required or voluntary participant.
  - (2) In two-parent or two-caretaker families, both parents may participate in E&T activities simultaneously and receive voucher-authorized child care unless one parent or caretaker has been exempted to care for a child(ren) under six years of age.
  - (3) Child care services are only purchased from licensed and contracted out-of-home child care facilities.

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- (4) Food Stamp E&T participants are predetermined eligible for voucher-authorized child care and are approved with a zero family share co-payment.
- (5) At the end of each calendar month, the client submits to the worker a completed Form FSP-22, Job Search Plan.
- (6) An overpayment is written for any ~~vouchered~~ voucher-authorized child care used by the client for which he or she was not eligible.
- (7) The Family Support Services Division, Food Stamp Section monitors a random selection of cases quarterly to ensure the integrity of the program.
- (g) **Protective or preventive child care.** Protective or preventive child care services are used as an early intervention strategy in certain critical situations to help in preventing neglect, abuse, or exploitation. The worker may approve child care in these situations to help stabilize the family situation or to enhance family functioning.
- (1) The worker may approve protective or preventive child care for a maximum of 30 calendar days at the county level.
- (2) The family may or may not be expected to help in paying the cost of this child care depending on the unique circumstances of the family.
- (3) If the family is financially ineligible for child care services but there is evidence the family is so burdened by debt that the additional financial pressure of paying for child care may result in further deterioration of family stability and functioning, the worker may approve protective or preventive child care. A plan to reduce such debt must be established.
- (4) If determining financial eligibility will take time, the worker may approve child care while the parent or caretaker is gathering necessary information.
- (5) Protective or preventive child care is temporary and planning to reduce or eliminate the need for such child care begins at the initial contact.
- (h) **Child with disabilities.** A child with disabilities is defined as a child ~~receiving~~ who receives Supplemental Security Income (SSI), SoonerStart early intervention services, or special education services provided in accordance with an Individualized Education Program (IEP) by the local school district. This definition also includes a child whose SSI payment stops because of financial reasons but who still meets the medical definition of disability as determined by the Social Security Administration. A child must receive SSI to be predetermined eligible for child care services with a zero family share co-payment if he or she meets all conditions of eligibility for child care. Child care may be approved for a child with disabilities through the day before the child's 19<sup>th</sup> birthday when a statement from a licensed health care professional is provided stating the child is physically or mentally incapable of self-care as age appropriate.
- (1) **Approval for the higher special needs rate.** Form ADM-123, Certification for Special Needs Child Care Rate, is completed and signed by the parent or guardian, the child care provider, Division of Child Care (DCC) licensing staff, and the child's Family Support Services

worker or Child Welfare worker. The parent or caretaker must submit the child's ~~Individualized Education Program (IEP)~~ or Individualized Family Service Plan (IFSP) that documents the care needs of the child. If a child ~~receiving~~ who receives SSI is not receiving special education services or SoonerStart services, a statement from a health professional describing the care needs of the child is submitted. A change from the applicable daily or weekly rate to the higher special needs rate is effective the first of the month following the month eligibility for the rate is determined by DCC licensing staff. When care is not provided until the special needs rate is approved, it is effective the first day care is provided.

(2) **Enrichment child care services for children with disabilities.** The purpose of enrichment child care services is to assist the child in developing socialization skills. Children with disabilities receiving SSI who are normally not eligible for child care may be approved for enrichment child care services based solely on the needs of the child's condition of delay or disability rather than on the activities of the parent or caretaker. Child care is limited to a maximum of two days per week not to exceed ten full-time or part-time days per month for enrichment child care. The parent or caretaker must provide a statement from a professional involved in the child's life recommending child care be provided and the reason child care would be beneficial to the child. When such enrichment child care is approved, it is provided outside of the child's home, preferably in a setting where at least one other child is present.

### 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 garnisheed or diverted and paid to a third party are also 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 are considered as self-employment income. Gross income is determined by calculating total gross receipts or sales, and 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 cost of labor, stock, raw material, seed and fertilizer, and payments on the principal of the purchase price of income producing 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) net losses from previous periods;
- (ii) 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;
- (iii) depreciation;
- (iv) penalties and fines; and
- (v) charitable contributions.

(B) **Monthly self-employment income.** Self-employment income received on a monthly basis is normally averaged over a 12-month period. If 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 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 like other ~~self-employed~~ self-employment 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 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.~~

(43) **On-the-job training.** Earned income from regular employment for on-the-job training is considered as any other earned income.

(54) **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 WIA~~ 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.

(65) **Title I 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

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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 other 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 (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 (**TANF**) and State Supplemental Payments (**SSP**) 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 unearned income.

(4) **Unemployment and workers' compensation.** Income from unemployment insurance benefits or workers' compensation is counted as unearned income.

(5) **Child support, court-ordered child care, and alimony.** Child support, child care payments, and alimony payments, whether 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, and similar payments are considered unearned income.

(7) **Contributions.** Appreciable contributions recurrently received in cash are considered 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 similar sources are considered 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) **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 considered as a resource. Recurring lump sum payments, including income from earnings, are averaged over the period they are intended to cover.

(10) ~~**Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments paid to individuals by the Developmental Disabilities Services Division of OKDHS are considered unearned income.~~ **Title IV-E or State Adoption Subsidy.** Federally or state funded adoption subsidy payments are made to adoptive parents of children with special needs are considered as unearned income.

### 340:40-7-12. Sources of excluded income

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 payments of federal EITC are excluded.

(10) **Money received for third parties.** Money received and used for the care and maintenance of a third party ~~beneficiary~~ who is not a household member is 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.** 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.~~

~~(15)~~ **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 excluded.

~~(16)~~ **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 excluded.

~~(17)~~ **Foster care payments.** Foster care payments received for a foster child in state or tribal custody are excluded as income.

~~(18)~~ **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]

~~(19)~~ **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments paid to individuals by the Developmental Disabilities Services Division of the Oklahoma Department of Human Services (OKDHS) are excluded as income.

(20) **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;

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- (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) 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.);
- (M) payments received under the Civil Liberties Act of 1988;
- (N) 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;
- (O) payments for the fulfillment of a Plan for Achieving Self-Support under Title XVI of the Social Security Act;
- (P) payments made to individuals because of their status as victims of Nazi persecution;
- (Q) 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;
- (R) ~~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)] monetary allowances provided to certain children of Vietnam War veterans as described in 38 United States Code (USC) Chapter 18;~~
- (S) 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;
- (T) the value of the food stamp allotment under the Food Stamp Act of 1977; and
- (U) 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 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 worker verifies 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.

[OAR Docket #03-3059; filed 9-4-03]

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 50. FOOD STAMP PROGRAM

[OAR Docket #03-3062]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 5. Non-Financial Eligibility Criteria

Part 1. Household Definition

340:50-5-8.1 [AMENDED]

Part 5. Students, Strikers, Resident Farm Laborers, Migrant Households, Sponsored Aliens, and School Employees

340:50-5-49 [AMENDED]

Subchapter 7. Financial Eligibility Criteria

Part 1. Resources

340:50-7-2 [AMENDED]

Part 3. Income

340:50-7-22 [AMENDED]

340:50-7-29 [AMENDED]

340:50-7-31 [AMENDED]

Subchapter 9. Eligibility and Benefit Determination Procedures

340:50-9-1 [AMENDED]

Subchapter 15. Overpayments and Fraud

Part 1. Overpayments

340:50-15-1 [AMENDED]

340:50-15-6 [AMENDED]

(Reference APA WF #03-16)

### AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; 2002 Farm Bill; and Section 1823(c) of Title 38 of the United States Code

### DATES:

#### Adoption:

July 22, 2003

#### Approved by Governor:

August 21, 2003

**Effective:**

October 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 OKDHS finds compelling public interest exists to comply with federal law concerning the Food Stamp Program. The 2002 Farm Bill requires the changes to sponsored alien eligibility be implemented October 1, 2003. Without approval, OKDHS rules will be out of compliance with federal law.

**ANALYSIS:**

The proposed revisions to Chapter 50 provide Oklahoma Department of Human Services (OKDHS) staff with guidance and clarification regarding changes implemented by the 2002 Farm Bill and expand eligibility to certain legal aliens.

340:50-5-8.1 is revised to update language and change the name of Immigration and Naturalization Service to the current name of Bureau of Citizenship and Immigration Service.

340:50-5-49 is revised to update rules according to the implementation of the 2002 Farm Bill regarding sponsored aliens and deeming of income.

340:50-7-2 is revised to disregard as a resource income received by certain individuals who are children of Vietnam War veterans in accordance with federal law.

340:50-7-22 is revised to exclude Family Support Assistance Payment Program payments from Developmental Disabilities Services Division (DDSD) and income received by certain individuals who are children of Vietnam War veterans in accordance with federal law.

340:50-7-29 is revised to remove training allowances as included income and to clarify the meaning of the cost of doing business.

340:50-7-31 is revised to simplify utility deductions per the Farm Bill of 2002, by having three utility standard options based on what utility the household pays.

340:50-9-1 is revised to remove reference to the client claiming a higher utility cost than the standard.

340:50-15-1 is revised to clarify when an overpayment referral is made and to remove the sponsor of an alien from responsibility for an overpayment to an alien they have sponsored.

340:50-15-6 is revised to clarify when an overpayment claim is considered delinquent and when the claim is referred to the Treasury Offset Program.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF OCTOBER 1, 2003:**

**SUBCHAPTER 5. NON-FINANCIAL ELIGIBILITY CRITERIA**

**PART 1. HOUSEHOLD DEFINITION**

**340:50-5-8.1. Ineligible and illegal aliens**

Aliens not identified as qualified aliens in ~~340:50-5-67(a)(3) of this Subchapter~~ OAC 340:50-5-67(3) are not eligible for food stamps. Income and resources of ineligible aliens are considered available to the household. All aliens who are in the United States unlawfully, ~~illegal aliens,~~ must be

reported to the ~~Immigration and Naturalization Service (INS)~~ Bureau of Citizenship and Immigration Service (BCIS).

**PART 5. STUDENTS, STRIKERS, RESIDENT FARM LABORERS, MIGRANT HOUSEHOLDS, SPONSORED ALIENS, AND SCHOOL EMPLOYEES**

**340:50-5-49. Sponsored aliens**

(a) Aliens admitted for permanent residence under Section 401(a)(15) and (20) of the Immigration and Nationality Act, whose entry into the United States required sponsorship, must have the income and resources of the sponsor and sponsor's spouse, if living with the sponsor, considered in determining eligibility and benefit amount for food stamps. Sponsored aliens whose sponsor signed an enforceable affidavit of support may be subject to sponsor deeming, unless exempt from deeming requirements. The groups in (1) through (5) of this Subsection are exempt from deeming requirements.

(1) During any 12-month period the alien is exempt if he or she is a battered spouse, battered child or parent, or child of a battered person, providing the battered alien lives in a separate household from the person responsible for the battery. The exemption can be extended beyond the 12-month period if the alien demonstrates that the battery is recognized in a court or administrative order and if it is determined by the Oklahoma Department of Human Services (OKDHS) that the battery has a substantial connection to the need for benefits.

(2) If the sponsor lives in the same household as the alien, deeming does not apply because the sponsor's income and resources are already counted. There is no deeming exemption if the sponsor receives food stamps in another household.

(3) If the sponsored alien is ineligible for food stamps because of immigration status, such as he or she is not a qualified alien or a refugee or asylee during the seven year eligibility period, the sponsor's income is not deemed to other eligible members of the immigrant's household.

(4) Children under the age of 18 are exempt.

(5) If the alien's own income and any assistance provided by the sponsor or any other individual(s) is not enough for the alien to obtain food and shelter without the assistance of other assistance programs, the amount of the income and resources attributed to the alien cannot exceed the actual amount provided for a 12-month period. An alien is considered indigent if the sum of alien's household's own income and any cash or in-kind assistance provided by the sponsor or others is less than 130% of the poverty limit as shown on OKDHS Appendix C-3, Maximum Coupon Allotments and Standards for Deductions, Maximum Income and Utilities (Food Stamps). Each indigence determination is effective for 12 months and may be renewed for additional 12-month periods.

(A) If exempted under (5) of this subsection, OKDHS is required to send a written notice of the

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determination to the statistics branch of the Bureau of Citizenship and Immigration Service (BCIS).

(B) After learning of the reporting requirement, the alien may be given the opportunity to refuse food stamp benefits for himself or herself without withdrawing the entire household's application.

(C) An alien who does not wish to be exempt as indigent can be permitted to have his or her eligibility and benefits determined based on the deeming formula.

(b) The income and resources of a sponsor and his or her spouse, ~~if living with the sponsor,~~ are considered as the unearned income and resources of an alien ~~until the alien becomes a citizen or has 40 qualifying quarters of Social Security coverage as defined in OAC 340:50-5-67.~~ The income of the sponsor's spouse is considered even if the marriage occurred after the sponsor signed an agreement to support the alien.

(1) A sponsor is defined as an individual(s), not an organization, who executed an affidavit of support or similar agreement on behalf of the alien as a condition of the alien's entry or admission into the United States as a permanent resident.

(2) In addition to providing information required for any other applicant, if deeming is required, the alien must provide the:

- (A) income and resource information of the alien's sponsor and the sponsor's spouse;
- (B) number of other aliens sponsored by the sponsor;
- (C) Immigration and Naturalization Services (INS) Act under which the alien was admitted and the date of entrance;
- (D) alien's birthdate, birthplace, and registration number;
- (E) number of dependents claimed on the sponsor's and his or her spouse's income tax statement; and
- (F) name, address, and phone number of the sponsor.

