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Brad Henry, Governor
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Secretary of State
Peggy Coe, Managing Editor

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Notices of Rulemaking Intent

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

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

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

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

[OAR Docket #04-1327]

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking

PROPOSED RULES:

Subchapter 17. Combined Pesticide

35:30-17-13. through 35:30-17-13.5. [NEW]

SUMMARY:

The proposed rule implements the requirements of House Bill 2402 that created a state program for registration of pesticide producing establishments.

AUTHORITY:

Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29), 3-82; Article 6, Section 31, Constitution of the State of Oklahoma

COMMENT PERIOD:

Persons may submit written and oral comments to Teena Gunter at 2800 North Lincoln Boulevard, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from November 1, 2004 through December 1, 2004.

PUBLIC HEARING:

A public hearing will be held at 10:30 a.m., December 1, 2004, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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 Teena Gunter at the above address during the period from November 1, 2004 through December 1, 2004.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by contacting Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804.

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

Teena Gunter, (405) 522-4576, e-mail address: tgunter@oda.state.ok.us

[OAR Docket #04-1327; filed 10-8-04]

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

[OAR Docket #04-1328]

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking

PROPOSED RULES:

Subchapter 17. Combined Pesticide

35:30-17-21. [AMENDED]

SUMMARY:

The proposed rule assists the Department in reviewing records for applications of pesticides. Currently, applicators are required to keep specified records and allow review of those records at their principle place of business. Many applicators list their home as the principle place of business. The Department has experienced significant difficulties in reviewing records at these home based businesses. Often the business hours for the home business are not during normal Department working hours or the home is located in a closed or gated community. This rule requires the applicator to provide a plan that allows Department staff to access the records in a reasonable manner.

AUTHORITY:

Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29), 3-81 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma

COMMENT PERIOD:

Persons may submit written and oral comments to Teena Gunter at 2800 North Lincoln Boulevard, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from November 1, 2004 through December 1, 2004.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m., December 1, 2004, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar

Notices of Rulemaking Intent

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 Teena Gunter at the above address during the period from November 1, 2004 through December 1, 2004.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by contacting Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804.

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

Teena Gunter, (405) 522-4576, e-mail address: tgunter@oda.state.ok.us

[OAR Docket #04-1328; filed 10-8-04]

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

[OAR Docket #04-1329]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 29. Fertilizer
35:30-29-22. [AMENDED]
35:30-29-37. [AMENDED]
35:30-29-51. [AMENDED]

SUMMARY:

The proposed rules provide additional requirements for fertilizer storage facilities. These requirements include guidelines for directions of use of fertilizers, labeling of storage bins, application requirements, and correcting an error in terminology.

AUTHORITY:

Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29), 8-77.1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma

COMMENT PERIOD:

Persons may submit written and oral comments to Teena Gunter at 2800 North Lincoln Boulevard, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from November 1, 2004 through December 1, 2004.

PUBLIC HEARING:

A public hearing will be held at 11:30 a.m., December 1, 2004, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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 Teena Gunter at the above address during the period from November 1, 2004 through December 1, 2004.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by contacting Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804.

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

Teena Gunter, (405) 522-4576, e-mail address: tgunter@oda.state.ok.us

[OAR Docket #04-1329; filed 10-8-04]

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

[OAR Docket #04-1335]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 13. Special Education
210:15-13-4. [NEW]

SUMMARY:

The purpose of the rule is to improve the quality of service provided to deaf and hearing impaired students utilizing an interpreter. The rule will effect persons employed as educational interpreters within the school setting. The public schools will bear the cost of the implementation as required by SB 1328.

AUTHORITY:

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

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m. on December 15, 2004 at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:00 a.m. on Thursday, December 16, 2004 at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard,

Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:05 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. § 303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on November 16, 2004.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #04-1335; filed 10-8-04]

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

[OAR Docket #04-1336]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 9. Professional Standards: Teacher Education and Certification

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

210:20-9-172. [AMENDED]

SUMMARY:

The purpose of the rule is to improve the quality of service provided to deaf and hearing impaired students utilizing an interpreter. The rule will effect persons employed as educational interpreters within the school setting. The public schools will bear the cost of the implementation as required by SB 1328.

AUTHORITY:

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

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m. on December 15, 2004 at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:00 a.m. on Thursday, December 16, 2004 at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard,

Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:05 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on November 16, 2004.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #04-1336; filed 10-8-04]

**TITLE 235. OKLAHOMA FUNERAL BOARD
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #04-1330]

RULEMAKING ACTION:

Notice of Proposed PERMANENT Rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions [NEW]

235:1-1-2. [AMENDED]

SUMMARY:

The Proposed Rules change the title and modify the duties of Executive Secretary-Treasurer [Subchapter 1].

AUTHORITY:

59 O.S. § 396.2a(1); Oklahoma Funeral Board

COMMENT PERIOD:

Persons may submit written comments to Chris Ferguson, Oklahoma Funeral Board, at 4545 N. Lincoln Blvd., Suite 175, Oklahoma City, OK 73105, on or before Monday, December 6, 2004, between 10 a.m. and 2 p.m.

PUBLIC HEARING:

A public hearing shall be heard at the regular meeting of the Oklahoma Funeral Board, at 4545 N. Lincoln Blvd., Green Room, Oklahoma City, OK 73105, on Thursday, December 9, 2004, at 10 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Board has determined that the proposed rule changes will not have an affect on business entities. Nevertheless, any business entity that believes it may be affected by said changes are requested to provide the Board, within the Comment Period, in dollars amounts (where possible), the increase in the level of direct costs, indirect costs, or other costs expected to

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be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the Proposed Rules may be picked up at the Oklahoma Funeral Board located at 4545 N. Lincoln Blvd., Suite 175, Oklahoma City, OK 73105, between the hours of 10 a.m. and 2 p.m. There will be a \$0.25 per page charge for copies received. The document may be viewed electronically on the Board's website free of charge.

RULES IMPACT STATEMENT:

Copies of the Rule Impact Statement are available for review at the Oklahoma Funeral Board located at 4545 N. Lincoln Blvd., Suite 175, Oklahoma City, OK 73105, between the hours of 10 a.m. and 2 p.m. There will be a \$0.25 per page charge for copies received. The document may be viewed electronically on the Board's website free of charge.

CONTACT PERSONS:

John A. Maisch, Liaison Officer
Maisch Law Firm
500 E. Sheridan Ave.
Oklahoma City, OK 73105
(405) 826-5972 telephone
(405) 601-2240 facsimile
Chris Ferguson, Liaison Alternate
Oklahoma Funeral Board
4545 N. Lincoln Blvd, Suite 175
Oklahoma City, OK 73105
(405) 522-1790 telephone
(405) 522-1797 facsimile

[OAR Docket #04-1330; filed 10-8-04]

TITLE 235. OKLAHOMA FUNERAL BOARD CHAPTER 10. FUNERAL SERVICES LICENSING

[OAR Docket #04-1331]

RULEMAKING ACTION:

Notice of Proposed PERMANENT Rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions [AMENDED]
Subchapter 3. Qualifications and Requirements for Licensure [AMENDED]
Subchapter 5. Licensing Fees [AMENDED]
Subchapter 7. Licensing Renewal, Revocation, and Suspension [AMENDED]
Subchapter 9. Procedures for the Disposition of Complaints [AMENDED]
Subchapter 11. Minimum Standards of Performance [AMENDED]
Subchapter 13. Continuing Education Requirements [AMENDED]
Subchapter 15. Advertising [AMENDED]

SUMMARY:

The Proposed Rules clarify definitions and reflect statutory name change to the agency [Subchapter 1]. The Proposed Rules increase the type of misdemeanor convictions that may disqualify an applicant from licensure [Subchapter 3]. The Proposed Rules require applicants seeking licensure as both funeral director and embalmer to earn a seventy-five percent (75%) on each separate licensure exam [Subchapter 3]. The Proposed Rules mandate all funeral establishments or commercial embalming services to maintain an embalmer's log [Subchapter 3]. The Proposed Rules expand the time-period in which an apprentice's registration may be renewed [Subchapter 3]. The Proposed Rules distinguish reciprocity requirements for applicants who have been licensed for more than five (5) years [Subchapter 3]. The Proposed Rules delineate administrative fees as required by 59 O.S. § 396.4(B) [Subchapter 5]. The Proposed Rules enlarge the definition of material misrepresentation, desecration, and other prohibited acts [Subchapter 7]. The Proposed Rules augment the composition and duties of the Probable Cause Committee [Subchapter 9]. The Proposed Rules introduce continuing education requirements as required by 59 O.S. § 396.5b [Subchapter 13]. The Proposed Rules refine the definition of false or misleading advertising [Subchapter 15].

AUTHORITY:

59 O.S. § 396.2a(1); Oklahoma Funeral Board

COMMENT PERIOD:

Persons may submit written comments to Chris Ferguson, Oklahoma Funeral Board, at 4545 N. Lincoln Blvd., Suite 175, Oklahoma City, OK 73105, on or before Monday, December 6, 2004, between 10 a.m. and 2 p.m.

PUBLIC HEARING:

A public hearing shall be heard at the regular meeting of the Oklahoma Funeral Board, at 4545 N. Lincoln Blvd., Green Room, Oklahoma City, OK 73105, on Thursday, December 9, 2004, at 10 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Board has determined that the proposed rule changes will not have an affect on business entities. Nevertheless, any business entity that believes it may be affected by said changes are requested to provide the Board, within the Comment Period, in dollars amounts (where possible), the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the Proposed Rules may be picked up at the Oklahoma Funeral Board located at 4545 N. Lincoln Blvd., Suite 175, Oklahoma City, OK 73105, between the hours of 10 a.m. and 2 p.m. There will be a \$0.25 per page charge for copies received. The document may be viewed electronically on the Board's website free of charge.

RULES IMPACT STATEMENT:

Copies of the Rule Impact Statement are available for review at the Oklahoma Funeral Board located at 4545 N.

Lincoln Blvd., Suite 175, Oklahoma City, OK 73105, between the hours of 10 a.m. and 2 p.m. There will be a \$0.25 per page charge for copies received. The document may be viewed electronically on the Board's website free of charge.

