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

[OAR Docket #04-12]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 15. Licensure and Regulation of Accountancy
[AMENDED]

SUMMARY:

Subchapter 1, General Provisions, amendments will clarify and update the definitions. Subchapter 5, Examination Procedures, and Subchapter 7, Application to Take an Examination, amendments are made in preparation for the computer-based test. Subchapter 18, Transitioning from the Paper-and-Pencil Examination to the Computer-Based Examination, adds rules by which candidates for the CPA/PA examination will transition from the traditional paper-and-pencil examination they've taken in the past to the new computer-based examination they will begin taking early in 2004. Subchapter 19, Proctoring of Candidates Taking Examinations, amendments clarify Oklahoma candidates taking examination in other states. Subchapter 20, Internet Practice Requirements, amendments clarify that the rules apply to professional services offered through any electronic means, not just from a website. Subchapter 25, Permits, amendments further clarify definitions that are added to the "Definitions" section in Subchapter 1 and remove the requirement that anyone who practices public accounting only during certain times of the year must hold a permit for the entire year. Subchapter 27, Fees, amendments will provide for an increase in the examination fee to the current limits allowed by Title 59, Section 15.10A. This increase is applicable only if the CBT does not launch as scheduled. The Board does not intend to profit from the increase in fees, only to recover the direct and indirect costs of administering the examination. The addition of 10:15-27-3.1 actually provides for a decrease in the examination fee to \$50 upon implementation of the computer-based examination but further provides that candidates will be responsible for the fees required by the American Institute of Certified Public Accountants, the National Association of State Boards of Accountancy, and the delivery service provider. 10:15-27-13 provides for a portal convenience fee and reduces the convenience fee from the six and one quarter percent

(6.25%) in the original emergency rules adopted in 2003 to three and one half percent (3 $\frac{1}{2}$ %) of the total remittance for use of on-line services. Subchapter 29, Continuing Professional Education, amendments change the requirements of continuing professional education. Subchapter 31, Standards for Continuing Professional Education, is revoked since the new standards become effective January 1, 2004. Subchapter 32, Standards for Continuing Professional Education (CPE) Programs, amendments have mostly to do with renumbering and are not substantive. Subchapter 33, Quality Review, is being added to establish rules to implement the requirement for a quality review as provided for in Section 15.30 of the Oklahoma Accountancy Act. Subchapter 37, Enforcement Procedures, amendments clarify the enforcement committee. Subchapter 39, Rules of Professional Conduct, amendments revoke obsolete information regarding independence and insert current standards. Amendments also clarify the use of a "d/b/a".

AUTHORITY:

Oklahoma Accountancy Board, 59 O.S. Section 15.5

COMMENT PERIOD:

Written and oral comments will be accepted through close of business March 5, 2004 by contacting Edith Steele, Executive Director, Oklahoma Accountancy Board, 4545 North Lincoln Boulevard, Suite 165, Oklahoma City, Oklahoma 73105-3413. Telephone: 405-521-2397, E-mail: okaccybd@oklaosf.state.ok.us or FAX: 405-521-3118.

PUBLIC HEARING:

A public hearing to take comments on the proposed rules will be held by the Board at 9:00 a.m. on March 5, 2004 in the office of the Board, Suite 165, Lincoln Office Plaza, 4545 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUEST 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 Edith Steele at the above address during the period from February 5, 2004 through March 5, 2004.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Accountancy Board, 4545 North Lincoln Boulevard, Suite 165, Oklahoma City, Oklahoma 73105-3413.

Notices of Rulemaking Intent

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement will be prepared and will be available after February 2, 2004 from the Oklahoma Accountancy Board at the address and contact numbers listed above.

CONTACT PERSONS:

Edith Steele at 405-521-2397

[OAR Docket #04-12; filed 1-8-04]

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

[OAR Docket #04-25]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Fee Schedules [AMENDED]

SUMMARY:

Currently, the Department furnishes to state veterinarians a variety of supplies such as poultry wing bands, poultry leg band pliers, Pullorum test plates and antigens, and booklets of health certificates. The Department proposes to charge fees for the purchase of these supplies. The fees are set at the Department's costs.

AUTHORITY:

Title 2 O.S. 2001, §§ 2-4(2), 2-4 (20); Oklahoma State Board of Agriculture

COMMENT PERIOD:

Persons may submit written and oral comments to Janet Stewart at 2800 North Lincoln Boulevard, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from February 2, 2004 through March 4, 2004.

PUBLIC HEARING:

A public hearing will be held at 9:00 a.m., March 4, 2004 in the Plant Industry 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 Janet Stewart at the above address during the period from February 2, 2004 through March 4, 2004.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by contacting Janet Stewart, Director, Legal Services, P. O. Box 528804,

Oklahoma City, Oklahoma 73152-8804, (405) 522-5803, or at www.oda.state.ok.us under Hearings.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available from the Legal Services Division, Oklahoma Department of Agriculture, Food, and Forestry (address above).

CONTACT PERSON:

Dr. Burke Healey, Director, Animal Industry Services Division, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-6131; bhealey@oda.state.ok.us

[OAR Docket #04-25; filed 1-9-04]

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

[OAR Docket #04-32]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

317:2-1-1. through 317:2-1-4. [AMENDED]

(Reference APA WF # 03-54A and 03-55A)

SUMMARY:

Grievance Procedures and Process rules are revised to: (1) remove references to the SoonerCare Plus program which ended effective January 1, 2004; and (2) reflect current procedures in the SoonerCare Choice program.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted February 2, 2004 through March 4, 2004 during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(1), "persons may demand a hearing" by contacting the above listed person no later than March 4, 2004 by 4:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on March 4, 2004.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Joanne Terlizzi, Director, Policy Development, 405-522-7272.

[OAR Docket #04-32; filed 1-9-04]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 25. SOONERCARE**

[OAR Docket #04-33]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 25. SoonerCare [AMENDED]
(Reference APA WF # 03-54B and 03-55B)

SUMMARY:

SoonerCare rules are revised to: (1) remove references to the SoonerCare Plus program which ended effective January 1, 2004; and (2) reflect current procedures in the SoonerCare Choice program.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted February 2, 2004 through March 4, 2004 during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(1), "persons may demand a hearing" by contacting the above listed person no later than March 4, 2004 by 4:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on March 4, 2004.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Joanne Terlizzi, Director, Policy Development, 405-522-7272.

[OAR Docket #04-33; filed 1-9-04]

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

[OAR Docket #04-05]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-57. [AMENDED]
317:30-3-59. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2. [AMENDED]
317:30-5-9. [AMENDED]
317:30-5-11. [AMENDED]
317:30-5-15. [AMENDED]
Part 35. Rural Health Clinics
317:30-5-356. [AMENDED]
(Reference APA WF # 03-42)

SUMMARY:

Medical Providers-Fee for Service rules are being revised to increase the monthly compensable number of outpatient physician visits for Medicaid eligible adults from two to four visits per month. On December 31, 2003, the SoonerCare Plus program will end and all current SoonerCare Plus recipients will be transferred to the Fee-for-Service program. The agency anticipates that the effected group of individuals will be moved into the SoonerCare Choice program by April 1, 2004. To ensure continued quality health care for these recipients, the agency is proposing to enhance the benefits available through the Fee-for-Service program by amending rules to increase the number of compensable physicians visits from two to four per month for adults.

Notices of Rulemaking Intent

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.50

COMMENT PERIOD:

Written and oral comments will be accepted February 2, 2004 through March 4, 2004 during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing is scheduled for March 9, 2004, 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on March 4, 2004.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Joanne Terlizzi, Director, Policy Development, 405-522-7272.

[OAR Docket #04-05; filed 1-7-04]

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

[OAR Docket #04-34]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-5. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians

317:30-5-8. [AMENDED]

Part 3. Hospitals

317:30-5-47. [AMENDED]

Part 73. Early Intervention Services

317:30-5-640.1. through 317:30-5-641.2. [AMENDED]

Part 103. Qualified Schools as Providers of Health Related Services

317:30-5-1022. through 317:30-5-1025. [AMENDED]

(Reference APA WF # 03-54C and 03-55C)

SUMMARY:

Medical Providers-Fee for Service rules are revised to: (1) remove references to the SoonerCare Plus program which ended effective January 1, 2004; and (2) reflect current procedures in the SoonerCare Choice program.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted February 2, 2004 through March 4, 2004 during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(1), "persons may demand a hearing" by contacting the above listed person no later than March 4, 2004 by 4:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on March 4, 2004.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Joanne Terlizzi, Director, Policy Development, 405-522-7272.

[OAR Docket #04-34; filed 1-9-04]

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

[OAR Docket #04-35]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 3. General Provider Policies
- Part 5. Eligibility
- 317:30-3-73. [REVOKED]
- Subchapter 5. Individual Providers and Specialties
- Part 15. Child Health Centers
- 317:30-5-198. [AMENDED]
- (Reference APA WF # 03-41)**

SUMMARY:

Medical Providers-Fee for Service, Eligibility specific, rules are revised to revoke an obsolete section that contains a general list of persons eligible for Medicaid; rules regarding clients' financial eligibility for Medicaid are found in the agency's existing Medical Assistance for Adult and Children-Eligibility (OAC 317:35) rules. Medical Providers-Fee for Service, Child Health Centers specific, rules are revised to allow the dentists in Child Health Centers to bill for dental services using the fee-for-service fee schedule. The revision will provide more adequate reimbursement for the Oklahoma State Department of Health and better tracking of services for OHCA. Oklahoma State Department of Health dentists currently bill a bundled encounter rate. This existing method does not allow OHCA to track the services that are provided without a chart review. The rule revision will allow OHCA to track the services by claims submission.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 441.61(c).

COMMENT PERIOD:

Written and oral comments will be accepted February 2, 2004 through March 4, 2004 during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(1), "persons may demand a hearing" by contacting the above listed person no later than March 4, 2004 at 4:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue

loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on March 4, 2004.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Joanne Terlizzi, Director, Policy Development, 405-522-7272.

[OAR Docket #04-35; filed 1-9-04]

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

[OAR Docket #04-36]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 3. General Provider Policies
- Part 1. General Scope and Administration
- 317:30-3-25. [AMENDED]
- 317:30-3-26. [REVOKED]
- (Reference APA WF # 03-51)**

SUMMARY:

Medical Providers-Fee for Service rules are revised to clarify current reimbursement of Medicare crossover claims. Deletions remove erroneous language regarding Hospital Part B reimbursement of co-insurance.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted February 2, 2004 through March 4, 2004 during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(1), "persons may demand a hearing" by contacting the above listed person no later than March 4, 2004 at 4:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar

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amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on March 4, 2004.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Joanne Terlizzi, Director, Policy Development, 405-522-7272.

[OAR Docket #04-36; filed 1-9-04]

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

[OAR Docket #04-37]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties
Part 35. Rural Health Clinics
317:30-5-355. through 317:30-5-359.2. [AMENDED]
317:30-5-361. through 317:30-5-362. [AMENDED]
Part 71. Early Intervention Case Management Services
317:30-5-620. through 317:30-5-622. [AMENDED]
317:30-5-624. [AMENDED]
Part 73. Early Intervention Services
317:30-5-640. through 317:30-5-642. [AMENDED]
317:30-5-644. [AMENDED]
Part 91. Tuberculosis Clinic Services
317:30-5-910. through 317:30-5-911. [AMENDED]
317:30-5-913. [AMENDED]
Part 93. Case Management Services for Persons Infected
with Tuberculosis
317:30-5-920. through 317:30-5-921. [AMENDED]
317:30-5-923. through 317:30-5-924. [AMENDED]
Part 95. Agency Personal Care Services
317:30-5-950. through 317:30-5-953. [AMENDED]
Part 103. Qualified Schools as Providers of Health Related
Services
317:30-5-1020. through 317:30-5-1027. [AMENDED]
Part 104. School-Based Case Management Services

317:30-5-1030. through 317:30-5-1034. [AMENDED]

(Reference APA WF # 03-50)

SUMMARY:

Medical Providers-Fee for Service, Individual Providers and Specialties specific, rules are revised to comply with the HIPAA requirements for the use of standardized national procedure codes. The newly implemented HIPAA regulations require that all states discontinue the use of state specific procedure codes for medical services. The transition from Oklahoma specific procedure codes has occurred. The revisions to provider rules are required to reflect the conversion from State specific procedure codes to standardized codes as required by HIPAA.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted February 2, 2004 through March 4, 2004 during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(1), "persons may demand a hearing" by contacting the above listed person no later than March 4, 2004 at 4:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on March 4, 2004.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Joanne Terlizzi, Director, Policy Development, 405-522-7272.

[OAR Docket #04-37; filed 1-9-04]

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

[OAR Docket #04-38]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 5. Individual Providers and Specialties
 - Part 11. Maternity Clinic Services
 - 317:30-5-175. through 317:30-5-176. [AMENDED]
 - 317:30-5-178. [AMENDED]
 - Part 13. High Risk Pregnant Women Case Management Services
 - 317:30-5-185. through 317:30-5-188. [AMENDED]
 - Part 15. Child Health Centers
 - 317:30-5-195. through 317:30-5-201. [AMENDED]
 - Part 49. Family Planning Centers
 - 317:30-5-465. through 317:30-5-467. [AMENDED]
- (Reference APA WF # 03-49)**

SUMMARY:

Medical Providers-Fee for Service rules are in need of revision to: (1) allow for provider eligibility certification by entities other than the Oklahoma State Department of Health; and (2) reflect the conversion from State procedure codes to standardized procedure codes as required by HIPAA.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.90.

COMMENT PERIOD:

Written and oral comments will be accepted February 2, 2004 through March 4, 2004 during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(1), "persons may demand a hearing" by contacting the above listed person no later than March 4, 2004 at 4:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on March 4, 2004.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Joanne Terlizzi, Director, Policy Development, 405-522-7272.

[OAR Docket #04-38; filed 1-9-04]

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

[OAR Docket #04-40]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 5. Individual Providers and Specialties
 - Part 1. Physicians
 - 317:30-5-11. [AMENDED]
- (Reference APA WF # 03-53)**

SUMMARY:

Medical Providers-Fee for Service, Physicians specific, rules are revised to more appropriately describe psychiatric services that are necessary to Medicaid recipients. Current rules in the section state that only individual psychotherapy and family therapy are the only compensable services. Revisions will list and clarify the specific types of Medicaid compensable psychiatric services.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted February 2, 2004 through March 4, 2004 during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing is scheduled for 1:00 p.m. on March 9, 2004, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

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business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on March 4, 2004.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Joanne Terlizzi, Director, Policy Development, 405-522-7272.

[OAR Docket #04-40; filed 1-9-04]

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

[OAR Docket #04-41]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Procedures and Specialties
Part 21. Outpatient Behavioral Health Services
317:30-5-240. through 317:30-5-241. [AMENDED]
317:30-5-243. [REVOKED]
317:30-5-247. [REVOKED]
317:30-5-248. [AMENDED]
(Reference APA WF # 03-52)

SUMMARY:

Medical Providers-Fee for Service, Outpatient Behavioral Health Services specific, rules are revised to: (1) require Mental Health Professionals and Behavioral Health Rehabilitation Specialists who perform services in contracted Outpatient Behavioral Health agencies to obtain individual provider numbers and use them when billing for services; (2) add additional detail regarding the prior authorization process; (3) better describe appropriate Alcohol and Other Drug (AOD) treatment services; (4) allow AOD providers a window to contract to be a provider (if certified by the state to perform services on February 1, 2004 and meet other specifications) without having national accreditation but they would be required to be accredited by July 1, 2005; (5) allow the Office of Juvenile Affairs (OJA) to be the designated agent for prior authorization of services for children in their care, custody or supervision; (6) add Behavioral Health Aid services for seriously emotionally disturbed children.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted February 2, 2004 through March 4, 2004 during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing is scheduled for 1:00 p.m. on March 9, 2004, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on March 4, 2004.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Joanne Terlizzi, Director, Policy Development, 405-522-7272.

[OAR Docket #04-41; filed 1-9-04]

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

[OAR Docket #04-04]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions
317:40-1-1. [AMENDED]
Subchapter 5. Client Services
Part 9. Service Provisions
317:40-5-112. [NEW]
(Reference APA WF # 03-29)

SUMMARY:

Developmental Disability Services rules are being revised at the request of the Oklahoma Department of Human Services to establish guidelines for the new Home and Community-Based waiver for Homeward Bound class members. The Centers

for Medicare and Medicaid Services (CMS) have approved a new waiver for members of the Homeward Bound class that allow federalization of various services that must be provided in accordance with the Homeward Bound consent decree. The revisions will: (1) add rules establishing guidelines for the new waiver for Homeward Bound class members; (2) specify time frames relating to information presented when requesting services; (3) clarify the reasons for which a person is removed from the DDS waiting list; (4) specify situations in which a person is changed from one waiver to another; (5) require re-determination of a child's eligibility at age six and at age 18; (6) clarify the reasons for case closure and for reinstatement of services; and (7) provide guidance regarding delivery of dental services to members of the Homeward Bound class. The revisions were approved by the Advisory Committee on Services to Persons with Developmental Disabilities on August 12, 2003.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 10 O.S. § 1415.1; 63 O.S. § 5006

COMMENT PERIOD:

Written and oral comments will be accepted February 2, 2004 through March 4, 2004 during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing is scheduled for March 9, 2004, 1:00 p.m., at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on March 4, 2004.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement may be obtained for review by contacting the above listed person.

CONTACT PERSON:

Joanne Terlizzi, Director, Policy Development, 405-522-7272.

[OAR Docket #04-04; filed 1-7-04]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 1. COMMISSION POWERS AND JURISDICTION**

[OAR Docket #04-20]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

325:1-1-13. Notice to licensee [AMENDED]

SUMMARY:

Commission Staff requests that the Commission consider amending this Rule for ease of notification. Currently, Notice can be given in writing by personal delivery or by a letter sent certified, return receipt requested. Due to the impracticality of personal delivery, the current use is the certified, return receipt requested mail method. With the broad use in the public and private sectors of electronic transmission (via the use of fax machines), the proposed amendment would eliminate the use of sending certified, return receipt requested mail for Licensees with fax machines since the subject machines provide receipt confirmation. If the Licensee or its representative does not have the electronic technology, then notice would be given by certified mail, return receipt requested. The change would also reduce postage expense since, in addition to the postage charge for the weight of the material, the current fees for each Notice are \$4.05: \$2.30 for certified mail and \$1.75 for return receipt requested service.

AUTHORITY:

75 O.S., §303; Title 3A O.S. §204(A); Oklahoma Horse Racing Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Monday, March 8, 2004, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Monday, March 8, 2004, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the public hearing must sign a speaker's register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the Commission, within the comment period, in dollar amounts, if possible, 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 rule. Business entities may submit this information in writing to the Commission, at

Notices of Rulemaking Intent

the above address, before the close of the comment period on March 8, 2004.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained from the Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by January 30, 2004 may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

Bonnie Morris, Assistant to the Administrator, (405) 943-6472.

[OAR Docket #04-20; filed 1-9-04]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 15. LICENSING

[OAR Docket #04-21]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

Subchapter 3. Organizational Licensing

325:15-3-2. Application for license and days to conduct a horse race meeting [AMENDED]

SUMMARY:

The proposed amendment would allow a purchaser of a racetrack to make application for a license where the date of the purchase is after the date, June 1, a license application must be submitted under current Rule 325:15-3-2. The specific situation which brought the need for the proposed amendment to the attention of the Commission was the purchase of Blue Ribbon Downs by Backstretch, LLC, one day prior to a scheduled foreclosure sale. The purchase was a purchase of the racetrack and equipment only and not a purchase of the corporate stock of Race Horses, Inc., the pari-mutuel licensee. Therefore, under the current Rule 325:15-3-2, the new owner, Backstretch, LLC, would not have been able to submit a timely application to conduct pari-mutuel racing at Blue Ribbon Downs in the year 2004 and, without a license, no pari-mutuel racing could occur at Blue Ribbon Downs during 2004. The proposed amendment was approved through emergency rulemaking to assist the timely application of Backstretch, LLC. The amendment is now proposed through permanent rulemaking.

AUTHORITY:

75 O.S., §303; Title 3A O.S. §204(A); Oklahoma Horse Racing Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Monday, March 8, 2004, at the following

address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Monday, March 8, 2004, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the public hearing must sign a speaker's register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the Commission, within the comment period, in dollar amounts, if possible, 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 rule. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on March 8, 2004.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained from the Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by January 30, 2004 may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

Bonnie Morris, Assistant to the Administrator, (405) 943-6472.

[OAR Docket #04-21; filed 1-9-04]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 30. CLAIMING RACES

[OAR Docket #04-22]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

325:30-1-3. Racing interest defined [AMENDED]

SUMMARY:

Commission Staff requests that the Commission consider amending this Rule to provide more flexibility to horsemen and women so that, as licensed Owners, they may participate in more than one Stable Name. Currently, an Owner may participate in more than one racing interest but not participate in more than one Stable Name.