(3) Verification requirements described in OAC 340:50-3-3 ~~applies apply~~ to all information the alien is required to provide except that non-liquid resources of the sponsor and the number of aliens he or she sponsors must also be verified.

(4) If an alien has already reported the gross income and resources of the sponsor and the sponsor's spouse in a Temporary Assistance for Needy Families (TANF) case, that income amount may be used for food stamp purposes. The amount of the sponsor's income ~~considered and resources deemed to the alien~~ is determined by:

(A) using the total monthly gross earned income, including income from self-employment but excluding in-kind or vendor payments to the sponsor and sponsor's spouse, minus ~~the 20% of the gross earned income deduction from DHS Appendix C-3, Maximum Food Stamp Allotments and Standards for Deductions, Income, and Utilities,~~ plus total monthly unearned income; ~~and.~~

(i) In-kind assistance such as food and shelter provided to the alien must be included as income in determining indigent exemption only. It is not considered when determining eligibility or benefit levels for the alien household.

(ii) In the absence of actual declared in-kind assistance cost provided by the sponsor, an assigned value of \$143 is used;

(B) subtracting the food stamp gross income eligibility standard for the sponsor and the dependents as claimed by the sponsor to determine his or her federal personal income tax liability; ~~See DHS Appendix C-3, for household size. The amount of resources considered available to the client from the sponsor is the total amount of the resources of the sponsor less \$1500.~~ and

(C) considering the total amount of the resources of the sponsor and sponsor's spouse less \$1,500.

(5) Income and resources of the sponsor and sponsor's spouse considered available to the sponsored alien are:

(A) not considered in determining need of unsponsored members of the alien's household unless actually available;

(B) divided equally where the sponsor also sponsors other aliens; and

(C) redetermined on a new sponsor if the alien switches sponsors during the certification period.

(6) Changes during the certification period must be reported for both the alien's and the sponsor's household.

(7) ~~The sponsor and the alien are held jointly liable for any overissuance of benefits due to failure to provide correct information unless the sponsor established good cause. Sponsor-to-alien deeming stops when the:~~

(A) alien becomes a naturalized citizen;

(B) alien can be credited with 40 quarters of work per OAC 340:50-5-67; or

(C) alien's sponsor is deceased.

## SUBCHAPTER 7. FINANCIAL ELIGIBILITY CRITERIA

### PART 1. RESOURCES

#### 340:50-7-2. Excluded resources

Only resources listed in this Section are excluded for household members, for disqualified members whose resources are counted, or for ineligible aliens who would otherwise be a household member. When an exclusion applies because of use by or for a household member, the exclusion also applies when the resource is used by or for a disqualified person whose resources are counted or for an ineligible alien who would otherwise be a household member.

(1) **Home and surrounding property.** The home and surrounding property which is not separated from the home by intervening property owned by others is exempt. Public right-of-way, such as roads which run through

the surrounding property and separate it from the home, does not affect exemption of the property. The home and surrounding property remain exempt when temporarily unoccupied by reasons of employment, training for future employment, illness, vacation, or uninhabitability caused by casualty or natural disaster so long as the household intends to return. Households that currently do not own a home, but own or are purchasing a lot on which they intend to build or are building a permanent home receive an exclusion for the value of the lot and, if it is partially completed, for the home.

(2) **Household personal goods, life insurance, and pension plans.** Household goods, personal belongings, including one burial lot per household member, the cash value of life insurance policies, and prepaid burial plans are exempt. The cash value of pension plans or funds is excluded, except for Individual Retirement Accounts (IRA) and Keogh Plans. A Keogh Plan may be excluded if it involves a contractual arrangement with individuals outside the household.

(3) **Vehicles.**

(A) Exclude one licensed vehicle per adult household member, including an ineligible alien or disqualified household member whose resources are considered available to the household, regardless of the use of the vehicle. Exclude any other vehicle a household member under age 18, including an ineligible alien or disqualified household member under age 18 whose resources are considered available to the household, drives ~~to commute~~ to and from employment, or to and from training or education which is preparatory to employment, or to seek employment. This exclusion applies during temporary periods of unemployment to a vehicle which a household member under age 18 customarily drives ~~to commute~~ to and from employment. Also exclude any licensed vehicle if:

- (i) used for income-producing purposes such as, but not limited to, a taxi, truck, or fishing boat, or a vehicle used for deliveries, to call on clients or customers, or required by the terms of employment. Licensed vehicles that have previously been used by a self-employed household member engaged in farming but are no longer used in farming because the household member has terminated his or her self-employment from farming must continue to be excluded as a resource for one year from the date the household member terminated his or her self-employment farming;
- (ii) annually producing income consistent with its fair market value, even if used only on a seasonal basis;
- (iii) necessary for long distance travel, other than daily commuting, that is essential to the employment of a household member, ineligible alien, or disqualified person whose resources are considered available to the household, such as the vehicle

of a traveling sales person or of a migrant farm worker following the work stream;

- (iv) used as the household's home;
- (v) necessary to transport a physically disabled household member, physically disabled ineligible alien, or physically disabled disqualified person whose resources are considered available to the household, regardless of the purpose of such transportation. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member. Only one vehicle per physically disabled household member may be excluded;
- (vi) necessary to carry fuel for heating or water for home use when the transported fuel or water is anticipated to be the primary source of fuel or water for the household during the certification period. Households must receive this resource exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle. Households must not be required to furnish documentation unless the exclusion of the vehicle is questionable;
- (vii) the value of the vehicle is inaccessible because its sale would produce an estimated return of not more than \$1,500;
- (viii) jointly owned by a food stamp household member and someone who does not live with the food stamp household. To be excluded, the vehicle must not be used by, nor in the possession, of anyone who lives in or with the household. The member must also be unable to sell the vehicle because the signature of the co-owner is needed and that person will not sign; or
- (ix) legally prohibited from being sold by the food stamp household. The determination of whether a food stamp household can legally sell a vehicle is governed by the law ~~of the State~~ of Oklahoma.

(B) The exclusions in (i) through (iii) of this ~~Section~~ subsection continue to apply when the ~~vehicles~~ are vehicle(s) is not in use because of temporary unemployment such as when a taxi driver is ill and cannot work or the vehicle is broken down and cannot be used.

(4) **Real or personal property directly related to the maintenance of excluded vehicles.** Property, real or personal, to the extent it is directly related to the maintenance or use of a vehicle described in paragraph (3) of this subsection is excluded. Only that portion of real property determined necessary for maintenance or use is excluded. For example, a household which owns a produce truck to earn its livelihood may be prohibited from parking the truck in a residential area. The household may own a 100-acre field and use a quarter-acre of the field to park or service the truck. Only the value of the quarter-acre is excluded under this provision, not the entire 100-acre field.

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(5) **Income producing property.** Income producing property which annually produces income consistent with the fair market value is excluded even if used on a seasonal basis. Examples of such property are rental homes and mineral rights. When it is necessary to determine if property is producing income consistent with its fair market value, the worker contacts a local realtor, tax assessor, the Small Business Administration, Farmer's Home Administration, or other knowledgeable sources to determine the prevailing rate of return from similar property in the area.

(6) **Property essential to employment.** Property, such as farm land or work related equipment including tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of a household member is excluded. Property of a household member engaged in farming continues to be excluded for one year from the date the household member terminates his or her self-employment from farming.

(7) **Installment contracts.** Installment contracts for the sale of land or buildings are excluded if the contract or agreement is producing income consistent with its fair market value. The exclusion applies to the value of the property sold under the installment contract or held as security in exchange for a purchase price consistent with the fair market value of that property.

(8) **Inaccessible resources.** Resources whose cash value is not accessible to the household are exempt, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. If questionable, the worker establishes that the property is for sale and that the household will accept a reasonable offer. A resource is considered inaccessible if its sale or other disposition is unlikely to produce funds amounting to one half or more of the applicable resource limit for the household. The value of the inaccessible resource is the amount of the expected return to the household after subtracting estimated cost of sale or disposition, and consideration of the ownership interest to the household. A single resource may not be subdivided solely to obtain an exclusion as inaccessible. This inaccessible provision does not apply to vehicles or financial instruments such as stocks, bonds, or negotiable financial instruments. Any funds in a trust or transferred to a trust and the income produced by that trust to the extent it is not available to the household is considered inaccessible to the household if:

(A) the trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(B) the trustee administering the funds is either a court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or an individual appointed by the court who has court imposed limitations placed on his or her use of the trust funds;

(C) trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and

(D) the funds held in irrevocable trust are either established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or established from non-household funds by a non-household member.

(9) **Education assistance.** All education grants, work study, scholarships, and student loans are exempt if receipt is contingent upon the student regularly attending school.

(10) **Resources excluded by law.** Resources currently excluded by law are:

(A) payments received:

(i) under the Alaska Native Claims Settlement Act [Public Law (P.L.) 92-203, ~~See~~ § 21(a)];

(ii) under the Sac and Fox Indian Claims Agreement [P.L. 94-189];

(iii) from the disposition of funds to the Grand River Band of Ottawa Indians [P.L. 94-540];

(iv) by members of the Confederated Tribes of the Mescalero Reservation [P.L. 95-433]; or

(v) under the Maine ~~Indians~~ Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation [P.L. 96-420];

(B) payments received by certain Indian tribal members under P.L. 94-114, ~~See~~ Section 6 regarding submarginal land held in trust by the United States;

(C) Indian per capita payments distributed from judgment awards and trust funds made pursuant to P.L. 98-64. Also excluded is any interest or investment income accrued on such funds while held in trust or any purchases made with ~~judgement~~ judgment funds, trust funds, interest or investment income accrued on such funds. Exclude any per capita payments, such as headrights of Osage tribe, income from mineral leases, or other tribal business ventures, as long as the payments meet the distribution requirements as stated in this subparagraph. Any interest or income derived from the funds after distribution is considered as any other income. The per capita exclusion applies per person rather than per family. When these excluded funds are deposited in a bank or other financial institution, the deposits are excluded as long as the funds are kept in a separate account and not commingled in an account with non-excluded funds. When the excluded funds are commingled in an account with non-excluded funds, the excluded funds retain their exemption for six months from the date of commingling. After six months from the date of commingling, all funds are counted as a resource. Purchases made with excluded funds are considered a resource;

- (D) interests of individual Indians in trust or restricted lands;
- (E) benefits received from ~~special supplemental food program for women, infants, and children~~ Special Supplemental Nutrition Program For Women, Infants, and Children (WIC) [P.L. 92-443, ~~See~~ § 6];
- (F) reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 [P.L. 91-646, ~~See~~ § 216];
- (G) Earned Income Tax Credit (EITC) payments received by a participating food stamp household member as part of a federal tax refund or as advance payments received as part of a ~~pay-check~~ paycheck, excluded for 12 months during continuous participation. This does not mean that households lose the exclusion if they temporarily leave the program for administrative reasons;
- (H) refunds of the state EITC as a result of filing a state income tax return in the month received and the following month;
- (I) payments received from the Youth Incentive Entitlement Pilot Projects, the Youth Community Conservation and Improvement Projects, and the Youth Employment and Training Programs under Title IV of the Comprehensive Employment and Training Act of 1978 [P.L. 95-524];
- (J) financial assistance provided by a program funded in whole or in part under Title IV of the Higher Education Act in accordance with P.L. 99-498;
- (K) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
- (L) payments received under the Civil Liberties Act of 1988. These payments are made to individuals of Japanese ancestry who were detained in internment camps during World War II;
- (M) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;
- (N) amounts held in an account for the fulfillment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act;
- (O) the resources of any non-household member unless the individual is disqualified from the program by an administrative or court fraud hearing, by failing to obtain or refusing to provide a Social Security number, or is an ineligible alien who would otherwise be a household member;
- (P) payments or allowances made under any federal law for the purpose of energy assistance such as the Low Income ~~Heating and Home~~ Energy Assistance Program (LIHEAP);
- (Q) earmarked resources, such as those governmental payments made by the Individual and Family Grant Program or the Small Business Administration which are designated for the restoration of homes

- damaged in a disaster and which are subject to a legal sanction if the funds are not used as intended. Resources such as those of self-employed persons, which have been prorated and counted as income, and Indian lands held jointly with the tribe or land that can be sold only with the approval of the Bureau of Indian Affairs are also exempt;
- (R) the identified resources of all Temporary Assistance for Needy Families (TANF) and Supplemental Security Income (SSI) recipients when the household's total resources are calculated for food stamp eligibility purposes;
- (S) excluded monies kept in a separate account, which are not commingled in an account with the non-excluded funds retain excluded status for an unlimited period of time. Monies of self-employed households ~~which~~ that are excluded as a resource because they have been prorated over the period they are intended to cover and are commingled in an account with non-excluded funds retain their exclusion for the period of time over which they have been prorated as income. All other excluded monies which are commingled in an account with other funds retain their exempt status for six months from the date they are commingled. If the household's total resources, including all funds in the commingled account, exceed the allowable limit after that time, all funds in the commingled account are considered as a resource;
- (T) payments made to individuals because of their status as victims of Nazi persecution; ~~and~~
- (U) any funds deposited in an Individual Development Account (IDA) operated under the Assets for Independence Act; and
- (V) monetary allowances as described in Section 1823(c) of Title 38 of the United States Code (USC) provided to certain individuals who are children of Vietnam War veterans.