CONTACT PERSONS:

John A. Maisch, Liaison Officer
Maisch Law Firm
500 E. Sheridan Ave.
Oklahoma City, OK 73105
(405) 826-5972 telephone
(405) 601-2240 facsimile
Chris Ferguson, Liaison Alternate
Oklahoma Funeral Board
4545 N. Lincoln Blvd, Suite 175
Oklahoma City, OK 73105
(405) 522-1790 telephone
(405) 522-1797 facsimile

[OAR Docket #04-1331; filed 10-8-04]

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

[OAR Docket #04-1334]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 4. New Source Performance Standards
252:100-4-15. [AMENDED]
- Subchapter 17. Incinerators
- Part 9. Commercial and Industrial Solid Waste Incinerator Units
252:100-17-63. [AMENDED]
- Subchapter 41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants
- Part 1. General Provisions
252:100-41-1. [REVOKED]
252:100-41-2. [REVOKED]
252:100-41-3. [NEW]
252:100-41-4. [NEW]
- Part 3. Hazardous Air Contaminants
252:100-41-15. [AMENDED]
- Part 5. Toxic Air Contaminants
252:100-41-35. [REVOKED]
252:100-41-36. [REVOKED]
252:100-41-37. [REVOKED]
252:100-41-38. [REVOKED]
252:100-41-39. [REVOKED]
252:100-41-40. [REVOKED]
252:100-41-41. [REVOKED]
252:100-41-42. [REVOKED]
252:100-41-43. [REVOKED]
252:100-41-44. [REVOKED]

- Subchapter 42. Control of Toxic Air Pollutants (TAPs)
[NEW]
- Appendix E. Primary Ambient Air Quality Standards
[REVOKED]
- Appendix E. Primary Ambient Air Quality Standards
[NEW]
- Appendix F. Secondary Ambient Air Quality Standards
[REVOKED]
- Appendix F. Secondary Ambient Air Quality Standards
[NEW]
- Appendix O. Toxic Air Pollutants Ambient Air Concentration Standards [NEW]

SUMMARY:

The Department proposes to incorporate by reference New Source Performance Standards (NSPS) contained in 40 CFR Part 60 into 252:100-4-15.

The Department proposes to add language to subsection 63 (j) of OAC 252:100-17 Incinerators, which will clarify that air curtain incinerators are subject to the Title V permitting requirements found in 252:100-17-73. The added reference will not change the interpretation of the rule, but will clarify the current requirements for air curtain incinerators.

The Department proposes to amend Section 15 of Subchapter 41 Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants to incorporate by reference new National Emission Standards for Hazardous Air Pollutants contained in 40 CFR Parts 61 and 63.

In a separate hearing, the Department proposes to partition the existing Subchapter 41 into two subchapters. The proposed amendments will clarify and modify the state-only requirements for emissions from stationary sources and relocate these requirements into the new Subchapter 42 and Appendix O. Subchapter 41 will contain the federal requirements for HAPs and asbestos. The remaining Sections 15 and 16 of Subchapter 41, which incorporate by reference National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR Parts 61 and 63 and specific asbestos requirements, will be retained in Subchapter 41. Also, two new sections will be added as 252:100-41-3 and 252:100-41-4.

The Department proposes to add the 24-hour and annual PM 2.5 standards to both the Primary and Secondary Ambient Air Quality Standards contained in Appendices E and F.

AUTHORITY:

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

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on December 9, 2004. To be thoroughly considered by staff prior to the hearing, written comments should be submitted to the contact person by December 2, 2004. Oral comments may be made at the December 9, 2004 hearing and the March 4, 2005 Environmental Quality Board meeting.

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PUBLIC HEARINGS:

Before the Air Quality Council at 9:00 a.m., Thursday, December 9, 2004 at the Department of Environmental Quality, Room 101, 707 North Robinson, Oklahoma City, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on March 4, 2005 at the Department of Environmental Quality.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

Please send written comments to Max Price (e-mail: max.price@deq.state.ok.us) for Subchapters 4 and 41-15; Lisa Donovan (e-mail: lisa.donovan@deq.state.ok.us) for Subchapters 17 and 41; Brad Cook (e-mail: brad.cook@deq.state.ok.us) for Subchapter 42 and Appendix O; and Leon Ashford (e-mail: leon.ashford@deq.state.ok.us) for Appendices E & F at the Department of Environmental Quality, Air Quality Division, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-4100, fax (405) 702-4101.

PERSONS WITH DISABILITIES:

Should you desire to attend but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405) 702-4100.

[OAR Docket #04-1334; filed 10-11-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT

[OAR Docket #04-1333]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

252:410-1-7. [AMENDED]

Subchapter 3. Radiation Machines - Common Requirements

Part 1. General Provisions

252:410-3-3. [AMENDED]

Subchapter 7. Radiation Management Authorizations; Procedures and Requirements

Part 1. General Provisions Common to all Authorizations

252:410-7-1. [AMENDED]

252:410-7-2. [AMENDED]

252:410-7-3. [AMENDED]

252:410-7-4. [AMENDED]

252:410-7-5. [AMENDED]

252:410-7-6. [AMENDED]

Part 3. Reciprocity Recognition

252:410-7-32. [AMENDED]

Subchapter 10. Radioactive Materials Program

Part 35. Medical Use of Byproduct Material

252:410-10-35. [AMENDED]

Part 101. ~~State Agreement~~ Radioactive Materials Program Fees [AMENDED]

252:410-10-101. [AMENDED]

252:410-10-110. [AMENDED]

252:410-10-111. [AMENDED]

252:410-10-118. [AMENDED]

Subchapter 19. X-ray Fluorescence Instruments Used for Lead-based Paint Detection

252:410-19-1. [AMENDED]

252:410-19-2. [AMENDED]

252:410-19-3. [AMENDED]

252:410-19-6. [AMENDED]

252:410-19-9. [AMENDED]

Appendix A. Fee Schedule for Radiation Management [REVOKED]

Appendix A. Fee Schedule for Radiation Management [NEW]

SUMMARY:

The proposed amendment to 252:410-1 updates the incorporation by reference to Title 10 of the Code of Federal Regulations (10 CFR).

The proposed amendment to Subchapter 3 revises the fees charged for permit applications and renewal of permits for radiation machines. The new Appendix A sets forth the revised fees.

The proposed amendments to Subchapter 7 amend provisions authorizing the imposition of a late payment charge when fees are received after the due date. For radiation machines, the definition of the term "due date" is proposed to be added in relation to permit fees. Another proposed amendment is to insert the term "Radioactive Materials" in several places within the Subchapter where the term "State Agreement" currently appears.

The proposed amendment to Subchapter 10 is to adopt by reference Part 35 of 10 CFR, Medical Use of Byproduct Material. Another proposed amendment is the revision of the fees applied to small entities and a revision of the

qualifications for eligibility as a "small entity." Another proposed amendment adds a fee for inspections related to those activities of decommissioning, decontamination, reclamation or site restoration, to be charged at full cost. The title of Part 101 will be changed to coincide with the correct name of Subchapter 10.

The proposed amendments to Subchapter 19 delete the exemption for instruments containing radioactive material that is regulated under the Atomic Energy Act or by the U.S. Nuclear Regulatory Commission. Another proposed amendment lowers the fee charged with the application for a permit. Another proposed amendment will strengthen the requirements for the training of owners/users/operators of these instruments.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and 2-9-104

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from October 10, 2004 through December 8, 2004. Oral comments may be made at the Radiation Management Advisory Council meeting on December 8, 2004, or at the meeting of the Environmental Quality Board on March 4, 2005.

PUBLIC HEARINGS:

Before the Radiation Management Advisory Council on December 8, 2004 at its meeting in Room A-1440 of the Tulsa Technology Center, Riverside campus, 801 East 91st Street, Tulsa.

Before the Environmental Quality Board at its meeting on March 4, 2005 in the Multi-Purpose Room, first floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPY OF PROPOSED RULE CHANGES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

Mike Broderick, Land Protection Division, Radiation Management Section, P.O. Box 1677, Oklahoma City, OK

73101-1677, e-mail at mike.broderick@deq.state.ok.us, phone 405-702-5100, or fax 405-702-5101.

ADDITIONAL INFORMATION:

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

[OAR Docket #04-1333; filed 10-11-04]

**TITLE 600. REAL ESTATE APPRAISER BOARD
CHAPTER 10. LICENSURE AND CERTIFICATION REQUIREMENTS**

[OAR Docket #04-1315]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

600:10-1-2. Definitions [AMENDED]

600:10-1-4. Examination [AMENDED]

600:10-1-16. Supervision of trainee appraisers [AMENDED]

SUMMARY:

The proposed amendment to 600:10-1-2 adds language incorporating the Uniform Standards of Professional Appraisal Practice by reference. The proposed amendment to rule 600:10-1-4 adds the requirement for identification of a supervisory appraiser to the qualifications for eligibility to take the examination for trainee appraiser and incorporates the Appraiser Qualification Criteria promulgated by the Appraiser Qualification Board of the Appraisal Foundation by reference. Amendments to rule 600:10-1-16 clarify existing rules for the trainee-supervisor relationship and brings the rule into compliance with the Appraiser Qualification Criteria promulgated by the Appraiser Qualification Board of the Appraisal Foundation.

AUTHORITY:

Real Estate Appraiser Board, 59 O.S. § 706(A).

COMMENT PERIOD:

Persons may submit written or oral comments to Rod Stirman at the offices of the Real Estate Appraiser Board, Oklahoma Insurance Department, 2401 NW 23rd Street, Suite 28, Oklahoma City, Oklahoma 73107 during the period from November 1, 2004 to 1:00 p.m., December 2, 2004.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on December 3, 2004, in the Commissioner's Conference Room at the office of the Oklahoma Insurance Department, at 2401 NW 23rd Street, Suite 28, Oklahoma City, Oklahoma 73107.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board with information, in dollar

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amounts if possible, about any increases in the level of direct 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 Rod Stirman at the above address during the period from November 1, 2004 to 1:00 p.m., December 2, 2004.

COPIES OF PROPOSED RULES:

Copies of proposed rules are available at the Offices of the Real Estate Appraiser Board, Oklahoma Insurance Department, at 2401 NW 23rd Street, Suite 28, Oklahoma City, Oklahoma 73107. Copies of proposed rules may also be obtained by written request to the attention of Rod Stirman, Real Estate Appraiser Board, PO Box 53408, Oklahoma City, OK 73152.