AUTHORITY:

75 O.S., §303; Title 3A O.S. §204(A); Oklahoma Horse Racing Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Monday, March 8, 2004, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Monday, March 8, 2004, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the public hearing must sign a speaker's register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the Commission, within the comment period, in dollar amounts, if possible, 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 rule. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on March 8, 2004.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained from the Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by January 30, 2004 may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

Bonnie Morris, Assistant to the Administrator, (405) 943-6472.

[OAR Docket #04-22; filed 1-9-04]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 45. MEDICATION AND EQUINE TESTING PROCEDURES**

[OAR Docket #04-23]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

325:45-1-25. Use, administration and regulation of Furosemide (Salix) [NEW]

SUMMARY:

The new rule was proposed under emergency rulemaking in Spring, 2003 in response to statutory change in HB 1524, sponsored by Representative Fred Stanley, which became effective law April 8, 2003 upon the Governor's signature. In effect, the statutory amendment allows all horses to be administered Furosemide (Salix) prior to a horse race at the discretion of the horse owner or trainer without approval of a practicing veterinarian, Racing Veterinarian, Official Veterinarian, racetrack or Commission. To be in compliance with the new law, the Commission noted that certain provisions in a number of current rules in Chapter 45, Medication and Equine Testing Procedures, OHRC *Rules of Racing*, needed to be addressed and amended as well as Commission Directive 91-D-1. At the April Commission meeting, Commission Counsel suggested that, under emergency rulemaking procedures, the Commission could create a new rule, 325:45-1-25, to begin with the phrase "Notwithstanding any rule already in place" and then state the new statutory language without changing the current language in the OHRC *Rules of Racing*. This would allow more time for Commission staff and horsemen's organizations to work on proposed amendments to the current rules and return the matter to the Commission for consideration under permanent rulemaking procedures. Following the emergency adoption, the expected national consensus on racing medications did not occur which would have facilitated revision at the state level of several medication rules in the Commission's *Rules of Racing*. Therefore, the new rule is now proposed through permanent rulemaking.

AUTHORITY:

75 O.S., §303; Title 3A O.S. §204(A); Oklahoma Horse Racing Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Monday, March 8, 2004, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Monday, March 8, 2004, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the public hearing must sign a speaker's register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the Commission, within the comment period, in dollar amounts, if possible, 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 rule. Business entities may submit this information in writing to the Commission, at

Notices of Rulemaking Intent

the above address, before the close of the comment period on March 8, 2004.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained from the Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by January 30, 2004 may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

Bonnie Morris, Assistant to the Administrator, (405) 943-6472.

[OAR Docket #04-23; filed 1-9-04]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 65. PARI-MUTUEL WAGERING

[OAR Docket #04-24]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

Subchapter 1. General Provisions

325:65-1-44. Pools dependent upon betting interests

[AMENDED]

SUMMARY:

Mr. Fred Hutton, Director of Racing/Racing Secretary at Remington Park, submitted a letter dated December 18, 2003, requesting that the Commission consider amending Rule 325:65-1-44, Pools Dependent Upon Betting Interests, to change the wording in Item 7 from "shall prohibit" to "may be allowed to prohibit" to provide more flexibility for an Organization Licensee (racetrack) in determining whether to allow or prohibit Superfecta wagering on any contest with seven (7) or fewer betting interests scheduled to start. In his letter, Mr. Hutton requested the rule amendment because "the rule change would have an immediate impact if implemented. The benefit would be increased handle, where more value is placed in the betting public's hands. The increased handle would trickle down to all levels of participants, more money would be available for Horsemen's purses, increased revenue to both the race tracks and the State and most important added value to the betting public." Mr. Hutton also identified "... the following jurisdictions that allow the organizational licensee this same option: Texas, Louisiana, Ohio, Florida, Maryland, California and Pennsylvania. In some cases the tracks in these jurisdictions have kept this wager for their patrons with as few as 6 contestants."

AUTHORITY:

75 O.S., §303; Title 3A O.S. §204(A); Oklahoma Horse Racing Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Monday, March 8, 2004, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Monday, March 8, 2004, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the public hearing must sign a speaker's register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the Commission, within the comment period, in dollar amounts, if possible, 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 rule. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on March 8, 2004.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained from the Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by January 30, 2004 may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

Bonnie Morris, Assistant to the Administrator, (405) 943-6472.

[OAR Docket #04-24; filed 1-9-04]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 1. AGENCY AUTHORITY AND OBJECTIVES

[OAR Docket #04-06]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

390:1-1-3. [AMENDED]

390:1-1-4. [AMENDED]

SUMMARY:

Amended sections would establish the procedure of selecting a chairman and vice-chairman of the Council;

establish terms of office for the Chairman and Vice-Chairman of the Council; establish procedures for the appointment and establish duties of the Drug Dog Advisory Council and the Bomb Dog Advisory Council; and provide for the process of appointment and removal of members from all advisory councils appointed by the CLEET Council.

AUTHORITY:

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

COMMENT PERIOD:

Written and oral comments will be accepted February 2 to March 5, 2004 at: CLEET, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma 73136, Attn: Janet Ingram.

PUBLIC HEARING:

Public hearings will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door. The public hearing will be held at 10:00 a.m. on March 5, 2004, at the Robert R. Lester Training Center, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

CLEET requests that business entities affected by these proposed rule changes provide CLEET, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as labor, reporting, professional services or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Janet Ingram, at the above address, before the close of the comment period on March 5, 2004.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained by contacting Janet Ingram at CLEET, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma 73136, (405) 425-2758.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be issued and made available on February 2, 2004, at the CLEET offices listed above.

CONTACT PERSON:

Janet Ingram, Administrative Division Manager, (405) 425-2758

[OAR Docket #04-06; filed 1-7-04]

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

[OAR Docket #04-07]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

390:10-1-6. [AMENDED]

390:10-1-7. [AMENDED]

SUMMARY:

Amended sections would establish a required duration of out-of-state law enforcement employment to obtain Oklahoma peace officer certification by reciprocity; and would require CLEET to notify the District Attorney when a peace officer's certification has been suspended or revoked.

AUTHORITY:

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

COMMENT PERIOD:

Written and oral comments will be accepted February 2 to March 5, 2004 at: CLEET, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma 73136, Attn: Janet Ingram.

PUBLIC HEARING:

Public hearings will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door. The public hearing will be held at 10:00 a.m. on March 5, 2004, at the Robert R. Lester Training Center, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

CLEET requests that business entities affected by these proposed rule changes provide CLEET, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as labor, reporting, professional services or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Janet Ingram, at the above address, before the close of the comment period on March 5, 2004.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained by contacting Janet Ingram at CLEET, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma 73136, (405) 425-2758.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be issued and made available on February 2, 2004, at the CLEET offices listed above.

Notices of Rulemaking Intent

CONTACT PERSON:

Janet Ingram, Administrative Division Manager, (405) 425-2758

[OAR Docket #04-07; filed 1-7-04]

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

[OAR Docket #04-08]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Basic Academy Programs

390:15-1-6. [AMENDED]

390:15-1-11. [AMENDED]

SUMMARY:

The proposed amendments would remove provisions of the rules relating to mandatory physical assessments for participation in the Basic Academy; would allow for dismissal from the academy if a student refuses to submit to testing for determination of whether the student is under the influence of drugs or alcohol; and would allow for removal from participation in the academy of a student who appears to be impaired by prescription medications or substances.

AUTHORITY:

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

COMMENT PERIOD:

Written and oral comments will be accepted February 2 to March 5, 2004 at: CLEET, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma 73136, Attn: Janet Ingram.

PUBLIC HEARING:

Public hearings will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door. The public hearing will be held at 10:00 a.m. on March 5, 2004, at the Robert R. Lester Training Center, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

CLEET requests that business entities affected by these proposed rule changes provide CLEET, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as labor, reporting, professional services or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this

information in writing to Janet Ingram, at the above address, before the close of the comment period on March 5, 2004.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained by contacting Janet Ingram at CLEET, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma 73136, (405) 425-2758.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be issued and made available on February 2, 2004, at the CLEET offices listed above.

CONTACT PERSON:

Janet Ingram, Administrative Division Manager, (405) 425-2758

[OAR Docket #04-08; filed 1-7-04]

**TITLE 390. COUNCIL ON LAW
ENFORCEMENT EDUCATION AND
TRAINING
CHAPTER 30. CDS DETECTOR DOG
CERTIFICATION**

[OAR Docket #04-09]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

390:30-1-5. [AMENDED]

390:30-1-7. [AMENDED]

SUMMARY:

Amended sections would remove reference to the U.S. Customs Service as the standard criteria for conducting trials and testing of CDS detector dog teams.

AUTHORITY:

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

COMMENT PERIOD:

Written and oral comments will be accepted February 2 to March 5, 2004 at: CLEET, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma 73136, Attn: Janet Ingram.

PUBLIC HEARING:

Public hearings will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door. The public hearing will be held at 10:00 a.m. on March 5, 2004, at the Robert R. Lester Training Center, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

CLEET requests that business entities affected by these proposed rule changes provide CLEET, within the comment period, in dollar amounts if possible, the increase in the level

of direct costs such as fees, and indirect costs such as labor, reporting, professional services or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Janet Ingram, at the above address, before the close of the comment period on March 5, 2004.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained by contacting Janet Ingram at CLEET, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma 73136, (405) 425-2758.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be issued and made available on February 2, 2004, at the CLEET offices listed above.

CONTACT PERSON:

Janet Ingram, Administrative Division Manager, (405) 425-2758

[OAR Docket #04-09; filed 1-7-04]

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

[OAR Docket #04-10]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. License Requirements

390:35-5-2. [AMENDED]

Subchapter 13. Use of Firearms

390:35-13-2. [AMENDED]

SUMMARY:

Amended sections would increase the number of continuing education hours required annually for private investigators from four (4) hours per year to eight (8) hours per year; and would clarify language making a licensee responsible for submitting a written report of a firearm discharge to CLEET.

AUTHORITY:

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

COMMENT PERIOD:

Written and oral comments will be accepted February 2 to March 5, 2004 at: CLEET, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma 73136, Attn: Janet Ingram.

PUBLIC HEARING:

Public hearings will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in

at the door. The public hearing will be held at 10:00 a.m. on March 5, 2004, at the Robert R. Lester Training Center, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

CLEET requests that business entities affected by these proposed rule changes provide CLEET, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as labor, reporting, professional services or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Janet Ingram, at the above address, before the close of the comment period on March 5, 2004.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained by contacting Janet Ingram at CLEET, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma 73136, (405) 425-2758.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be issued and made available on February 2, 2004, at the CLEET offices listed above.

CONTACT PERSON:

Janet Ingram, Administrative Division Manager, (405) 425-2758

[OAR Docket #04-10; filed 1-7-04]

**TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 45. RETIRED PEACE OFFICER FIREARMS PERMIT**

[OAR Docket #04-11]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

390:45-1-3 [AMENDED]

SUMMARY:

Amended section includes "fire marshal inspector" in the definition of "Retired" to comply with the legislative change made in 2003 Session Laws, c.54.

AUTHORITY:

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

COMMENT PERIOD:

Written and oral comments will be accepted February 2 to March 5, 2004 at: CLEET, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma 73136, Attn: Janet Ingram.

Notices of Rulemaking Intent

PUBLIC HEARING:

Public hearings will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door. The public hearing will be held at 10:00 a.m. on March 5, 2004, at the Robert R. Lester Training Center, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

CLEET requests that business entities affected by these proposed rule changes provide CLEET, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as labor, reporting, professional services or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Janet Ingram, at the above address, before the close of the comment period on March 5, 2004.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained by contacting Janet Ingram at CLEET, 3530 N. Martin Luther King Avenue, Oklahoma City, Oklahoma 73136, (405) 425-2758.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be issued and made available on February 2, 2004, at the CLEET offices listed above.

CONTACT PERSON:

Janet Ingram, Administrative Division Manager, (405) 425-2758

[OAR Docket #04-11; filed 1-7-04]

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

[OAR Docket #04-13]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Subchapter 3. Pharmacists
535:10-3-1.2. [AMENDED]

SUMMARY:

The rule adds charging for a name brand when a compounded product is dispensed in 535:10-3-1.2 (6). They add use or abuse of an illegal CDS substance or a positive drug screen for the same to violations of professional practice in 535:10-3-1.2 (22).

This rule changes makes it clear that charging a brand name price for a compounded drug and add an illegal CDS positive drug screen as a violation of pharmacist professional conduct.

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.9, 353.11, 353.16A, 353.18, 353.20, 353.22, and 353.24 - 353.26 and 364.

COMMENT PERIOD:

Written and oral comments will be accepted until March 10, 2004, at 4:00 p.m. at the Board office at 4545 N Lincoln, Suite 112, Oklahoma City, OK 73105-3488.

PUBLIC HEARING:

March 11, 2004, at 9:00 a.m. in our office at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Please send written request to appear before the Board in advance of hearing, so that we may allot time fairly and conduct an orderly meeting.

AFFECT ON SMALL BUSINESS:

All Board rules affect small businesses dealing with prescription drugs such as pharmacies, hospitals, wholesalers, manufacturers, medical gas suppliers, medical gas distributors and packagers.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

COPIES OF PROPOSED RULES:

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Ste 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available on or after February 2, 2004 at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

CONTACT PERSON:

Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 N Lincoln Blvd, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405)521-3758.

[OAR Docket #04-13; filed 1-8-04]

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

[OAR Docket #04-14]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

- Subchapter 3. Pharmacies
 - 535:15-3-2. [AMENDED]
 - 535:15-3-2.1. [AMENDED]
 - 535:15-3-21. [AMENDED]
- Subchapter 5. Hospital Pharmacies
 - 535:15-5-1. [AMENDED]
 - 535:15-5-2. [AMENDED]
 - 535:15-5-7. [AMENDED]
 - 535:15-5-7.3. [AMENDED]
 - 535:15-5-7.4. [AMENDED]
 - 535:15-5-7.5. [AMENDED]
- Subchapter 13. Pharmacy Technicians and Supportive Personnel
 - 535:15-13-1. [AMENDED]
 - 535:15-13-3. [AMENDED]
 - 535:15-13-4. [AMENDED]
 - 535:15-13-5. [AMENDED]
 - 535:15-13-6. [AMENDED]
 - 535:15-13-7. [AMENDED]
 - 535:15-13-8. [AMENDED]
 - 535:15-13-9. [AMENDED]
 - 535:15-13-10. [AMENDED]
 - 535:15-13-12. [AMENDED]
 - 535:15-13-13. [AMENDED]

SUMMARY:

The revision in 535:15-3-2 adds auxiliary support personnel to the identification requirement and requires the pharmacy to ensure an adequate number of qualified pharmacists and supportive personnel for the size and scope of services are provided by the pharmacy. Rule 535:15-3-2.1 requires pharmacies to dispense at a safe rate. The 535:15-3-21 adds partial fill records to the section title and Schedule II partials to the logbook or file alternate procedure.

The emergency rules in 535:15-5-1 through 535:15-13-13 are added to permanent rules. The 535:15-5-1 and 535:15-13-1 purpose sections add that these rules implement 59 O.S. Section 353.29. The rule in 535:15-5-2 and 535:15-13-3 adds to definitions auxiliary supportive personnel, adds to the pharmacy technician definition, and modifies the supportive personnel definition. Rule 535:15-5-7, 535:15-5-7.3, 535:15-5-7.4 and 535:15-5-7.5 add the emergency rule revisions regarding supportive personnel to permanent rules. Rule 535:15-13-4 changes the section title and adds 535:25 to the applicant requirements. Rule 535:15-13-5 clarifies that Oklahoma pharmacy technicians may only work in an Oklahoma pharmacy when supervised by an Oklahoma pharmacist. Rule 535:15-13-6 cleans up supportive and auxiliary supportive language. Amended rule 535:15-13-7 clarifies who may receive oral prescriptions. The rule revision in 535:15-13-8 clarifies technician annual permit requirements and qualifications. 535:15-13-9 corrects the section title while 535:15-13-10, 535:15-13-12 and 535:15-13-13 clarify the rules and make permanent emergency rules for supportive personnel.

The grammar corrections and cite cleanup make the rules clear. The Board needs to make the emergency technician rules permanent.

The training, equipment, and systems as well as number of patients and prescriptions filled in a pharmacy varies from pharmacy to pharmacy or even from day to day, so there can be no one right level of staffing. However, there are specific instances where inadequate levels of staffing have led to unsafe practices and even errors including misfills in pharmacies.

These rules will allow the Board the flexibility to work with pharmacies where staffing and/or fill rate is contributing to errors.

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.

COMMENT PERIOD:

Written and oral comments will be accepted until March 10, 2004 at 4:00 p.m. at the Board office at 4545 N Lincoln, Ste 112, Oklahoma City, OK 73105-3488.

PUBLIC HEARING:

March 11, 2004, at 9:00 a.m. in our office at 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Please send written request to appear before the Board in advance of hearing, so that we may allot time fairly and conduct an orderly meeting.

AFFECT ON SMALL BUSINESS:

All Board rules affect small businesses dealing with prescription drugs such as pharmacies, hospitals, wholesalers, manufacturers, medical gas suppliers, medical gas distributors and packagers.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

COPIES OF PROPOSED RULES:

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Ste 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available on February 2, 2004 at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

CONTACT PERSON:

Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 N. Lincoln Boulevard, Suite 112,

Notices of Rulemaking Intent

Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

[OAR Docket #04-14; filed 1-8-04]

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

[OAR Docket #04-15]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Subchapter 9. Medical Gas Suppliers and Distributors
535:20-9-2 [AMENDED]
535:20-9-3 [AMENDED]
535:20-9-4 [AMENDED]

SUMMARY:

The revision in 535:20-9-2 clarifies that a drug order means a prescription drug order. The 535:20-9-3 and 535:20-9-4 rule describes minimum qualifications to includes the same as those in 535:20-7-6 and cleans up cites to 535:20-7-7.3 and 535:20-7-7.4. They describe in plain language the requirements for maintaining and storing prescription records for medical gas suppliers. Rule 535:20-9-4 additionally describes the records a medical gas distributor must maintain as well as prescription records.

Medical gas supplier and medical gas distributor rules referred to wholesaler rules that had been moved to a new cite, these corrected cites match them up again.

Medical gas suppliers and medical gas distributors need clear guidance on what is required regarding maintaining of prescription records since their staff are less likely to be aware of federal and state prescription drug law and rules.

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.

COMMENT PERIOD:

Written and oral comments will be accepted until March 10, 2004 at 4:00 p.m. at the Board office at 4545 N Lincoln, Ste 112, Oklahoma City, OK 73105-3488.

PUBLIC HEARING:

March 11, 2004, at 9:00 a.m. in our office at 4545 N. Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Please send written request to appear before the Board in advance of hearing, so that we may allot time fairly and conduct an orderly meeting.

AFFECT ON SMALL BUSINESS:

All Board rules affect small businesses dealing with prescription drugs such as pharmacies, hospitals, wholesalers, manufacturers, medical gas suppliers, medical gas distributors and packagers.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

COPIES OF PROPOSED RULES:

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Ste 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available on or after February 2, 2004 at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

CONTACT PERSON:

Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 N. Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

[OAR Docket #04-15; filed 1-8-04]

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

[OAR Docket #04-16]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Subchapter 3. Applicants, Registrants, and Applications
535:25-3-3 [AMENDED]
Subchapter 7. Rules of Registrant Conduct
535:25-7-3 [AMENDED]
Subchapter 9. Violations of the Rules of Registrant Conduct
535:25-9-3 [AMENDED]

SUMMARY:

The revision in 535:25-3-3 adds deferred sentence or deferred prosecution, abuse of alcohol, use of illegal or habit forming drugs, practicing without reasonable skill to consideration factors for licensure applicants. They add to registrant conduct requirements in 535:25-7-3 and correct punctuation in 535:25-9-3.

These rules allow the board to consider additional safety factors in licensure decisions. They allow the Board to take corrective action for violations of conduct and fix a punctuation error.

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A,

353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.

COMMENT PERIOD:

Written and oral comments will be accepted until March 10, 2004, at 4:00 p.m. at the Board office at 4545 N Lincoln, Ste 112, Oklahoma City, OK 73105-3488.

PUBLIC HEARING:

March 11, 2004, at 9:00 a.m. in our office at 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Please send written request to appear before the Board in advance of hearing, so that we may allot time fairly and conduct an orderly meeting.

AFFECT ON SMALL BUSINESS

All Board rules affect small businesses dealing with prescription drugs such as pharmacies, hospitals, wholesalers, manufacturers, medical gas suppliers, medical gas distributors and packagers.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

COPIES OF PROPOSED RULES:

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Ste 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available on or after February 2, 2004 at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

CONTACT PERSON:

Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

[OAR Docket #04-16; filed 1-8-04]

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

[OAR Docket #04-17]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Chapter 10. Requirements, Standards and Procedures [AMENDED]

SUMMARY:

Permanent revisions to the Rules and Regulations are proposed as described herein. These proposed amendments affect real estate licensees, school entities and instructors, and the general public, and if promulgated will have an effective date of July 1, 2004. Proposed revisions are summarized as follows:

605:10-3-7. Provisional sales associate postlicense education requirement Adding language to allow a provisional sales associate who has received orders for active military service to request an extension of time to complete the postlicense education requirement if the request is received in writing prior to the expiration of the license. All requests must be accompanied by a copy of the military orders for active military service. The extension of time shall be one (1) year from the date of return from active military service. In conformance with §858-309 during active military service, any licensee shall not be required to pay the fees but shall request the inactive status prior to each term for which the license is to be issued.