## PART 3. INCOME

### 340:50-7-22. Income exclusions

Only the payments listed in this Section can be excluded from the household's income, from income of disqualified members whose income is counted, or from the income of ineligible aliens who would otherwise be household members. No other income is excluded.

- (1) **In-kind income.** In-kind income is any gain or benefit which is not in the form of money payable directly to the household, including non-monetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden.
- (2) **Vendor payments.** Vendor payments are payments in money on behalf of a household when a person or organization outside the household uses its own funds to make a direct payment to either a household's creditors or a person or organization providing a service to the household.

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(3) **Education assistance.** All education grants, work-study, scholarships, and student loans are exempt if receipt is contingent upon the student regularly attending school.

(4) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments provided by Developmental Disabilities Services Division (DDSD) are excluded.

(45) **Income excluded by law.** Income excluded by law is:

(A) reimbursements from the Uniform Relocation Assistance and Real Property Acquisition ~~Policy~~ Policies Act of 1970. [Public Law (P.L.) 91-646, § 216] Such payments are:

- (i) payments to persons displaced due to the acquisition of real property;
- (ii) relocation payments to a displaced home owner toward the purchase of a replacement dwelling if the owner purchased and occupied the dwelling within one year following displacement; and
- (iii) replacement housing payments to displaced persons not eligible for a home owner's payment;

(B) payments received:

- (i) under the Alaska ~~Natives~~ Native Claims Settlement Act [P.L. 92-203, ~~See~~ § 21(a)];
- (ii) under the Sac and Fox Indian Claims Agreement [P.L. 94-189];
- (iii) from the disposition of funds to the Grand River Band of Ottawa Indians [P.L. 94-540];
- (iv) by members of the Confederated Tribes of the Mescalero Reservation [P.L. 95-433];
- (v) 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 (RSVP), 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 (VISTA), University Year for Action, and Urban Crime Prevention Program, to volunteers are excluded for those individuals receiving food stamps or public assistance at the time they joined the Title I Program, except that households who were receiving an income exclusion for a VISTA or other Title I subsistence allowance on February 1, 1979 continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time. Temporary interruptions in food stamp participation does not alter the exclusion once an initial determination has been made;

(D) income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes [P.L. 94-114, ~~See~~ § 6];

(E) Indian per capita payments distributed from judgment awards and trust funds made pursuant to

~~Public Law P.L. 98-64.~~ Also excluded is 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 per capita payments, such as headrights of Osage tribe, income from mineral leases or other tribal business ventures are excluded, as long as they meet the distribution requirements as stated in this paragraph. Any interest or income derived from the funds after distribution is considered as any other income. The per capita exclusion applies per person rather than per family. When:

- (i) these excluded funds are deposited in a bank or other financial institution the deposits are excluded as long as they are kept in a separate account and not commingled in an account with non-excluded funds. When the excluded funds are commingled in an account with non-excluded funds they retain their exemption for six months from the date of commingling. After six months from the date of commingling, all funds are counted as a resource; and
- (ii) purchases made with excluded funds are considered a resource;

(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. 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 made for participation in the Workforce Investment Act (WIA) to individuals of all ages and student status. There are numerous programs for which payments are excluded. These programs include Summer Youth, ~~Job Corp Corps~~, paid ~~class room~~ classroom training, and others. The exemption to the income exclusion is income to individuals for on-the-job training paid to participants 19 years old and older. This income is treated as any other earned income;

(H) payments, allowances, or earnings to individuals participating in programs under Title I of the National and Community Service Act, such as Health Careers Volunteer Program and the ~~AmeriCorps~~ AmeriCorps Program, are not included as income for purposes of determining food stamp eligibility and benefit level;

(I) payments or allowances made under any federal law for the purpose of energy assistance, Low Income Home Energy Assistance Program (LIHEAP) and also utility payments, and reimbursements made by the Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA);

(J) the amount of the mandatory salary reduction of military service personnel used to fund the G.I. Bill;

(K) all funds which are 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 Elderly;
- (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 [P.L. 100-435];

(M) refunds of the state EITC as result of filing a state income tax return;

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

(O) payments received under the Civil Liberties Act of 1988. These payments are made to individuals of Japanese ancestry who were detained in interment camps during World War II;

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

(Q) payments for the fulfillment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act;

(R) payments made to individuals because of their status as victims of Nazi persecution; ~~and~~

(S) funds distributed by Federal Emergency Management Assistance (FEMA) due to a disaster or emergency to individuals directly affected by the event. This exclusion also applies to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. For payments to be excluded, the disaster or emergency must be declared by the President of the United States; ~~and~~

(T) monetary allowances as described in Section 1823(c) of Title 38 of the United States Code (USC) provided to certain individuals who are children of Vietnam War veterans.

**340:50-7-29. Income inclusions**

(a) **Earned income.** Earned income is income which a household receives in the form of wages, self-employment, or training allowances and for which an individual puts forth daily, physical labor. The types of earnings listed in (1) through

(5) of this subsection, including money from the sale of whole blood or blood plasma, are considered earned income.

(1) **Wages.** All wages and salaries for services performed as an employee including sick pay paid by the employer to an employee who plans to return to work when recovered are considered as earned income. Wages that are garnished or diverted and paid to a third party for a household's expenses are also included.

(2) **Self-employment.** The total gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business but excluding the cost of producing the income and payments from roomers or boarders and rent from rental property are considered self-employment income. Income from rental property is considered earned income only if a member of the household is actively engaged in management of the property an average of at least 20 hours a week.

~~(3) **Training allowances.** Training allowances for vocational and rehabilitative programs recognized by the federal, state, or local governments such as the Work Incentive Program and programs authorized by the Comprehensive Employment and Training Act, are considered income to the extent they are not reimbursement. The individual must be actively involved in some type of work.~~

~~(4) **Title I Payments payments of the Domestic Volunteer Services Act.** Payments under Title I of the Domestic Volunteer Services Act of 1973 as amended [P.L. 93-113] are considered as income unless excluded in OAC 340:50-7-22. This includes income to volunteers in Volunteers in Service to America (VISTA), University Year for Action, and similar volunteer payments.~~

~~(5) **On-the-job training.** Income earned in on-the-job training positions is considered earned income. This includes on-the-job training provided under Section 204(b)(1)(c) or Section 264(c)(1)(A) of the Workforce Investment Act for individuals 19 years of age or older.~~

(b) **Unearned income.** In general, unearned income is that income which a household receives and is not in the form of wages, self-employment, or training allowances and for which an individual does not put forth any daily, physical labor. The types of income listed in (1) through (6) of this subsection, while not all inclusive, are considered unearned.

(1) **Assistance payments.** Assistance payments from a federally aided public assistance program, such as Supplemental Security Income (SSI), or Temporary Assistance for Needy Families (TANF), or assistance programs based on need, such as State Supplemental Payments are considered as unearned income.

(A) A household's food stamp benefit amount does not increase when the benefit received from another program is reduced, suspended, or terminated because of a penalty imposed for an intentional failure to comply with a requirement of that program. The other program must be a means-tested, federal, state, or local welfare or public assistance program which

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is governed by welfare or public assistance laws or regulations and which distributes public funds.

(i) When a worker is not able to obtain the necessary information and cooperation from another federal, state, or local means-tested welfare, or public assistance program to comply with the provision in (A) of this paragraph, Oklahoma Department of Human Services (OKDHS) is not held responsible. The worker must make a good faith effort to get the needed information and record the details and results of this effort in the case file.

(ii) The household's current food stamp benefit amount is not reduced, suspended, or terminated when the benefits under another assistance program are decreased.

(iii) When eligible members are added to the food stamp case the benefit must be adjusted regardless of whether ~~or not~~ the household is prohibited from receiving benefits for the additional member under another federal, state, or local welfare or public assistance means-tested program.

(iv) Changes in the household circumstances which are not related to the penalty imposed by another federal, state, or local welfare or public means-tested assistance program are not affected by the provision in (A) of this paragraph.

(v) The application of the provision in (A) of this paragraph applies for the duration of the imposed penalty.

(B) The provision in (A) of this paragraph does not apply to individuals or households subject to disqualification from the Food Stamp Program for noncompliance with a comparable work requirement under Title IV of the Social Security Act or an unemployment compensation work requirement.

(2) **Pension and Social Security.** Annuities, pensions, retirement, ~~Veterans'~~ veterans' or disability benefits, workers' or unemployment compensation, survivors' or Social Security benefits, and strike benefits are unearned income.

(3) **Support and alimony.** Support and alimony payments that are made directly to the household from non-household members, money deducted or diverted from court-ordered support or alimony payments, or other binding written support or alimony agreement, to a third party for a household expense must be considered as income when the court order directs that the payment be made to the household.

(4) **Grants and interest payments.** Payments from government sponsored programs, such as Agricultural Stabilization and Conservation Service Programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or profit are considered as income. Income from royalties is treated as unearned, self-employment income.

(5) **Monies which are withdrawn or dividends which are or could be received by a household from trust funds.** Dividends which the household has the option of either receiving as income or reinvesting in the

trust are considered as income in the month they become available to the household.

(c) **Income of disqualified or ineligible household members.** A complete list of reasons for disqualification of household members is found in OAC 340:50-5-10.1. Income of disqualified individuals and unqualified aliens is counted as indicated in ~~OAC 340:50-7-9(c)(1) and (2) paragraphs (1) and (2) of this subsection.~~

(1) **Income of an individual disqualified for failure to comply with food stamp employment and training requirements or willful misrepresentation, fraud.** All income of an individual disqualified for failure to comply with food stamp employment and training requirements or willful misrepresentation, fraud, is counted as available to the remaining household members. Utility, medical, dependent care, and excess shelter deductions continue to apply to the remaining household members.

(2) **Income of individuals disqualified for reasons other than willful misrepresentation or failure to comply with employment and training requirements.** Income of individuals disqualified for reasons other than those stated in paragraph (1) of this subsection is prorated among all household members. A pro rata share of the income of a disqualified individual is considered as income available to the remaining members. This pro rata share is calculated by first subtracting the allowable exclusions from the disqualified member's income and dividing the income evenly among the household members, including the disqualified member. All but the disqualified member's share is considered as income available to the remaining household members. The earned income deduction from OKDHS Appendix C-3, Maximum Coupon Allotments and Standards for Deductions, Maximum Income, and Utilities (Food Stamps) applies to the prorated income attributed to the household if it was earned by the disqualified member. That portion of the household's allowable shelter and dependent care expenses which are either paid by or billed to the disqualified member is divided evenly among the household members, including the disqualified member. When the household is using the utility standard, it too is evenly prorated. All but the disqualified member's share is considered as a deductible shelter expense for the remaining household members.

(3) **Determining eligibility and benefit level.** The needs of a disqualified or ineligible household member are not considered when determining the household's size for purposes of assigning a benefit level to the household or for purposes of comparing the household's monthly income with the income eligibility standard.

### 340:50-7-31. Deductions

Deductions from income are allowed for the expenses listed in paragraphs (1) through (6) of this subsection. That portion of the household's allowable shelter and dependent care expenses, which are either paid by or billed to a disqualified household member, as defined by OAC 340:50-7-29(c)(2), is divided evenly among the household members, including the disqualified member. When the household is using the utility

standard, it is also evenly prorated. All except the disqualified member's share is considered as a deductible shelter expense for the remaining household members.

(1) **Standard deduction.** The appropriate standard deduction as shown in Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum Coupon Allotments and Standards for Deductions, Maximum Income and Utilities (Food Stamps), is deducted from the household's income.

(2) **Earned income deduction.** The appropriate amount of earned income deduction from OKDHS Appendix C-3 is deducted from the gross earned income to cover the cost of state and local income taxes, pensions, union dues, and work related expenses. The earned income deduction is not allowed on any portion of income earned under a work supplementation or support program that is attributable to public assistance. No other deduction is allowed from the gross earned income.

(3) **Medical expense deduction.** Medical expenses exceeding \$35 per month incurred by any elderly or disabled household members are deductible. The \$35 is subtracted from medical expenses only once per household even though the household has more than one elderly or disabled member.

(A) Households report and verify medical expenses at certification and each recertification. Households are not required to report changes in medical expenses during the certification period. When a household voluntarily reports a change in medical expenses that will reduce the food stamp allotment, no verification is needed. However, the change does require notice of adverse action. When a household voluntarily reports a change in medical expenses that will increase the food stamp allotment, the change must be verified before the change is made. If OKDHS finds out about a change from a source other than the household, the change is acted on if it is considered verified upon receipt. The household is not contacted for additional information. When the change requires contacting the household for additional information or verification, no change is made.