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement may be obtained at the Offices of the Real Estate Appraiser Board, Oklahoma Insurance Department, at 2401 NW 23rd Street, Suite 28, Oklahoma City, Oklahoma 73107.

CONTACT PERSON:

Rod Stirman, Director, (405) 521-6636.

[OAR Docket #04-1315; filed 10-5-04]

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

[OAR Docket #04-1316]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

600:15-1-2. Definitions [AMENDED]

600:15-1-4. ~~Complaint~~Grievance process procedure [AMENDED]

600:15-1-5. Issuance of formal complaint: setting date for formal hearing [AMENDED]

600:15-1-6. Notice of disciplinary proceedings [AMENDED]

SUMMARY:

The proposed amendment to 600:15-1-2 incorporates the Uniform Standards of Professional Appraisal Practice by reference. The proposed amendments to rules 600:15-1-4, 600:15-1-5, and 600:15-1-6 amend the rules to use the term grievance in place of the term informal complaint. The proposed amendment to rule 600:15-1-6 also revises scheduling of hearings.

AUTHORITY:

Real Estate Appraiser Board, 59 O.S. § 706(A).

COMMENT PERIOD:

Persons may submit written or oral comments to Rod Stirman at the offices of the Real Estate Appraiser Board, Oklahoma Insurance Department, 2401 NW 23rd Street, Suite

28, Oklahoma City, Oklahoma 73107 during the period from November 1, 2004 to 1:00 p.m., December 2, 2004.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on December 3, 2004, in the Commissioner's Conference Room at the office of the Oklahoma Insurance Department, at 2401 NW 23rd Street, Suite 28, Oklahoma City, Oklahoma 73107.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board with information, in dollar amounts if possible, about any increases in the level of direct 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 Rod Stirman at the above address during the period from November 1, 2004 to 1:00 p.m., December 2, 2004.

COPIES OF PROPOSED RULES:

Copies of proposed rules are available at the Offices of the Real Estate Appraiser Board, Oklahoma Insurance Department, at 2401 NW 23rd Street, Suite 28, Oklahoma City, Oklahoma 73107. Copies of proposed rules may also be obtained by written request to the attention of Rod Stirman, Real Estate Appraiser Board, PO Box 53408, Oklahoma City, OK 73152.

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement may be obtained at the Offices of the Real Estate Appraiser Board, Oklahoma Insurance Department, at 2401 NW 23rd Street, Suite 28, Oklahoma City, Oklahoma 73107.

CONTACT PERSON:

Rod Stirman, Director, (405) 521-6636.

[OAR Docket #04-1316; filed 10-5-04]

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

[OAR Docket #04-1317]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Chapter 20. Alcohol, Mixed Beverages, and Low-Point Beer [AMENDED]

SUMMARY:

The 2003-2004 Legislative Session enacted statutory changes which require amendments to the existing rules in the following areas:

Existing Section **710:20-2-6** has been amended to conform with the provisions of Senate Bill 1543 §1, which provided that retail dealers seeking a special event permit would not

be required to separately permit each service unit in the same general vicinity. [37:163.8]

In addition, other rule changes may be made to clarify policy, improve readability, correct scrivener's errors, update statutory citation, and insure accurate internal cross-references.

AUTHORITY:

Oklahoma Tax Commission; 68 O.S., § 203; 37 O.S., § 163.18F

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m., December 2, 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. December 3, 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** has been determined to **adversely** impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity **due to** compliance with the proposed Rules.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared and will be available for review from and after November 16, 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 #04-1317; filed 10-6-04]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 23. CHARITY GAMES TAX**

[OAR Docket #04-1318]

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 23. Charity Games Tax [AMENDED]

SUMMARY:

The 2003-2004 Legislative Session enacted statutory changes which require amendments to the existing rules in the following areas:

A definition of "veterans' organization" in conformity with statute has been added to Section **710:23-1-2**, in keeping with the provisions of House Bill 1889. [3A:421]

Section **710:23-1-4** has been amended to require documentation from distributors concerning exempt sales to "veterans organizations". [HB 1889 §1] [3A:422]

Section **710:23-1-8** has been amended to add the provision that sales of charity game equipment to "veterans organizations" are exempt from sales tax. [HB 1889 §3] [68:1355]

In addition, other rule changes may be made to clarify policy, improve readability, correct scrivener's errors, update statutory citation, and insure accurate internal cross-references.

AUTHORITY:

Oklahoma Tax Commission; 68 O.S., § 203; 3A O.S. § 422

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m., December 3, 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. December 7, 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.

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REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this **rulemaking action** has been determined to **adversely** impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity **due to** compliance with the proposed Rules.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared and will be available for review from and after November 16, 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 #04-1318; filed 10-6-04]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 55. MOTOR FUELS

[OAR Docket #04-1332]

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

CHAPTER 55. Motor Fuels [AMENDED]

SUMMARY:

The 2004 Legislature enacted statutory changes which require modification of existing rules. Specifically, Section 710:55-4-119 must be amended to implement the provisions of Senate Bill 1356 of the 49th Legislature, 2nd Regular Session, which provides for a refund of motor fuel tax for fuel used to operate trucks designed, equipped, and used exclusively for garbage, refuse, or solid waste disposal.

AUTHORITY:

Oklahoma Tax Commission; 68 O.S. §203; 68 O.S.Supp.1996 §§500.10(4), 500.13(3), 500.14(E), 500.18(1),

500.24(C), 500.29(D), 500.36(C), 500.38(2), 500.44(E), 500.46, 500.60(C)

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m., December 10, 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. December 14, 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** has been determined to **adversely** impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity **due to** compliance with the proposed Rules.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared and will be available for review from and after November 16, 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 #04-1332; filed 10-8-04]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 75. TOURISM PROMOTION**

[OAR Docket #04-1319]

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

710:75-1-8. Filing requirements; interest; penalty
[AMENDED]

SUMMARY:

The 2003-2004 Legislative Session enacted statutory changes which require amendments to the existing rules in the following areas:

Section 710:75-1-8, has been amended to conform with the provisions of Senate Bill 1122(2), which changed the delinquency date for reporting and remitting taxes due pursuant to the Oklahoma Tourism Promotion Act. **[68:50013]**

In addition, other rule changes may be made to clarify policy, improve readability, correct scrivener's errors, update statutory citation, and insure accurate internal cross-references.

AUTHORITY:

Oklahoma Tax Commission; 68 O.S. §§ 203, 50013

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m., December 3, 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. December 7, 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** has been determined to **adversely** impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity **due to** compliance with the proposed Rules.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared and will be available for review from and after November 16, 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 #04-1319; filed 10-6-04]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING**

[OAR Docket #04-1320]

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Subchapter 3. Returns and Payments
710:90-3-11. Income tax withholding for pass-through entities [AMENDED]

SUMMARY:

The 2003-2004 Legislative Session enacted statutory changes which require amendments to the existing rules in the following areas:

The amendments streamline the procedures for reporting and remitting taxes withheld by a pass-thru entity, and modify withholding requirements for a non-resident member to avoid withholding requirements imposed by 68 O.S. § 2385.30 if the member voluntarily submits to the jurisdiction of the Commission. Procedures have been established for the filing of affidavits for this purpose with the member's pass-through entity, and for the reporting the information to the Commission. New language has been added to reflect the exempt status of certain publicly-traded partnerships. Finally, a Section has been added to note that where the pass-through entity is making distributions subject to withholding for out-of-state attorneys pursuant to 5 O.S. Supp.2004, § 1.6 and is withholding accordingly, such distributions will not be subject to pass-through entity withholding requirements. [SB 1556] Section 710:90-3-11 was also submitted for gubernatorial approval through emergency rulemaking procedures on September 7, 2004.

Notices of Rulemaking Intent

In addition, other rule changes may be made to clarify policy, improve readability, correct scrivener's errors, update statutory citation, and insure accurate internal cross-references.

AUTHORITY:

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

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m., December 7, 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. December 10, 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** has been determined to **adversely** impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity **due to** compliance with the proposed Rules.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared and will be available for review from and after November 16, 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 #04-1320; filed 10-6-04]

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

[OAR Docket #04-1321]

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Subchapter 13. Out-of-State Attorney Registration [NEW]
710:95-13-1. Out-of-state attorney registration [NEW]

SUMMARY:

The 2003-2004 Legislative Session enacted statutory changes which require modification to the existing rules in the following areas:

House Bill 2661 was enacted into law by the 49th Legislature, 2nd Regular Session, and shall become effective on November 1, 2004. Portions of this bill enacted the "Out-of-State-Attorney Registration Act", which mandates a registration procedure with the Oklahoma Bar Association and the Tax Commission for out-of-state attorneys performing legal services in the state. The new rule establishes forms and procedures for the new registration process, discusses procedures for filing reports, and making remittances of amount withheld by the persons and entities who may have an income tax reporting duty or withholding requirement under the new law, and establishes an annual renewal process for registrants. **[5 O.S. Supp. 2004, § 1.1-1.19]**

Section 710:95-13-1 was also submitted for gubernatorial approval through emergency rulemaking procedures on October 1, 2004. The proposed permanent rule has been augmented with information about annual reporting requirements.

In addition, other rule changes may be made to clarify policy, improve readability, correct scrivener's errors, update statutory citation, and insure accurate internal cross-references.

AUTHORITY:

Oklahoma Tax Commission; 5 O.S. Supp. 2004, § 1.6; 68 O.S. § 203

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m., December 7, 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. December 10, 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** has been determined to **adversely** impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity **due to** compliance with the proposed Rules.

COPIES OF PROPOSED RULES:

Interested persons may inspect proposed rules at the offices of the Oklahoma Tax Commission, Tax Policy Division, 5th

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

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared and will be available for review from and after November 16, 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 #04-1321; filed 10-6-04]

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 150. OKLAHOMA DEPARTMENT OF COMMERCE CHAPTER 100. COMMUNITY EXPANSION OF NUTRITION ASSISTANCE

[OAR Docket #04-1314]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

150:100-1-1. [NEW]

150:100-1-2. [NEW]

150:100-1-3. [NEW]

150:100-1-4. [NEW]

AUTHORITY:

The legislation establishing the Oklahoma Department of Commerce 74 O.S. §§ 5001 et seq., and Section 1, of Senate Bill 1017 of the 2nd Session of the 49th Oklahoma Legislature, executed by the Governor on May 28, 2004.