605:10-9-4. Advertising Adding language to require that a franchise name may be part of a trade name but shall not be the complete trade name.

Adding language to require that no real estate advertisement shall contain anything in regard to an unlicensed person, unless the advertisement also indicates that the person is unlicensed.

The Commission may consider whether or not Rule 605:10-9-4 (a)(b)(3)(D,) team names should be removed. The rule requires in all advertising, that the associate must include the name under which the broker operates, in such a way that the broker's reference is prominent, conspicuous and easily identifiable by the public. If allowed by a broker, an associate may include in the advertisement a team name so long as all of the names of all of the associate team members are included near the team name reference, and which cannot be construed as that of a company name; however, in the case of personal business cards, inclusion of all associate team members names shall not be required.

605:10-13-1. Duty to account; broker The Commission is going to consider amending language to require that a broker shall maintain all records and files in their "original format" for a minimum of five (5) years after consummation or termination of a transaction. In the case of trust account records the five years shall commence with the date of disbursement of funds. The Commission is also going to consider allowing brokers the option of having their records digitally imaged, and if allowed, will set minimum standards for digital imaging.

605:10-15-4. Residential Property Condition Disclosure Act forms This is currently an emergency rule. Amending language to change the date to November 1, 2003, which is the latest date the Residential Property Condition Disclosure Statement form was amended by emergency rule and is also the effective date of amendments to Title 60.

Appendix A. Residential Property Condition Disclosure Statement Form This is currently an emergency rule. Adding information for the seller to provide regarding whether or

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not the seller is aware of existence of prior manufacturing of methamphetamine, whether or not the property has been inspected for mold and if mold has been remediated from the property. In 2003, House Bill 1319 was passed, which required the Disclosure form to be amended in regard to the existence of prior manufacturing of methamphetamine.

AUTHORITY:

Oklahoma Real Estate Commission; 59 O.S., Section 858-208

COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so before 4:30 p.m. on March 5, 2004 at the following address:

Oklahoma Real Estate Commission
Shepherd Mall
2401 N. W. 23rd St., Suite 18
Oklahoma City, Oklahoma 73107-2431

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 10 minutes to speak and must sign in at the door. Date, time and place of public hearing:

March 10, 2004 - 10:30 a.m.
Shepherd Mall
2401 NW 23 St., Suite 18
Oklahoma City, Oklahoma 73107-2431

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by the public between 8:00 a.m. and 4:30 p.m., Monday through Friday, (with the exception of legal holidays) at the following location:

Oklahoma Real Estate Commission
2401 N. W. 23rd St., Suite 18
Oklahoma City, Oklahoma 73107-2431

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303 (D), a rule impact statement will be prepared and available on February 17, 2004 at the Oklahoma Real Estate Commission (address and phone number listed above).

CONTACT PERSON:

Kathy White, Project Officer - (405) 521-3387

[OAR Docket #04-17; filed 1-8-04]

TITLE 655. SECRETARY OF STATE CHAPTER 10. ADMINISTRATIVE RULES ON RULEMAKING

[OAR Docket #04-26]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions
655:10-1-1 [AMENDED]
655:10-1-2 [AMENDED]
Subchapter 7. Preparation of Documents
Part 1. General Provisions
655:10-7-1 [AMENDED]
655:10-7-2 [AMENDED]
655:10-7-6 [AMENDED]
Part 7. Miscellaneous Documents
655:10-7-45 [REVOKED]
Part 9. Document Scope
655:10-7-50 [AMENDED]
655:10-7-53 [REVOKED]
Subchapter 9. Submission of Documents
655:10-9-1 [AMENDED]
655:10-9-3 [AMENDED]
Subchapter 11. Review of Documents
655:10-11-1 [AMENDED]
Subchapter 13. Correction of Errors
655:10-13-2 [AMENDED]
655:10-13-3 [AMENDED]
Subchapter 15. The Oklahoma Register
655:10-15-1 [AMENDED]
655:10-15-2 [AMENDED]
655:10-15-5 [AMENDED]
Subchapter 19. Public Inspection and Copies of Documents
655:10-19-1 [AMENDED]

SUMMARY:

The following revisions to Administrative Rules on Rulemaking [ARR] are being proposed:

All requirements and references related to publishing local project funding contract announcements are being deleted as obsolete. Because EO 1995-26 was not continued by Governor Henry last year in EO 2003-7, local project funding contract announcements are no longer required to be published in the Oklahoma Register.

The provision establishing annual serialization of the Oklahoma Register is being revised so that "Register volumes" match "Code/Supplement years." Instead of running from November 1 to October 31, Register volumes would begin and end each year based on the closing date established by statute [75:256(B)(1)] for the annual Code/Supplement.

The provision stating that a "schedule of filing deadlines" is published in each issue of the Register is being replaced with a provision identifying the current practice of publishing a "schedule of publication dates and filing deadlines" on the Secretary of State's website.

A procedure is being added for handling open records requests for copies of documents that have been filed with the Office of Administrative Rules but have not yet been published in the Register as "official."

Provisions related to the distribution of free copies of the Code/Supplement to county clerks, as set forth in the APA [75 O.S., Section 257.1(B)], are being updated to reflect current methods of implementation. The statute states that

county clerks are "entitled to receive" a copy of each year's Code/Supplement, and since the Code/Supplement is now available on cdrom as well as in print, county clerks are now being given the option each year of either receiving the Code/Supplement in print or on cdrom, or waiving their right to receive a free copy.

AUTHORITY:

Secretary of State; 75 O.S., §§ 250 et seq.

COMMENT PERIOD:

Persons wishing to submit written comments must do so by March 3, 2004 at 5:00 p.m. to Beverly Roundtree at 2401 N. Lincoln Boulevard, Will Rogers Building, Suite 220, P. O. Box 53390, Oklahoma City, Oklahoma 73152-3390.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views at 9:00 a.m. on Wednesday, March 3, 2004 at 2401 N. Lincoln Boulevard, Will Rogers Building, Suite 214, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Secretary of State, Office of Administrative Rules, 2401 N. Lincoln Boulevard, Will Rogers Building, Suite 220, P. O. Box 53390, Oklahoma City, Oklahoma 73152-3390.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303 (D), a rule impact statement has been prepared and is available from Beverly Roundtree at the above address.

CONTACT PERSON:

Peggy Coe, Managing Editor, Office of Administrative Rules, (405) 521-4911.

[OAR Docket #04-26; filed 1-9-04]

**TITLE 655. SECRETARY OF STATE
CHAPTER 30. ADDRESS
CONFIDENTIALITY PROGRAM**

[OAR Docket #04-03]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 30. Address Confidentiality Program [NEW]

SUMMARY:

The proposed rules establish procedures for implementing the Address Confidentiality Program created pursuant to 22 O.S., § 60.14.

AUTHORITY:

Secretary of State; 22 O.S., § 60.14(I)

COMMENT PERIOD:

Written and oral comments will be accepted February 2, 2004 through March 3, 2004 at the Office of the Secretary of

State, 2401 N. Lincoln Boulevard, 220 Will Rogers Building, P.O. Box 53390, Oklahoma City, OK 73152-3390, Attn: Brenda Coffman

PUBLIC HEARING:

A public hearing will be held at 9:00 a.m. on Wednesday, March 3, 2004 at the Will Rogers Building, 2401 N. Lincoln Boulevard, Room 214, Oklahoma City, OK.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Secretary of State, Office of Administrative Rules, 2401 N. Lincoln Boulevard, 220 Will Rogers Building, Oklahoma City, OK 73105.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a rule impact statement will be prepared and available from the Secretary of State at the above address on February 17, 2004.

CONTACT PERSON:

Brenda Coffman, Address Confidentiality Program Director, (405) 557-1700.

[OAR Docket #04-03; filed 1-7-04]

**TITLE 675. STATE BOARD OF LICENSED
SOCIAL WORKERS
CHAPTER 1. ADMINISTRATIVE
OPERATIONS**

[OAR Docket #03-3444]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- 675:1-1-1.1. Definitions [NEW]
- 675:1-1-3. Makeup of Board [AMENDED]
- 675:1-1-4. Officers of the Board [AMENDED]
- 675:1-1-5. Executive Secretary [REVOKED]
- 675:1-1-8. Meeting dates [AMENDED]
- 675:1-1-9. Fee schedule [NEW]

SUMMARY:

Amendments to Chapter 1 are being made to comply with changes in the Social Workers Licensing Act that became effective November 1, 2003. The fees for licensure, renewal and administrative costs are being increased.

AUTHORITY:

Title 59 O.S., Section 1250.1-1256, State Board of Licensed Social Workers

COMMENT PERIOD:

The comment period will run from February 2, 2004 to March 3, 2004. Written comments may be sent to the office of the Board, PO Box 18256, Oklahoma City, OK 73154-0256.

Notices of Rulemaking Intent

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 5, 2004, 10:00 a.m. at the office of the Board of Medical Licensure and Supervision, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma. Written notice of intent to make oral comment must be received by this office no later than March 3, 2004.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained at the office of the Board, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and available after February 2, 2004 at the office of the Board, 5104 North Francis, Suite C, Oklahoma City, Oklahoma 73118.

CONTACT PERSON:

Jan Ewing, Deputy Director (405) 848-6841, ext. 104

[OAR Docket #03-3444; filed 12-30-03]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS CHAPTER 3. INDIVIDUAL PROCEEDINGS

[OAR Docket #03-3445]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

675:3-1-1. Purpose [NEW]

675:3-1-2. Definitions [NEW]

675:3-1-3. Complaint procedure [NEW]

675:3-1-4. Procedures for denials, revocations, suspensions [NEW]

SUMMARY:

This is a new Chapter that establishes the procedures used in the investigation of complaints, disciplinary hearings before the Board and Individual Proceedings.

AUTHORITY:

Title 59 O.S., Section 1250.1-1256, State Board of Licensed Social Workers

COMMENT PERIOD:

The comment period will run from February 2, 2004 to March 3, 2004. Written comments may be sent to the office of the Board, PO Box 18256, Oklahoma City, OK 73154-0256.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 5, 2004, 10:00 a.m. at the office of the Board of Medical Licensure and Supervision, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma. Written notice of intent to make oral comment must be received by this office no later than March 3, 2004.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained at the office of the Board, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and available after February 2, 2004 at the office of the Board, 5104 North Francis, Suite C, Oklahoma City, Oklahoma 73118.

CONTACT PERSON:

Jan Ewing, Deputy Director (405) 848-6841, ext. 104

[OAR Docket #03-3445; filed 12-30-03]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS CHAPTER 10. LICENSURE REQUIREMENTS

[OAR Docket #03-3446]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 10. Licensure Requirements [AMENDED]

SUMMARY:

Amendments to Chapter 10 are being made to comply with changes in the Social Workers Licensing Act that became effective November 1, 2003.

AUTHORITY:

Title 59 O.S., Section 1250.1-1256, State Board of Licensed Social Workers

COMMENT PERIOD:

The comment period will run from February 2, 2004 to March 3, 2004. Written comments may be sent to the office of the Board, PO Box 18256, Oklahoma City, OK 73154-0256.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 5, 2004, 10:00 a.m. at the office of the Board of Medical Licensure and Supervision, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma. Written notice of intent to make oral comment must be received by this office no later than March 3, 2004.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained at the office of the Board, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and available after February 2, 2004 at the office of the Board, 5104 North Francis, Suite C, Oklahoma City, Oklahoma 73118.

CONTACT PERSON:

Jan Ewing, Deputy Director (405) 848-6841, ext. 104

[OAR Docket #03-3446; filed 12-30-03]

**TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 12. GUIDELINES FOR SUPERVISION**

[OAR Docket #03-3447]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- 675:12-1-3.1. Supervision and the Licensed Clinical Social Worker [NEW]
- 675:12-1-3.2. Supervision and the Licensed Social Worker-Adm [NEW]
- 675:12-1-3.3. Supervision and the Licensed Masters Social Worker [NEW]
- 675:12-1-4. Supervision and specialty certification [AMENDED]
- 675:12-1-5. Supervision and specific licensure [REVOKED]
- 675:12-1-6. Minimum supervision expectations [AMENDED]
- 675:12-1-7. Requirements for Board Approved Supervisor [AMENDED]

SUMMARY:

The rules regarding supervision are being amended to comply with changes in the law that became effective November 1, 2003.

AUTHORITY:

Title 59 O.S., Section 1250.1-1256, State Board of Licensed Social Workers

COMMENT PERIOD:

The comment period will run from February 2, 2004 to March 3, 2004. Written comments may be sent to the office of the Board, PO Box 18256, Oklahoma City, OK 73154-0256.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 5, 2004, 10:00 a.m. at the office of the Board of Medical Licensure and Supervision, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma. Written notice of intent to make oral comment must be received by this office no later than March 3, 2004.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained at the office of the Board, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and available after February 2, 2004 at the office of the Board, 5104 North Francis, Suite C, Oklahoma City, Oklahoma 73118.

CONTACT PERSON:

Jan Ewing, Deputy Director (405) 848-6841, ext. 104

[OAR Docket #03-3447; filed 12-30-03]

**TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 15. GUIDELINES FOR CONTINUING EDUCATION**

[OAR Docket #03-3448]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- 675:15-1-2. Introduction [AMENDED]
- 675:15-1-2.1. Audit of continuing education [NEW]
- 675:15-1-3. Continuing education standards [AMENDED]
- 675:15-1-4. Content of continuing education learning activities [AMENDED]
- 675:15-1-5. Information to providers of continuing education [AMENDED]
- 675:15-1-6. Suggested criteria for accepting category I and II continuing education events [REVOKED]

SUMMARY:

Amendments to Chapter 15 are being made to comply with changes in the Social Workers Licensing Act that become effective November 1, 2003.

AUTHORITY:

Title 59 O.S., Section 1250.1-1256, State Board of Licensed Social Workers

COMMENT PERIOD:

The comment period will run from February 2, 2004 to March 3, 2004. Written comments may be sent to the office of the Board, PO Box 18256, Oklahoma City, OK 73154-0256.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 5, 2004, 10:00 a.m. at the office of the Board of Medical Licensure and Supervision, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma. Written notice of intent to make oral comment must be received by this office no later than March 3, 2004.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained at the office of the Board, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma.

Notices of Rulemaking Intent

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and available after February 2, 2004 at the office of the Board, 5104 North Francis, Suite C, Oklahoma City, Oklahoma 73118.

CONTACT PERSON:

Jan Ewing, Deputy Director (405) 848-6841, ext. 104

[OAR Docket #03-3448; filed 12-30-03]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 10. AD VALOREM

[OAR Docket #04-19]

RULEMAKING ACTION:

Notice of proposed **EMERGENCY and PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 10. Ad Valorem [AMENDED]

SUMMARY:

Pursuant to the authority set out in 68 O.S. § 1001.1, the Oklahoma Tax Commission shall promulgate rules to establish guidelines for the determination of properties rendered exempt from ad valorem taxes by payment of the "*in lieu*" gross production tax, as provided by 68 O.S. 1001(R) and (S).

AUTHORITY:

68 O.S. §§ 203, 1001.1; Oklahoma Tax Commission

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m., March 4, 2004, 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., March 5, 2004**, at the main offices of the Oklahoma Tax Commission, M. C. Connors Building, Room 1-24, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this rulemaking action is expected to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that 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 no later than February 17, 2004 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 #04-19; filed 1-9-04]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 50. INCOME

[OAR Docket #04-18]

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 50. Income [AMENDED]

SUMMARY:

The 2003 Legislature enacted statutory changes which require additions, revocations, and amendments to the existing rules. Additionally, other rule amendments are proposed to make clarifications of policy, to improve readability, to correct scrivener' errors, to update statutory citation, and to insure accurate references.

Section **710:50-3-40**, "*Husbands and wives*", has been amended to provide more filing flexibility for married taxpayers who file a joint federal return, where one spouse is non-resident (and non-military). The amendment is the result of a change in policy.

New Section **710:50-3-46**, addresses an *exception to* the instances where *electronic filing* will be required, and has been drafted to insure that individual taxpayers are aware that they may elect not to have a return filed electronically, even if their paid tax-preparer is statutorily required to do so.

New Section **710:50-3-54**, entitled, "*Income tax withholding for pass-through entities*" has been promulgated to implement the provisions of House Bill 1356 of the 49th Legislature, 1st Regular Session.

Several Sections within **Subchapter 11**, dealing with the *interception of taxpayer refunds*, have been amended for clarity and to improve readability.

Section 710:50-13-6, dealing with *payment of estimated tax*, has been amended to clarify procedures, at the recommendation of the Office of the General Counsel.

New Section 710:50-15-2, *Application of the Oklahoma Individual Income Tax to Native Americans*, was adopted in part through emergency rulemaking procedures, effective June 26, 2003. The amendments being promulgated in this rulemaking action are an effort to provide guidance to the public regarding the broad policies applicable to the income taxation of Native Americans, as reflected in case law and in the decisions of Commission.

Sections 710:50-15-55 and 710:50-17-51(11), dealing with *depletion*, have been amended to conform with Senate Bill 55, which extended the sunset date for the modification required of major oil companies claiming the Oklahoma depletion deduction.

Section 710:50-15-60, dealing with the *inventors assistance income exclusion*, has been amended only to add an internal cross-reference to the "investment/new jobs" credit.

Section 710:50-15-72, "*Credit for taxes paid other states*", has been amended to reflect a new form for use with this credit.

Section 710:50-15-74, entitled "*Credit for investment/new jobs*", has been amended to reflect the provisions of Senate Bill 440, which modified the carryover provisions of unused "investment/new jobs" credit.

Section 710:50-15-81, "*Credit for qualified clean-burning motor vehicle fuel property and qualified electric vehicle property*", has been amended to conform to the provisions of House Bill 1085, which modified the definition of "qualified electric vehicle property" to provide for a modified basis for the credit on vehicles which are also equipped with an internal combustion engine.

Section 710:50-15-93, "*Credit for Qualified Oklahoma Space Transportation Vehicle Providers*" has been added to implement the provisions of Senate Bill 55, which created an income tax credit for this class of taxpayers.

Section 710:50-19-1, "*Partnership return*", has been amended to conform to statute (68 O.S. § 2362) as to the manner of computing a tax base for partnership returns and to require electronic filing in certain instances.