(B) If a household reports an anticipated medical expense at the time of certification, but is unable to provide the verification at that time, the household is told the expense will be allowed when the verification is provided during the certification period. Upon verification, a household may elect to have a one-time medical deduction or have the expense averaged over the remaining months of the certification period. Allowable costs are:

- (i) medical and dental care, including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by state law or other qualified health professional;
- (ii) hospitalization or outpatient treatment, nursing care, and nursing home care, including payments by the household for an individual who was a household member immediately prior to

entering a hospital or nursing home provided by a facility recognized by the state;

(iii) prescription drugs and other over-the-counter medication, including insulin, when approved by a licensed practitioner or other qualified health professional. Costs of medical supplies, sick-room equipment, including rentals, or other prescribed equipment are also included;

(iv) health and hospitalization policy premiums;

(v) Medicare premiums, and any cost-sharing or spend-down expenses incurred by Medicare or Medicaid recipients;

(vi) dentures, hearing aids, and prosthetics;

(vii) eye glasses prescribed by a licensed practitioner, and securing and maintaining a seeing eye or hearing dog, including the cost of dog food and veterinarian bills;

(viii) reasonable cost of transportation and lodging to obtain medical treatment or services; and

(ix) maintaining an attendant, homemaker, home health ~~aid~~ aide, child care services, or housekeeper due to age, infirmity, or illness. If this expense also qualifies as a dependent care expense as described in paragraph (4) of this subsection, it is considered as a medical expense rather than a dependent care expense. Additionally, if the household furnishes a majority of the caretaker's meals, an amount equal to one allotment is added to the medical expense for meals provided. The allotment used is the amount in effect at certification.

(C) Cost for special diets or health and accident insurance policies such as those payable in lump sum settlements for death or dismemberment, or income maintenance policies such as those that continue mortgage or loan payments while the beneficiary is disabled are **not** allowable medical costs. The worker must verify the amount of any deductible medical expenses. Verification of other factors, such as the allowability of services provided or the eligibility of the person incurring the cost, is required only if questionable.

(4) **Dependent care.** Dependent care is payment for the actual cost for the care of a child or other dependent when necessary for a household member to seek, accept, or continue employment or to attend training or education preparatory to employment. This deduction is applicable whether or not the household member is subject to the Food Stamp Employment and Training requirements. If this expense also qualifies as a medical expense, it is considered as a medical expense rather than a dependent care expense. See OKDHS Appendix C-3 for the maximum dependent care deduction allowable. Dependent care is only verified when the expenses claimed would actually result in a deduction and other information available to the worker is inconsistent with the household's claim that it incurs a dependent care expense or that the household

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incurs the expense for reasons of employment, seeking employment or training, or education for employment.

(5) **Legally-binding child support.** A deduction is allowed for verified legally-binding child support payments paid by a household member to or for a non-household member, including payments made to a third party on behalf of the non-household member.

(6) **Shelter costs.** A deduction is made for monthly shelter cost in excess of 50% of the household's income after all of the deductions are allowed. The shelter deduction alone cannot exceed the maximum amount as shown in OKDHS Appendix C-3, unless the household has an elderly or disabled member. Households with an elderly or disabled member receive an excess shelter deduction for the monthly cost that exceeds 50% of the household's income after all of the deductions listed in paragraphs (1) through (6) of this subsection have been allowed. All homeless households who incur or can expect to incur a shelter cost during the month are entitled to use the estimated homeless shelter deduction to determine food stamp eligibility and benefit level. This estimate covers all shelter costs as described in this paragraph. If a homeless household is living in a vehicle for which they are making payments, the monthly payment may be allowed as a shelter cost. If the household's actual verified shelter cost exceeds the estimated amount, the larger amount is used. Shelter costs include only:

(A) continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter, such as loan repayments for the purchase of a mobile home, including interest on such payments. The charges charge for renting or buying the land on which a mobile home is located is also considered shelter cost;

(B) property taxes, state and local assessments, and insurance on the structure itself except the separate costs for insuring furniture or personal belongings. The cost of vehicle registration or tag for a mobile or motor home is not a shelter expense. A mobile home is taxed as part of the property tax when the land is owned or being purchased. This is considered a shelter expense. Unregistered mobile homes on rented land are taxed as personal property. The personal property tax for the mobile home is considered a shelter expense. No other personal property tax is considered a shelter expense;

(C) charges for heating, cooling, or cooking fuel; electricity; water, sewage, garbage, and trash collection fees; and the basic service fee for one telephone including tax on the basic fee, and fees charged by the utility provider for initial installation of the utility. One time deposits are not included as shelter costs. A household that incurs an allowable utility expense receives the total amount of the utility standard specified in OKDHS Appendix C-3 for one of the mandatory utility standards in (i) through (iii) of this subparagraph.

(i) The standard utility standard allowance (SUA) is a single standard based on annual averages that include costs for heating, cooling, and cooking fuel; electricity; basic telephone service; and water, sewage, and garbage.

(I) The SUA may be used as long as the household is billed for heating or cooling during the year. Households billed less often than monthly for heating costs such as butane or propane may continue to use the utility standard between billing months. The worker must assess the household's eligibility for the SUA at each application, reapplication, and when the household moves. If the household reports they no longer incur a heating or cooling expense, but still have a utility expense, the standard must be changed to either the basic utility allowance (BUA) or telephone standard.

(II) A household with utility expenses which are reimbursed or paid by an excluded payment such as a vendor payment, Housing and Urban Development (HUD) or Farmers Home Administration (FmHA) payment may use the SUA when the heating or cooling cost exceeds the amount of the excluded payment.

(ii) ~~Households may elect to use the utility standard rather than verify actual expense if costs for heating or cooling are billed separately from rent or mortgage. Cooling costs are limited to operation of room air conditioners and central air conditioning systems. Households that cannot use the utility standard and are required to provide verification for the amount actually billed for utilities in order to have these costs included in calculating the shelter deduction are those: The BUA includes utility charges other than for heating and/or cooling which the household incurs,~~

~~(I) responsible only for the portion of heating or cooling costs which exceed a set amount included in rent or mortgage such as is common in public housing units; or~~

~~(II) who do not have a cost for heating or cooling.~~

~~(iii) Households eligible for and electing to use the standard utility deduction receive the total amount of the utility standard specified in OKDHS Appendix C-3 unless the household lives with and shares utility cost with another household. Multiple households living in the same residence are allowed only one utility standard which is prorated equally among the households that contribute to meeting any utility cost included in the standard whether or not each household receives food stamps. The telephone standard is used if the household is not entitled to use the SUA or BUA but has a telephone cost;~~

~~(iv) The utility standard can be used as long as the household is billed for heating or cooling~~

during the year. Households billed less often than monthly for heating costs such as butane or propane may continue to use the utility standard between billing months. Households are allowed to switch between the utility standard and actual utilities only at recertification.

(v) A household with utility expenses which are reimbursed or paid by an excluded payment such as a vendor payment, Housing and Urban Development (HUD) or Farmers Home Administration (FmHA) payment may use the standard utility allowance when the heating or cooling cost exceeds the amount of the excluded payment.

(vi) The worker must verify household utility expenses if the household chooses to use actual expenses rather than the state's standard utility allowance and when the expense would actually result in a deduction;

(D) the shelter costs for the home even when not actually occupied by the household because of employment or training away from home, illness, or abandonment of the home due to disaster or casualty loss. For the cost of a vacated home to be included in shelter costs, the household must intend to return to the home. The current occupants of the home, if any, must not be claiming the shelter costs during the absence of the household and the home must not be rented or leased during the absence of the household. If a deductible expense must be verified and obtaining the verification may delay the household's certification, the worker advises the household that the household's eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. The appropriate utility standard is used if the household is entitled to claim it. ~~If actual expenses can be used but cannot be verified within 30 days of the date of application, the worker determines eligibility and benefit level without providing a deduction for the unverified expense.~~

**SUBCHAPTER 9. ELIGIBILITY AND BENEFIT DETERMINATION PROCEDURES**

**340:50-9-1. Determining the food stamp allotment and preprocessing certifications**

- (a) **Cases with unverified deductible expenses.**
  - (1) **Benefits without deductions.** If a deductible expense cannot be verified before the 30-day processing standard for applications expires, the ~~social services specialist worker~~ determines the household's benefit level without giving a deduction for the claimed but unverified expense. ~~The utility standard is used if the household wishes to claim utility expenses in excess of the standard utility amount, but the higher amounts cannot be verified.~~ If the household is eligible without allowing the expense,

an allotment which does not reflect deduction of the expense is provided within 30 days after the application is filed. If the household wishes to claim expenses for an unoccupied home, the ~~social services specialist worker~~ verifies the household's actual utility expenses for the unoccupied home and ~~does not use~~ uses the appropriate utility standard utility amount.

(2) **Benefits delayed.** If a deductible expense cannot be verified before the 30-day processing standard for applications expires and the household is ineligible unless the expense is allowed, the household application is held pending or denied.

(b) **Determining household eligibility.** In calculating net monthly income, cents are used in determining each source of each individual's monthly income and the household's monthly dependent care, shelter, or medical expense. When the monthly amount of each individual's source of income or each of the household's expenses ~~are~~ is established, and at all other steps of the net income computation, cents are rounded to the nearest dollar, 1 cent - through 49 cents is rounded down and 50 cents - through 99 cents is rounded up. For example an individual's weekly earnings of \$99.90 are multiplied by the number of checks that will be received in a month's time and the cents rounded to the nearest dollar, \$99.90 x 4.3 = \$429.57 rounded to \$430. Due to changes in composition or circumstances, households certified under gross income standards may become subject to net income standards during the certification period or vice versa. The ~~social services specialist worker~~ is required to change the one income standard to the other when any change is made in the case to adjust the household's eligibility, benefit level, or certification period, or at recertification, whichever is earlier.

(1) **Households without elderly or disabled members.** If the household does not have an elderly or disabled member, the household's total gross monthly income and household size are the first basis for determining eligibility. The household is not eligible if the total gross income exceeds the Maximum Gross Income Standard for the appropriate household size as shown on ~~DHS Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum Food Stamp Coupon Allotments and Standards for Deductions, Maximum Income, and Utilities (Food Stamps).~~ After gross income, resource, and non-financial conditions of eligibility are established, the net food stamp monthly income is computed and compared to the Maximum Net Income Standard for the appropriate household size as shown on ~~DHS OKDHS Appendix C-3.~~ If the net food stamp income does not exceed this standard, the household is determined eligible. The steps in (A) - through (H) of this paragraph are used to determine the household's net food stamp monthly income if the household does not contain an elderly or disabled member.

(A) Add gross monthly income earned by all household members including any net self-employment income minus the earned income exclusions to determine the household's total gross earned income.

(B) Multiply the total gross earned income by the appropriate earned income deduction according

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to ~~DHS OKDHS~~ Appendix C-3 and subtract that amount to determine the net monthly income. The earned income deduction is not allowed on any portion of income earned under a work supplementation or support program that is attributable to public assistance.

(C) Add the net monthly earned income and the total monthly unearned income of all household members, minus income exclusions.

(D) Subtract the standard deduction as shown in ~~DHS OKDHS~~ Appendix C-3.

(E) Subtract monthly dependent care expenses, if any, up to the maximum amount allowed as shown in ~~DHS OKDHS~~ Appendix C-3. A dependent care deduction cannot be allowed for dependent care expenses which are reimbursed or paid for under an Employment and Training Program or other source.

(F) Subtract verified legally-binding child support payments made to someone outside the food stamp household.

(G) Add the allowable shelter expenses to determine the total shelter costs. Subtract from the total shelter costs 50% of the adjusted income, the household's monthly income after all of the deductions given in subparagraphs (A) - through (F) of this paragraph have been subtracted. The remaining amount, if any, is the excess shelter costs. If there are no excess shelter costs, the net monthly income has been determined. If there are excess shelter costs, go to the next step.

(H) To apply the excess shelter costs, subtract excess shelter costs from the adjusted income if the total of excess shelter costs ~~do~~ does not exceed the maximum shown in ~~DHS OKDHS~~ Appendix C-3. If the total of the shelter costs ~~exceed~~ exceeds the standard shown in ~~DHS OKDHS~~ Appendix C-3, only the amount not exceeding the standard is deducted.

(2) **Households with elderly or disabled members.**

(A) The steps listed in (i) - through (ix) of this subparagraph are used to determine the household's net food stamp income if the household does contain an elderly or disabled member.

(i) Add gross monthly income earned by all household members, including any net self-employment income minus the earned income exclusions, to determine the household's total gross earned income.

(ii) Multiply the total gross earned income by the appropriate earned income deduction from ~~DHS OKDHS~~ Appendix C-3 and subtract that amount to determine the net monthly income. The earned income deduction is not allowed on any portion of income earned under a work supplementation or support program that is attributable to public assistance.

(iii) Add the net monthly earned income and the total monthly unearned income of all household members, minus income exclusions.

(iv) Subtract the standard deduction as shown in ~~DHS OKDHS~~ Appendix C-3.

(v) Subtract medical expenses which exceed \$35 for the elderly or disabled household members only. Thirty-five dollars is subtracted only once for the household rather than for each household member.

(vi) Subtract monthly dependent care expenses, if any, up to the maximum amount allowed as shown in ~~DHS OKDHS~~ Appendix C-3. A dependent care deduction cannot be allowed for dependent care expenses which are reimbursed or paid for under an Employment and Training Program or other source.

(vii) Subtract verified legally-binding child support payments made to someone outside the food stamp household.

(viii) Add the allowable shelter expenses to determine the total shelter costs. Subtract from the total shelter costs 50% of the adjusted income, the household's monthly income after all of the deductions in (i) - through (vi) of this subparagraph have been subtracted. The remaining amount, if any, is the excess shelter costs. If there are no excess shelter costs, the net monthly income has been determined. If there are excess shelter costs, go to the next step.

(ix) To apply the excess shelter costs, subtract excess shelter costs from the adjusted income.