DATES:

Adoption:

August 24, 2004

Approved by Governor:

August 31, 2004

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2005, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

Section 1 of Senate Bill 1017 of the 2nd Session of 49th Oklahoma Legislature, executed by the Governor on May 28, 2004, mandates the Oklahoma Department of Commerce to promulgate emergency rules for the Community Expansion of Nutrition Assistance program by September 1, 2004.

ANALYSIS:

The Emergency Rules provide a systematic, equitable method for making application for Community Expansion of Nutrition Assistance and a framework for the Oklahoma Department of Commerce to notify applicants.

CONTACT PERSON:

Donald R. Hackler, Jr. (405) 815-5359

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):

150:100-1-1. Purpose and scope

The purpose of these rules is to implement the Community Expansion of Nutrition Assistance program at the Oklahoma Department of Commerce.

150:100-1-2. Definitions

In addition to those terms defined elsewhere in this chapter, the following words and terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise.

"Community Expansion of Nutrition Assistance" also referred to as "CENA Program" means a program that provides funding for general improvement of nutritional conditions, with the overall goal of:

(A) Increase the number of meals served to individuals, families, and their children, and older persons at senior centers; or

(B) Expand other needed services provided at senior centers for residents of the state.

"CENA Centers" means those local nutrition centers that meet the requirements set forth by the Oklahoma Department of Commerce in the annual CENA Request for Application.

"CENA Request for Application" means the application guidance material issued by the Oklahoma Department of Commerce to Eligible Applicants for funding under the CENA Program.

"Department" means the Oklahoma Department of Commerce established pursuant to 74 O.S. §§ 5001 et seq. and any successor agencies thereto.

"Director" means the duly appointed and acting Director of the Department or during any period of time that the position of Director is vacant; such term shall refer to the person serving as the acting director.

"Eligible Applicants" means Councils of Government and Oklahoma Department of Human Services Area Agencies on Aging administering senior independent sites and Title III-Multi-Purpose sites. Eligible Applicants does not include Meals-on-Wheels Programs, Title VI or Title III Nutrition Centers.

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150:100-1-3. Funding

(a) The funding to Eligible Applicants will be done based upon an annually determined formula that will take into consideration the number of independent sites, and the senior population. The number of independent sites does not include Meals-on-Wheels Programs, Title VI or Title III Nutrition Centers. To be an eligible independent site a Title III Nutrition Center must be designated as a Multi-Purpose Center and must meet all other requirements of a CENA Center. To be eligible for funding a CENA Center must meet the following criteria:

- (1) Must provide an application to the appropriate Eligible Applicant.
- (2) Must have a current Board of Directors
- (3) Must have approved By-Laws
- (4) Must comply with other requirements of the Oklahoma Department of Human Services (DHS) Area Agencies on Aging.

(b) Local distribution of funding by Eligible Applicants to CENA Centers shall be determined by the governing boards of the Eligible Applicants and shall be filed with and approved by the Oklahoma Department of Commerce.

150:100-1-4. Application process

Based upon funding availability, the Oklahoma Department of Commerce shall issue a CENA Request for Application to Eligible Applicants that will set forth the requirements for making application to the CENA Program, and being awarded funding to support CENA Centers statewide.

- (1) Eligible uses of funding will be set forth in the CENA Request for Application
- (2) Only Eligible Applicants can receive funding under the CENA Program.
- (3) The Director or the Director's designee shall make the funding awards from the Oklahoma Department of Commerce to the Eligible Applicants.
- (4) All other terms and conditions of funding shall be set forth in either the CENA Request for Application or the contract between the Oklahoma Department of Commerce and the Eligible Applicant.

[OAR Docket #04-1314; filed 9-30-04]

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

[OAR Docket #04-1323A]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-123. [AMENDED]
(Reference APA WF # 04-03A)

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 483.100 through 483.138

DATES:

Adoption:

May 13, 2004

Approved by Governor:

June 14, 2004

Effective:

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

Expiration:

Effective through July 14, 2005, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of revisions that enable the agency's Level of Care Evaluation Unit (LOCEU) to better monitor nursing facilities' compliance with Federal Pre-Admission Screening and Resident Review (PASRR) requirements.

ANALYSIS:

Medical Providers-Fee for Service, Long Term Care Facilities specific, rules are revised to comply with Federal Pre-Admission Screening and Resident Review requirements, which outline the states' responsibility for screening all individuals for mental illness or mental retardation or related conditions who apply to or reside in Title XIX certified nursing facilities. Nursing facilities which inappropriately admit an individual without a PASRR Screen are subject to recoupment of funds. Currently, facilities are not required to report on residents who are transferred from one nursing facility to another which results in gaps in the data available to LOCEU to evaluate PASRR compliance, as well as resulting in an inconsistently applied recoupment process. Nursing home residents will benefit from the proposed rule revisions as a PASRR screening would be required for all residents just prior to admission, thus helping to assure safety by reducing the number of inappropriate nursing home placements. Rule revisions are needed to comply with Federal Pre-Admission Screening and Resident Review requirements.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR JULY 1, 2004, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

317:30-5-123. Patient certification for long term care

(a) **Medical eligibility.** Initial approval of medical eligibility for long-term care is determined by the ~~DHS~~ OKDHS area nurse, or nurse designee. The certification is obtained by the facility at the time of admission.

- (1) **Pre-admission screening.** Federal Regulations govern the State's responsibility for Preadmission Screening and Resident Review (PASRR) for individuals with mental illness and mental retardation. PASRR applies to

the screening or reviewing of all individuals for mental illness or mental retardation or related conditions who apply to or reside in Title XIX certified nursing facilities regardless of the source of payment for the nursing facility services and regardless of the individual's or resident's known diagnoses. The NF must independently evaluate the Level I PASRR Screen regardless of who completes the form and determine whether or not to admit an individual to the facility. NFs which inappropriately admit a person without a PASRR Screen are subject to recoupment of funds. There are no PASRR requirements for individuals seeking residency in an intermediate care facility for the mentally retarded (ICF/MR) or in Medicare Skilled beds.

(2) **PASRR Level I screen.**

(A) Form LTC-300A, Long Term Care Pre-admission Screen, must be completed by an authorized official of ~~DHS~~ OKDHS, of the nursing facility, of the hospital or a physician. An authorized official is defined as:

- (i) A licensed nurse from ~~DHS~~ OKDHS;
- (ii) The nursing facility administrator or co-administrator;
- (iii) A licensed nurse from the nursing facility, hospital, or physician's office;
- (iv) A social service director from the nursing facility or hospital; or
- (v) A social worker from the nursing facility, or the hospital.

(B) The authorized official as defined in (1) of this subsection must evaluate the properly completed OHCA Form LTC-300A and/or the Uniform Comprehensive Assessment Tool and/or the Minimum Data Set (MDS). Any other readily available medical and social information is also used to determine if there currently exists any indication of mental illness (MI), mental retardation (MR), or other related condition, or if such condition existed in the applicant's past history. This evaluation constitutes the Level I PASRR Screen and is utilized in determining whether or not a Level II Assessment is necessary prior to allowing the patient to be admitted.

(C) The nursing facility is responsible for determining from the evaluation whether or not the patient can be admitted to the facility. A "yes" response to any question from Form LTC-300A, Section I, will result in a consultation with the Level of Care Evaluation Unit (LOCEU) to determine if a Level II Assessment is needed. If there is any question as to whether or not there is evidence of MI, MR, or related condition, LOCEU should be contacted prior to admission.

(D) Upon receipt and review of the medical eligibility information packet, the LOCEU may, in coordination with the ~~DHS~~ OKDHS area nurse, re-evaluate whether a Level II PASRR assessment may be required. If a Level II Assessment is not required, the process of determining medical eligibility continues. If a Level II is required, a medical decision

is not made until the results of the Level II Assessment are known.

(3) **Level II Assessment for PASRR.**

(A) Any one of the following three circumstances will allow a patient to enter the nursing facility without being subjected to a Level II PASRR Assessment.

- (i) The patient has no current indication of mental illness or mental retardation or other related condition and there is no history of such condition in the patient's past.
- (ii) The patient does not have a diagnosis of mental retardation or related condition, and a primary or secondary diagnosis of dementia including dementia of the Alzheimer's type is documented in writing by a physician.
- (iii) The patient has indications of mental illness or mental retardation or other related condition, but is not a danger to self and/or others, and is being released from an acute care hospital as part of a medically prescribed period of recovery. If an individual is admitted to an NF based on **Exempted Hospital Discharge**, it is the responsibility of the NF to ensure that the individual is either discharged by the 30th day or that a Level II has been requested and is in process. Exempted Hospital Discharge is allowed if the following three conditions are met:

- (I) The individual must be admitted to the NF directly from a hospital after receiving acute inpatient care at the hospital (not including psychiatric facilities);
- (II) The individual must require NF services for the condition for which he/she received care in the hospital; and
- (III) The attending physician must certify in writing before admission to the facility that the individual is likely to require less than 30 days of nursing facility services.

(B) If the patient has current indications of mental illness or mental retardation or other related condition, or if there is a history of such condition in the patient's past, the patient cannot be admitted to the nursing facility. Instead, a Level II PASRR Assessment must be performed and the results must indicate that nursing facility care is appropriate prior to allowing the patient to be admitted.

(C) The State Mental Retardation (MR) (~~DHS/Developmental~~ OKDHS/Developmental Disabilities Services Division) and Mental Illness (MI) (Department of Mental Health and Substance Abuse Services) authorities have developed **Advance Group Determinations** by category that take into account certain diagnoses, levels of severity of illness, or need for a particular service which clearly indicate that admission to an NF is normally needed, and that the provision of specialized services is not normally needed. These determinations are actual Level II decisions and not exemptions from the screening

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process. For those for whom a categorical determination is made, both the level of care determination and the specialized services determination must be addressed. All positive determinations concerning the need for specialized services must be based on a more extensive individualized evaluation.