AUTHORITY:

68 O.S., §§ 203, 2357.11(C)(2), 2357.30(C), 2357.31(D), 2358(D)(14)(c), 2367(3), 2368(D),(F),(H), and 2369; 74 O.S. §§ 5064.7(B), 5075(B), 5078(B)]

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m., March 11, 2004, 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., March 12, 2004**, 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** is expected to **adversely** impact small business, the Oklahoma Tax Commission (OTC) requests that 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 February 17, 2004, 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 #04-18; filed 1-9-04]

Submissions for Review

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

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

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #03-3434]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 9. Individual Procedures
35:1-9-16. [REVOKED]

SUBMITTED TO GOVERNOR:

December 22, 2003

SUBMITTED TO HOUSE:

December 22, 2003

SUBMITTED TO SENATE:

December 22, 2003

[OAR Docket #03-3434; filed 12-30-03]

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

[OAR Docket #03-3435]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 3. Fee Schedules
35:2-3-2.4. [AMENDED]

SUBMITTED TO GOVERNOR:

December 22, 2003

SUBMITTED TO HOUSE:

December 22, 2003

SUBMITTED TO SENATE:

December 22, 2003

[OAR Docket #03-3435; filed 12-30-03]

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

[OAR Docket #03-3436]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 3. Fee Schedules
35:2-3-6. [REVOKED]
35:2-3-7. [REVOKED]
35:2-3-12. through 35:2-3-16. [AMENDED]
35:2-3-18. [AMENDED]
35:2-3-22. [AMENDED]
35:2-3-26. [AMENDED]
35:2-3-27. [NEW]
35:2-3-28. [NEW]

SUBMITTED TO GOVERNOR:

December 22, 2003

SUBMITTED TO HOUSE:

December 22, 2003

SUBMITTED TO SENATE:

December 22, 2003

[OAR Docket #03-3436; filed 12-30-03]

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

[OAR Docket #03-3437]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 3. Fee Schedules
35:2-3-11. [AMENDED]

SUBMITTED TO GOVERNOR:

December 22, 2003

SUBMITTED TO HOUSE:

December 22, 2003

SUBMITTED TO SENATE:

December 22, 2003

[OAR Docket #03-3437; filed 12-30-03]

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

[OAR Docket #03-3439]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 3. Animal Health Reportable Diseases

Submissions for Review

35:15-3-4. [NEW]

SUBMITTED TO GOVERNOR:

December 22, 2003

SUBMITTED TO HOUSE:

December 22, 2003

SUBMITTED TO SENATE:

December 22, 2003

[OAR Docket #03-3439; filed 12-30-03]

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

[OAR Docket #03-3440]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 47. Chronic Wasting Disease (CWD) in Cervidae

Part 3. Herd Certification Standards

35:15-47-6. [AMENDED]

Part 5. Disposition of Positive and Trace Herds

35:15-47-12. through 35:15-47-14. [AMENDED]

Part 7. Interstate Movement Requirements

35:15-47-18. [AMENDED]

35:15-47-19. [AMENDED]

SUBMITTED TO GOVERNOR:

December 22, 2003

SUBMITTED TO HOUSE:

December 22, 2003

SUBMITTED TO SENATE:

December 22, 2003

[OAR Docket #03-3440; filed 12-30-03]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 20. FORESTRY**

[OAR Docket #03-3438]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 17. Forest Resources Development Program

Part 3. Cost-Share Program Guidelines

35:20-17-7. [AMENDED]

35:20-17-8. [AMENDED]

35:20-17-14. [AMENDED]

35:20-17-15. [AMENDED]

35:20-17-18. [AMENDED]

SUBMITTED TO GOVERNOR:

December 22, 2003

SUBMITTED TO HOUSE:

December 22, 2003

SUBMITTED TO SENATE:

December 22, 2003

[OAR Docket #03-3438; filed 12-30-03]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 30. PLANT INDUSTRY**

[OAR Docket #03-3441]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 17. Combined Pesticide

Part 9. Minimum Standards for Contracts and Keeping of Records

35:30-17-20. [AMENDED]

35:30-17-21. [AMENDED]

Part 10. Minimum Standards for Pesticides

35:30-17-22.2. [AMENDED]

Part 11. Standards for Application of Pesticide

35:30-17-24. [AMENDED]

Part 13. Restricted Areas for the Application of Hormone Type Pesticides

35:30-17-35. [AMENDED]

Part 19. Minimum Fumigation Standards for Structures

35:30-17-83. [AMENDED]

SUBMITTED TO GOVERNOR:

December 22, 2003

SUBMITTED TO HOUSE:

December 22, 2003

SUBMITTED TO SENATE:

December 22, 2003

[OAR Docket #03-3441; filed 12-30-03]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 30. PLANT INDUSTRY**

[OAR Docket #03-3442]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 27. Feed

Part 1. Commercial Feed

35:30-27-11. [AMENDED]

SUBMITTED TO GOVERNOR:

December 22, 2003

SUBMITTED TO HOUSE:

December 22, 2003

SUBMITTED TO SENATE:

December 22, 2003

[OAR Docket #03-3442; filed 12-30-03]

**TITLE 35. OKLAHOMA DEPARTMENT OF
AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 30. PLANT INDUSTRY**

[OAR Docket #03-3443]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 29. Fertilizer

Part 1. General

35:30-29-23. [NEW]

Part 3. Liquid, Dry, and Anhydrous Ammonia

35:30-29-34. [AMENDED]

Part 5. Licenses and Complaints

35:30-29-51. [AMENDED]

SUBMITTED TO GOVERNOR:

December 22, 2003

SUBMITTED TO HOUSE:

December 22, 2003

SUBMITTED TO SENATE:

December 22, 2003

[OAR Docket #03-3443; filed 12-30-03]

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

[OAR Docket #03-3423]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 5. Due Process

210:1-5-8. [AMENDED]

SUBMITTED TO GOVERNOR:

December 29, 2003

SUBMITTED TO HOUSE:

December 29, 2003

SUBMITTED TO SENATE:

December 29, 2003

[OAR Docket #03-3423; filed 12-30-03]

**TITLE 210. STATE DEPARTMENT OF
EDUCATION
CHAPTER 10. SCHOOL ADMINISTRATION
AND INSTRUCTIONAL SERVICES**

[OAR Docket #03-3424]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 13. Student Assessment

210:10-13-2. [AMENDED]

210:10-13-4. [AMENDED]

210:10-13-11. [AMENDED]

210:10-13-13. [REVOKED]

210:10-13-14. [REVOKED]

210:10-13-18. [NEW]

SUBMITTED TO GOVERNOR:

December 29, 2003

SUBMITTED TO HOUSE:

December 29, 2003

SUBMITTED TO SENATE:

December 29, 2003

[OAR Docket #03-3424; filed 12-30-03]

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

[OAR Docket #03-3425]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 29. Elementary and Secondary Education Act
[ESEA] Federal Program [NEW]

210:15-29-1. [NEW]

210:15-29-2. [NEW]

SUBMITTED TO GOVERNOR:

December 29, 2003

SUBMITTED TO HOUSE:

December 29, 2003

SUBMITTED TO SENATE:

December 29, 2003

[OAR Docket #03-3425; filed 12-30-03]

Submissions for Review

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

[OAR Docket #03-3426]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 3. Priority Academic Student Skills

Part 7. Mathematics

210:15-3-45. [AMENDED]

SUBMITTED TO GOVERNOR:

December 29, 2003

SUBMITTED TO HOUSE:

December 29, 2003

SUBMITTED TO SENATE:

December 29, 2003

[OAR Docket #03-3426; filed 12-30-03]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #03-3421]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 9. Professional Standards: Teacher Education
and Certification

Part 9. Teacher Certification

210:20-9-91. [AMENDED]

SUBMITTED TO GOVERNOR:

December 29, 2003

SUBMITTED TO HOUSE:

December 29, 2003

SUBMITTED TO SENATE:

December 29, 2003

[OAR Docket #03-3421; filed 12-30-03]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #03-3427]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 9. Professional Standards: Teacher Education
and Certification

Part 17. Full (Subject Matter) Competencies for Licensure
and Certification

210:20-9-172. [AMENDED]

SUBMITTED TO GOVERNOR:

December 29, 2003

SUBMITTED TO HOUSE:

December 29, 2003

SUBMITTED TO SENATE:

December 29, 2003

[OAR Docket #03-3427; filed 12-30-03]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 25. FINANCE

[OAR Docket #03-3428]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 3. Funding Criteria

210:25-3-4. [AMENDED]

SUBMITTED TO GOVERNOR:

December 29, 2003

SUBMITTED TO HOUSE:

December 29, 2003

SUBMITTED TO SENATE:

December 29, 2003

[OAR Docket #03-3428; filed 12-30-03]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 25. FINANCE

[OAR Docket #03-3429]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 5. Budgeting and Business Management

Part 1. Implementation

210:25-5-4. [AMENDED]

SUBMITTED TO GOVERNOR:

December 29, 2003

SUBMITTED TO HOUSE:

December 29, 2003

SUBMITTED TO SENATE:

December 29, 2003

[OAR Docket #03-3429; filed 12-30-03]

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

[OAR Docket #03-3422]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 9. Additional Standards for Secondary Schools.

Part 7. Standard IV: Curriculum, Instruction, Assessment
and Climate

210:35-9-31. [AMENDED]

SUBMITTED TO GOVERNOR:

December 29, 2003

SUBMITTED TO HOUSE:

December 29, 2003

SUBMITTED TO SENATE:

December 29, 2003

[OAR Docket #03-3422; filed 12-30-03]

Gubernatorial Approvals

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

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

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

[OAR Docket #03-3432]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Fee Schedules

35:2-3-3. [AMENDED]

GUBERNATORIAL APPROVAL:

December 19, 2003

[OAR Docket #03-3432; filed 12-30-03]

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

[OAR Docket #03-3433]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 11. Importation of Livestock, Poultry, and Pets

Part 11. Poultry and Other Avian Species [NEW]

35:15-11-41. [NEW]

GUBERNATORIAL APPROVAL:

December 19, 2003

[OAR Docket #03-3433; filed 12-30-03]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE CHAPTER 85. EMERGENCY SHELTER GRANT PROGRAM

[OAR Docket #04-01]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

150:85-1-6. [AMENDED]

150:85-1-7. [AMENDED]

150:85-1-8. [AMENDED]

150:85-1-9. [AMENDED]

150:85-1-10. [AMENDED]

150:85-1-12. [AMENDED]

GUBERNATORIAL APPROVAL:

December 19, 2003

[OAR Docket #04-01; filed 1-5-04]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE CHAPTER 90. COMMUNITY SERVICES BLOCK GRANT PROGRAM

[OAR Docket #04-02]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

150:90-1-7. [AMENDED]

150:90-1-9. [AMENDED]

GUBERNATORIAL APPROVAL:

December 19, 2003

[OAR Docket #04-02; filed 1-5-04]

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 210. STATE DEPARTMENT OF EDUCATION CHAPTER 1. STATE BOARD OF EDUCATION

[OAR Docket #03-3430]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Due Process
210:1-5-6. [AMENDED]

AUTHORITY:

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

DATES:

Adoption:

November 20, 2003

Approved by Governor:

December 19, 2003

Effective:

Immediately upon Governor's approval

Expiration:

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

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The proposed change will allow the Board Chairperson to designate a person to sign verification on Complaints for certificate revocation when the Chairperson is not immediately available. There has been an increase in the number of Complaints for certificate revocations over the last several years and, as a result, more Complaints are presented to the Board.

ANALYSIS:

The change is of compelling public interest due to the increased numbers of Complaints which must be filed and presented to the Board and the change is needed to streamline the process to avoid possible delay.

CONTACT PERSON:

Valerie Payne, 405-521-3308

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

SUBCHAPTER 5. DUE PROCESS

210:1-5-6. Revocation of certificates

The rules and regulations of the State Board of Education governing the revocation of certificates apply to the following: superintendent of schools, principals, supervisors, librarians, school nurses, school bus drivers, visiting teachers, classroom teachers and other personnel performing instructional, administrative and supervisory services in the public schools.

(1) **Grounds for revocation.** A certificate shall be revoked only for a willful violation of a rule or regulation of the State Board of Education, or of any federal or state law, or for other proper cause. [70-3-104] It shall be a violation of State Board of Education rules and regulations for any person holding a valid teaching certificate to be aware of and fail to report, or knowingly participate in any activity deemed illegal while participating in job-related activities of student organizations, athletic and scholastic competitions, fairs, stock shows, field trips, or any other activity related to the instructional program. Violation of this regulation can result in recommendation of revocation of the teaching certificate, or such other penalty, as may be determined after due process by the State Board of Education.

(2) **Right to hearing on certificate revocation.** No certificate shall be revoked until a hearing has been held by the State Board of Education. The Board may utilize a hearing officer to conduct the hearing. If utilized, the hearing officer shall be appointed by the Chairperson of the Board. At least twenty (20) days before the hearing the complaint giving rise to the hearing shall be filed with the Chairperson of the Board, showing grounds or reasons for revocation of the certificate. The complaint shall be in writing, and shall be signed by the complaining party, and the chairperson or chairperson's designee.

(3) **Filing of complaint.** In an individual proceeding, there shall be filed a complaint containing a statement of the matters asserted setting forth the relief requested, and the facts alleged to give rise to the right to the relief, and naming the persons against whom relief is sought.

(4) **Informal disposition.** Informal disposition of any complaint may be made by stipulation, agreed settlement, consent order, or default. Written notice signed by each party or counsel representatives shall be delivered to the Secretary of the State Board of Education prior to the time of the scheduled hearing.

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(5) **Notice to parties.** Whenever such a charge or complaint is filed with the Chairperson of the State Board of Education, he or she shall send a copy thereof to the holder of the certificate by certified or registered mail, restricted delivery with return receipt requested. Notice of the time and place of the hearing and the name of the hearing officer (if applicable) shall be given by the Chairperson by certified or registered mail, restricted delivery with return receipt requested, to the holder of the certificate.

(6) **Attendance of witnesses.** If the complainant, or the holder of the certificate wants any person to attend the hearing and testify as a witness, he/she shall notify the Chairperson, State Board of Education within ten (10) days prior to the hearing, in writing, giving the name and address of the desired witness, and the Chairperson shall thereupon subpoena, by mail, the desired witness to attend. Every person testifying at a revocation hearing shall be sworn to tell the truth. The parties to the hearing shall exchange witness and exhibit lists no later than five (5) days prior to the hearing. The hearing shall be electronically recorded by the State Department of Education. A party to the hearing, upon request, shall be supplied a copy of the tape recording of the hearing. Any transcription cost shall be borne by the party requesting transcription. If a hearing officer is utilized, written recommended findings of fact and conclusions of law shall be prepared by the hearing officer after conclusion of the hearing and submitted to the parties and the State Board of Education. The parties shall have the opportunities set out in 75 O. S. Supp. 1997, § 311 before action is taken by the Board on the proposed findings of fact and conclusions of law. After the parties have been given notice and an opportunity to file exceptions, present briefs and oral arguments in accordance with 75 O.S. Supp. 1997, § 311, action shall be taken by the State Board of Education to accept, reject, or modify the proposed Findings and Conclusions of the hearing officer.

(7) **Issuance of subpoenas.** Subpoenas for the attendance of witnesses, or for the furnishing of information required by the Board, or for the production of evidence or records of any kind shall be issued by the Secretary of the Board at the direction of the Chairperson or upon order of the Board. In like manner, and for like purpose, subpoenas shall be issued by the Secretary at the request of any party to a proceeding before the Board for the attendance of witnesses or for the production of evidential materials at a hearing in such proceeding. The signature of the Secretary shall be sufficient authentication for any subpoena. Subpoenas shall be served in any manner prescribed for service of a subpoena in a civil action. [75-315]

(8) **Refusal to obey subpoena or to testify.** Upon the failure of any person to obey a subpoena, or upon the refusal of any witness to be sworn or make an affirmation or to answer a question put to her or him in the course of a hearing in any rule-making proceeding, proceeding for a declaratory ruling, or in an individual proceeding, or in any other authorized action of the Board, the Board as

soon as convenient shall consider the matter. By resolution, it may direct the institution of appropriate judicial proceedings under the law of the state for an order to compel compliance with the subpoena or the giving of testimony, as the case may be. Meanwhile, the hearing or other matters shall proceed, so far as is possible, but the Board at its discretion at any time may continue the proceedings for such time as may be necessary to secure a final ruling in the compliance proceedings.

(9) **Costs.** The costs covering the issuance and service of subpoenas and all witness fees incurred on behalf of a party to the proceedings, other than the Board, shall be borne by the party on whose behalf they are incurred.

(10) **Right to representation.** The person or persons signing the charge or complaint, the holder of the certificate, and any other interested person may appear at the hearing personally and/or by legal counsel.

(11) **Legal counsel to State Board of Education.** The attorney for the State Board of Education or, upon request, the Attorney General's representative shall present evidence to the Board, in furtherance of the Complaint. If deemed necessary by the Chairperson of the Board, a request will be made of the Attorney General to provide counsel to the Board to rule on questions of admissibility of evidence, competence of witnesses, and any other questions of law. In the event that counsel is not requested from the Attorney General the Chairperson of the Board will rule on the evidence, competency of the witness and other questions of law.

(12) **Requests for disqualifications.** Requests for the disqualification of a member or members of the Board shall be embodied in an affidavit, stating with particularity the grounds alleged therefor. Such requests must be filed prior to the commencement of the hearing unless it appears in the affidavit that the grounds for disqualification were not previously known and that upon such grounds the application to disqualify was promptly filed. Upon the filing of such affidavit, the Chairperson of the Board or the Secretary, if the affidavit is filed against the Chairperson, shall set the matters for hearing at the earliest date at which the Board can be convened, giving notice thereof personally or by telephone to the party or his or her counsel. The Board, or those members thereof qualified to sit at the hearing, shall take evidence and make prompt decisions. In the event the disqualification is sustained or in the event of a mandamus requiring disqualification, the hearing shall be continued to such time as is necessary for the appointment of members pro tem to proceed with the matters, and due notice of the continuance shall be given to all parties.

(13) **Disqualification of Board or Agency member.** A Board or Agency member shall withdraw from any individual proceeding in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification on the ground of his or her inability to give a fair and impartial hearing by filing an affidavit promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon

which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the Board, or if it affects a member of the Board, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a Board or Agency member, the Governor immediately shall appoint a member pro tem to sit in place of the disqualified member in that proceeding.

(14) **Notice of facts.** The Board shall give notice to all parties, prior to, or at the hearing, of any facts of which it proposes to take official notice. Any party or her/his attorney may request that official notice be taken of any fact qualified for such notice by the statutes of this state. If such official notice is taken, it shall be stated in the record, and all parties shall have opportunity to contest and give evidence in rebuttal or derogation of the official notice.

(15) **Presentation and consideration of evidence.** The State Board of Education shall consider only evidence upon the specific cause contained in the notice, and evidence will be heard for such cause. Questions of the admissibility of evidence shall be governed by the provisions of 75-310.

(16) **Order of procedure.** The order of procedure at the hearing shall be as follows:

(A) Opening statements by legal counsel of both parties;

(B) Presentation of evidence by both parties followed by cross-examination of witnesses, and questions by State Board members;

(C) Closing arguments by legal counsel of both parties; and

(D) Submission of case to the Board for decision.

(17) **Decision.**

(A) After hearing all evidence, and all witnesses, the State Board of Education shall issue its decision on whether the certificate shall be revoked.

(B) The decision of the State Board of Education shall be announced at the conclusion of the hearing and notification of that decision shall be by certified or registered mail, restricted delivery with return receipt requested to the holder of the certificate.

(18) **Findings of fact and conclusions of law.** The Board shall render findings of fact and conclusions of law. All findings of fact made by the Board shall be based exclusively on the evidence presented during the course of the hearing or previously filed briefs, (made a part of the record), of the testimony of witnesses taken under oath.

(19) **Final order.** All final orders in an individual proceeding shall be in writing and made a part of the record. Final orders are to be issued by the Chairperson of the Board or the presiding officer for transmission to the parties by the Secretary of the Board.

(20) **Communication with parties.** Unless required for the disposition of ex parte matters authorized by law, the Chairperson and the members of the Board or the employees or the agents of the Board shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue

of law, with any party or his or her representative except upon notice and opportunity for all parties to participate. The Chairperson and members of the Board may communicate with one another and have the aid and advice of one or more personal assistants. Advice may also be secured from the Attorney General's office.

(21) **Record of hearing.**

(A) The record of a hearing shall be set forth in such form and detail as the Chairperson or the Board may direct. The hearing may also be fully transcribed, and shall be placed on file in the Secretary's office. The record shall include all pleadings, motions, and intermediate rulings; evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon; any decision, opinion, or report by the officer presiding at the hearing; all staff memoranda or data submitted to the Board or members of the Agency in connection with their consideration of the case.

(B) The State Board Secretary shall tape record the proceedings, with the exception of the executive sessions. If the requesting party should desire the tape(s) to be transcribed by a court reporter, the requesting party shall bear the expense.

(22) **Rights to a rehearing, reopening or reconsideration.**

(A) A petition for rehearing, reopening or reconsideration of a final order must be filed with the Secretary of the State Board within ten (10) days from the entry of the order. It must be signed by the party or his or her attorney, and must set forth with particularity such of the statutory grounds upon which it is based. However, a petition based upon fraud practiced by the prevailing party or upon procurement of the orders by perjured testimony or fictitious evidence may be filed at any time. All petitions for rehearing, reopening, or reconsideration will be considered and ruled upon as soon as the convenient conduct of the Board's business will permit.

(B) The grounds for requesting a rehearing shall be either:

(i) newly discovered or newly available evidence, relevant to the issues;

(ii) need for additional evidence adequately to develop the facts essential to proper decision;

(iii) error committed by the Agency in the proceeding or in its decision such as would be grounds for reversal on judicial review of the order;

(iv) need for further consideration of the issues and the evidence in the public interest; or

(v) a showing that issues not previously considered ought to be examined in order to properly dispose of the matter. The grounds which justify the rehearing shall be set forth by the State Board of Education which grants the order, or in the petition of the individual making the request for the hearing.

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(C) It is the burden of the party requesting a rehearing to notify the opposing party of the appeal.

(D) On reconsidering the matter, it may be heard by the State Board of Education or it may be referred to a Board or Agency Member and the hearing must be confined to those grounds on which the recourse was granted. [75-317]

(23) **Judicial review.** Any person or party aggrieved or adversely affected by a final order in an individual proceeding is entitled to certain judicial review pursuant to 75-318-323 and the procedures set forth therein shall govern appeals.

[OAR Docket #03-3430; filed 12-30-03]

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

[OAR Docket #04-28]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-46. [AMENDED]
317:30-3-57. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2. [AMENDED]
Part 5. Pharmacists
317:30-5-72. [AMENDED]
(Reference APA WF 03-36)

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:

November 13, 2003

Approved by Governor:

December 19, 2003

Effective:

Immediately upon Governor's approval or January 1, 2004, 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. General Providers 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]
(Reference APA WF # 03-20A)

Gubernatorial approval:

June 26, 2003

Register publication:

20 Ok Reg 2881

Docket number:

03-3049A

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 would increase the maximum adult prescription limit under the fee for service program to more equitable levels for Oklahoma's Medicaid recipients. Agency staff has estimated that the annual total cost will be \$53.5 million with a state share of \$15.9 million.