(B) When a household that contains an elderly or disabled member meets the other resource and non-financial conditions of eligibility, the household's net food stamp monthly income and household size are the basis for determining eligibility. The net food stamp monthly income is compared to the Maximum Net Income Standards for the appropriate household size as shown on ~~DHS OKDHS~~ Appendix C-3. If the net food stamp income does not exceed this standard, the household is determined eligible.

(c) **Food stamp allotment.**

(1) **Initial month proration.**

(A) Initial month means the first month the household is certified for food stamps following any period during which the household was not certified. Food stamp allotments for an initial month are based upon the date of the application and prorated from the date of application. Proration of benefits from the application date applies to the new case if one food stamp household separates into two or more food stamp households. Migrant and seasonal farm workers are not prorated when the household has participated in food stamps in the prior month. While a household's eligibility for the initial month is determined by considering the household's circumstances for the entire month of application, the allotment is based on the day of the month the household applies for benefits. The monthly allotment that the recipient would be eligible to receive if proration did not apply must be

determined prior to computation by using the prorated allotment on ~~DHS OKDHS~~ Appendix B, Proration Table for TANF and Food Stamp Benefits, or by using the formula:  $(31 - \text{Application Date} - \text{minus the application date}) \times \text{Monthly Allotment} \div 30 = \text{the prorated allotment}$ .

(B) The prorated allotment is rounded down to the lower dollar. If the answer is less than \$10, the household is denied for the month of application but certified for the next month. If the household applies on the 31st day of the month, use the 30th for the application date for purposes of this provision. Households ~~which~~ that apply after the 15th of the month are issued the prorated benefits for the month of application and the benefits for the first full future month on the same day.

(C) When a household is certified for the month following the month of initial application because the household failed to furnish necessary information, benefits are prorated from the date the household furnished the information. The application date becomes the date information was furnished to ~~the Department~~ OKDHS.

(2) **Monthly allotment.** The monthly allotment for all months except the initial month is the amount listed on ~~DHS OKDHS~~ Appendix C-3 for the appropriate household size and net income.

(d) **Certification periods.** Definite periods of time are established for each eligible household to receive benefits. At the expiration of each certification period, entitlement to food stamp benefits is established only upon a recertification based upon a newly completed application, an interview, and verification required. Under no circumstances are benefits continued beyond the end of a certification period without a redetermination of eligibility. The month of application is the first month in the certification period for initial applicants if eligibility is determined within the 30-day period. Because of anticipated changes, a household may be eligible for the month of application but ineligible for the subsequent month. In this situation, the household is certified for the month of application only. If a household is found to be ineligible and is denied benefits for the month of application but is eligible for subsequent months, a new application form is not needed and the case is certified effective the month following the month of application. During the application process a household who did not appear for their first scheduled interview may request a new interview date be scheduled through the 30th day following their application date. See delayed applications in paragraph (1) of this subsection to determine the proration date of the food stamp allotment. When an application is denied because the household did not provide the requested information and the applicant furnishes the needed information and an eligibility determination can be made within the second 30-day period, no new application is needed. The case is then certified using the date the information or verification is furnished as the application, certification, or proration date.

(1) **Delayed applications.** Applications which have been neither approved nor denied by the 30th day are considered delayed applications. On the 30th day following the application date, every delayed application is assessed to determine who caused the delay. The purpose of this assessment is to determine if the benefits are denied and what date is used to prorate benefits if the household is determined eligible at a later date.

(A) **Delay caused by the county.** When the processing delay is caused by the county, the application remains in pending status. At the end of the first 30 days the household is notified of the reason the application is still pending using Form ABCDMS-37-A, Notice to Client of Action Taken. If the household is later determined eligible, the case is certified back to the date of application. County caused delays include, but are not limited to, the circumstances given in (i) - through (vi) of this subparagraph.

(i) The household's first interview was scheduled on or before the 20th day following the date of application. The household appeared for the interview but subsequently failed to provide the needed verification. During the interview the ~~social services specialist~~ worker did not explain to the household or provide the information in writing regarding:

- (I) what factors must be verified;
- (II) what is considered acceptable verification; or
- (III) by what date the information must be supplied.

(ii) An interview was never scheduled for the household.

(iii) The ~~social services specialist~~ worker did not offer or provide assistance to the household in obtaining the verification as required or did offer assistance but failed to follow through on collateral contacts or release of information.

(iv) The ~~social services specialist~~ worker discovered that additional information was needed after the interview but the client did not have ten days between the request for the verification and the 30th day of the application process.

(v) The household missed their first interview on or before the 30th day and requested that the interview be rescheduled. The county was unable to schedule the second interview date until after the 30th day.

(vi) The eligible household provided all the needed verification on or before the 30th day, and the application was not approved or denied ~~by the social services specialist~~.

(B) **Delay caused by the household.** When the processing delay is caused by the household, the application is denied on the 30th day. The household is notified that the application is denied by computer-generated notice. When the household provides the needed verification in the second 30

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days, no new application is needed. If the household is determined eligible, the food stamp allotment is prorated from the date the household provided the verification. Household caused delays include, but are not limited to, the circumstances given in (i) - through (iii) of this subparagraph.

(i) The household's first interview was scheduled on or before the 20th day following the date of application. The household appeared at the interview but subsequently failed to provide the needed verification. The ~~social services specialist~~ worker provided the household with a statement of required verification, offered to assist the household in obtaining the verification, and also allowed the household sufficient time to provide the verification.

(ii) The household missed their first interview and requested on or before the 30th day that the interview be rescheduled. The interview was rescheduled to be held on the 30th day; however, the household did not provide all the needed verification at the rescheduled interview.

(iii) The household missed their first interview and requested on or before the 30th day that the interview be rescheduled. The household stated they could not come in until after the 30th day.

(2) **Length of certification periods.** Households are assigned the longest certification period possible based on the predictability of the household's circumstances. In (C) and (D) of this paragraph, the length of the incapacity must be expected to exceed the length of the certification period.

(A) **One month.** A one-month certification is assigned only to:

- (i) households eligible only for the month of application; and
- (ii) migrant farm worker households, in the work stream, who apply before the 16th of the month.

(B) **Two months.** A two-month certification is assigned only to:

- (i) households eligible only for the month of certification and subsequent month; and
- (ii) migrant farm worker households, in the work stream, who apply after the 15th of the month.

(C) **Three to six months.** A three to six-month certification is assigned to all households with circumstances not addressed in subparagraphs (A), (B), or (D) of this paragraph. Information to be used as guidelines for the length of certification periods for groups listed in this subparagraph is given in (i)(I) - through (III) of this subparagraph.

(i) The ~~social services specialist~~ worker reviews the case carefully to see if there have been overissuances or underissuances due to the household's failure to report:

- (I) changes in income;

- (II) changes in household composition; or
- (III) moving from residence to residence, thereby changing the shelter expense.

(ii) The factors in (i)(I) - through (III) of this subparagraph are some of the factors to be checked, but are not meant to be all inclusive. At the discretion of the ~~social services specialist~~ worker, a shorter certification period may be assigned. The length of the certification period assigned groups in this subparagraph is based on review of the history of the household and the judgment of the ~~social services specialist~~ worker.

(D) **Twelve months.** A 12-month certification period is assigned to non-public assistance (non-PA) households who have countable earned income at certification unless the household contains an able-bodied adult without dependents member who is not meeting the work requirement or is not otherwise exempt. These households are required to complete a benefit review form at six-month intervals. They are known as semi-annual reporters.

(E) **Twenty-four months.** A 24-month certification period is assigned to non-PA households when all adult members are elderly or disabled without earned income. These households are required to complete a benefit review form at 12-month intervals. They are known as annual reporters.

## SUBCHAPTER 15. OVERPAYMENTS AND FRAUD

### PART 1. OVERPAYMENTS

#### 340:50-15-1. Scope and applicability

An overissuance or overpayment of food stamp benefits occurs when a household receives more food stamp benefits than it is entitled to receive. When the ~~social services specialist~~ worker ~~has determined~~ determines a household may have received more food stamp benefits than it is entitled to receive, the ~~social services specialist~~ worker makes a referral to Family Support Services Division (FSSD) Overpayment Section, ~~State Office~~, within 30 days of the date of discovery 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) failing to provide the Oklahoma Department of Human Services with correct or complete information;
- (ii) failing to report changes in ~~its~~ household circumstances;
- (iii) electing to receive benefits pending a fair hearing decision which subsequently found the ~~family~~ household ineligible or eligible for fewer benefits; or
- (iv) trafficking benefits;

- (B) the ~~social services specialist worker~~:
  - (i) assigning an incorrect allotment;
  - (ii) failing to take prompt action on a change reported by the household;
  - (iii) incorrectly computing the household's income, deductions, or both; or
  - (iv) incorrectly authorizing issuance to a household; or
- (C) any overissuance discovered as a result of a Quality Control Review.
- (2) Persons responsible for paying a claim are:
  - (A) each person who was an adult member of the household when the overpayment or trafficking occurred; or
  - ~~(B) a sponsor of an alien household member if the sponsor is at fault; or~~
  - (B) a person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking.
- (3) The FSSD Overpayment Section, ~~State Office~~, classifies overpayments as inadvertent client error, intentional program violation also known as fraud, or agency error. The FSSD Overpayment Section treats all overpayments as inadvertent client error or agency error until Form H-S-13A, Administrative Disqualification Hearing Waiver, is signed or a court of law finds a household guilty of fraud.
- (4) The FSSD Overpayment Section sends Form FSP-S-18, Notification of Food Stamp Overpayment, to the client along with page 1 of Form FSP-10, Report of Food Stamp Overissuance.
- (5) The FSSD Overpayment Section postpones notification on cases being referred for judicial court decision until a court decision has been made.
- (6) Food stamp overpayments classified as inadvertent client error or agency error ~~will do~~ will do not cover more than 12 months prior to the month in which the overpayment was discovered. Food stamp overpayments classified as fraud may cover the entire time the overpayment occurred. However, the time covered cannot include periods more than six years prior to the date the overpayment was discovered.
- (7) Food stamp overpayments arising from trafficking related offenses ~~will be~~ are the value of the trafficked benefits as determined by the individual's admission, adjudication, or documentation that forms the basis for the trafficking determination.
- (8) When the ~~social services specialist worker~~ and the Overpayment Section suspect an intentional program violation, the Overpayment Section makes a referral to the Office of Inspector General or to the Appeals Unit for a determination of fraud.

**340:50-15-6. Development of repayment**

(a) **Repayment of established overpayments.** Households must make repayment on all established ~~overpayments~~ overpayment claims 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. Any other collection method may be used against any adult individual who was in the household at the time of the overpayment and who is not a current member of the household undergoing allotment reduction. The FSSD Overpayment Section sends the client Form FSP-18-B, Food Stamp Repayment Agreement, that explains the acceptable methods of repayment for the debt classification. The client is responsible for completing and returning Form FSP-18-B within the appropriate time frame. The food stamp overpayment is considered delinquent if the overpayment claim is not paid within 30 days of the date of the FSP-S-18, Notification of Food Stamp Overpayment, or a monthly payment, as designated on the repayment agreement, has not been made by the due date. An overpayment claim is not considered delinquent if another food stamp overpayment claim for the same household is currently being paid either through a previous repayment agreement or allotment reduction. Paragraphs (1) - through (2) of this subsection describe the basis for acceptable methods of repayment and time frames for client responses.

- (1) **Agency error or inadvertent client error.** To make a voluntary plan of repayment of an agency error or inadvertent client error debt, the client must complete and return Form FSP-18-B within ~~20~~ 30 days of the date on the form. If the client fails to return Form FSP-18-B, FSSD ~~will begin~~ begins recoupment from the client's food stamp benefits.
- (2) **Intentional program violation.** To make a voluntary plan of repayment of an intentional program violation debt, the client must complete and return Form FSP-18-D, Repayment Agreement ~~for - Fraud Debts Debt~~, within ~~ten~~ 30 days of the date on the form. If the client fails to return Form FSP-18-D, FSSD ~~will begin~~ begins recoupment from the client's food stamp benefits.
- (b) **Repayment options.**
  - (1) **Payment in full.** The client may repay an overpayment claim 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 claim in regular monthly installments by personal check, money order, cashier's check, or approved EBT debits. The amount to be repaid in monthly installments cannot be less than the amount that could be recovered through allotment reduction.
  - (3) **Food stamp allotment reduction.**
    - (A) **Agency error or inadvertent client error.** The FSSD Overpayment Section ~~will process~~ processes the reduction in the amount of 10% of the client's monthly allotment or \$10, whichever is greater. The client may request a reduction up to the client's maximum monthly allotment.
    - (B) **Intentional program violation.** The FSSD Overpayment Section ~~will process~~ processes the reduction in the amount of 20% of the client's monthly allotment or \$20, whichever is greater. The client

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may request a reduction up to the client's maximum monthly allotment.

(4) **Lost benefit reductions.** Any lost benefit due the household ~~will be~~ is used as payment on a food stamp overpayment claim.

(5) **Client authorized EBT debits.** A household may make a voluntary payment through a debit from the EBT Access account. In order to debit the EBT account a signed statement must be received from the client or the household's authorized, representative giving permission for the debit. This statement is faxed to the FSSD Overpayment Section for immediate processing.

(6) **Expunged benefits.** Expunged food stamp benefits are those where the account has not been accessed for one year. These expunged benefits, when known and identified with an overpayment account ~~will be~~ are used to adjust the overpayment balance by the amount of the expunged benefit.