(D) The OHCA, LOCEU, authorizes Advance Group Determinations for the MI and MR Authorities in the following categories:

(i) **Provisional admission in cases of delirium.** Any person with mental illness, mental retardation or related condition that is not a danger to self and or others, may be admitted to a Title XIX certified NF if the individual is experiencing a condition that precludes screening, i.e., effects of anesthesia, medication, unfamiliar environment, severity of illness, or electrolyte imbalance.

(I) A Level II evaluation is completed immediately after the delirium clears. The LOCEU must be provided with written documentation by a physician that supports the individual's condition which allows provisional admission as defined in (i) of this subparagraph.

(II) Payment for NF services will not be made after the provisional admission ending date. If an individual is determined to need a longer stay, the individual must receive a Level II evaluation before continuation of the stay may be permitted and payment made for days beyond the ending date.

(ii) **Provisional admission in emergency situations.** Any person with a mental illness, mental retardation or related condition, who is not a danger to self and/or others, may be admitted to a Title XIX certified nursing facility for a period not to exceed seven days pending further assessment in emergency situations requiring protective services. The request for Level II evaluation must be made immediately upon admission to the NF if a longer stay is anticipated. The LOCEU must be provided with written documentation from ~~DHS~~ OKDHS Adult Protective Services, or the NF, which supports the individual's emergency admission. Payment for NF services will not be made beyond the emergency admission ending date.

(iii) **Respite care admission.** Any person with mental illness, mental retardation or related condition, who is not a danger to self and/or others, may be admitted to a Title XIX certified nursing facility to provide respite to in-home caregivers to whom the individual is expected to return following the brief NF stay. Respite care may be granted up to 15 consecutive days per stay, not to exceed 30 days per calendar year.

(I) In rare instances, such as illness of the caregiver, an exception may be granted to allow 30 consecutive days of respite care. However,

in no instance can respite care exceed 30 days per calendar year.

(II) Respite care must be approved by LOCEU staff prior to the individual's admission to the NF. The NF provides the LOCEU with written documentation concerning circumstances surrounding the need for respite care, the date the individual wishes to be admitted to the facility, and the date the individual is expected to return to the caregiver. Payment for NF services will not be made after the respite care ending date.

(4) **Resident Review.**

(A) The nursing facility's routine resident assessment will identify those individuals previously undiagnosed as MR or MI. A new condition of MR or MI must be referred to LOCEU by the NF for determination of the need for the Level II Assessment. The facility's failure to refer such individuals for a Level II Assessment will result in recoupment of funds.

(B) A Level II Resident Review must be conducted the following year for each resident of a nursing facility who was found to experience a serious mental illness on their pre-admission Level II, to determine whether, because of the resident's physical and mental condition, the resident requires the level of services provided by a nursing facility and whether the resident requires specialized services.

(C) A significant change in a resident's physical or mental condition could trigger a Level II Resident Review. If such a change should occur in a resident's condition, it is the responsibility of the nursing facility to notify the LOCEU of the need to conduct a resident review.

(5) **Results of Level II Pre-Admission Assessment and Resident Review.** Through contractual arrangements between the ~~Oklahoma Health Care Authority~~ OHCA and the MI/MR authorities, individualized assessments are conducted and findings presented in written evaluations. The evaluations determine if nursing facility services are needed, if specialized services or lesser than specialized services are needed and what types, and if the individual meets the federal PASRR definition of mental illness or mental retardation or related conditions. Evaluations are delivered to the LOCEU to process formal, written notification to patient, guardian, NF and interested parties.

(6) **Readmissions, and interfacility transfers.** The Preadmission Screening process does not apply to readmission of an individual to an NF after transfer for a continuous hospital stay, and then back to the NF. There is no specific time limit on the length of absence from the nursing facility for the hospitalization. ~~Readmissions to a nursing facility following transfer to a psychiatric unit in an acute hospital or to a psychiatric hospital for treatment of an acute episode of serious mental illness does not require further Level II Assessment.~~ Inter-facility transfers are subject to Resident Reviews rather than

preadmission screening. In the case of transfer of a resident with ~~MI or MR~~ from an NF to a hospital or to another NF, the transferring NF is responsible for ensuring that copies of the resident's most recent LTC-300A and any PASRR evaluations accompany the transferring resident. The receiving NF must submit an updated LTC-300A that reflects the resident's current status to LOCEU within 30 days of the transfer. Failure to do so could result in possible recoupment of funds.

(7) PASRR appeals process.

(A) Any individual who has been adversely affected by any PASRR determination made by the State in the context of either a preadmission screening or an annual resident review may appeal that determination by requesting a fair hearing. If the individual does not consider the PASRR decision a proper one, the individual or their authorized representative must contact the local county ~~DHS OKDHS~~ office to discuss a hearing. Any request for a hearing must be made no later than 30 days following the date of written notice. All individuals seeking an appeal have the same rights, regardless of source of payment. Level I determinations are not subject to appeal.

(B) When the individual is found to experience MI, MR, or related condition through the Level II Assessment, the PASRR determination made by the MR/MI authorities cannot be countermanded by the state Title XIX agency, either in the claims process or through other utilization control/review processes, or by the state survey and certification agency. Only appeals determinations made through the fair hearing process may overturn a PASRR determination made by the MR/MI authorities.

(b) Determination of Title XIX medical eligibility for long term care. The determination of medical eligibility for care in a nursing facility is made by the ~~DHS OKDHS~~ area nurse, or nurse designee. The procedures for determining Nursing Facility (NF) program medical eligibility are found in OAC 317:35-19. Determination of ICF/MR medical eligibility is made by LOCEU. The procedures for obtaining and submitting information required for a decision are outlined below.

(1) **Pre-approval of medical eligibility.** Pre-approval of medical eligibility for private ICF/MR care is based on results of a current comprehensive psychological evaluation by a licensed psychologist or state staff psychologist, documentation of MR or related condition prior to age 22, and the need for active treatment according to federal standards. Pre-approval is made by LOCEU analysts.

(2) **Medical eligibility for ICF/MR services.** Within 30 calendar days after services begin, the facility must submit the original of the Long Term Care Assessment form (LTC-300) to LOCEU. Required attachments include current (within 90 days of requested approval date) medical information signed by a physician, a current (within 12 months of requested approval date) psychological evaluation, a copy of the pertinent section of the Individual Developmental Plan or other appropriate documentation relative to discharge planning and the need for

ICF/MR level of care, and a statement that the client is not an imminent threat of harm to self or others (i.e., suicidal or homicidal). If pre-approval was determined by LOCEU and the above information is received, medical approval will be entered on MEDATS.

(3) **Categorical relationship.** Categorical relationship must be established for determination of eligibility for long-term medical care. If categorical relationship to disability has not already been established, the proper forms and medical information are submitted to LOCEU. (Refer to OAC 317:35-5-4). In such instances, LOCEU will render a decision on categorical relationship using the same definition as used by SSA. A follow-up is required by the ~~DHS OKDHS~~ worker with the Social Security Administration to be sure that their disability decision agrees with the decision of LOCEU.

[OAR Docket #04-1323A; filed 10-7-04]

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

[OAR Docket #04-1322]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-131.2. [AMENDED]
(Reference APA WF # 04-01)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 1-1925.2 of Title 63 of the Oklahoma Statutes

DATES:

Adoption:

February 12, 2004

Approved by Governor:

March 24, 2004

Effective:

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

Expiration:

Effective through July 14, 2005, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of revisions that allow the Agency to comply with provisions of Section 1-1925.2 of Title 63 of the Oklahoma Statutes which relate to the Quality of Care Fund reporting process.

ANALYSIS:

Medical Providers-Fee for Service, Long Term Care Facilities specific, rules are revised to comply with Section 1-1925.2 of Title 63 of the Oklahoma Statutes which was amended by House Bill 2218 of the 2nd Session of the 48th Legislature (2002) related to the Quality of Care Fund reporting process. Revisions are needed to provide reference to the Oklahoma State Department of Health recently revised rules which allow the implementation of flexible staff scheduling. Other revisions provide instructions to facilities regarding the completion of the newly revised Quality of Care Report.

Emergency Adoptions

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 APRIL 1, 2004, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

317:30-5-131.2. Quality of care fund requirements and report

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) **"Nursing Facility and Intermediate Care Facility for the mentally retarded"** means any home, establishment, or institution or any portion thereof, licensed by the State Department of Health as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes.
- (2) **"Quality of Care Fee"** means the fee assessment created for the purpose of quality care enhancements pursuant to Section 2002 of Title 56 of the Oklahoma Statutes upon each nursing facility and intermediate care facility for the mentally retarded licensed in this State.
- (3) **"Quality of Care Fund"** means a revolving fund established in the State Treasury pursuant to Section 2002 of Title 56 of the Oklahoma Statutes.
- (4) **"Quality of Care Report"** means the monthly report developed by the Oklahoma Health Care Authority to document the staffing ratios, total patient gross receipts, total patient days, and minimum wage compliance for specified staff for each nursing facility and intermediate care facility for the mentally retarded licensed in the State.
- (5) **"Staffing ratios"** means the minimum direct-care-staff-to-resident ratios pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statutes and pursuant to OAC 310:675-1 et seq.
- (6) **"Peak In-House Resident Count"** means the maximum number of in-house residents at any point in time during the applicable shift.
- (7) **"Staff Hours worked by Shift"** means the number of hours worked during the applicable shift by direct-care staff.
- (8) **"Direct-Care Staff"** means any nursing or therapy staff who provides direct, hands-on care to residents in a nursing facility and intermediate care facility for the mentally retarded pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statutes, pursuant to OAC 310:675-1 et seq., and as defined in subsection (c) of this Section.

(9) **"Major Fraction Thereof"** is defined as an additional threshold for direct-care-staff-to-resident ratios at which another direct-care staff person(s) is required due to the peak in-house resident count exceeding one-half of the minimum direct-care-staff-to-resident ratio pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statutes.

(10) **"Minimum wage"** means the amount paid per hour to specified staff pursuant to Section 5022.1 of Title 63 of the Oklahoma Statutes.

(11) **"Specified staff"** means the employee positions listed in the Oklahoma Statutes under Section 5022.1 of Title 63 and as defined in subsection (d) of this Section.

(12) **"Total Patient Days"** means the monthly patient days that are compensable for the current monthly Quality of Care Report.