ANALYSIS:

Medical Providers-Fee for Service rules are revised to increase the number of compensable prescription drugs for adults under the fee for service program. For many years, pharmacy benefit rules have restricted fee for service adults to three monthly prescriptions which does not allow physicians to treat clients with chronic conditions according to best practices as described in current medical literature. Due to a shortfall in agency funding, at the June 12, 2003 Board meeting, rule revisions were approved and subsequently signed by the Governor to reduce compensable prescription medications to a total of five monthly for adults receiving services under the §1915(c) Home and Community Based Services Waivers effective July 1, 2003. These revisions would increase the three prescription limitation to a total of six monthly, with a limit of three brand name drugs per month. In addition, adults receiving services under the §1915(c) Home and Community Based Services Waivers could receive up to seven additional medically necessary generic prescriptions per month. Coverage of medically necessary prescriptions beyond the three brand name or thirteen total prescriptions for this group of adult waiver recipients would be compensable when prior authorized. Proposed revisions will have a positive effect on public health and safety by providing access to medications that potentially will decrease the complications of chronic diseases, treat acute conditions in a cost-effective manner, and decrease utilization of inpatient and emergency hospital visits. Rule revisions are needed in order to enhance the current pharmacy benefit by providing coverage for additional prescriptions for adult clients. Other revisions are incorporated due to superseding emergency rules previously approved by the Governor in APA WF # 03-20A.

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 JANUARY 1, 2004, WHICHEVER IS LATER:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-46. Services for persons infected with tuberculosis

(a) Oklahoma Medicaid provides optional coverage of tuberculosis (TB) related services for certain TB infected individuals. Services covered under this program are not restricted to the Medicaid scope of coverage or limitations. Services for TB infected individuals that exceed the scope of Medicaid services must be prior authorized. Individuals eligible only under the optional TB-related services program can receive TB related services such as:

- (1) Prescribed medications; ;

(A) Prescription drugs covered and available through the Vendor Drug Program for persons infected with TB are: indicated for the treatment of TB up to the Medicaid established prescription limit; and

- (i) Cycloserine 250 mg Cap;
- (ii) Ethambutol 100 mg Tab;
- (iii) Ethambutol 400 mg Tab;
- (iv) Ethionamide 250 mg Tab;
- (v) Isoniazid 100 mg Tab;
- (vi) Isoniazid 300 mg Tab;
- (vii) Isoniazid Syrup 10 mg/ml;
- (viii) Pyrazinamide 250 mg Tab;
- (ix) Pyrazinamide 500 mg Tab;
- (x) Rifampin 150 mg Cap.

(B) Other drugs, not listed in (A)(i)-(x) of this paragraph, related to the treatment of TB beyond the three prescriptions covered under Medicaid, require prior authorization obtained from the University of Oklahoma College of Pharmacy using form "Petition for TB Related Therapy".

(2) Physician services:

(A) Physician services include:

- (i) ambulatory physician services;
- (ii) office visits; and
- (iii) ambulatory surgery and such, but not including inpatient services.

(B) Office visits are not limited for TB infected persons. However, prior authorization is required when the limit under Medicaid is exceeded;

- (3) Outpatient hospital services;
- (4) Rural Health Clinic services;
- (5) Federally Qualified Health Clinic services;
- (6) Laboratory and x-ray services. Necessary laboratory and x-ray services (including services to confirm presence of TB infection) are covered for infected persons. Screening tests to detect and confirm presence of TB do not require prior authorization;
- (7) Tuberculosis Clinic services (See 317:30-5-911 for description of these services); and
- (8) Targeted Case Management services (See 317:30-5-921 for a description of these services).

(b) Persons eligible for services only under optional TB coverage do not receive the full range of Medicaid benefits. Coverage is limited as set out in this Section.

(c) Persons eligible under Medicaid who are infected with TB may also be eligible for TB services and receive these extended benefits.

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

The following are general Medicaid coverages for the categorically needy:

- (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;

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- (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~~ a total of six prescriptions with a limit of three brand name 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 six 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) seven additional medically necessary prescriptions which are generic products per month to the six covered under the State Plan are allowed for adults receiving services under the §1915(c) Home and Community Based Services Waivers. Medically necessary prescriptions beyond the three brand name or thirteen total prescriptions will be covered with prior authorization.

- (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.~~
- ~~(2726) Blood and blood fractions for eligible persons suffering from a congenital or acquired disease of the blood when administered on an outpatient basis.~~
- ~~(2827) 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.~~
- ~~(2928) Nursing facility services, limited to individuals preauthorized and approved by OHCA for such care.~~
- ~~(3029) 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.~~
- ~~(3130) 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.~~
- ~~(3231) 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.~~
- ~~(3332) Nursing facility services for patients under 21 years of age.~~
- ~~(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 1. PHYSICIANS

- 317:30-5-2. General coverage by category**
- (a) **Adults.** Payment for adults is made to physicians for medical and surgical services within the scope of the Authority's medical programs, provided the services are reasonable

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and necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Coverage of certain services may be based on a determination made by the medical consultant in individual circumstances.

(I) Coverages include the following:

(A) Effective August 1, 2000, all general acute care inpatient hospital services for all persons 21 years of age or older, will be limited to 24 days per person per state fiscal year (July 1 through June 30). This limitation does not apply to free-standing psychiatric facilities providing inpatient treatment to persons under 21 years of age and 65 years of age and older. The 24 days limitation applies to both hospital and physician services. Payment will be made for up to 24 hospital days paid on hospital claims during a state fiscal year for each individual recipient. 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 hospital days have been captured, no inpatient physician services will be paid beyond the last compensable hospital day. No exceptions or extensions will be made to the 24 day inpatient services limitation. All inpatient services are subject to post-payment review by the OHCA, or its designated agent. Effective October 1, 1993, for all persons ages 21 to 65 years, there is no coverage for inpatient chemical dependency treatment and inpatient detoxification is limited to a maximum of five days per admission and subject to post payment review.

(B) Inpatient psychotherapy by a physician.

(C) Inpatient psychological testing by a physician.

(D) One inpatient visit per day, per physician.

(E) Certain surgical procedures performed in a Medicare certified free-standing ambulatory surgical center or a Medicare certified hospital that offers outpatient surgical services. Refer to the List of Covered Surgical Procedures.

(F) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for persons with proven malignancies or opportunistic infections.

(G) Direct physicians' services are covered on an outpatient basis. A maximum payment of two visits are covered per month per patient in office or home regardless of the number of physicians providing treatment. Additional visits per month are allowed for those services related to emergency medical conditions and for services in connection with Family Planning.

(H) Direct physicians' services in a nursing facility for those patients approved for nursing care. Payment is made for a maximum of two nursing facility visits per month. To receive payment for a second nursing facility visit in a month denied by Medicare for a Medicare/Medicaid patient, attach the EOMB from

Medicare showing denial and mark "carrier denied coverage".

(I) Payment is made for medically necessary diagnostic x-ray and laboratory work.

(J) One screening mammogram and one follow-up mammogram every year for women beginning at age 30. Additional follow-up mammograms are covered when medically necessary. A prior authorization by the Medical Professional Services Division of the Oklahoma Health Care Authority is required for additional follow-up mammograms. This includes interpretation and technical component.

(K) Obstetrical care.

(L) Pacemakers and prostheses inserted during the course of a surgical procedure. Payment is made based upon an invoice for the item.

(M) Prior authorized examinations for the purpose of determining medical eligibility for programs under the jurisdiction of the Authority. A copy of the authorization, DHS form ABCDM-16, Authorization for Examination and Billing, must accompany the claim.

(N) If a physician personally sees a patient on the same day as a dialysis treatment, payment can be made for a separately identifiable service unrelated to the dialysis.

(O) Family planning - including sterilization procedures for legally competent persons 21 years of age and over who voluntarily request such a procedure and, with their physician, execute the Federally mandated consent form (ADM-71). A copy of the consent form must be attached to the claim form. Separate payment is made for an I.U.D. inserted during an office visit. Certain family planning products may be obtained through the Vendor Drug Program. Reversal of sterilization procedures for the purposes of conception 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.

(P) Genetic counseling (requires special medical review prior to approval).

(Q) Blood count weekly for persons receiving the drug Clozaril.

(R) Complete blood count and platelet count prior to receiving chemotherapeutic agents or radiation therapy and for persons receiving medication such as DPA-D-Penicillamine on a regular basis for treatment other than malignancies.

(S) Payment of ultrasounds for pregnant women as specified in OAC 317:30-5-22.

(T) Payment to the attending physician in a teaching medical facility for compensable services when the physician signs as claimant and renders personal

and identifiable services to the patient in conformity with Federal regulations.

(U) Payment to clinical fellow or chief resident in an outpatient academic setting when the following conditions are met:

- (i) Recognition as clinical faculty with participation in such activities as faculty call, faculty meetings, and having hospital privileges;
- (ii) Board certification or completion of an accredited residency program in the fellowship specialty area;
- (iii) Hold unrestricted license to practice medicine in Oklahoma;
- (iv) If Clinical Fellow, practicing during second or subsequent year of fellowship;
- (v) Seeing patients without supervision;
- (vi) Services provided not for primary purpose of medical education for the clinical fellow or chief resident;
- (vii) Submit billing in own name with appropriate Oklahoma Medicaid provider number.
- (viii) Additionally if a clinical fellow practicing during the first year of fellowship, the clinical fellow must be practicing within their area of primary training. The services must be performed within the context of their primary specialty and only to the extent as allowed by their accrediting body.

(V) Payment to the attending physician for the services of a currently Oklahoma licensed physician in training when the following conditions are met.

- (i) Attending physician performs chart review and sign off on the billed encounter;
- (ii) Attending physician present in the clinic/hospital setting and available for consultation;
- (iii) Documentation of written policy and applicable training of physicians in the training program regarding when to seek the consultation of the attending physician.

(W) Payment to the attending physician for the outpatient services of an unlicensed physician in a training program when the following conditions are met:

- (i) The patient must be at least minimally examined and reviewed by the attending physician or a licensed physician under the supervision of the attending physician;
- (ii) This contact must be documented in the medical record.

(X) Payment to a physician for supervision of CRNA services unless the CRNA bills directly.

(Y) One pap smear per year for women of child bearing age. Two follow-up pap smears are covered when medically indicated.

(Z) 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 (i)-(iv) of this subparagraph:

- (i) All transplantation services, except kidney and cornea, must be prior authorized to be compensable.
- (ii) To be prior authorized all procedures are reviewed based on appropriate medical criteria.
- (iii) To be compensable under the Medicaid program all organ transplants must be performed at a Medicare approved transplantation center.
- (iv) Finally, procedures considered experimental or investigational are not covered.

(AA) Total parenteral nutritional therapy for certain diagnoses and when prior authorized.

(BB) Ventilator equipment.

(CC) Home dialysis equipment and supplies.

(DD) Ambulatory services for treatment of persons with tuberculosis (TB). This includes, but is not limited to, physician visits, outpatient hospital services, rural health clinic visits and prescriptions. Drugs prescribed for the treatment of TB not listed in OAC 317:30-3-46 require prior authorization by the University of Oklahoma College of Pharmacy using form "Petition for TB Related Therapy". Ambulatory services to persons infected with TB are not limited to the scope of the Medicaid program, but require prior authorization when the scope is exceeded.

(2) General exclusions include the following:

(A) Inpatient diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery including removal of benign skin lesions.

(C) Services of two physicians for the same type of service to the same patient at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the patient's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the patient's care, the codes for subsequent hospital care should be used.

(D) Refractions and visual aids.

(E) Separate payment for pre and post-operative care when payment is made for surgery.

(F) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(G) Sterilization of persons who are under 21 years of age, mentally incompetent or institutionalized. Reversal of sterilization procedures for the purposes of conception.

(H) Non-therapeutic hysterectomy.

(I) Medical services considered to be experimental or investigational.

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- (J) Payment for more than two outpatient visits per month (home or office) per patient except those visits in connection with family planning, or related to emergency medical conditions.
- (K) Payment for more than two nursing facility visits per month.
- (L) More than one inpatient visit per day per physician.
- (M) Physician supervision of hemodialysis or peritoneal dialysis.
- (N) Physician services which are administrative in nature and not a direct service to the patient including such items as quality assurance, utilization review, treatment staffing, tumor board, dictation, and similar functions.
- (O) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.
- (P) Payment for the services of physicians' assistants, social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out.
- (Q) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (See OAC 317:30-5-6 or 317:30-5-50.)
- (R) Night calls or unusual hours.
- (S) Speech and Hearing services.
- (T) Treatment for obesity, including weight reduction surgery.
- (U) Mileage.
- (V) Other than routine hospital visit on date of discharge unless patient expired.
- (W) Direct payment to perfusionist as this is considered part of the hospital cost.
- (X) Inpatient chemical dependency treatment.
- (Y) Fertility treatment.
- (Z) Routine immunizations.
- (b) **Children.** Payment is made to physicians for medical and surgical services for persons under the age of 21 within the scope of the Authority's medical programs, provided the services are medically necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services for children are comparable to those listed for adults. In addition to those services listed for adults, the following services are covered for children.
- (1) **Pre-authorization of inpatient psychiatric services.** All inpatient psychiatric services for patients under 21 years of age must be prior authorized by an agency designated by the Oklahoma Health Care Authority. All psychiatric services will be prior authorized for an approved length of stay. Non-authorized inpatient psychiatric services will not be Medicaid compensable.
- (A) Effective October 1, 1993, all residential and acute psychiatric services will be authorized based on the medical necessity criteria as described in OAC 317:30-5-46.
- (B) Out of state placements will not be authorized unless it is determined that the needed medical services are more readily available in another state or it is a general practice for recipients in a particular border locality to use resources in another state. If a medical emergency occurs while a client is out of the state, treatment for medical services will be covered in the same way as they would be covered within the state. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in discharge and reintegration planning.
- (2) **General acute care inpatient service limitations.** All general acute care inpatient hospital services for persons under the age of 21 are not limited. All inpatient care must be medically necessary.
- (3) **Procedures for requesting extensions for inpatient services.** The physician and/or facility must provide necessary justification to enable OHCA, or its designated agent, to make a determination of medical necessity and appropriateness of treatment options.
- (A) Extension requests for psychiatric admissions must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation which validates the need for continued treatment in accordance with the medical necessity criteria described in OAC 317:30-5-46. Requests shall be made prior to the expiration of the approved inpatient stay.
- (B) If a denial decision is made, a reconsideration request may be made directly to the OHCA, or its designated agent and should occur within 3 days of the denial notification due to the timeliness of processing such a request with the patient still in the facility. The request for reconsideration shall include new and/or additional medical information to justify the need for continued care.
- (4) **Utilization control requirements for psychiatric beds.** Medicaid utilization control requirements for inpatient psychiatric services for persons under 21 years of age apply to all hospitals and residential psychiatric treatment facilities.
- (5) **Early and periodic screening diagnosis and treatment program.** Payment is also made to eligible providers for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of individuals under age 21. The 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 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 physician plays a significant role in

educating parents and guardians in all services available through the EPSDT program. 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. Federal regulations also require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the Authority's current program. Such services must be allowable under the Federal Regulations. These services must be necessary to ameliorate or correct defects and physical or mental illnesses or conditions and will require prior authorization. The following services are covered under EPSDT:

(A) The Oklahoma Program adopted the following recommendations which includes at least:

- (i) Six screenings during the first year of life;
- (ii) Two screenings in the second year;
- (iii) One screening yearly for ages two thru five years; and
- (iv) One screening every other year for ages 6 thru 20 years.

(B) Periodicity schedules for screening, dental, vision and hearing, and other services include:

(i) **Screening services.** Comprehensive examinations performed by a licensed physician, dentist or other provider qualified under State law to furnish primary medical and health services are covered. See OAC 317:30-3-47 for EPSDT services. Screenings must include all of the following:

- (I) A comprehensive health and developmental history (including assessment of both physical and mental health development);
- (II) A comprehensive unclothed physical exam;
- (III) Appropriate immunizations according to age and health history;
- (IV) Laboratory tests (including lead blood level assessment appropriate to age and risk); and
- (V) Health education (including anticipatory guidance).

(ii) **Vision services.** At a minimum, vision services include diagnosis and treatment for defects in vision, including eyeglasses. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal.

(iii) **Dental services.** At a minimum, dental services include relief of pain and infections, restoration of teeth and maintenance of dental health. Dental services may not be limited to emergency services. Coverage also includes 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; other restoration, repair and/or replacement of dental defects after the treatment plan submitted by a dentist has been authorized.

This includes amalgam and composite restoration, pulpotomies, chrome steel crowns, anterior root canals, pulpectomies, band and loop space maintainers, cement bases, acrylic flippers, and lingual arch bars. (Refer to Dental Provider Manual for limitations.)

(iv) **Hearing services.** At a minimum, hearing services include diagnosis and treatment for defects in hearing, including hearing aids. Hearing aid evaluation once every 12 months and purchase of a hearing aid when prescribed as a result of the hearing aid evaluation.

(v) **Immunizations.** Federal legislation created the Vaccine for Children Program to be effective October 1, 1994. Vaccines will be provided free of charge to all enrolled providers for Medicaid eligible children. Participating providers may bill for an administration fee to be set by HCFA on a regional basis. They may not refuse to immunize based on inability to pay the administration fee. Medicaid will continue to pay non-participating providers for vaccines and an administration fee of \$2.10 until April 1, 1995, when Federal Financial Participation will no longer be available.

(vi) **Appropriate laboratory tests.** Use medical judgement in determining the applicability of the laboratory tests or analyses to be performed. If any laboratory tests or analyses are medically contraindicated at the time of the screening, provide them when no longer medically contraindicated laboratory tests should only be given when medical judgement determines they are appropriate. However, laboratory tests should not be routinely administered.

(I) As appropriate, conduct the following laboratory tests: Anemia test; Sickle cell test. If a child has been properly tested once for sickle cell disease, the test need not be repeated. Tuberculin test. Give a tuberculin test to every child who has not received one within a year.

(II) Lead toxicity screening. Where age and risk factors indicate it is medically appropriate to perform a blood level assessment, a blood level assessment is mandatory. See OAC 317:30-3-50 for required lead screening guidelines.

(vii) **Other necessary health care.** Other necessary health care, diagnostic services, treatment and other measures to correct or ameliorate defects, and physical and mental illnesses and conditions discovered by the screening services.

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

(II) Outpatient care for acute physical injury.

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(III) Prescribed drugs beyond the ~~three~~ prescription limitation.

(IV) Inpatient psychotherapy for individuals under 21 years of age when prior authorized. Payment is made to psychologists who are licensed to practice.

(V) Inpatient psychological testing. Limited to one hour per recipient each 12 months. If medically necessary, additional hours will be prior authorized. Payment is made to psychologists who are licensed to practice.

(VI) Outpatient psychological services for eligible individuals under 21 years of age when prior authorized. See (V) of this unit for limitations.

(6) **Child abuse/neglect findings.** Instances of child abuse and/or neglect discovered through screenings and regular exams are to be reported in accordance with State Law. Title 21, Oklahoma Statutes, Section 846, as amended, states in part: *Every physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents, and interns, examining, attending, or treating a child under the age of eighteen (18) years and every registered nurse examining, attending or treating such a child in the absence of a physician or surgeon, and every other person having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him or her by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred. Providing it shall be a misdemeanor for any person to knowingly and willfully fail to promptly report an incident as provided above. Persons reporting such incidents of abuse and/or neglect in accordance with the law are exempt from prosecution in civil or criminal suits that might be brought as a result of the report.*

(7) **General exclusions.** The following are excluded from coverage for persons under the age of 21:

(A) Inpatient diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery unless the physician certifies the procedure emotionally necessary.

(C) Services of two physicians for the same type of service to the same patient at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the patient's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter

in the patient's care, the codes for subsequent hospital care should be used.

(D) Separate payment for pre and post-operative care when payment is made for surgery.

(E) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(F) Sterilization of persons who are under 21 years of age.

(G) Non-therapeutic hysterectomy.

(H) Medical Services considered to be experimental or investigational.

(I) More than one inpatient visit per day per physician.

(J) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (See OAC 317:30-5-6 or 317:30-5-50.)

(K) Physician supervision of hemodialysis or peritoneal dialysis.

(L) Physician services which are administrative in nature and not a direct service to the patient including such items as quality assurance, utilization review, treatment staffing, tumor board, dictation, and similar functions.

(M) Payment for the services of physicians' assistants except as specifically set out.

(N) Direct payment to perfusionist as this is considered part of the hospital cost.

(O) Treatment of obesity including weight reduction surgery.

(P) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(Q) Night calls or unusual hours.

(R) Mileage.

(S) Other than routine hospital visit on date of discharge unless patient expired.

(T) Tympanometry (92567).

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services. For in-State physicians, claims filed with Medicare Part B should automatically cross over to OHCA. The explanation of Medicare Benefits will reflect a message that the claim was referred to Medicaid. If such a message is not present, a claim for coinsurance and deductible must be filed with Medicaid within 90 days of the date of Medicare payment in order to be considered timely filed. The Medicare EOMB must be attached to the claim. If payment was denied by Medicare Part B, and the service is a Medicaid covered service, mark the claim "denied by Medicare".