(7) **Stale benefits.** Stale food stamp benefits are those where the account has not been accessed for three months. These benefits when known and identified with an overpayment account ~~will be~~ are used as payment on a food stamp overpayment claim. This is done only after the client is notified of this intent on the EBT Inactivity Notice and given 30 days from the date of the notice to request these benefits be left in the account for client use.

(c) **Reconsideration of repayment plan.** The client may request reconsideration of the repayment plan by submitting information regarding changes in family and financial circumstances directly to the FSSD Overpayment Section, ~~State Office~~. The FSSD Overpayment Section ~~will reconsider~~ reconsiders any repayment plan if circumstances warrant.

(d) **Referrals for Treasury Offset Program (TOP).** If the client fails to pay the overpayment ~~debts-claims~~ or payments have become delinquent, the FSSD Overpayment Section ~~may~~ will make referrals to TOP.

(1) **Criteria for TOP.** The criteria for state and federal tax offsets are the:

- (A) amount owed must be at least \$25;
- (B) ~~debt was established less than ten years ago. If the debt is part of a court ordered judgment, the maximum delinquency criteria does not apply~~ claim is under ten years delinquent except for judgment claims;
- (C) ~~repayment claim is delinquent by 180 days from the initial notice of overpayment or from a missed installment from a voluntary repayment agreement;~~
- (D) ~~debt overpayment claim is not part of a bankruptcy stay or under litigation or review;~~
- (E) client received the original notification of the debt; and
- (F) ~~debt overpayment claim is not being collected through allotment reduction, also known as recoupment, or under an approved repayment plan.~~

(2) **Notification of TOP.** The FSSD Overpayment Section notifies individuals of any intended referral to TOP

and mails the notices as the ~~debt overpayment claim~~ meets the criteria in paragraph (1) of this subsection and 60 days prior to referring the ~~debt overpayment claim~~ to TOP. The Overpayment Section mails TOP notices to individuals at the address provided by United States Department of Agriculture (USDA), Food and Nutrition Service. Information contained in the notice includes:

- (A) the individual's Social Security number;
- (B) the citation of the statutory authority for the offset;
- (C) the instructions on how to pay the claim;
- (D) the individual's right to request a review;
- (E) all TOP exemptions and restrictions;
- (F) information regarding spousal protection from offset;
- (G) a statement that all adult household members who were members when the overpayment occurred are liable for repayment of the food stamp ~~debt overpayment claim~~; and
- (H) the individual's right to review applicable records.

(3) **Request for review of intended action.** Individuals whose food stamp ~~debt(s)-overpayment claim(s)~~ are being referred to TOP may ask for a review of the intended action. The individual's contention that the claim is not past due or legally enforceable is the basis for the review.

(A) A claim is not past due and legally enforceable if the:

- (i) ~~debt claim~~ has been paid and the individual proves it;
- (ii) individual cited for offset is not the person who owes the ~~debt claim~~;
- (iii) individual substantiates bankruptcy action; or
- (iv) individual denies he or she was informed of the ~~debt overpayment claim~~ and a review of ~~Agency Oklahoma Department of Human Services~~ files substantiates the denial.

(B) The client must request the review within 60 days of the TOP notice date. FSSD Overpayment Section sends written notification of the review decision to individuals requesting reviews. The notice informs individuals requesting a review why the overpayment is or is not being referred to TOP and further review rights to which they are entitled.

(C) The individual can avoid referral to TOP if the individual pays the ~~debt overpayment claim~~ in full or a payment specified by the FSSD Overpayment Section along with an acceptable repayment agreement by 60 days from the date of the TOP notice.

[OAR Docket #03-3062; filed 9-4-03]

**TITLE 530. OFFICE OF PERSONNEL  
MANAGEMENT  
CHAPTER 10. MERIT SYSTEM OF  
PERSONNEL ADMINISTRATION RULES**

[OAR Docket #03-3069]

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

- Subchapter 7. Salary and Payroll
  - Part 1. Salary and Rates of Pay
    - 530:10-7-20. [AMENDED]
    - 530:10-7-24. [AMENDED]
    - 530:10-7-26. [AMENDED]
- Subchapter 9. Recruitment and Selection
  - Part 11. Direct Hire Authority
    - 530:10-9-122. [RESERVED]
    - 530:10-9-123. [NEW]
- Subchapter 11. Employee Actions
  - Part 3. Probationary Employees
    - 530:10-11-34. [REVOKED]
  - Part 7. Transfers and Voluntary Demotions
    - 530:10-11-71. [AMENDED]
- Subchapter 15. Time and Leave
  - Part 5. Miscellaneous Types of Leave
    - 530:10-15-43. [AMENDED]
    - 530:10-15-49. [AMENDED]
- Subchapter 17. Employee Performance Management System and Career Enhancement Programs
  - Part 7. Carl Albert Public Internship Program
    - 530:10-17-74. [AMENDED]
    - 530:10-17-75. [AMENDED]
  - Part 15. State Mentor Program
    - 530:10-17-156. [AMENDED]

**AUTHORITY:**

Administrator of the Office of Personnel Management; Sections 840-1.6A and 840-2.17 of Title 74 of the Oklahoma Statutes.

**DATES:**

**Adoption:**

June 11, 2003

**Approved by Governor:**

July 1, 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:**

Whereas changes in several pay movement mechanisms (market adjustments, skill-based pay adjustments, and equity-based adjustments) are necessary to make the rules more consistent with the state's compensation philosophy; and whereas OPM finds it necessary to revoke a rule regarding the suspension of probationary employees as being outside its purview; and whereas it is necessary to amend the rule on furloughs to give agencies maximum flexibility in scheduling furloughs; and whereas Enrolled Senate Bill 1384 (2002) made certain amendments to the Oklahoma Personnel Act which makes it necessary to amend the Merit Rules for the sake of consistency; now therefore, the Administrator of the Office of Personnel Management finds these compelling extraordinary circumstances make it necessary to promulgate emergency rules.

**ANALYSIS:**

**Subchapter 7**-Amendments to 530:10-7-20, 530:10-7-24, and 530:10-7-26 are necessary to remove the requirement that if certain pay movement mechanisms (market adjustments, skill-based adjustments, and equity-based adjustments) are used, they be paid to all agency employees in a job family level. Instead, these amendments would state that if these pay movement mechanisms are used, they must be paid only to those employees doing similar work. Other amendments to 530:10-7-20 are necessary to allow

agencies making market adjustments some flexibility to avoid creating pay inequities. Other amendments to 530:10-7-26 are needed to avoid misuse of equity-based adjustments.

**Subchapter 11**-Merit Rule 530:10-11-34 is being revoked as it involves discipline which falls under the purview of the Oklahoma Merit Protection Commission, not OPM. Amendments to 530:10-11-71 make the rule consistent with statutory changes made by Enrolled House Bill 1384 (2002).

**Subchapter 15**-An amendment to 530:10-15-49 is necessary to make the rule consistent with statutory changes. An amendment to 530:10-15-43 is being made at the request of a state agency. The change will provide agencies with more flexibility in scheduled furlough days.

**Subchapter 17**-Amendments to 530:10-17-74, 530:10-17-75, and 530:10-17-156 are necessary to make the rules consistent with statutory changes. An amendment to 530:10-17-173 is necessary to clarify that OPM does not require certification of eligibility for the State Work Incentive Program until the time a person is appointed under the program.

**COMMENT PERIOD:**

Although a comment period and rules hearing were not required, the Office of Personnel Management distributed a draft of these rules to state agencies on March 13, 2003. The proposed emergency rules were also available on the OPM website. A rules hearing was held March 20, 2003, which was attended by 30 people. All comments received were considered in adopting the final version of these rules.

**CONTACT PERSON:**

Kimberlee Williams, (405) 522-1736.

**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. SALARY AND PAYROLL**

**PART 1. SALARY AND RATES OF PAY**

**530:10-7-20. Market adjustments**

(a) ~~A cost of living raise or any other type of raise that would be given to state employees on an across the board basis is prohibited unless specifically authorized by the Legislature. The Office of Personnel Management conducts annual compensation surveys of relevant markets to determine rates of pay for various jobs within the designated market areas. The Administrator shall make any recommendations concerning salary adjustments for state employees on an across the board basis in the Annual Compensation Report for consideration by the Legislature.~~

(b) ~~At the discretion of~~ Upon approval by the Administrator, an Appointing Authority may make market adjustments may be made for employees in individual a job families family or job family levels who perform the same or similar duties, or who perform the same role or accountabilities upon the request of an Appointing Authority. An Appointing Authority making such a request shall provide the Administrator with information supporting the request, such as relevant market data, information on recruitment or retention problems, or other appropriate data. The Appointing Authority shall also certify that an adjustment can be made within the agency's budget for the current and subsequent fiscal year without the need for additional funding. An Appointing Authority may limit market adjustments to employees rated at least "Meets

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Standards" on the most recent performance evaluation. Such limitation must be included in the agency's approved Salary Administration Plan. All eligible employees of an agency in jobs affected by a market adjustment shall be given uniform treatment.

### **530:10-7-24. Skill-based pay adjustments**

(a) An Appointing Authority may develop skill-based pay programs upon the approval of the Administrator. Such programs shall be related to the acquisition or possession of additional skills and abilities which can be applied to the work to be performed and which will increase the value of the employee to the agency. The skills or abilities must be verifiable through certification, licensure, diploma, or some other method and must be beyond the qualifications required in the job family descriptor for all employees in that job family level to perform the primary or essential functions and responsibilities of the employee's position. Requests to establish skill-based pay programs shall include a complete description of the training or education required, how it will benefit the agency, the proposed salary adjustment, and any other information that will assist in evaluating the request.

(b) Skill-based pay adjustments may be provided as a differential over and above an employee's base pay or as a one-time lump-sum payment. Lump sum skill-based pay adjustments shall be limited to **10%** of an employee's annual salary, and differentials shall be limited to **10%** of an employee's monthly salary for employees paid on a monthly basis, and **10%** of an employee's biweekly salary for employees paid on a biweekly basis. Employees whose base pay is at or exceeds the maximum of the pay band shall not be eligible for a differential, but may receive a lump-sum payment. Skill-based pay adjustments shall be paid only as long as the employee occupies a position to which the skill is applicable in accordance with the agency's salary administration plan. An employee may receive multiple skill-based pay differentials so long as the combined total of all skill-based pay differentials does not exceed **15%**.

### **530:10-7-26. Equity-based pay adjustments**

An Appointing Authority may provide equity-based pay adjustments when individual employees are significantly underpaid relative to other employees performing the same or similar duties, or employees with the same role or accountabilities, in the same job family and level within the same agency. Adjustments above the midpoint of the pay band require approval of the Administrator. An Appointing Authority may make adjustments Adjustments which do not cause an employee's salary to exceed below the midpoint of the pay band and which are consistent with the requirements of this section may be made at his or her the Appointing Authority's discretion. Adjustments which cause an employee's salary to exceed the midpoint of the pay band require approval of the Administrator. An Appointing Authority may limit equity-based pay adjustments to employees rated at least "Meets Standards" on the most recent performance evaluation.

Such limitation must be included in the agency's approved Salary Administration Plan. No employee may receive more than one equity-based adjustment in the same job family and level in a twelve-month period.

## **SUBCHAPTER 9. RECRUITMENT AND SELECTION**

### **PART 11. DIRECT HIRE AUTHORITY**

#### **530:10-9-122. [RESERVED]**

#### **530:10-9-123. Expedited recruitment**

(a) The Administrator may select positions or job family levels for expedited recruitment when in the opinion of the Administrator the education, experience or certification requirements for such positions or job family levels substantially limit the pool of available applicants to less than an adequate applicant pool as defined by 530:10-9-111. Applicants for positions selected for expedited recruitment who have been approved by the Office of Personnel Management as meeting the minimum qualifications for the job may be referred to agencies having such vacancies without examination and ranking, provided that the register for the job has been publicly announced for at least 14 calendar days. Applicants for positions selected for expedited recruitment are eligible for appointment upon referral. [74:840-1.6A]

(b) An Appointing Authority may request that positions or job family levels be considered for expedited recruitment by submitting a written request to the Administrator. The request shall describe the unique education, experience or certification requirements that substantially limit the pool of available applicants, the recruitment efforts made by the agency, the suggested duration of the expedited recruitment designation, and shall be accompanied by a Position Description Questionnaire (OPM-39) for the position(s). The Administrator may request clarification or additional information from the agency. The Administrator shall provide the agency with written notification of his approval or denial of the request. The decision of the Administrator shall be final.

(c) An Appointing Authority who has expedited recruitment authority may retain that authority for 12 months from the date of approval by the Administrator unless that authority is terminated by the Administrator pursuant to 530:10-9-121. The Appointing Authority may reapply to continue expedited recruitment authority for additional 12 month periods in the same manner as in the initial request.