(13) **"Total Gross Receipts"** means all cash received in the current Quality of Care Report month for services rendered to all residents in the facility. Receipts should include all Medicaid, Medicare, Private Pay and Insurance including receipts for items not in the normal per diem rate. Charitable contributions received by the nursing facility shall ~~are~~ not be included.

(14) **"Service rate"** means the minimum direct-care-staff-to-resident rate pursuant to Section 1-1925.2 of Title 63 of Oklahoma Statutes and pursuant to OAC 310:675-1 et seq.

(b) **Quality of care fund assessments.**

(1) The Oklahoma Health Care Authority (OHCA) was mandated by the Oklahoma Legislature to assess a monthly service fee to each Licensed Nursing Facility in the State. The fee ~~shall be~~ is assessed on a per patient day basis. The amount of the fee ~~shall be~~ is uniform for each facility type. The fee ~~shall be~~ is determined as six percent (6%) of the average total gross receipts divided by the total days for each facility type.

(2) In determination of the fee for the time period beginning October 1, 2000, a survey was mailed to each licensed nursing facility requesting calendar year 1999 Total Patient Days, Gross Revenues and Contractual Allowances and Discounts. This data ~~shall be~~ is used to determine the amount of fee to be assessed for the period of 10-01-00 through 06-30-01. The fee ~~shall be~~ is determined by totaling the "annualized" gross revenue and dividing by the "annualized" total days of service. "Annualized" means that the surveys received that do not cover the whole year of 1999 ~~shall be~~ are divided by the total number of days that are covered and multiplied by 365.

(3) The fee for subsequent State Fiscal Years ~~shall be~~ is determined by using the monthly gross receipts and census reports for the six (6) month period October 1 through March 31 of the prior fiscal year, annualizing those figures, and then determining the fee as defined above.

(4) Monthly reports of Gross Receipts and Census ~~shall be~~ are included in the monthly Quality of Care Report. The data required includes, but is not limited to, the Total Gross Receipts and Total Patient Days for the current monthly report.

(5) The method of collection ~~shall occur~~ is as follows:

(A) The Oklahoma Health Care Authority ~~shall assess~~ assesses each facility monthly based on the reported patient days from the Quality of Care Report filed two (2) months prior to the month of the fee assessment billing. As defined in this subsection, the total assessment ~~shall be~~ is the fee times the total days of service. The Oklahoma Health Care Authority ~~shall notify~~ notifies the facility of its assessment by the end of the month of the Quality of Care Report submission date.

(B) Payment ~~shall be~~ is due to the Oklahoma Health Care Authority by the 10th of the following month. Failure to pay the amount by the 10th or failure to have the payment mailing postmarked by the 8th ~~shall will~~ will result in a debt to the State of Oklahoma and ~~shall be~~ is subject to penalties of ~~ten percent (10%)~~ of the amount and interest of ~~one and one quarter percent (1.25%)~~ per month. The Quality of Care Fee ~~shall must~~ must be submitted no later than the 10th of the month. If the 10th falls upon a holiday or weekend (Saturday-Sunday), the fee ~~shall be~~ is due by 5 p.m. (Central Standard Time) of the following business day (Monday-Friday).

(C) The monthly assessment including applicable penalties and interest ~~shall be~~ must paid regardless of any appeals action requested by the facility. If a provider fails to pay the Authority the assessment within the time frames noted on the second invoice to the provider, the assessment, applicable penalty, and interest will be deducted from the facility's payment. Any change in payment amount resulting from an appeals decision will be adjusted in future payments. Adjustments to prior months' reported amounts for gross receipts or patient days may be made by filing an amended part C of the Quality of Care Report.

(D) The Quality of Care fee assessments excluding penalties and interest are an allowable cost for Oklahoma Health Care Authority Cost Reporting purposes.

(E) The Quality of Care fund ~~shall contain~~ contains assessments collected excluding penalties and interest as described in this subsection and any interest attributable to investment of any money in the fund ~~shall must~~ must be deposited in a revolving fund established in the State Treasury. The funds will be used pursuant to Section 2002 of Title 56 of the Oklahoma Statutes.

(c) **Quality of care direct-care-staff-to resident-ratios.**

(1) Effective September 1, 2000, all nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR) subject to the Nursing Home Care Act, in addition to other state and federal staffing requirements, ~~shall must~~ must maintain the minimum direct-care-staff-to-resident ratios or direct-care service rates as cited in Section 1-1925.2 of Title 63 of the Oklahoma Statutes and pursuant to OAC 310:675-1 et seq.

(2) For purposes of staff-to-resident ratios, direct-care staff are limited to the following employee positions:

- (A) Registered Nurse
- (B) Licensed Practical Nurse
- (C) Nurse Aide
- (D) Certified Medication Aide
- (E) Qualified Mental Retardation Professional (ICFs/MR only)
- (F) Physical Therapist
- (G) Occupational Therapist
- (H) Respiratory Therapist
- (I) Speech Therapist
- (J) Therapy Aide/Assistant
- (K) Social Services Director/Social Worker
- (L) Other Social Services Staff
- (M) Activities Director
- (N) Other Activities Staff
- (O) Combined Social Services/Activities

(3) Prior to September 1, 2003, activity and social services staff who are not providing direct, hands-on care may be included in the direct-care-staff-to-resident ratio in any shift or direct-care service rates. On and after September 1, 2003, such persons ~~shall are not be~~ are not included in the direct-care-staff-to-resident ratio or direct-care service rates.

(4) In any shift when the direct-care-staff-to-resident ratio computation results in a major fraction thereof, direct-care staff ~~shall be~~ is rounded to the next higher whole number.

(5) To document and report compliance with the provisions of this subsection, nursing facilities and intermediate care facilities for the mentally retarded ~~shall must~~ must submit the monthly Quality of Care Report pursuant to subsection (e) of this Section.

(d) **Quality of care minimum wage for specified staff.**

Effective November 1, 2000, all nursing facilities and private intermediate care facilities for the mentally retarded receiving Medicaid payments, in addition to other federal and state regulations, ~~shall must~~ must pay specified staff not less than in the amount of \$6.65 per hour. Employee positions included for purposes of minimum wage for specified staff are as follows:

- (1) Registered Nurse
- (2) Licensed Practical Nurse
- (3) Nurse Aide
- (4) Certified Medication Aide
- (5) Other Social Service Staff
- (6) Other Activities Staff
- (7) Combined Social Services/Activities
- (8) Other Dietary Staff
- (9) Housekeeping Supervisor and Staff
- (10) Maintenance Supervisor and Staff
- (11) Laundry Supervisor and Staff

(e) **Quality of care reports.** Effective September 1, 2000, all nursing facilities and intermediate care facilities for the mentally retarded ~~shall must~~ must submit a monthly report developed by the Oklahoma Health Care Authority, the Quality of Care Report, for the purposes of documenting the extent to which such facilities are compliant with the minimum direct-care-staff-to-resident ratios or direct-care service rates.

Emergency Adoptions

(1) The monthly report must be signed by the preparer and by the Owner, authorized Corporate Officer or Administrator of the facility for verification and attestation that the reports were compiled in accordance with this section.

(2) The Owner or authorized Corporate Officer of the facility ~~shall~~ must retain full accountability for the report's accuracy and completeness regardless of report submission method.

(3) Penalties for false statements or misrepresentation made by or on behalf of the provider are provided at 42 U.S.C. Section 1320a-7b which states, in part, "*Whoever... (2) at any time knowingly and willfully makes or causes to be made any false statement of a material fact for use in determining rights to such benefit or payment... shall (i) in the case of such statement, representation, concealment, failure, or conversion by any person in connection with furnishing (by that person) of items or services for which payment is or may be made under this title (42 U.S.C. §1320 et seq.), be guilty of a felony and upon conviction thereof fined not more than \$25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than \$10,000 or imprisoned for not more than one year, or both.*"

(4) The Quality of Care Report ~~shall~~ must be submitted by 5 p.m. (CST) on the 15th of the following month. If the 15th falls upon a holiday or a weekend (Saturday-Sunday), the report ~~shall be~~ is due by 5 p.m. (CST) of the following business day (Monday - Friday).

(5) The Quality of Care Report will be made available in an electronic version for uniform submission of the required data elements.

(6) Facilities ~~shall~~ must submit the monthly report either through electronic mail to the Provider Compliance Audits Unit or send the monthly report in disk or paper format by certified mail and pursuant to subsection (e)(14) of this section. The submission date ~~shall be~~ is determined by the date and time recorded through electronic mail or the postmark date and the date recorded on the certified mail receipt.

(7) Should a facility discover an error in its submitted report for the previous month only, the facility ~~shall~~ must provide to the Provider Compliance Audits Unit written notification with adequate, objective and substantive documentation within five ~~(5)~~ business days following the submission deadline. Any documentation received after the five ~~(5)~~ business day period ~~shall~~ will not be considered in determining compliance and for reporting purposes by the Oklahoma Health Care Authority.

(8) An initial administrative penalty of \$150.00 ~~shall be~~ is imposed upon the facility for incomplete, unauthorized, or non-timely filing of the Quality of Care Report. Additionally, a daily administrative penalty will begin upon the Authority notifying the facility in writing that the report

was not complete or not timely submitted as required. The \$150.00 daily administrative penalty ~~shall accrue~~ accrues for each calendar day after the date the notification is received. The penalties ~~shall be~~ are deducted from the Medicaid facility's payment. For ~~one hundred percent (100%)~~ private pay facilities, the penalty amount(s) ~~shall be~~ is included and collected in the fee assessment billings process. Imposed penalties for incomplete reports or non-timely filing ~~shall are~~ are not ~~be~~ considered for Oklahoma Health Care Authority Cost Reporting purposes.

(9) The Quality of Care Report ~~shall include~~ includes, but is not limited to, information pertaining to the necessary reporting requirements in order to determine the facility's compliance with subsections (b) and (c) of this Section. Such reported information includes, but is not limited to: staffing ratios; peak in-house resident count; staff hours worked by shift; total patient days; total gross receipts; and direct-care service rates.

(10) Audits may be performed to determine compliance pursuant to subsections (b), (c) and (d) of this Section. Announced/unannounced on-site audits of reported information may also be performed.