(1) Out of state claims will not "cross over". Providers must file a claim for coinsurance and/or deductible within 90 days of the Medicare payment. The Medicare EOMB must be attached to the claim.

(2) Claims filed under Medicaid must be filed within one year from the date of service. For dually eligible individuals, to be eligible for payment of coinsurance and/or deductible under Medicaid, a claim must be filed with Medicare within one year from the date of service.

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.

(1A) With the exception of ~~(B)(2) and (C)(3) of this paragraph subsection,~~ categorically needy adults are eligible for three a maximum of six covered prescriptions per month with a limit of three brand name prescriptions.

~~(2B) 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 six 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) seven additional medically necessary prescriptions which are generic products per month to the six covered under the State Plan are allowed for adults receiving services under the §1915(c) Home and Community Based Services Waivers. Medically necessary prescriptions beyond the three brand name or thirteen total prescriptions will be covered with prior authorization.

(3C) 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.

[OAR Docket #04-28; filed 1-9-04]

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

[OAR Docket #04-30]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Services
317:30-5-241. [AMENDED]
(Reference APA WF # 03-33)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; the Health Insurance Portability and Accountability Act

DATES:
Adoption:
November 13, 2003
Approved by Governor:
December 19, 2003
Effective:
Immediately upon Governor's approval or January 1, 2004, 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 21. Outpatient Behavioral Health Services
317:30-5-241. [AMENDED]
(Reference APA WF # 03-11)

Gubernatorial approval:
May 26, 2003

Emergency Adoptions

Register publication:

20 Ok Reg 2767

Docket number:

03-3005

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 comply with Health Insurance Portability and Accountability Act regulations regarding standardized billing codes which must be in effect by January 1, 2004.

ANALYSIS:

Medical Providers-Fee for Service, Outpatient Behavioral Health Services specific, rules are revised to meet a January 1, 2004 Health Insurance Portability and Accountability Act (HIPAA) established deadline by which state Medicaid agencies must comply with national coding provisions. Rule revisions are necessitated in order to have Medicaid compensable service titles, descriptions, and units of service match available Health Care Procedure Coding System (HCPCS) codes. Revisions establish the Mental Health Assessment by a Non-Physician service which is compensable for clients who are seeking services for the first time from a contracted agency if the client is not receiving or previously received services from that agency. The service is divided into two types, low or moderate complexity, based on the amount of face-to-face time spent on the assessment. Previously, the provider was compensated for the services by billing for individual or family counseling. The Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) has requested that Program for Assertive Community Treatment (PACT) services be added as a Medicaid compensable behavioral health service. PACT services provide treatment, rehabilitation, and essential behavioral health supports on a continuous basis to individuals 18 years of age or older with serious mental illness in need of intensive ongoing services. The ODMHSAS will pay the state match for all PACT providers. The ODMHSAS has also requested Medicaid compensation of Community Based Structured Emergency Care services (new title Crisis Intervention Services-Facility Based) for children. These services are emergency psychiatric and substance abuse services to resolve crisis situations which are currently Medicaid compensable for adults only. The service is designed to evaluate individuals on a short term 24 hour basis, up to 72 hours, and then return them home, if possible, or recommend inpatient residential care. Currently, the ODMHSAS pays the state match for these services for adults and will also pay for children's services. Medical Providers-Fee for Service, Outpatient Behavioral Health Services specific, rules are in need of revision to comply with HIPAA coding regulations and add new compensable services.

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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 JANUARY 1, 2004, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 21. OUTPATIENT BEHAVIORAL HEALTH SERVICES

317:30-5-241. Coverage for adults and children

(a) **Service descriptions and conditions.** Outpatient behavioral health services are covered for adults and children as set forth in this Section, unless specified otherwise, and

when provided in accordance with a documented individualized ~~treatment~~ service plan; a developed to treat the identified mental health and/or substance abuse disorder(s). All services are to be for the goal of improvement of functioning, independence, or well being of the ~~patient~~ client. The ~~patient~~ client must be able to actively participate in the treatment. Active participation means that the ~~patient~~ client must have sufficient cognitive abilities, communication skills, and short-term memory to derive a reasonable benefit from the treatment. The assessment must include ~~a~~ DSM IV multi axial diagnosis completed for all five ~~axis~~ axes from the most recent DSM version. All services will be subject to medical necessity criteria. For DMHSAS Contracted and Private facilities, an agent designated by the Oklahoma Health Care Authority will apply the medical necessity criteria. For ~~Public~~ public facilities (~~Regionally~~ regionally based CMHCS), the medical necessity criteria will be self-administered. Non prior authorized services will not be Medicaid compensable with the exception of ~~six units of individual counseling, two units of family counseling and one unit of treatment plan development per Medicaid recipient per calendar year, one unit of medical review per month, crisis intervention and community based structured emergency care~~ Mental Health Assessment by a Non-Physician, Mental Health Service Plan Development, Crisis Intervention Services (by a MHP and Facility based), and Program of Assertive Community Treatment Services (PACT). ~~Payment is made for Rehabilitative Treatment services for children. Payment is not made for Outpatient Behavioral Health Services for Children~~ children who are receiving Residential Behavioral Management Services in a Foster or Group Home or Therapeutic Foster Care with the exception of Psychotherapy services which must be are eligible for Outpatient Behavioral Health services only if prior authorized by the OHCA or its designated agent, regardless of provider type providing Outpatient Behavioral Health services as medically necessary and indicated, and Crisis Intervention Services (facility based). Residents of nursing facilities are not eligible for Outpatient Behavioral Health services.

(+) **Treatment plan development.**

(A) ~~Description~~ The treatment plan must be completed by the responsible MHP or other direct service staff. Treatment plan development includes the evaluation of assessment and diagnostic information in order to develop a written individualized treatment plan. The treatment plan must contain the following written elements: patient's strengths/assets, weakness/liabilities, problems, goals, and objectives that are specific and time limited, discharge plan, criteria and date. Each treatment service to be received must be listed. If individual counseling is to be received the theoretical approach to be used should also be included. The frequency of each service and responsible MHP, BHRS, physician or nurse must be delineated. A full five axis DSM IV diagnosis must be documented. Deferred diagnosis for Axis I are not acceptable. Axis II and III must be completed. A completed Client Assessment Record (CAR) is also required. In some circumstances, a completed

Child and Adolescent Functioning Assessment Scale (CAFAS) may be substituted for the CAR assessment when authorized by OHCA or its designated agent. A valid compensable treatment plan must be signed and dated by the patient (if over age 14), the parent/guardian (if under age 18), and must include a statement by the patient regarding their involvement, understanding and comments on the plan. For children who are school aged, collaboration with the school system regarding the treatment must be included. Medicaid recipients in an ICF/MR, nursing facility or receiving Residential Behavioral Management Services in a foster or group home are not eligible for this service.

(B) Providers—Treatment plan development will be provided by the patient treatment team. This includes all staff responsible for the treatment services delineated in the plan. The treatment plan is not valid until it is signed and dated by the responsible MHP, the responsible physician, the patient, the guardian (if applicable), and any other direct service provider, and all requirements have been met. Each signature must have the date written by the signing party on the date of signing.

(2) **Treatment plan review.**

(A) Description—Treatment plan review is a comprehensive review and evaluation of the current efficacy of the treatment. This includes a review of the treatment plan with the patient and the modification of the plan as required. It includes the CAR evaluation and other documentation required for prior authorization extension requests. In some circumstances, a completed Child and Adolescent Functioning Assessment Scale (CAFAS) may be substituted for the CAR assessment when authorized by OHCA or its designated agent. This review must include the participation of the MHP, the physician providing pharmacological management, and other staff relevant to the treatment, as well as the patient. It is designed to assure that medications and all forms of treatment are provided in the least intrusive manner possible, to encourage normalization and prevent institutionalization. All compensable treatment plan reviews must include an update to the individual treatment plan. Patient involvement must be clearly documented, if the patient is 14 years of age or older. If the patient is under 18 years of age, the parent or guardian must also be involved and sign the treatment plan.

(B) Providers—Treatment plan review will be provided by the treatment team members. The review is not valid until signed and separately dated by the responsible MHP, the responsible physician (if patient is receiving medication or otherwise under the care of the physician), the patient, the guardian (if applicable), and any other direct service provider, and all requirements have been met.

(3) **Individual counseling.**

(A) Description—Individual counseling is a method of treating mental health and alcohol and other drug (AOD) disorders using face to face, one on one interaction between a Mental Health Professional and a patient to promote emotional or psychological change to alleviate disorders. MHPs performing this service must use an approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. Ongoing assessment of the patient's status and response to treatment as well as psycho-educational intervention are appropriate components of individual counseling. Individual counseling must be provided in an appropriate, private confidential setting including the patient residence or the provider's office. The counseling must be goal directed utilizing techniques appropriate to the treatment plan and the patient's developmental and cognitive abilities.

(B) Providers—Individual counseling must be provided by a MHP.

(4) **Group counseling.**

(A) Description—Group counseling is a method of treating mental health and AOD disorders using the interaction between a mental health professional and two or more patients to promote positive emotional or behavioral change. The focus of the group must be directly related to goals and objective of the individual patient's treatment plan. The individual patient's behavior, the size of the group, and the focus of the group must be included in each patient's medical record. This service does not include social skills development or daily living skill activities and must take place in an appropriate, confidential setting, limited to the therapist and group members. Group counseling is limited to eight total patients except for residents of nursing and ICF/MR facilities where the limit is six total patients. Group size is limited to a total of six patients for all children. A group may not consist solely of related individuals.

(B) Providers—Group counseling will be provided by a MHP.

(5) **Family counseling.**

(A) Description—Family counseling is a face to face interaction between a MHP and family to facilitate emotional, psychological or behavioral changes and promote successful communication and understanding. Family counseling must be provided for the benefit of a Medicaid eligible individual as a specifically identified component of an individual treatment plan. Family Counseling must be provided in a confidential setting which may include a patient's residence or provider's office.

(B) Providers—Family counseling will be provided by a MHP.

(6) **Psychological testing.**

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(A) Description—A psychologist utilizing tests selected from currently accepted psychological test batteries performs psychological testing. Test results must be reflected in the individual treatment plan. The medical record must clearly document the need for the testing and what the testing is expected to achieve.

(B) Providers—Psychological testing will be provided by a psychologist or certified psychometrist. A psychological technician of a psychologist may provide psychological testing.

(7) Medical review.

(A) Description—Medical review is a documented review and evaluation by a registered nurse, or physician's assistant focusing on a patient's response to medication and compliance with the medication regimen. The patient must be present at the time of the medical review. The review will include an assessment of medication compliance and medication side effects. Vital signs must be taken including pulse, blood pressure and respiration. A physician is not required to be present, but must be available for consult. Medical review is designed to maintain the patient on the appropriate level of the least intrusive medications, encourage normalization and prevent hospitalization. Medical reviews may not be billed for Medicaid recipients who reside in nursing homes or ICF/MR's.

(B) Providers—Medical reviews must be provided by a licensed registered nurse, or a physician's assistant as a direct service under the supervision of a physician.

(8) Individual Rehabilitative Treatment Services.

(A) Description—Individual Rehabilitative Treatment Service is a face to face, service which is performed to assist Medicaid recipients who are experiencing significant functional impairment due to mental illness and/or AOD disorders in order to increase the skills necessary to perform activities of daily living, and function in the community. Services will be for the reduction of psychiatric and behavioral impairment and the restoration of functioning consistent with the requirements of independent living and enhanced self sufficiency. This service includes educational and supportive services regarding independent living, self care, social skills (re) development, lifestyle changes and recovery principles and practices. Each Individual Rehabilitative Treatment Service provided must have an objective and purpose relevant to the individualized treatment plan and the patient diagnosis. Compensable Individual Rehabilitative Services are provided to patients who have the ability to benefit from the services as evidenced by the patient's developmental and cognitive abilities and communication skills. This service may be provided one on one between the patient and BHRS, or may be provided with parent/guardian present or occasionally

with only the parent/guardian for the purpose of treating the identified patient's disorder. Other family may be present if pertinent to the treatment goals and objectives.

(B) Providers—A BHRS or MHP must provide this service. Residents of nursing and ICF/MRs Facilities and children receiving Residential Behavioral Management Group in a Foster or Home setting are not eligible for this service.

(9) Group Rehabilitative Treatment Services (adult).

(A) Description—Rehabilitative Treatment Services for adults are behavioral health remedial services, which are necessary to improve the patient's ability to function in the community. They are performed to assist patients with mental health illnesses and AOD disorders. Examples of services, which may be covered under the definition of rehabilitation, are: independent living, self care, social skills (re)development, lifestyle change and recovery principles and practices. Services will be provided in the least restrictive setting appropriate for the reduction of psychiatric and behavioral impairment and the restoration of functioning consistent with the requirements of independent living and enhanced self sufficiency. Each service must have purpose that is related directly to the individual treatment plan and diagnosis of each participant. Compensable Rehabilitative Treatment Services are provided to patient's who have the ability to benefit from the service. Travel time to and from activities is not covered. The maximum staffing ratio is fourteen patients to one staff. Countable staff must be appropriately trained in an anger management/intervention technique such as MANDT or CAPE to be directly involved in patient care. Recipients residing in a nursing facility or Intermediate Care Facility for the Mentally Retarded (ICF/MR) will not be eligible for this service.

(B) Providers—Group Rehabilitative treatment services for adults are provided utilizing a treatment curriculum approved by a MHP. A BHRS or MHP may perform group rehabilitative treatment services.

(10) Group Rehabilitation Treatment Services (children).

(A) Description—Group Rehabilitative Treatment Services for children are behavioral health remedial services, as specified in the individual treatment plan which are necessary for the treatment of mental health and AOD disorders. They may be provided alone or in conjunction with other behavioral health services. Examples of educational and supportive services which may be covered under the definition of rehabilitative treatment services are basic living skills, social skills (re)development, interdependent living, self care, lifestyle change and recovery principles. Services will be provided in the least restrictive setting appropriate for the reduction of psychiatric

impairment and the restoration of functioning consistent with the requirements of age appropriate behavioral functioning and self sufficiency. Meeting with family members, legal guardian and/or significant other is covered when the services are directed exclusively to the effective treatment of the recipient. Each service provided under Rehabilitative Treatment Services must have a goal and purpose, which relates directly to the individual treatment plan of each participant. Compensable Rehabilitative Treatment Services are provided to recipients who have the ability to benefit from the service. The child must be able to actively participate and must possess the cognitive, developmental and communication skills necessary to benefit from the service. Travel time to and from activities is not covered. Staff to patient ratio shall not exceed eight children to one staff member. Countable staff must be appropriately trained, including trained and certified in a recognized anger management intervention technique, such as MANDT or CAPE to be directly involved in patient care. Patients residing in a nursing facility or an Intermediate Care Facility for the Mentally Retarded (ICF/MR) or children receiving Residential Behavioral Management services in a foster or group home will not be eligible for this service.

(B) Providers—Group Rehabilitative Treatment Services for children are provided utilizing a treatment curriculum approved by a MHP. A BHRS or MHP may perform group rehabilitative treatment services.

(11) Crisis Intervention Services.

(A) Description—Crisis Intervention Services are face to face services of an emergency nature to evaluate and resolve acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal and/or homicidal behaviors. The crisis situation and significant functional impairment must be clearly documented. Crisis Intervention will not be reimbursed for recipients who, while receiving other behavioral health services, experience acute behavioral or emotional dysfunction.

(B) Providers—Crisis Intervention Services must be provided by a Mental Health Professional (MHP)

(12) Community Based Structured Emergency Care.

(A) Description—Community Based Structured Emergency Care is emergency psychiatric and substance abuse services to resolve crisis situations. The services provided are emergency stabilization, which includes a protected environment, chemotherapy, detoxification, individual and group treatment and medical assessment. Community Based Structured Emergency Care is compensable for individuals 18 years of age and older.

(B) Providers—Community Based Structured Emergency Care will be under the supervision of a physician aided by a licensed nurse, and will also include mental health professionals for the provision

of group and individual treatment. A physician must be available for the 3 hour period. This service is limited to providers who contract with or are operated by the Department of Mental Health and Substance Abuse Services to provide this service within the overall behavioral health service delivery system.

(1) **Mental Health Assessment by a Non-Physician** includes a history of psychiatric symptoms, concerns and problems, an evaluation of mental status, a psychosocial and medical history, a full five axes diagnosis and evaluation of current functioning, and an evaluation and assessment of alcohol and other drug use (historic and present). It must also include an evaluation of the client's strengths and information regarding the client's treatment preferences. For adults, it may include interviews or communications with family, caretakers, or other support persons as permitted by the client. For children under the age of 18, it must include an interview with a parent, or other adult caretaker. For children, the assessment must also include information on school performance and school based services. This service is performed by an MHP. The minimum face-to-face time spent in assessment with the client and others as identified previously in this paragraph for a low complexity Mental Health Assessment by a Non-Physician is one and one half hours. For a moderate complexity, it is two hours or more. This service is compensable on behalf of a client who is seeking services for the first time from the contracted agency and is not compensable if the client has previously received or is currently receiving services from the agency.

(2) **Mental Health Services Plan Development by a Non-Physician (moderate complexity).** Mental Health Services Plan Development by a Non-Physician (moderate complexity) is to be performed by the practitioners and others who will comprise the treatment team. It is performed with the direct active participation of the client and a client support person or advocate if requested by the client. In the case of children under the age of 18, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate. The Mental Health Services Plan is developed based on information obtained in the mental health assessment and includes the evaluation of assessment by the practitioners and the client of all pertinent information. It includes a discharge plan. It is a process whereby an individualized rehabilitation plan is developed that addresses the client's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited. For adults, it must be focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training. For children, the service plan must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care. Each type of service to be received must be delineated in the service plan and the practitioner who will be providing and responsible

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for each service must be identified. In addition, the anticipated frequency of each type of service must be included. This service is provided by the client treatment team. This includes all staff responsible for the treatment services delineated in the plan, the client (if over age 14), and the parent/guardian if under age 18. The service plan is not valid until it is signed and dated by the responsible MHP, the treating physician, the client, the guardian (if applicable), and any other direct service provider, and all requirements have been met. Each signature must have the date written by the signing party on the date of signing. One unit per Medicaid recipient per provider is allowed without prior authorization. If determined by OHCA or its designated agent, one additional unit per year may be authorized.

(3) **Mental Health Services Plan Development by a Non-Physician (low complexity).** Mental Health Services Plan Development by a Non-Physician (low complexity) is for the purpose of reviewing, revising and updating an established Mental Health Services Plan. All elements of the plan must be reviewed with the client and treatment progress assessed. When significant progress toward recovery and the treatment goals is not occurring, the service plan must be altered in order to support and maximize progress toward recovery. When significant progress has been made, the plan must be updated to reflect the improved client's abilities and strengths and services adjusted accordingly. Mental Health Services Plan Development by a Non-Physician (low complexity) will be provided by the treatment team members. The review is not valid until signed and separately dated by the responsible MHP, the responsible physician (if client is receiving medication or otherwise under the care of the physician), the client, the guardian (if applicable), and any other direct service provider, and all requirements have been met.

(4) **Individual/Interactive Psychotherapy.**

(A) Individual Psychotherapy is a face-to-face treatment for mental illnesses and behavioral disturbances, in which the clinician, through definitive therapeutic communication, attempts to alleviate the emotional disturbances, reverse or change maladaptive patterns of behavior and encourage growth and development. Insight oriented, behavior modifying and/or supportive psychotherapy refers to the development of insight of affective understanding, the use of behavior modification techniques, the use of supportive interactions, the use of cognitive discussion of reality, or any combination of these items to provide therapeutic change.

(B) Interactive Psychotherapy is generally furnished to children and involves the use of physical aids and nonverbal communication to overcome barriers to the therapeutic interaction between the clinician and the client who has not yet developed or who has lost either the expressive language communication skills to explain his/her symptoms and response to treatment, or the receptive communication skills to understand the clinician. It may be used

for adults who are hearing impaired and require the use of a language interpreter due to language barriers. (C) There are a total of six different compensable units of individual/interactive psychotherapy, three each for interactive and individual psychotherapy. They are Individual Insight Oriented, Behavior Modifying and or Supportive Psychotherapy in an Outpatient Setting (20 - 30 minutes, 45 - 50 minutes, and 75 - 80 minutes), and Interactive Psychotherapy in an office or Outpatient Setting (20 - 30 minutes, 45 - 50 minutes, and 75 - 80 minutes). There is a maximum of one unit of either Individual or Interactive Psychotherapy per day. With the exception of a qualified interpreter if needed, only the client and the MHP should be present and the setting must protect and assure confidentiality. Ongoing assessment of the client's status and response to treatment as well as psycho-educational intervention are appropriate components of individual counseling. The counseling must be goal directed, utilizing techniques appropriate to the service plan and the client's developmental and cognitive abilities.

(D) Individual/Interactive counseling must be provided by a MHP.