## **SUBCHAPTER 11. EMPLOYEE ACTIONS**

### **PART 3. PROBATIONARY EMPLOYEES**

**530:10-11-34. Suspension of probationary employees  
[REVOKED]**

~~(a) A probationary employee may be suspended from duty without pay for disciplinary or internal investigatory purposes for up to 60 calendar days without right of appeal or hearing.~~

~~(b) The date of the final working day of the probationary period shall be adjusted for the same number of calendar days as the suspension.~~

~~(c) If a probationary employee is suspended in conjunction with an internal investigation, the Merit Protection Commission shall be so notified. If the investigation subsequently clears the employee, the agency, with the prior authorization of the Commission, shall reinstate the employee to the former position. The employee shall be fully compensated for the time lost, and the time spent on suspension shall be fully considered as part of the probationary period.~~

**PART 7. TRANSFERS AND VOLUNTARY  
DEMOTIONS**

**530:10-11-71. Intra-agency transfer**

(a) The intra-agency transfer of a permanent employee from one position to another position in the same job family or another job in the same pay band, for which the employee has currently qualified, may be made at any time by the Appointing Authority. Such transfer may be made simultaneously with a promotion or demotion in accordance with the provisions of the Merit Rules.

(b) Upon intra-agency lateral transfer, an employee shall serve a six-month trial period in the job level to which the employee is transferred, unless the trial period is waived in writing by the Appointing Authority. [74:840-4.12]

~~(c) A state agency shall have sole and final authority to designate the place or places where its employees shall perform their duties. The Oklahoma Merit Protection Commission shall not have jurisdiction to entertain an appeal of an employee from action of the employing agency transferring the employee from one county or locality to another, changing the assigned duties of the employee, or relieving the employee from performance of duty at a particular place and reassigning to the employee duties to be performed at another place, unless:~~

- ~~(1) the action results in a change in job classification or reduction of base salary; or~~
- ~~(2) an investigation by the Commission indicates that a violation of the provisions of Section 840-2.5 or 840-2.9 of ... [the Oklahoma Personnel Act] may have occurred; or~~
- ~~(3) it is established that the action was clearly taken for disciplinary reasons and to deny the employee the right of appeal. [74:840-4.19]~~

**SUBCHAPTER 15. TIME AND LEAVE**

**PART 5. MISCELLANEOUS TYPES OF LEAVE**

**530:10-15-43. Holidays**

(a) Holidays shall be granted in accordance with state law and the Governor's proclamations as they are observed by the individual agencies in accordance with their work load and policies.

(b) To be eligible to receive holiday pay, an employee shall be in pay status or on furlough for the entire regularly-scheduled workday either the workday before or the workday after the holiday. An employee shall not be eligible to be paid for holidays which occur either before the employee's entry on duty date or after the last day the employee works. The receiving Appointing Authority shall pay an employee who transfers from another agency for any holidays occurring after the last day worked in the sending agency. An employee who is recalled, reemployed, or reinstated shall not be paid for any holiday occurring after the last day worked while previously employed and before entry on duty.

(c) Appointing Authorities shall pay full-time employees for holidays based on an 8-hour workday. Full-time employees who are eligible for holiday pay under (b) of this Section and who are scheduled to work either more or less than 8 hours on a holiday shall receive the equivalent of 8 hours of holiday pay or compensatory time off.

(d) Appointing Authorities shall prorate holiday pay for part-time employees based on one of the following methods:

- (1) Holiday pay as a percentage of normally scheduled hours worked divided by full-time hours; or
- (2) Holiday pay equal to regular pay for hours normally worked if a holiday occurs on a normally scheduled work day.

(e) If a full-time or part-time employee's scheduled hours worked plus holiday hours total less than the employee's normally scheduled hours during the workweek, the Appointing Authority shall account for the difference exercising one or more of the following options:

- (1) Work additional hours during the same workweek;
- (2) Charge to accumulated annual leave; or
- (3) Record as leave without pay under 530:10-15-47.

(f) If an employee's scheduled hours worked plus holiday hours are more than 40 hours in a workweek, the Fair Labor Standards Act requires that only hours actually worked be counted as hours worked in accordance with the Fair Labor Standards Act and 530:10-7-12.

(g) For employees who are scheduled to work on a holiday and for employees whose regular day off falls on a holiday, the Appointing Authority shall either:

- (1) reschedule the employee's holiday to be taken within 180 days; or
- (2) pay the employee for the holiday based on an 8-hour workday times the employee's base rate of pay at the time of payment.

(h) An Appointing Authority may request an extension of the 180 days for taking holiday time off up to an additional 180 days providing the Appointing Authority submits proper documentation to the Office of Personnel Management justifying the extension. All extensions are subject to the approval of the Office of Personnel Management.

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### **530:10-15-49. Leave and first preference due to work related illness or injury**

(a) **Purpose.** The purpose of this Section is to interpret Section 840-2.21 of Title 74 of the **Oklahoma Statutes** (Section 840-2.21). Section 840-2.21 establishes the rights and benefits of state employees who are absent from work because of an illness or injury arising out of and sustained in the course of employment with the State. These employees have a right to return to work if certain conditions are met. **In applying Section 840-2.21 and this Section, employing agencies shall return an employee to work as soon as possible, either to the original position or to an alternate position if an employee, with reasonable accommodation, is unable to return to the original position.**

(b) **Employee eligibility.** This Section applies to all eligible probationary and permanent classified and regular unclassified employees. It does not apply to unclassified employees on temporary and other limited term appointments. An employee shall file a claim for workers compensation benefits to be eligible [74:840-2.21].

(c) **Termination of rights.** All rights and benefits under Section 840-2.21 and this Section shall end 1 year after the start of leave without pay under this Section and shall end immediately if the claim for workers compensation is denied or canceled within the 1 year period [74:840-2.21].

(d) **Employing agency practice, policy, and procedure.** An agency's policy, procedure and practice affecting employees who file claims for workers compensation benefits shall agree with Section 840-2.21.

(e) **Required notice to employees.** Appointing Authorities shall give employees who report a job related illness or injury copies of this Section, Section 840-2.21, and the agency's policies and procedures for complying with this Section and the law. The procedures shall include instructions about requesting leave without pay under Section 840-2.21.

(f) **Placement of employee on leave without pay.** Appointing Authorities shall refer to this Section when they place an employee on leave without pay under Section 840-2.21. The Appointing Authority shall not require employees to exhaust paid sick and annual leave accumulations before placing them on leave without pay [74:840-2.21]. The Appointing Authority shall continue paying the employee's basic plan insurance coverage and dependent insurance benefit allowance while the employee is on leave without pay, and the leave shall not be a break in service [74:840-2.21].

(g) **Medical reports.** At least every 3 months, an employee on leave without pay under this Section shall give the Appointing Authority a medical statement as to his or her ability to perform the essential duties of the original position [74:840-2.21]. The medical statement shall be made by a physician as defined in Section 14 of Title 85 of the **Oklahoma Statutes**.

(h) **Inability to perform essential duties of original position.** If an employee on leave without pay under this Section cannot perform the essential duties of the original position, the employing agency shall give the employee first preference for other classified and unclassified positions according to Section 840-2.21.

(1) Appointing Authorities shall establish a procedure for giving employees on leave without pay under this Section first preference to fill classified and unclassified positions that do not represent a promotion to the employee, if the employee is medically able to do the essential duties and has the minimum qualifications for positions the Appointing Authority seeks to fill.

(2) The Appointing Authority's procedure shall include either notifying an employee of all vacant classified and unclassified positions the Appointing Authority seeks to fill or allowing the Appointing Authority and the employee to agree on notice for specific positions or jobs. The procedure may require employees to submit medical reports stating their ability to perform the essential duties of specific positions or groups of positions. The Appointing Authority shall give a copy of the procedure to each employee on leave without pay under this Section.

(3) Appointing Authorities do not have to notify employees on leave without pay under this Section when the Appointing Authority fills a vacant position temporarily (by temporary unclassified appointment or detail to special duty).

(4) Before an Appointing Authority may give a classified or unclassified employee first preference for a classified position, the employee shall be certified by the Office of Personnel Management as meeting the minimum qualifications. Neither classified nor unclassified employees shall be required to compete through the open competitive process for a classified position. The Appointing Authority shall submit the necessary paperwork to the Office of Personnel Management for review.

(5) Before an Appointing Authority assigns an employee to an alternate position (a position that is not the original position), the Appointing Authority shall give the employee written notice of the requirement to return to the original position under (i) of this Section. While in an alternate position, an employee shall submit medical reports at least every 3 months and whenever the medical condition changes enough to affect his or her ability to return to the original position.

(i) **Return to original position.** An employee on leave without pay or working in an alternate position shall have the right to return to his or her original position according to this Section and Section 840-2.21. When a medical report indicates the employee is able to perform the essential duties of the original position, with or without reasonable accommodation, the Appointing Authority shall return the employee to the original position. The employee and the Appointing Authority may agree in writing to waive the requirement to return the employee to the original position from an alternate position.

(j) **Failure to return to work.**

(1) The Appointing Authority may discipline a permanent classified employee or a probationary classified employee or an unclassified employee if:

(A) a medical report states the employee is able to do the essential duties of the original position or an alternate position (for which the employee is qualified); and

(B) the employee does not return to work within 7 days after the Appointing Authority mails a notice to the employee's last known address or delivers a notice to the employee.

(2) If an employee does not return to the original position or an alternate position within 1 year after the start of leave without pay, the Appointing Authority may terminate the employee under Section 840-2.21. An Appointing Authority that uses Section 840-2.21 as authority to terminate an employee shall give the employee a copy of (k) of this Section. Termination of a permanent classified employee under this Section is subject to the pretermination hearing requirements of Section 840-6.4 of Title 74 of the **Oklahoma Statutes**.

~~(3) If Section 5 (A)(2) of Title 85 of the Oklahoma Statutes prevents the Appointing Authority from terminating the employee, the Appointing Authority shall place the employee on leave without pay according to that law. The rights and benefits of this Section and Section 840-2.21 shall no longer apply.~~

(k) **Reinstatement upon separation.** A classified employee shall be eligible for reinstatement to either classified or unclassified employment with any state agency for 12 months after the date of separation under (j)(2) of this Section. An unclassified employee shall be eligible for reinstatement to unclassified employment with any state agency for 12 months after the date of separation under (j)(2) of this Section. This does not reduce eligibility under other general reinstatement or reemployment laws or rules, such as 530:10-9-102. [74:840-2.21]

**SUBCHAPTER 17. EMPLOYEE PERFORMANCE MANAGEMENT SYSTEM AND CAREER ENHANCEMENT PROGRAMS**

**PART 7. CARL ALBERT PUBLIC INTERNSHIP PROGRAM**

**530:10-17-74. Undergraduate internship program**

(a) **Eligibility.** The undergraduate internship program consists of temporary positions for students enrolled in institutions of higher education ~~within the state~~ and working toward an undergraduate degree [74:840-3.4(1)]. To be considered for eligibility determination, applicants shall have completed at least 24 semester hours of coursework with at least a 2.5 cumulative grade point average on a 4.0 scale. Applicants shall follow the procedures in 530:10-17-77 for eligibility determination.

(b) **Conditions of employment.** Participants in the Undergraduate Internship Program who receive internship appointments shall:

- (1) be employed in accordance with paragraph 8 of Section 840-5.5 of Title 74 of the Oklahoma Statutes, for not more than 2 semesters or 999 hours,
- (2) continue making progress toward an undergraduate degree,

(3) maintain the grade point average set out in (a) of this Section, and

(4) complete the training requirements described in (d)(3) of this Section.

(c) **Benefits.** Undergraduate interns shall not be eligible for paid leave, or health and retirement benefits.

(d) **Responsibilities of appointing authorities.**

(1) The Appointing Authority or designee shall ensure that the intern provides written verification to the Office of Personnel Management that the intern is:

(A) continuing to make progress toward an undergraduate degree during each semester employed, and

(B) maintaining the grade point average set out in (a) of this Section.

(2) If this information is not transmitted to the Office of Personnel Management within 30 days after the end of the previous semester, the Administrator shall notify the Office of State Finance and the Appointing Authority of the termination of the internship agreement in accordance with Section 530:10-17-82(a).

(3) Each Appointing Authority shall provide a minimum of 4 clock hours of job-related training for undergraduate interns during the internship, in addition to the training coordinated by the Administrator, and shall provide verification to the Office of Personnel Management of the completion of the training requirements.

**530:10-17-75. Executive Fellows program**

(a) **Eligibility.** An Executive Fellows Program consists of six-month to two-year placements in professional or managerial level positions for students [74:840-3.4(2)]. No person is eligible to participate in the Executive Fellows program for more than 2 years. To be considered for eligibility determination, applicants shall have completed a baccalaureate degree and at least 6 semester hours of graduate level coursework with at least a 3.0 grade point average on a 4.0 scale [74:840-3.4(2)(a)] or a 7.0 on a 12.0 scale in all graduate level coursework. Applicants shall follow the procedures in 530:10-17-77 for eligibility determination.

(b) The Administrator may waive the completion of 6 semester hours of graduate level coursework required by subsection (a) of this section for 1 semester, if:

(1) An individual currently employed by a state agency as a Carl Albert Public Internship Program undergraduate intern provides written verification to the Office of Personnel Management that he or she has:

(A) completed an undergraduate degree, and

(B) is enrolled in 6 semester hours of approved graduate level work; and

(2) The Appointing Authority or designee of the agency where the undergraduate intern is currently employed certifies in writing on a form provided by the Office of Personnel Management that the agency intends to employ the undergraduate intern as a Carl Albert Public Internship Program Executive Fellow immediately upon the undergraduate intern's completion of an undergraduate degree.

## Emergency Adoptions

(c) The appointment of an Executive Fellow in accordance with subsection (b) is not effective until the Administrator approves:

(1) the waiver of the 6 semester hours of graduate level coursework; and

(2) an Executive Fellow agreement form prepared by the Appointing Authority in accordance with 530:10-17-77(f).