(11) Direct-care-staff-to-resident information and on-site audit findings pursuant to subsection (c), will be reported to the Oklahoma State Department of Health for their review in order to determine "willful" non-compliance and assess penalties accordingly pursuant to Title 63 Section 1-1912 through Section 1-1917 of the Oklahoma Statutes. The Oklahoma State Department of Health ~~shall inform~~ informs the Oklahoma Health Care Authority of all final penalties as required in order to deduct from the Medicaid facility's payment. Imposed penalties ~~shall are~~ are not ~~be~~ considered for Oklahoma Health Care Authority Cost Reporting purposes.

(12) If a Medicaid provider is found non-compliant pursuant to subsection (d) based upon a desk audit and/or an on-site audit, for each hour paid to specified staff that does not meet the regulatory minimum wage of \$6.65, the facility must reimburse the employee(s) retroactively to meet the regulatory wage for hours worked. Additionally, an administrative penalty of \$25.00 ~~shall be~~ is imposed for each non-compliant staff hour worked. For Medicaid facilities, a deduction ~~shall be~~ is made to their payment. Imposed penalties for non-compliance with minimum wage requirements ~~shall are~~ are not ~~be~~ considered for Oklahoma Health Care Authority Cost Reporting purposes.

(13) Long Term Care facility providers may appeal the administrative penalty described in ~~subsection~~ subsections (b)(5)(B) and ~~subsections~~ subsections (e)(8) and (e)(12) of this section.

(14) Facilities that have been authorized by the Oklahoma State Department of Health (OSDH) to implement flexible staff scheduling must comply with OAC 310:675-1 et seq. The authorized facility are required to complete the flexible staff scheduling section of Part A of the Quality of Care Report. The Owner, authorized Corporate Officer or Administrator of the facility must complete the flexible staff scheduling signature block.

acknowledging their OSDH authorization for Flexible Staff Scheduling.

[OAR Docket #04-1322; filed 10-7-04]

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

[OAR Docket #04-1325]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties
Part 2. Physician Assistants
317:30-5-30. through 317:30-5-31. [AMENDED]
317:30-5-34. [REVOKED]
(Reference APA WF # 04-04)

AUTHORITY:

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

DATES:

Adoption:

May 13, 2004

Approved by Governor:

June 14, 2004

Effective:

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

Expiration:

Effective through July 14, 2005, 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 a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of Medical Providers-Fee for Service, Physician Assistant specific, rules which ameliorate access for Medicaid clients.

ANALYSIS:

Medical Providers-Fee for Service rules are revised to allow Physician Assistant reimbursement at the same allowable as Physicians and Advance Practice Nurses, thereby improving access to medical care for Medicaid recipients. Revisions allow reimbursement to Physician Assistants at 100% of the Physicians fee schedule, consistent with reimbursement to Physicians and Advance Practice Nurses. Revisions are needed to improve access to medical care for Medicaid recipients.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR JULY 1, 2004, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 2. PHYSICIAN ASSISTANTS ASSISTANT

317:30-5-30. Eligible providers

The Oklahoma Health Care Authority (OHCA) recognizes medical services rendered by a Physician Assistants Assistant in accordance with the rules and regulations covering the Authority's medical care program.

- (1) The application for a Medicaid Provider agreement must be accompanied by copies of the physician assistant's current written authorization to practice from the Oklahoma State Board of Medical Licensure and Supervision. The Application to Practice must be jointly filed by the supervising physician and physician assistant and include a description of the physician's practice, methods of supervision and utilization of the physician assistant, and the name of alternate supervising physician(s) who will supervise the physician assistant in the absence of the primary supervising physician. At any time that the supervising physician(s) change, an updated copy of the certification must be submitted to OHCA, Provider Enrollment.
(2) All services provided by a Physician Assistants Assistant must be within the current practice guidelines for the State of Oklahoma.
(3) Payment for Physician Assistant services will be made to the employing entity (i.e. hospital, rural health clinic, clinic, physician, etc.).

317:30-5-31. General coverage by category

- (a) Adults. For persons ages 21 to 65, payment is made to the employing entity of a Physician Assistant for medical and surgical services within the scope of the Authority's medical programs, provided the services are reasonable and necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. All services must be within the current Physician Assistant practice guidelines for the State of Oklahoma. In addition, Physician Assistant services are subject to all rules and guidelines which apply to Physician services as specified at OAC 317:30-5, Part 1, Physicians.
(b) Children. Payment is made to a Physician Assistant for medical and assistant 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, Physician Assistant services are subject to all rules and guidelines which apply to Physician services for children as specified at OAC 317:30-5, Part 1, Physicians.
(c) Vocational rehabilitation coverage. Vocational rehabilitation services performed by Physician Assistants are subject to all rules and guidelines which apply to Physician services as specified at OAC 317:30-5-2(c).
(d) Individuals eligible for Part B of Medicare. Payment of Physician Assistant services to individuals eligible for Part B of Medicare are subject to all rules and guidelines which apply to Physician services as specified at OAC 317:30-5-2(d).

Emergency Adoptions

317:30-5-34. Payment rates [REVOKED]

(a) ~~Physician Assistant services listed in (1) and (2) of this subsection are reimbursed as specified.~~

~~(1) Assistant surgery claims must have modifier AS on the claim form. Reimbursement is at 10.4 percent of the surgery allowable.~~

~~(2) Office visits, hospital visits, nursing facility visits, home visits and all other services which represent time spent with the patient must have the appropriate modifier on the claim form. Reimbursement is at 75 percent of the physician allowable.~~

(b) ~~The services listed in (1) through (3) of this subsection are reimbursed at 100 percent of the current Medicaid allowable and do not require a modifier on the claim form.~~

~~(1) Services which represent a cost to the provider, such as injections, laboratory procedures, and radiology.~~

~~(2) EPSDT Screenings.~~

~~(3) Authorized examinations.~~

[OAR Docket #04-1325; filed 10-7-04]

Revised rules allow general or pediatric dentists, under certain conditions, to be reimbursed for orthodontic services. Without revisions, Medicaid eligible children with handicapping malocclusions determined to be severe enough to warrant medically necessary treatment are often unable to obtain medically necessary services. Revisions will increase the availability of specialized services for Medicaid eligible children.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

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

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 79. DENTISTS

317:30-5-700. Orthodontic services

(a) The Oklahoma State Medicaid Program limits orthodontic services to handicapping malocclusions determined to be severe enough to warrant medically necessary treatment. These orthodontic services include the following:

(1) a handicapping malocclusion, as measured on the Handicapping Labio-Lingual Deviation Index (HLD) with a minimum score of 26; and

(2) any classification secondary to cleft palate or other maxillofacial deformity.

(b) Reimbursement for Orthodontic services is limited to:

(1) Orthodontists, or

(2) General or Pediatric dental practitioners who have completed at least 200 hours of continuing education in the field of orthodontics; and successfully completed at least 25 comprehensive cases to include 10 or more extraction cases.

(A) As with all dental or orthodontia treatment performed and reimbursed by Medicaid, all pre and post orthodontic records must be available for review.

(B) Verification of the continuing education hours and the number of cases completed are reviewed by the OHCA Dental Unit every two years.

(bc) The following limitations apply to orthodontic services:

(1) Cosmetic orthodontic services are not a covered benefit of the Oklahoma State Medicaid Program;

~~(2) Only licensed orthodontists will be paid for orthodontic services. General dentists should refer children appearing to meet the criteria outlined in subsection (a) of this Section to a licensed orthodontist in their area who accepts Medicaid, for consultation and submission of a prior authorization request;~~

~~(3) All orthodontic procedures require prior authorization for payment;~~

~~(4) Prior authorization for orthodontic treatment is not a notification of the patient's eligibility and does not guarantee payment. Payment for authorized services will~~

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

[OAR Docket #04-1324]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 79. Dentists

317:30-5-700. [AMENDED]

(Reference APA WF # 04-05)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; O.S. 59, Section 328.19

DATES:

Adoption:

June 10, 2004

Approved by Governor:

July 6, 2004

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2005, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that an immediate peril to the preservation of the public peace, health, safety or welfare exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions that will improve access for Medicaid children to orthodontic services. Without revisions, Medicaid eligible children with handicapping malocclusions determined to be severe enough to warrant medically necessary treatment may not be able to obtain medically necessary orthodontic services. Revisions will increase the availability of specialized services.

ANALYSIS:

Medical Providers-Fee for Service, Dentists specific, rules are revised to improve access for Medicaid eligible children to orthodontic services.

depend on the client's eligibility at the beginning of each treatment year;

(54) The client must be Medicaid-eligible and under 21 years of age at the time the request for prior authorization for treatment is received by OHCA and on the date that the last year of orthodontic service is to begin. Services cannot be added or approved after eligibility has expired:

(A) Clients receive a permanent Medical Identification Card;

(B) It is the orthodontist's responsibility to verify that the patient has current Medicaid eligibility and that the date of birth indicates the client is under age 21. If no card is available, case status can be verified by utilizing the REVS system.

(ed) Orthodontic services are an elective procedure. The orthodontist must interview the prospective patient as to his/her understanding of and willingness to cooperate fully in a lengthy treatment program.

(de) The interview information is unavailable to OHCA except through the provider's recommendation of treatment. The interview process for OHCA clients is equivalent to that of private pay patients.

(ef) Providers are not obligated to accept a client when it appears that the client will not cooperate in the orthodontic treatment program or is not willing to keep eligibility current.

[OAR Docket #04-1324; filed 10-7-04]

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

[OAR Docket #04-1323]

RULEMAKING ACTION: EMERGENCY adoption

RULES:

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

Part 7. Certification, Redetermination and Notification

317:35-6-64.1. [NEW]

(Reference APA WF # 04-02)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 1925(b)(3)(iii)(III) of the Social Security Act

DATES:

Adoption:

March 11, 2004

Approved by Governor

April 26, 2004

Effective:

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

Expiration:

Effective through July 14, 2005, 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 allow the agency to comply with federal regulations by establishing guidelines for Transitional Medical Assistance. Agency staff estimate that the implementation of TMA will increase the agency budget by \$5,184,000 annually, with a State share of \$1,533,000. This increase was funded in the Agency's budget.

ANALYSIS:

Medical Assistance for Adults and Children-Eligibility rules are issued to comply with federal regulations by establishing guidelines that implement Transitional Medical Assistance (TMA). Section 1925(b)(3)(iii)(III) of the Social Security Act requires states to provide continued Medical Assistance to a Medicaid Only or a Temporary Assistance for Needy Families (TANF) benefit group who loses eligibility due to the receipt of new or increased child or spousal support, or new or increased earnings of the caretaker relative. The Act further requires the continued Medicaid coverage to be of the same amount, duration, and scope as was received prior to the new or increased child support or income. Therefore, rules are needed to conform to federal regulations.