(5) **Group Psychotherapy.**

(A) Group Psychotherapy is a method of treating behavioral disorders using the interaction between the MHP and two or more individuals to promote positive emotional or behavioral change. The focus of the group must be directly related to the goals and objectives in the individual client's current service plan. This service does not include social or daily living skills development as described under Individual and Group Psychosocial Rehabilitation Services.

(B) Group Psychotherapy must take place in a confidential setting limited to the MHP conducting the service, an assistant or co-therapist, if desired, and the group psychotherapy participants. Group Psychotherapy is limited to a total of eight adult individuals except when the individuals are residents of an ICF/MR where the maximum group size is six. For all children under the age of 18, the total group size is limited to six. The typical length of time for a group psychotherapy session is one hour. A maximum of two Group Psychotherapy units per day are allowed. Half units are acceptable. The individual client's behavior, the size of the group, and the focus of the group must be included in each client's medical record. A group may not consist solely of related individuals.

(C) Group psychotherapy will be provided by a MHP.

(6) **Family Psychotherapy.**

(A) Family Psychotherapy is a face-to-face psychotherapeutic interaction between a MHP and the client's family, guardian, and/or support system. It is typically inclusive of the identified client, but may be performed if indicated without the client's presence.

When the client is an adult, his/her permission must be obtained. Family psychotherapy must be provided for the direct benefit of the Medicaid recipient to assist him/her in achieving his/her established treatment goals and objectives and it must take place in a confidential setting.

(B) The length of a Family Psychotherapy session is one hour. No more than two hours of Family Psychotherapy are allowed per day. Half units are acceptable. Family Psychotherapy must be provided by a MHP.

(7) Psychosocial Rehabilitation Services (group).

(A) Psychosocial Rehabilitation Services are behavioral health remedial services which are necessary to improve the client's ability to function in the community. They are performed to improve the skills and abilities of clients to live interdependently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. This service may take the form of a psychosocial clubhouse and promote the principles and practices of a work ordered day. Compensable Psychosocial Rehabilitation Services are provided to clients who have the ability to benefit from the service. The services performed must have a purpose that directly relates to the goals and objectives of the client's current service plan. A client who at the time of service is not able to cognitively benefit from the treatment due to active hallucinations, substance use, or other impairments is not suitable for this service.

(B) Travel time to and from Psychosocial Rehabilitative treatment is not compensable. Breaks, lunchtime and times when the client is unable or unwilling to participate are not compensable. The minimum staffing ratio is fourteen clients for each BHRS or MHP for adults and eight to one for children under the age of eighteen. Countable professional staff must be appropriately trained in a recognized anger behavioral/management intervention program such as MANDT or CAPE. This service may be performed by a BHRS using a curriculum approved by a licensed MHP clinician. In order to develop and improve the client's community and interpersonal functioning and self care abilities, rehabilitation may take place in settings away from the Outpatient Behavioral Health agency site. When this occurs, the BHRS or MHP must be present and interacting, teaching, or supporting the defined learning objectives of the client for the entire claimed time. The service is a fifteen minute time frame and may be billed up to a maximum of 24 units per day for adults and 16 units per day for children. The rate of compensation for this service includes the cost of providing transportation for recipients who receive this service, but do not have their own transportation or do not have other support persons able to provide or who are responsible for the transportation needs. The OHCA transportation program will arrange

for transportation for those who require specialized transportation equipment. Residents of an ICF/MR or children receiving Residential Behavioral Management Services in a Group or Therapeutic Foster Care setting are not eligible for this service.

(C) Group Psychosocial Rehabilitation Services are provided utilizing a treatment curriculum approved by a MHP. A BHRS or MHP may perform group psychosocial rehabilitation services.

(8) Psychosocial Rehabilitation Services (individual).

(A) Psychosocial Rehabilitation Services (individual) is performed for the same purposes and under the same description and requirements as Psychosocial Rehabilitation Services (group) [Refer to paragraph (7) of this subsection]. It is generally performed with only the client present, but may include the client's family or support system in order to educate them about the rehabilitative activities, interventions, goals and objectives.

(B) A BHRS or MHP must provide this service. Residents of ICF/MR facilities and children receiving Residential Behavioral Management Group services in a Foster or Home setting are not eligible for this service. This billing unit is fifteen minutes and no more than six units per day are compensable.

(9) Psychological testing.

(A) Psychological testing is provided by a psychologist utilizing tests selected from currently accepted psychological test batteries. Test results must be reflected in the Mental Health Services plan. The medical record must clearly document the need for the testing and what the testing is expected to achieve.

(B) Psychological testing will be provided by a psychologist or certified psychometrist. A psychological technician of a psychologist may provide psychological testing.

(10) Medication Training and Support.

(A) Medication Training and Support is a documented review and educational session by a registered nurse, or physician's assistant focusing on a client's response to medication and compliance with the medication regimen. The review must include an assessment of medication compliance and medication side effects. Vital signs must be taken including pulse, blood pressure and respiration. A physician is not required to be present, but must be available for consult. Medication Training and Support is designed to maintain the client on the appropriate level of the least intrusive medications, encourage normalization and prevent hospitalization. Medication Training and Support may not be billed for Medicaid recipients who reside in ICF/MR facilities.

(B) Medication Training and Support must be provided by a licensed registered nurse, or a physician's assistant as a direct service under the supervision of a physician.

(11) Crisis Intervention Services.

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(A) Crisis Intervention Services are for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal or severe psychiatric distress. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented. Crisis Intervention Services are not compensable for Medicaid recipients who reside in an ICF/MR, or who receive Residential Behavioral Management Services in a Group or Therapeutic Foster home, or recipients who, while receiving other behavioral health services, experience acute behavioral or emotional dysfunction. The unit is a fifteen minute unit with a maximum of eight units per month and 40 units each 12 months per recipient.

(B) Crisis Intervention Services must be provided by a MHP.

(12) Crisis Intervention Services (facility based stabilization). Crisis Intervention Services (facility based stabilization) are emergency psychiatric and substance abuse services to resolve crisis situations. The services provided are emergency stabilization, which includes a protected environment, chemotherapy, detoxification, individual and group treatment, and medical assessment. Crisis Intervention Services (facility based stabilization) will be under the supervision of a physician aided by a licensed nurse, and will also include mental health professionals for the provision of group and individual treatments. A physician must be available. This service is limited to providers who contract with or are operated by the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) to provide this service within the overall behavioral health service delivery system. Crisis Intervention Services (facility based stabilization) are compensable for child and adult Medicaid recipients. Only children who are enrolled and approved through a Community Based Systems of Care Program are eligible for this service. The unit of service is per hour. The ODMHSAS is responsible for providing the State match for this service.

(13) Program of Assertive Community Treatment (PACT) Services.

(A) Program of Assertive Community Treatment (PACT) Services are those delivered within an assertive community based approach to provide treatment, rehabilitation, and essential behavioral health supports on a continuous basis to individuals 18 years of age or older with serious mental illness with a self contained multi-disciplinary team. The team must use an integrated service approach to merge essential clinical and rehabilitative functions and staff expertise. This level of service is to be provided only for persons most clearly in need of intensive ongoing services. Services must satisfy all statutory required program elements as articulated in the Oklahoma Administrative Code 450:55. At a minimum, the services must include:

(i) Assessment and evaluation;

(ii) Crisis intervention to cover psychiatric crisis and drug and alcohol crisis intervention;

(iii) Symptom assessment, management, and individual supportive psychotherapy;

(iv) Medication evaluation and management, administration, monitoring and documentation;

(v) Rehabilitation services;

(vi) Substance abuse treatment services;

(vii) Activities of daily living training and supports;

(viii) Social, interpersonal relationship, and related skills training; and,

(ix) Case management services.

(B) Providers of PACT services are specific teams within an established mental health delivery organization and must be operated by or contracted with and must be certified by the ODMHSAS in accordance with 43A O.S. 319 and Oklahoma Administrative Code 540:55. The unit is a per diem inclusive of all services provided by the PACT team. No more than 12 days of service per month may be claimed. Medicaid recipients who are enrolled in this service may not receive other Outpatient Behavioral Health Services except for Crisis Intervention Services (facility based stabilization). The ODMHSAS is responsible for providing the state match for this service.

(b) **Prior authorization of services and requirements.** To be authorized to provide individual, group or family ~~counseling~~ psychotherapy, medical review medication training and support, or psychosocial rehabilitation services (individual or group) rehabilitation treatment, or Mental Health Services Plan Development (low complexity) the provider must administer fully and document the Client Assessment Record (CAR) evaluation that assesses the client's functional abilities. In some circumstances, a completed CAFAS may be substituted for the CAR assessment when authorized by OHCA or its designated agent. The client must also have a DSM-IV Axis I diagnosis appropriate to his/her symptoms, behaviors, and/or impairments.

(1) The OHCA requires information to be submitted when a provider is requesting prior authorization. If the Medicaid recipient resides in a ~~Nursing Facility or an~~ ICF/MR, or receives Residential Behavioral Management in a Foster Care setting or receives Residential Behavior Management Services in a Group Home setting, the individual ~~treatment service~~ plan required for that service must be included with the request and must reflect the need for the requested Behavioral Health Services. The ~~patient client~~ must agree to the treatment service plan and sign the request. Requests submitted electronically must have signatures on site and available for auditors with signatures dated prior to, or on, the start date for treatment services. The required information for prior authorization includes:

(A) Pertinent demographic and identifying information;

(B) Complete and current (within 30 days of the date submitted to OHCA or its designated agent)

CAR assessment (CAFAS or other recognized functional assessment tools may be substituted in some instances when authorized by OHCA or its designated agent);

(C) Complete multi axial DSM ~~IV~~ diagnosis using the most current edition with supportive documentation and, if requested by OHCA or its designated agent, a mental status examination summary;

(D) Psychiatric and treatment history;

(E) ~~Treatment~~ Service plan with goals, objectives and time frames for treatment; and

(F) Services requested.

(2) Medicaid recipients will be considered for prior-authorization after receipt of complete and appropriate information submitted by the provider. Based on diagnosis, functional assessment, history and other Medicaid services being received, the Medicaid recipient may be approved to receive one of four levels of care. There are four levels of care for children and four levels of care for adults. Medicaid recipients who reside in ~~Nursing Facilities or ICF/MRs~~ may be approved for ~~one of two levels of care services according to the level of care established for this population~~. Medicaid recipients who receive Residential Behavior Management in a Foster Care setting or receive Residential Behavior Management in a Group Home setting may be approved for additional counseling based on demonstrated medical necessity and prior authorization by OHCA or its designated agent, regardless of provider type requesting to perform the additional services. A Medicaid recipient may be approved for a time frame of one to six months. For each level of care the documentation must illustrate the recipient meets the established medical necessity criteria. The OHCA (or its designated agent) will review the request for completeness and appropriateness. ~~The provider will be notified within 24 hours (excluding weekends and holidays) if the request is incomplete, deficient, or inappropriate, and additional information will be requested.~~ A completed request will be reviewed and processed within ~~72 working hours~~ three business days. Requests will be reviewed by licensed master's prepared therapist (Licensed Clinical Social Workers, Licensed Behavioral Practitioners, Licensed Professional Counselors, Licensed Marriage and Family Therapists) with experience in behavioral health care, or Licensed Registered Nurses with experience in behavioral health care. Psychiatrists, (M.D. and D.O.) and Psychologists possessing current State licenses may be utilized for reviews and appeals.

(3) A prior authorization decision may be appealed by the provider or patient client if filed within five working days of receipt of the decision. The first level of appeal is to request a reconsideration, which will be performed under the supervision of the manager of OHCA's designated agent's Pre-Authorization Unit. If the appeal is not satisfactorily resolved during reconsideration, the provider or patient client may submit an appeal to the OHCA through its standard grievance process (see OAC 317:2).

(4) Providers seeking prior-authorization will follow OHCA's designated agent's Outpatient Behavioral Health Prior Authorization Manual guidelines for submitting requests on behalf of the Medicaid recipient.

[OAR Docket #04-30; filed 1-9-04]

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

[OAR Docket #04-27]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties
Part 105. Residential Behavioral Management Services in Group Settings and Non-Secure Diagnostic and Evaluation Centers
317:30-5-1043. [AMENDED]
317:30-5-1046. [AMENDED]
(Reference APA WF # 03-27)

AUTHORITY:

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

DATES:

Adoption:

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions that will allow payment for behavior redirection services provided by non-degreed Residential Behavioral Management Services (RBMS) agencies' staff who have had behavior management training. If rules are not revised at this time, effective January 1, 2004, only RBMS redirection services provided by staff with a Bachelor's or Master's degree, a licensed registered nurse, a certified drug and alcohol counselor, or staff with a certification as a Behavioral Health Case Manager will be compensable. The current houseparent staff employed by the majority of group homes will not meet those requirements. If the rule is not changed, the group homes would be forced to hire around the clock staff with a degree, license or certification which would substantially increase the cost of care.

ANALYSIS:

Medical Providers-Fee for Service, Residential Behavioral Management Services in Group Settings and Non-Secure Diagnostic and Evaluation Centers specific, rules are being revised to establish a system of care provided by the Organized Health Care Delivery System (OHCDS) for children in the care and custody of the Oklahoma Department of Human Services and the Oklahoma Office of Juvenile Affairs. Residential Behavioral Management Services are provided by OHCDS for children in the care and custody of the State of Oklahoma who have special psychological, behavioral, emotional and social needs that require more intensive care than can be provided in a family or foster home setting. Existing rules state that as of January 1, 2004, only certain degreed staff members may be compensated for RBMS redirection services. Under the revisions, redirection services provided by the houseparent staff, who supervise the children 24 hours per day, will be compensable if they receive initial and ongoing training in behavior management techniques.

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Other revisions will incorporate the Oklahoma Board of Nursing's definition of an Advanced Practice Nurse into rules and update existing language regarding the Child in Need of Mental Health Treatment Act and Health Care Financing Agency to reflect current terminology.

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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 JANUARY 1, 2004, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 105. RESIDENTIAL BEHAVIORAL MANAGEMENT SERVICES IN GROUP SETTINGS AND NON-SECURE DIAGNOSTIC AND EVALUATION CENTERS

317:30-5-1043. Coverage by category

(a) **Adults.** Residential Behavioral Management Services In Group Settings and Non-Secure Diagnostic and Evaluation Center Services are not covered for adults.

(b) **Children.** Residential Behavioral Management Services (RBMS) in Group Settings and Non-Secure Diagnostic and Evaluation Centers are covered for children as set forth in this subsection.

(1) **Description.** Residential Behavior Management Services are provided by Organized Health Care Delivery Systems (OHCDs) for children in the care and custody of the State who have special psychological, behavioral, emotional and social needs that require more intensive care than can be provided in a family or foster home setting. The ~~Behavior~~ behavior management services are provided in the least restrictive environment and within a therapeutic milieu. The group setting is restorative in nature, allowing children with emotional and psychological problems to develop the necessary control to function in a less restrictive setting. Residential Behavior Management Services are reimbursed in accordance with the intensity of supervision and treatment required for the group setting in which the client is placed. Clients residing in a Level E and Intensive Treatment Services (ITS) Group Homes receive maximum supervision and treatment. In addition, ITS group homes provide crisis and stabilization intervention and treatment. Clients residing in a Level D+ Group Home receive highly intensive supervision and treatment. Clients residing in a Level D Group home or in a wilderness camp receive close supervision and moderate treatment. Clients residing in a Level C Group Home receive minimum supervision and treatment. Clients residing in Residential Diagnostic and Evaluation Centers receive intensive supervision and a 20 day comprehensive

~~assessment. Clients residing in an OJA Operated Home receive intensive supervision and treatment.~~ Clients residing in a Sanctions Home receive highly intensive supervision and treatment. Clients residing in an Independent Living Group Home receive intensive supervision and treatment. It is expected that RBMS in group settings are an all-inclusive array of treatment services provided in one day. In the case of a child who needs additional specialized services, under the Rehabilitation Option or by a psychologist, prior authorization by the OHCA ~~Medical Professional Services~~ or designated agent is required. Only specialized rehabilitation or psychological treatment services to address unique, unusual or severe symptoms or disorders will be authorized. If additional services are approved, the OHCDs shall collaborate with the provider of such services as directed by the OHCA or it's agent. Any additional specialized behavioral health services provided to children in state custody shall be funded in the normal manner. The OHCDs shall provide concurrent documentation that these services are not duplicative. The OHCDs determines the need for RBMS.

(2) **Medical necessity criteria.** The following medical necessity criteria must be met for residential behavior Management Services.

(A) Any DSM-IV AXIS I primary diagnosis, with the exception of V codes, with a detailed description of the symptoms supporting the diagnosis. A detailed description of the child's emotional, behavioral and psychological condition must be on file. A diagnosis is not required for behavior management services provided in Diagnostic and Evaluation centers.

(B) The child is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.

(C) It has been determined by the OHCDs that the current disabling symptoms could not have been or have not been manageable in a less intensive treatment program.

(D) Documentation that the child's presenting emotional and/or behavioral problems ~~prohibit full integration in a family/home setting without~~ prevent the child from living in a traditional family home. The child requires the availability of 24 hour crisis response/behavior management and intensive clinical interventions from professional staff, ~~preventing the child from living in a traditional family home.~~

(E) The Agency which has permanent or temporary custody of the child agrees to active participation in the child's treatment needs and planning.

(F) All of the medical necessity criteria must also be met for continued stay in residential group settings.

(3) **Treatment components.**

(A) **Treatment plan development.** A comprehensive individualized treatment plan for each resident shall be formulated by the Provider Agency staff within 30 days of admission, for ITS level within 72 hours, with documented input from the Agency which has permanent or temporary custody of the child and

when possible, the parent. This plan shall be revised and updated at least every three months, every seven days for ITS, with documented involvement of the Agency which has permanent or temporary custody of the child. Documented involvement can be written approval of the treatment plan by the Agency which has permanent or temporary custody of the child. A treatment plan is considered inherent in the provision of therapy and is not covered as a separate item of ~~Behavior Management Services~~ behavior management services. The treatment plan is individualized taking into account the child's age, history, diagnosis, functional levels, and culture. It includes appropriate goals and time limited and measurable objectives. Each resident's treatment plan shall also address the Provider Agency's plans with regard to the provision of services in each of the following areas:

- (i) Group therapy;
- (ii) Individual therapy;
- (iii) Family therapy;
- (iv) Alcohol and other drug counseling;
- (v) Basic living skills redevelopment;
- (vi) Social skills redevelopment;
- (vii) Behavior redirection; and
- (viii) The Provider Agency's plan to access appropriate educational placement services. (Any educational costs are excluded from calculation of the daily rate for ~~Behavior Management Services~~ behavior management services.)

(B) **Individual therapy.** The Provider Agency shall provide individual therapy on a weekly basis with a minimum of one or more sessions totaling one hour or more of treatment per week to children and youth receiving RBMS in Wilderness Camps, Level D, ~~OJA Operated Group Homes~~, Level D+ homes, Level E Homes, Independent Living Homes, and Sanctions Homes. ITS Level residents will receive a minimum of five or more sessions totaling a minimum of five or more hours of individual therapy per week. Clients residing in Diagnostic and Evaluation Centers and Level C Group Homes receive Individual Therapy on a an as needed basis. Individual therapy must be age appropriate and the techniques and modalities employed relevant to the goals and objectives of the individual's treatment plan. Individual counseling is a face to face, one to one service, and must be provided in a confidential setting.

(C) **Group therapy.** The Provider Agency shall provide group therapy to children and youth receiving residential behavioral management services. Group therapy must be a face to face interaction, age appropriate and the techniques and modalities employed relevant to the goals and objectives of the individual's treatment plan. The minimum expected occurrence would be one hour per week in Level D, Level C, ~~OJA Operated~~, Wilderness Camps and Independent Living. Two hours per week are required in Levels D+ and E. Ten hours per week are required in Sanctions

Homes, Intensive Treatment Service Level. Group therapy is not required for Diagnostic and Evaluation Centers. Group size should not exceed six members and group therapy sessions must be provided in a confidential setting.

(D) **Family therapy.** Family therapy is a face to face interaction between the therapist/counselor and family, to facilitate emotional, psychological or behavioral changes and promote successful communication and understanding. The Provider Agency shall provide family therapy as indicated by the resident's individual treatment plan. The Agency shall work with the caretaker to whom the resident will be discharged, as identified by the OHCDs custody worker. The Agency shall seek to support and enhance the child's relationships with family members (nuclear and appropriate extended), if the custody plan for the child indicates family reunification (~~nuclear and appropriate extended~~). The RBMS provider shall also seek to involve the child's parents in treatment team meetings, plans and decisions and to keep them informed of the child's progress in the program. Any service provided to the family must have the child as the focus.

(E) **Alcohol and other drug abuse treatment education, prevention, therapy.** The Provider Agency shall provide alcohol and other drug abuse treatment for residents who have emotional or behavioral problems related to substance abuse/chemical dependency, to begin, maintain and enhance recovery from alcoholism, problem drinking, drug abuse, drug dependency addiction or nicotine use and addiction. This service shall be considered ancillary to any other formal treatment program in which the child participates for treatment and rehabilitation. For residents who have no identifiable alcohol or other drug use, abuse, or dependency age appropriate education and prevention activities are appropriate. These may include self esteem enhancement, violence alternatives, communication skills or other skill development curriculums.