(d) At the end of the semester for which the waiver of the 6 semester hours of graduate level coursework was approved by the Administrator pursuant to subsection (b), the individual employed as a Carl Albert Public Internship Program Executive Fellow shall meet the eligibility requirements in subsection (a) of this section or be removed from the Carl Albert Public Internship Program. [74:840-3.5]

(be) **Conditions of employment.** Participants in the Executive Fellows Program who receive internship appointments shall:

(1) be appointed in accordance with paragraph 10 of Section 840-5.5 of Title 74 of the **Oklahoma Statutes** [74:840-3.5(4)],

(2) be granted leave benefits commensurate with regular state employees [74:840-3.5(4)],

(3) be enrolled in the state health insurance and retirement benefits programs, if expected to work one thousand (1,000) or more hours per year,

(4) continue to make scholastic progress toward their graduate degrees during each fall and spring semester until completion of all graduate degree requirements,

(5) maintain the grade point average set out in (a) of this Section, and

(6) complete the training requirements described in (c)(3) of this Section.

(ef) Responsibilities of appointing authorities.

(1) The Appointing Authority or designee shall ensure that the intern provides written verification to the Office of Personnel Management that the intern is:

(A) continuing to make scholastic progress toward a graduate degree, until completion of all graduate degree requirements, and

(B) maintaining the grade point average set out in (a) of this Section.

(2) If this information is not transmitted to the Office of Personnel Management within **30** days after the end of the previous semester, the Administrator shall notify the Office of State Finance and the Appointing Authority of the termination of the internship agreement in accordance with Section 530:10-17-82(a).

(3) Each Appointing Authority shall provide a minimum of **8** clock hours of job related training for Executive Fellows during each **6**-month period, in addition to the training coordinated by the Administrator, and shall provide verification to the Office of Personnel Management of the completion of the training requirements.

(4) Each Appointing Authority shall rate the performance of participants in the Executive Fellows Program in accordance with Section 840-4.17 of Title 74 of the Oklahoma Statutes. [74:840-3.4]

## PART 15. STATE MENTOR PROGRAM

### 530:10-17-156. Agency rotations

(a) **State Personnel Interchange Program.** Rotation assignments shall be accomplished through the State Personnel Interchange Program, Section 840-3.9, et seq. of Title 74 of the Oklahoma Statutes.

(b) **Length of rotations.** Each Mentor Executive shall complete a two-year management rotation assignment which consists of six months in any ~~or all of the following entities:~~ state agency accepting the mentor executive.

(1) ~~the sending agency;~~

(2) ~~one or both houses of the Legislature;~~

(3) ~~the Office of State Finance;~~

(4) ~~the Governor's Office;~~

(5) ~~the Office of Personnel Management; and~~

(6) ~~any other agency accepting the Mentor Executive.~~

(c) **Work assigned during rotations.** Each agency participating in the State Mentor Program shall assign the Mentor Executive to a policy-level manager during the period he or she is completing a management rotation in that agency.

(d) **Compensation during rotations.**

(1) The Administrator shall establish minimum compensation for Mentor Executives. The sending agency and each agency in which the Mentor Executive is completing his or her management rotation may share the compensation of the Mentor Executive or either agency may pay the total amount.

(2) If a state employee's salary is below the minimum salary for the Mentor Executive job family, the employee's salary shall be increased to that minimum. A state employee's salary shall not be reduced because of his or participation in the State Mentor Program.

(e) **FTE limitations.** Employees participating in the State Mentor Program shall be exempt from any full-time-equivalent limitations established by law.

(f) **Intercession by the Office of Personnel Management.** The Administrator of the Office of Personnel Management may intercede in mentor executive rotational assignments if the Administrator determines that the assignments are not functioning in accordance with guidelines established for the state mentor program. The result of the intercession may include, but is not limited to, reassignment or removal from the program.[74:840-3.8]

(g) **Completion of rotation assignment.** At the end of a two-year management rotation assignment or sooner, if a Mentor Executive is unable to complete the entire two-year management rotation assignment, a Mentor Executive shall be entitled to return to the previous job family or its successor job family, if one exists in the sending agency. Otherwise, the reduction-in-force provisions of Section 840-2.27C of Title 74 of the Oklahoma Statutes shall apply.

[OAR Docket #03-3069; filed 9-5-03]

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

*[OAR Docket #03-3045]*

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 7. Teacher Preparation Teacher Assessment  
712:10-7-1. [Amended]

**AUTHORITY:**

Oklahoma Commission for Teacher Preparation  
70 O.S. Supp. 1998, §6-180 et seq. Oklahoma Teacher Preparation Act

**DATES:**

**Adoption:**

July 15, 2003

**Approved by Governor:**

August 4, 2003

**Effective:**

Immediately upon Governor's approval

**Expiration:**

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

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**FINDING OF EMERGENCY:**

Pursuant to O.S. Supp. 1998, §6-180 et seq, known as the Oklahoma Teacher Preparation Act, the Oklahoma Commission for Teacher Preparation shall develop and administer a competency-based system of teacher assessment to serve as a threshold into the profession. Emergency rule is necessary to eliminate the testing requirement for teachers certified in other states who have successfully completed comparable assessments and are seeking Oklahoma certification.

**ANALYSIS:**

Pursuant to 70 O.S. Supp. 1998, §6-180, the Oklahoma Teacher Preparation Act, the Oklahoma Commission for Teacher Preparation shall develop and administer a competency-based system of teacher assessment. This emergency rule will allow for flexibility for school districts in Oklahoma in hiring teacher certified in other states and may assist in supply and demand problems in critical teacher shortage areas. The rule will lessen the financial burden for teacher certified in other states that have successfully completed comparable assessments who are seeking Oklahoma certification.

**CONTACT PERSON:**

Ted Gillispie, Executive Director  
405-525-2612

**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. TEACHER PREPARATION  
TEACHER ASSESSMENT**

**712:10-7-1. Teacher assessment regulations**

(a) **Examines-initial licensure and certification.** Any individual who applies for a teaching license/certification must successfully complete the competency examination as defined by the Oklahoma Commission for Teacher Preparation. (70 O.S. 1998 Supp., 6-182(14). The competency examination), the Oklahoma Subject Area Test (OSAT) and the Oklahoma Professional Teaching Exam (OPTE). See Appendix A for competency exam requirements by certification area test codes.

(b) **Examinees-additional certification.** 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.

(c) **Examinees-alternative preparation program.** Individuals seeking a teaching license via the Alternative Preparation Program 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.

(d) **Examinees-out of state certification.** Individuals seeking an Oklahoma license/certification who are certified educators in another state(s) shall meet the same assessment requirements as all other individuals seeking initial licensure/certification. Individuals having successfully completed comparable examination(s), as determined by OCTP, shall be exempt from the corresponding part(s) of Oklahoma's assessment requirement.

*[OAR Docket #03-3045; filed 8-25-03]*



# 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

1:2003-20.

### EXECUTIVE ORDER 2003-20

I, Mary Fallin, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all flags of the State of Oklahoma on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Saturday, August 30, 2003, to honor Judge Myrna Lansdown, who died on Friday, August 29, 2003.

Raised near Humbolt, Iowa, Lansdown earned her undergraduate degree from Iowa State University in 1978. In 1981, she graduated from the University of Tulsa College of Law. After law school, Lansdown joined the 11th Judicial District Attorney's Office as an assistant district attorney. In 1984, she was appointed Special District Judge.

Judge Lansdown was a member of the Washington County Bar Association, Oklahoma Bar Association and American Bar Association. In addition, she served on the Leave Policies Committee of the National Association of Women Judges, and the boards for the Sexual Assault and Safety Center and the Alcohol and Drug Center in Bartlesville.

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 29th day of August, 2003.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:

M. Susan Savage  
Secretary of State

[OAR Docket #03-3058; filed 9-2-03]

1:2003-21.

### EXECUTIVE ORDER 2003-21

I, Brad Henry, Governor of the State of Oklahoma, by authority conferred upon me by the Oklahoma Constitution and the laws of the State of Oklahoma, hereby amend the Cabinet areas for Human Resources and Administration and Commerce and Tourism outlined in Executive Order 2003-04, as follows:

The **Secretary for Human Resources and Administration** shall no longer be responsible for the Oklahoma Employment Security Commission, State Advisory Council, Board of Review, and Oklahoma Workforce Investment Board.

The **Secretary of Commerce and Tourism** shall hereafter be responsible for the Oklahoma Employment Security Commission, State Advisory Council, Board of Review, and Oklahoma Workforce Investment Board.

All legal duties and responsibilities for the Oklahoma Employment Security Commission, State Advisory Council, Board of Review, and Oklahoma Workforce Investment Board previously attributed to the Secretary for Human Resources and Administration shall be assumed by the Secretary of Commerce and Tourism.

This Executive Order shall be distributed to the Secretary for Human Resources and Administration, the Secretary of Commerce and Tourism, and to all other members of the Governor's Cabinet. It shall be the duty of each affected board, commission, agency or other entity of the Executive Branch of state government to facilitate the purposes of this Order and to cooperate fully with designated Cabinet secretaries.

## Executive Orders

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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 2nd day of September, 2003.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Brad Henry

ATTEST:  
M. Susan Savage  
Secretary of State

*[OAR Docket #03-3070; filed 9-3-03]*

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**1:2003-22.**

### EXECUTIVE ORDER 2003-22

I, Brad Henry, Governor of the State of Oklahoma, by virtue of the power and authority vested in me by law, hereby revoke Executive Order - D B No. 3, dated October 6, 1955; and pursuant to the provisions of the State Budget Law of 1947, 62 O.S. §§ 41.1 et seq., order as follows:

#### THE CERTIFICATION AND SUBMISSION OF PAYROLLS FOR PAYMENT

1. The Director of State Finance shall require that the payrolls for any officials or employees of any agency, authority, board, commission, institution, instrumentality, office, or organization of the State of Oklahoma contain a statement under oath sworn to by the head or designated administrative employee of any agency, authority, board, commission, institution, instrumentality, office or organization which certifies:

a. That the officials or employees of such agency, authority, board, commission, institution, instrumentality, office, or organization performed the duties to which they were assigned by the Constitution of Oklahoma, the statutes of Oklahoma, or by written administrative directive in absence of statutory or constitutional requirements (such administrative directive to be on file in the agency, authority, board, commission, institution, instrumentality, office, or organization prior to the delivery of the payroll warrant); that such officials or employees were present at their official duty stations or assigned places of duty, or were in an approved travel status for official purposes, without exception unless specially noted opposite such officials' or employees' names and entries upon the payroll forms.

b. That the payroll has been checked and approved as to the amounts due such officials or employees listed in the payroll filed for the period of time claimed and at the rates of pay set out.

c. That the listed deductions from the amounts due the officials or employees are in accordance with existing statutory requirements of the State of Oklahoma and the federal government.

d. That the listed deductions from the amounts due the officials or employees, other than those required by statute, are in accord with existing signed authorizations from such officials or employees which direct and authorize those deductions so made. Electronic methods may be accepted as signed authorization from such officials or employees. Such signed authorizations must be filed in the agency, authority, board, commission, institution, instrumentality, office or organization in which such official or employee is employed or compensated prior to delivery of the payroll warrant upon which such a deduction is made.

e. That the recording of the names, numbers, and the extension of amounts and totals is true and correct.

2. The Division of the Budget, The Division of Central Accounting and Reporting, and the Director of State Finance may receive for filing, processing, or preparation for payment any payroll or payrolls for any officials or employees of any agency, authority, board, commission, institution, instrumentality, office or organization of the State of Oklahoma, which payroll or payrolls are certified and sworn to as required herein and approved by the head or designated administrative employee of any agency, authority, board, commission, institution, instrumentality, office or organization of the State of Oklahoma in accordance with procedures established by the Division of Central Accounting and Reporting and the Director of State Finance.

3. The Director of State Finance, as the administrative head of The Division of the Budget and The Division of Central Accounting and Reporting, shall audit the payrolls and prepare warrants.

4. It is ordered that any warrant issued shall not be delivered by the head or designated administrative employee of any agency, authority, board, commission, institution, instrumentality, office, or organization of the State of Oklahoma prior to the date shown on said warrant, nor shall any warrant issued be delivered until the requirements set forth in Section 1 of this order have been fully complied with and met.

This Executive Order shall be distributed to the Director of State Finance who shall cause the provisions of this order to be implemented.

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 2nd day of September, 2003.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Brad Henry

ATTEST:  
M. Susan Savage  
Secretary of State

*[OAR Docket #03-3071; filed 9-3-03]*

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**1:2003-23.**

**EXECUTIVE ORDER 2003-23**

I, Mary Fallin, Governor of the State of Oklahoma, in recognition of Patriot Day, hereby direct the appropriate steps be taken to fly all flags of the State of Oklahoma on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Thursday, September 11, 2003, to honor the many innocent people who perished on September 11, 2001.

On that day, more than 3,000 people lost their lives in New York City, Washington, D.C. and Pennsylvania. The flying of the flags at half-staff is a symbol from Oklahomans that demonstrates our remembrance of those killed and our sympathy for their families.

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 9th day of September, 2003.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:  
M. Susan Savage  
Secretary of State

*[OAR Docket #03-3074; filed 9-10-03]*

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