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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 MAY 1, 2004, WHICHEVER IS LATER:

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

PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION

317:35-6-64.1. Continued medical benefits (CMB)/Transitional Medical Assistance (TMA)

(a) Conditions for CMB/TMA.

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

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

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

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

(2) **Closure due to child support or spousal support.** Health benefits are continued if the case closure is due to the receipt of new or increased child support or payments for spousal support in the form of alimony. The health benefits are continued for four months.

(3) **Closure due to new or increased earnings of caretaker relative.** Health benefits are continued if the closure is due to the new or increased earnings of the caretaker relative. The caretaker relative's needs must be included in the benefit group at the time of closure. The caretaker relative who is the natural or adoptive parent is required to cooperate with Child Support Enforcement Division during the period of time the family is receiving CMB. If the caretaker relative changes during the CMB period, the benefit group loses its CMB coverage. Health benefits may be continued for a period up to 12 months. This period is divided into two six-month periods with eligibility requirements and procedures for each period.

(A) **Initial six-month period.**

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

- (I) an eligible child remains in the home;
- (II) the caretaker relative remains the same; and
- (III) the benefit group remains in the state.

(ii) An individual benefit group family member remains eligible for the initial six-month period of CMB unless the individual:

- (I) moves out of the state,
- (II) dies,
- (III) becomes an inmate of a public institution,
- (IV) leaves the household,
- (V) does not cooperate, without good cause, with the Child Support Services Division or third party liability requirements.

(B) **Additional Six-month period.**

(i) Health benefits are continued for the additional six-month period if:

- (I) an eligible child remains in the home;
- (II) the caretaker relative remains the same;
- (III) the benefit group remains in the state;
- (IV) the benefit group was eligible for and received CMB for each month of the initial six-month period;
- (V) the benefit group has complied with reporting requirements in subsection (g) of this Section;
- (VI) the benefit group has average monthly earned (less child care costs that are necessary

for the employment of the caretaker relative) income that does not exceed the 185% of the Federal Poverty Level (see DHS Appendix C-1, Schedule IV); and

(VII) the caretaker relative had earnings in each month of the required three-month reporting period described in (g)(2) of this Section, unless the lack of earnings was due to an involuntary loss of employment, illness, or other good cause.

(ii) An individual benefit group family member remains eligible for the additional six-month period unless the individual meets any of the items listed in (3)(A)(i) of this paragraph.

(b) **Income and resource eligibility.** The unearned income and resources of the benefit group are disregarded in determining eligibility for CMB. There is no earned income test for the initial six-month period. Health benefits are continued for the additional six-month period if the benefit group's countable earnings less child care costs that are necessary for the employment of the caretaker relative are below 185% of the Federal Poverty Level (see DHS Appendix C-1, Schedule IV) and the benefit group meets the requirements listed in (a)(3)(B).

(1) The earnings of all benefit group members are used in determining the earned income test. The only exception is that earnings of full time students included in the benefit group are disregarded. The earnings of additional family members are considered only if that member is a natural or adoptive parent.

(2) Income is determined by averaging the benefit group's gross monthly earnings (except full time student earnings) for the required three-month reporting period.

(3) A deduction from the benefit group's earned income is allowed for the cost of approved child care necessary for the employment of the caretaker relative. The child care deduction is averaged for the same three-month reporting period. There is no maximum amount for this deduction.

(4) The needs of all individuals whose earnings are considered are included in determining the household size for the income test. The family size is used for the immediate preceding three months when the family size changes during the three-month period.

(c) **Eligible child.** When the regular health benefit is closed and CMB begins, the benefit group must include an eligible child whose needs were included in the health benefit at the time of closure, unless the only eligible child is a SSI recipient. After the CMB begins, the benefit group must continue to include an eligible child. However, age is the only requirement an eligible child must meet. This means that the eligible child does not have to meet the deprivation factor once CMB begins.

(d) **Additional members.** After the CMB begins, family members who move into the home cannot be added to the CMB coverage. This includes siblings and a natural or adoptive parent(s). If the additional member is in need of health benefits, an application for services under the regular Medicaid program is completed. If a benefit group member included in the CMB leaves the home and then returns, that member may be added back to the CMB coverage if all

conditions of eligibility are met. A child under the age of one year whose mother is included in the CMB coverage, is added to the benefit group if the child is deprived of parental support.

(e) **Third party liability.** The benefit group's eligibility for CMB is not affected by a third party liability. However, the benefit group is responsible for reporting all insurance coverage and any changes in the coverage. The social services specialist must explain the necessity for applying benefits from private insurance to the cost of medical care.

(f) **Notification.**

(1) **Notices.** Notices are sent to the benefit group, both at the onset of and throughout the CMB period. These notices, which are sent at specific times, inform the benefit group of its rights and responsibilities. When a Health benefit is closed and the benefit group is eligible for CMB, the computer generated closure notice includes notification of the continuation of health benefits. Another computer generated notice is sent at the same time to advise the benefit group of the reporting requirements and under what circumstances the health benefits may be discontinued. Each notice listed in (A)-(C) of this paragraph includes specific information about what the benefit group must report. The notices serve as the required advance notification in the event benefits are discontinued as a result of the information furnished in response to these notices.

(A) **Notice #1.** PSNOM1 is issued in the third month of the initial continued medical eligibility period. This notice advises the benefit group of the additional six-month period of CMB, the eligibility conditions, reporting requirements, and appeal rights.

(B) **Notice #2.** PSNOM2 is issued in the sixth month of the continued medical eligibility period, but only if the benefit group is eligible for the additional six-month period. This notice advises the benefit group of the eligibility conditions, reporting requirements, and appeal rights.

(C) **Notice #3.** PSNOM3 is issued in the ninth month of the continued medical eligibility period, or the third month of the additional six-month period. This notice advises the benefit group of the eligibility conditions, the reporting requirements, appeal rights, and the expiration of CMB coverage.

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

(g) **Reporting.** The benefit group is required to periodically report specific information. To assist the unit, Form CM-5, Continued Medical Benefit Reply Form, is sent at the same time as the notices generated during the CMB period. Though preferred, it is not mandatory for the report form itself to be returned. The information may be reported by telephone, in an office interview, or by letter.

(1) The benefit group must report:

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

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

(C) changes in members of the benefit group;

(D) residency; and

(E) third party liability.

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

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

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

(C) The information requested in the ninth month must be furnished by the 21st day of the tenth month. The decision to continue health benefits into the 11th month is determined by the information reported. When the information is not reported timely, the CMB are automatically suspended by the computer for the appropriate effective date. If the benefit group subsequently reports the necessary information, the social services specialist determines eligibility. If all eligibility factors are met during and after the suspension period, the health benefits are reinstated. The effective date of the reinstatement is the same as the effective date of the suspension so the benefit group has continuous medical coverage.

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

(i) **Receipt of health benefits after CMB ends.** To ensure continued medical coverage, DHS Form 80-2, Recertification of Eligibility for SoonerCare Health Benefits, is computer generated and mailed to the benefit group during the third month of CMB for benefits closed due to the receipt of child or spousal support or the 11th month of CMB for benefits closed due to increased earnings. The benefit group must return DHS Form 80-2 for a medical redetermination to be made prior to the termination of the CMB benefits. When determined eligible,

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health benefits continue as health benefits not CMB. If the benefit group fails to return Form 80-2, CMB benefits are terminated.

[OAR Docket #04-1323; filed 10-7-04]

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

[OAR Docket #04-1326]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 19. Nursing Facility Services
317:35-19-14. [AMENDED]
(Reference APA WF #04-03B)

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 483.100 through 483.138

DATES:

Adoption:

May 13, 2004

Approved by Governor:

June 14, 2004

Effective:

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

Expiration:

Effective through July 14, 2005, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of revisions that enable the agency's Level of Care Evaluation Unit (LOCEU) to better monitor nursing facilities' compliance with Federal Pre-Admission Screening and Resident Review (PASRR) requirements.

ANALYSIS:

Medical Assistance for Adults and Children-Eligibility, Long Term Care Facilities specific, rules are revised to comply with Federal Pre-Admission Screening and Resident Review requirements, which outline the states' responsibility for screening all individuals for mental illness or mental retardation or related conditions who apply to or reside in Title XIX certified nursing facilities. Nursing facilities which inappropriately admit an individual without a PASRR Screen are subject to recoupment of funds. Currently, facilities are not required to report on residents who are transferred from one nursing facility to another which results in gaps in the data available to LOCEU

to evaluate PASRR compliance, as well as resulting in an inconsistently applied recoupment process. Nursing home residents will benefit from the proposed rule revisions as a PASRR screening would be required for all residents just prior to admission, thus helping to assure safety by reducing the number of inappropriate nursing home placements. Rule revisions are needed to comply with Federal Pre-Admission Screening and Resident Review requirements.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR JULY 1, 2004, WHICHEVER IS LATER:

SUBCHAPTER 19. NURSING FACILITY SERVICES

317:35-19-14. New admissions, readmissions, interfacility transfers, and same level of care program transfers

The Preadmission Screening process does not apply to readmission of an individual to an NF after transfer for a continuous hospital stay, and then back to the NF. There is no specific time limit on the length of absence from the nursing facility for the hospitalization. ~~Readmissions to a nursing facility following transfer to a psychiatric unit in an acute hospital or to a psychiatric hospital for treatment of an acute episode of serious mental illness does not require further Level II assessment.~~ Inter-facility transfers are subject to resident reviews rather than preadmission screening. In the case of transfer of a resident ~~with MI or MR~~ from an NF to a hospital, another NF, or to Home and Community Base Waiver services, the transferring NF is responsible for ensuring that copies of the resident's most recent PASRR LTC-300A, ~~and~~ resident assessment reports, and any PASRR evaluations accompany the transferring resident. The receiving NF must submit an updated LTC-300A that reflects the resident's current status to LOCEU within 30 days of the transfer. Failure to do so could result in possible recoupment of funds.

[OAR Docket #04-1326; filed 10-7-04]