(F) **Basic living skills redevelopment.** The Provider Agency shall provide goal directed activities designed for each resident to restore, retain, and improve those basic skills necessary to independently function in a family or community. Basic living skills redevelopment is age appropriate and relevant to the goals and objectives of the treatment plan. This many include, but is not limited to food planning and preparation, maintenance of personal hygiene and living environment, household management, personal and household shopping, community awareness and familiarization with community resources, mobility skills, job application and retention skills.

(G) **Social skills redevelopment.** The Provider Agency shall provide goal directed activities designed for each resident to restore, retain and improve the self help, communication, socialization, and

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adaptive skills necessary to reside successfully in home and community based settings. These are age appropriate, culturally sensitive and relevant to the goals of the individual treatment plan. For ITS level of care, the minimum skill redevelopment per day is three hours. Any combination of basic living skills and social skills redevelopment that is appropriate to the need and developmental abilities of the child is acceptable.

(H) **Behavior redirection.** The Provider Agency shall be able to provide behavior redirection management by agency staff as needed 24 hours a day, 7 days per week. The Agency shall ensure staff availability to respond in a crisis to stabilize residents' behavior and prevent placement disruption. In addition, ITS group homes will be required to provide crisis stabilization interaction and treatment for new residents 24 hours a day, seven days a week.

(4) **Providers.** For eligible RBMS agencies to bill the Oklahoma Health Care Authority for services of their providers, the providers of individual, group and family therapies must:

(A) be a licensed psychologist, social worker (clinical specialty only), professional counselor, marriage and family therapist, or behavioral practitioner, or under Board Supervision to be licensed in one of the above stated areas; or

(B) have one year of experience in a behavioral health treatment program and a master's degree in a mental health treatment field licensable in Oklahoma by one of the following licensing boards:

- (i) Psychology,
- (ii) Social work (clinical specialty only),
- (iii) Licensed professional counselor,
- (iv) Licensed marriage and family therapist, or
- (v) Licensed behavioral practitioner; or

(C) have a baccalaureate degree in a mental health field in one of the stated areas listed in (B) of this paragraph AND three or more years post-baccalaureate experience in providing direct patient care in a behavioral health treatment setting and be provided a minimum of weekly supervision by a staff member licensed as listed in (A) of this paragraph; or

(D) be a registered psychiatric nurse; AND

(E) demonstrate a general professional or educational background in the following areas:

- (i) case management, assessment and treatment planning;
- (ii) treatment of victims of physical, emotional, and sexual abuse;
- (iii) treatment of children with attachment disorders;
- (iv) treatment of children with hyperactivity or attention deficit disorders;
- (v) treatment methodologies for emotional disturbed children and youth;

(vi) normal childhood development and the effect of abuse and/or neglect on childhood development;

(vii) treatment of children and families with substance abuse and chemical dependency disorders;

(viii) anger management; and

(ix) crisis intervention.

(5) For eligible RBMS agencies to bill the Oklahoma Health Care Authority for services of ~~their providers~~ provided by their staff for behavior management therapies (Individual, Group, Family) as of January 1, 2004, providers must have the following qualifications:

(A) be licensed in the state in which the services are delivered as a licensed psychologist, social worker (clinical specialty only), professional counselor, marriage and family therapist, or behavioral practitioner, or under Board approved Supervision to be licensed in one of the above stated areas; or

(B) be licensed as an Advanced Practice Nurse certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which services are provided, AND

(C) demonstrate a general professional or educational background in the following areas:

- (i) case management, assessment and treatment planning;
- (ii) treatment of victims of physical, emotional, and sexual abuse;
- (iii) treatment of children with attachment disorders;
- (iv) treatment of children with hyperactivity or attention deficit disorders;
- (v) treatment methodologies for emotionally disturbed children and youth;
- (vi) normal childhood development and the effect of abuse and/or neglect on childhood development;
- (vii) treatment of children and families with substance abuse and chemical dependency disorders;
- (viii) anger management; and
- (ix) crisis intervention.

(D) Staff providing basic living skills redevelopment, social skills redevelopment, ~~behavior redirection~~ and alcohol and other substance abuse treatment, shall meet one of the following areas:

- (i) ~~Bachelor~~ Bachelor's or ~~master~~ Master's degree in a ~~mental behavioral~~ health related field including but not limited to, psychology, sociology, criminal justice, school guidance and counseling, social work, occupational therapy, family studies; or
- (ii) a current license as a registered nurse in Oklahoma; or

- (iii) ~~Certification~~ certification as an Alcohol and Drug Counselor is allowed to provide substance abuse rehabilitative treatment to those with alcohol and/or other drug dependencies or addictions as a primary or secondary DSMIV Axis I diagnosis; or
- (iv) current certification as a Behavioral Health Case Manager from DMHSAS and meets OHCA requirements to perform case management services, as described in ~~317:30-5-585(1)~~ OAC 317:30-5-595(7).

(E) ~~Behavioral Management staff~~ Staff providing behavior redirection services must have current certification and required updates in nationally recognized behavior management techniques, such as CAPE or MANDT. Additionally, staff providing these services shall ~~must~~ receive initial and ongoing training in a at least one of the following areas: anger management, crisis intervention, normal child and adolescent development and the effect of abuse, neglect and/or violence on such development, grief and loss issues for children in out of home placement, interventions with victims of physical, emotional and sexual abuse, care and treatment of children with attachment disorders, care and treatment of children with hyperactive, or attention deficit, or conduct disorders, care and treatment of children, youth and families with substance abuse and chemical dependency disorders, passive physical restraint procedures, procedures for working with delinquents or the ~~Child in Need of Mental Health Treatment Act~~ Inpatient Mental Health and Substance Abuse Treatment of Minor's Act.

(F) In addition, Behavioral Management staff shall have access to consultation with an appropriately licensed mental health professional.

317:30-5-1046. Documentation of records and records review

- (a) The OHCDS and the facilities with whom it contracts must maintain appropriate records system. Current treatment plans, case files, and progress notes are maintained in the facilities' files during the time the child or youth is receiving services. All services rendered must be reflected by documentation in the case records.
- (b) OHCA and the ~~Health Care Financing Administration~~ Centers for Medicare and Medicaid Services (CMS) may evaluate through inspection or other means, the quality, appropriateness and timeliness of services provided by the OHCDS or facilities with whom it contracts.
- (c) All residential behavioral management services in group settings and non-secure diagnostic and evaluation centers must be reflected by documentation in the patient records. (4) Individual, group, family, and alcohol and other drug counseling, and social and basic living skills development services must include all of the following:
 - (1) date;
 - (2) start and stop time for each session;

- (3) signature of the ~~therapist~~ therapist/staff providing service;
- (4) credentials of ~~therapist~~ therapist/staff providing service;
- (5) specific problem(s) addressed (problem must be identified on master treatment plan);
- (6) methods used to address problem(s);
- (7) progress made toward goals;
- (8) patient response to the session or intervention; and
- (9) any new problem(s) identified during the session.

[OAR Docket #04-27; filed 1-9-04]

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

[OAR Docket #04-29]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacists
317:30-5-72.1. [AMENDED]
317:30-5-77.2. [AMENDED]
(Reference APA WF 03-34)

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

DATES:

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Immediately upon Governor's approval or January 1, 2004, whichever is later

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:
Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacists
317:30-5-72.1. [AMENDED]
(Reference APA WF # 03-01)

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May 26, 2003

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20 Ok Reg 2771

Docket number:
03-3049A

Superseded rules:
Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacists
317:30-5-77.2. [AMENDED]
(Reference APA WF # 03-25)

Gubernatorial approval:
August 23, 2003

Register publication:
20 Ok Reg 2897

Docket number:
03-3051

INCORPORATIONS BY REFERENCE:
N/A

Emergency Adoptions

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to increase the number of Medicaid recipients who successfully quit smoking. Medicaid clients who quit smoking or attempt to quit will benefit from the addition of smoking cessation products by improving their overall health status and decreasing the long term consequences of tobacco use.

ANALYSIS:

Medical Providers-Fee for Service, Pharmacists specific, rules are revised to remove the prior authorization requirement for smoking cessation products in order to assist Medicaid recipients with their smoking cessation efforts. Currently, Medicaid clients may receive a 90-day smoking cessation benefit consisting of Zyban, prescription nicotine patches, or Zyban/patch combination once in a twelve month period when prior authorized. Revisions would remove the need for a prior authorization for the first 90 days of therapy; however, coverage beyond that period would require a prior authorization and proof of enrollment in a behavior modification program. The smoking cessation benefits would also be enhanced to include coverage of prescription or non-prescription nicotine replacement products. Allowing recipients easier access to smoking cessation products should have a positive effect on public health and safety by encouraging these individuals who desire to stop using tobacco products. Medical Providers-Fee for Service, Pharmacists specific, rules are in need of revision in order to remove the prior authorization requirement for smoking cessation products. Agency staff projects that removing the prior authorization requirement for smoking cessation products for a 90 day time period will cost \$1,351,350 total dollars, \$405,000 in state dollars, for a one year period. This cost can be offset to a large extent by focusing outreach efforts toward pregnant women. For every dollar spent on smoking cessation in pregnant women, three dollars are returned. After applying the savings, the total cost drops to \$587,000 or \$176,000 in state funds per year. This savings can be further offset with long term returns of six dollars to every one dollar spent.

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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 JANUARY 1, 2004, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 5. PHARMACISTS

317:30-5-72.1. Drug benefit

OHCA administers and maintains an Open Formulary subject to the provisions of Title 42, United States Code (U.S.C.), Section 1396r-8. The Authority covers any drug for its approved purpose that has been approved by the Food and Drug Administration (FDA) for manufacturers who have entered into a drug rebate agreement with the Centers for Medicare and Medicaid Services—(CMS), formerly known as the Health Care Financing Administration (HCFA) subject to the following exclusions, and limitations.

(1) The following drugs, classes of drugs, or their medical uses are excluded from coverage:

- (A) Agents used to promote fertility.
- (B) Agents primarily used to promote hair growth.

- (C) Agents used for cosmetic purposes.
- (D) Agents used for the symptomatic relief of coughs and colds. Cough and cold drugs are not covered.
- (E) Vitamins and Minerals.
- (F) Agents used primarily for the treatment of anorexia or weight gain. Drugs used primarily for the treatment of obesity, such as appetite suppressants are not covered. Drugs used primarily to increase weight are not covered unless otherwise specified.
- (G) Agents used for smoking cessation. Nicotine replacement products are not covered.
- (H) Food supplements.
- (I) Agents that are experimental or whose side effects make usage controversial.
- (J) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or designee.
- (K) Over-the-counter drugs. Over-the-counter medications are not covered except for those medications listed in Paragraph (3) of this subsection.

(2) The exceptions to the exclusions provided in subsection OAC 317:30-5-72.1(1) are as follows:

(A) Agents used for the systematic relief of cough and colds. Antihistamines for allergies or antihistamine use associated with asthmatic conditions may be covered when medically necessary and prior authorized. ~~Non-sedating antihistamines are covered for children without prior authorization.~~

(B) Vitamins and Minerals. Vitamins and minerals are not covered except under the following conditions:

- (i) prenatal vitamins are covered for pregnant women up to age 50;
- (ii) fluoride preparations are covered for persons under 16 years of age or pregnant; and
- (iii) calcifediol/calciferol when used to treat end stage renal disease are covered.

(C) Agents used primarily for the treatment of anorexia or weight gain. There is limited coverage under the scope based prior authorization.

(D) Agents used for smoking cessation. A limited smoking cessation benefit is available through OAC 317:30-5-77.2(e)(1)(B)(ii).

(E) Over the counter drugs. Insulin, certain smoking cessation products, and the following family planning products are covered.

- (i) Male and Female Condoms.
- (ii) Contraceptive sponges.
- (iii) Diaphragms.
- (iv) Spermicidal jellies, creams, suppositories, and foams.

(3) All covered outpatient drugs are subject to prior authorization as provided in OAC 317-30-5-77.2 and 317:30-5-77.3.

(4) All covered drugs may be excluded or coverage limited if:

- (A) the prescribed use is not for a medically accepted indication as provided under 42 U.S.C. § 1396r-8;
- (B) the drug is subject to such restriction pursuant to the rebate agreement between the manufacturer and the Health Care Financing Administration;
- (C) OHCA has excluded coverage of the drug from its formulary established by the State as provided under 42 U.S.C. § 1396r-8.

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, prescription or non-prescription nicotine replacement products, or Zyban/patch Zyban/nicotine replacement~~ combination is covered once per twelve months ~~when prior authorized. Any additional coverage is considered on a case by case basis.~~ Coverage beyond 90 days requires prior authorization and proof of enrollment in a behavior modification program, such as the Oklahoma Tobacco Helpline or a manufacturer's telephone counseling program.

(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) **Clodpigrrel (Plavix™).** Clodpigrrel 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 #04-29; filed 1-9-04]

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

[OAR Docket #04-31]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Client Services

Part 9. Service Provisions

317:40-5-111. [NEW]

Part 11. Other Community Residential Supports

317:40-5-153. [NEW]

317:40-5-154. [NEW]

(Reference APA WF #03-30)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 63 O.S. § 5006; and 63 O.S. § 1415.1

DATES:

Adoption:

October 9, 2003

Approved by Governor:

November 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:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to conform to the Homeward Bound vs. The Hissom Memorial Center consent decree. The Centers for Medicare and Medicaid Services (CMS) recently approved a new waiver for class members and rules must be in place to implement the waiver.

ANALYSIS:

Developmental Disabilities Services rules are revised to establish guidelines for residential support services provided under the new Home and Community Based Homeward Bound Waiver for persons with developmental disabilities. As a result of the need to comply with the Homeward Bound vs. The Hissom Memorial Center consent decree, new rules have been developed by the Developmental Disabilities Services Division of the Oklahoma Department of Human Services and the Oklahoma Health Care Authority. The proposed policy has been previously approved by the Oklahoma Department of Human Services Advisory Committee on Services to Persons with Developmental Disabilities. The Centers for Medicare and Medicaid Services have approved the request for the new Homeward and Community Based Homeward Bound Waiver; therefore, rules are needed to implement residential support services provided under that specific waiver.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

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

SUBCHAPTER 5. CLIENT SERVICES

PART 9. SERVICE PROVISIONS

317:40-5-111. **Authorization for Habilitation Training Specialist Services in the Homeward Bound Waiver**

(a) Habilitation Training Specialist (HTS) Services are authorized as a result of needs identified by the Personal Support Team and informed service recipient selection.

(b) HTS Services may be provided in the Homeward Bound waiver in service settings including:

- (1) agency companion services as described in OAC 317:40-5-1 through OAC 317:40-5-39;
- (2) daily living supports as described in OAC 317:40-5-153;
- (3) specialized foster care as described in OAC 317:40-5-50 through OAC 317:40-5-76;
- (4) group home services as described in OAC 340:100-6; and
- (5) the class member's own home, family's home, or other community residential setting.

(c) HTS services are authorized only during periods when staff are engaged in purposeful activity that directly or indirectly benefits the person receiving services.

- (1) Staff must be physically able and mentally alert to carry out the duties of the job.
- (2) At no time are HTS services authorized for periods during which the staff are allowed to sleep.

PART 11. OTHER COMMUNITY RESIDENTIAL SUPPORTS

317:40-5-153. **Daily Living Supports for the Homeward Bound Waiver**

(a) **Introduction.** Daily Living Supports are provided by an agency with a valid OHCA contract, approved by DDS, for the service.

(1) Daily Living Supports require meeting the daily support needs of the people living in the home.

(A) In accordance with the needs of the class member, Daily Living Supports include hands-on assistance, supervision, or prompting so that the person performs the task, such as eating, bathing, dressing, toileting, transferring, personal hygiene, light housework, money management, community safety, recreation, social, health, or medication management.

(B) Daily Living Supports also include assistance with cognitive tasks or provision of services to prevent an individual from harming self or others, in accordance with the needs of the person receiving services.

(C) Daily Living Supports also include:

- (i) the provision of staff training to meet the specific needs of the service recipient;
- (ii) program supervision; and
- (iii) program oversight.

(2) Daily Living Supports are used to provide and fund up to eight hours per day of supports for class members

receiving supported living services as detailed in OAC 340:100-5-22.5.

(b) **Eligibility.** Daily Living Supports, as described in this Section, are provided to individuals who:

- (1) are members of the class certified in Case Number 85-C-437-E, U.S. District Court for the Northern District of Oklahoma;
- (2) receive community residential services in their own home; and
- (3) do not simultaneously receive any other community residential or group home services.

(c) **Responsibilities of provider agencies.** Each provider agency providing Daily Living Supports must:

- (1) ensure ongoing supports as needed to all service recipients living in the home when one or more service recipients is out of the home visiting family and friends, or hospitalized for psychiatric or medical care;
- (2) ensure compliance with all applicable DDS policy found at OAC 340:100; and
- (3) provide for the welfare of all service recipients living in the home.

(d) **Criteria for direct support staff services in the Homeward Bound Waiver beyond eight hours per day.** Additional direct support services including HTS, Homemaker, or Intensive Personal Supports, beyond the average of eight hours per day referenced in subsection (a) of this Section, are provided based on needs identified by the Personal Support Team.

(e) **Daily Living Supports claims.** No more than 365 units of Daily Living Supports may be billed per year, except Leap Year, for each individual receiving services.

- (1) The provider agency claims one unit of service for each day the individual receives Daily Living Supports.
- (2) Providers must claim at least monthly for all days that Daily Living Supports were actually provided during the preceding month. Claims must not be based on budgeted amounts.
- (3) When an individual changes provider agencies, only the outgoing service provider agency claims for the day that the individual moves.

(f) **Billing for other support services.** The provider agency may claim separately for additional support services such as HTS, Intensive Personal Supports, or Homemaker Services provided to an individual receiving Daily Living Supports, if:

- (1) additional support services have been authorized in the person's Plan of Care; and
- (2) eight hours of direct staff support, excluding Nursing, have already been provided to the person that day. If support services are provided to multiple individuals residing in the same household at the same time, the provider agency cannot count these hours toward each individual's eight-hour minimum. For example, three hours of HTS provided simultaneously by a single direct contact staff to three residents in the same household may only be counted as three hours of HTS for one of the individuals, not three hours for each resident.

Emergency Adoptions

(g) **Therapeutic leave.** Therapeutic leave is a Medicaid payment made to the Daily Living Supports contract provider to enable the service recipient to retain direct support services.

(1) Therapeutic leave is claimed when the service recipient does not receive Daily Living Supports services for 24 consecutive hours because of:

(A) a visit with family or friends without direct support staff;

(B) vacation without direct support staff; or

(C) hospitalization, whether direct support staff are present or not. Daily living supports staff are present with the individual in the hospital as approved by the person's Team in the Individual Plan.

(2) An individual may receive therapeutic leave for no more than 14 consecutive days per event, not to exceed 60 days per Plan of Care year.

(3) The payment for a day of therapeutic leave is the same amount as the per diem rate for Daily Living Supports.

(4) If, because of the service recipient's absence, the direct support staff member is unable to work, the provider pays the staff member the salary that he or she would have earned if the service recipient were not on therapeutic leave.

317:40-5-154. Intensive Personal Supports in the Homeward Bound Waiver

(a) **Introduction.** Intensive Personal Supports are support services provided to class members who need an enhanced

level of direct support in order to successfully reside in a community based setting. Intensive Personal Supports build upon the level of support provided by a Habilitation Training Specialist or Daily Living Supports staff by utilizing a second staff person on duty to provide assistance and training in self-care, daily living, recreational, and habilitation activities.

(b) **Eligibility.** Intensive Personal Supports are provided by OHCA contracted provider agencies to class members who:

(1) are eighteen years of age or older, unless approved by the Director of OKDHS or designee; and

(2) require a second support staff in order to meet their needs, when there is no other resolution.

(c) **Service requirements.** Intensive Personal Supports are limited to 24 hours per day and must be:

(1) included in the class member's Individual Plan in accordance with OAC 340:100-5-53;

(2) authorized in the Plan of Care; and

(3) provided in conjunction with Habilitation Training Services.

(d) **Responsibilities of provider agencies.** Each provider agency providing Intensive Personal Supports must:

(1) have current, valid contracts with OHCA and OKDHS/DDSD; and

(2) ensure that any staff member providing Intensive Personal Supports has completed the training in accordance with OAC 340:100-3-38.

[OAR Docket #04-31; filed 1-9-04]

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

1:2004-1.

EXECUTIVE ORDER 2004-1

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the authority vested in me and pursuant to Title 27A Okla. Stat. § 1-2-101(A)(1), designate to the Secretary of Environment the following additional powers and duties:

To receive funds from the United States pursuant to Federal environmental statutes and disburse them as appropriate to local governmental and quasi-governmental entities and, where eligible, private entities, watershed organizations, and nonprofit organizations.

To support and participate in non-partisan statewide environmental education efforts.

This executive order shall be forwarded to the Secretary of Environment who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 13th day of January, 2004.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #04-65; filed 1-15-04]

