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Oklahoma **LIQUEFIED** Petroleum Gas Board	420
Oklahoma **LIQUEFIED** Petroleum Gas Research, Marketing and Safety Commission	422
LITERACY Initiatives Commission	425
LONG-RANGE Capital Planning Commission	428
Board of Trustees for the **MCCURTAIN** County Higher Education Program	430
Commission on **MARGINALLY** Producing Oil and Gas Wells	432
State Board of **MEDICAL** Licensure and Supervision	435
MEDICAL Technology and Research Authority of Oklahoma	440
Board of **MEDICOLEGAL** Investigations	445
Department of **MENTAL** Health and Substance Abuse Services	450
MERIT Protection Commission	455
MILITARY Planning Commission, Oklahoma Strategic	457
Department of **MINES**	460
Oklahoma **MOTOR** Vehicle Commission	465
Board of Regents of **MURRAY** State College	470
Oklahoma State Bureau of **NARCOTICS** and Dangerous Drugs Control	475
Board of Regents of **NORTHERN** Oklahoma College	480
Oklahoma Board of **NURSING**	485
Oklahoma State Board of Examiners for **NURSING** Home Administrators	490
Board of Regents of **OKLAHOMA** City Community College	495
Board of Regents of **OKLAHOMA** Colleges	500
Board of Examiners in **OPTOMETRY**	505
State Board of **OSTEOPATHIC** Examiners	510
PARDON and Parole Board	515
Oklahoma **PEANUT** Commission	520
Oklahoma State **PENSION** Commission	525
State Board of Examiners of **PERFUSIONISTS**	527
Office of **PERSONNEL** Management	530
Oklahoma State Board of **PHARMACY**	535
PHYSICIAN Manpower Training Commission	540
Board of **PODIATRIC** Medical Examiners	545
Oklahoma **POLICE** Pension and Retirement System	550
State Department of **POLLUTION** Control *(abolished 1-1-93)*	555
POLYGRAPH Examiners Board	560
Oklahoma Board of **PRIVATE** Vocational Schools	565
State Board for **PROPERTY** and Casualty Rates	570
State Board of Examiners of **PSYCHOLOGISTS**	575
Department of **CENTRAL** Services (*Formerly*: Office of **PUBLIC** Affairs)	580
PUBLIC Employees Relations Board	585
Oklahoma **PUBLIC** Employees Retirement System	590
Department of **PUBLIC** Safety	595
REAL Estate Appraiser Board	600
Oklahoma **REAL** Estate Commission	605
Board of Regents of **REDLANDS** Community College	607
State **REGENTS** for Higher Education	610
State Department of **REHABILITATION** Services	612
Board of Regents of **ROGERS** State College	615
Board of Regents of **ROSE** State College	620
Oklahoma **SAVINGS** and Loan Board *(abolished 7-1-93)*	625
SCENIC Rivers Commission	630
Oklahoma Commission on **SCHOOL** and County Funds Management	635
Advisory Task Force on the Sale of **SCHOOL** Lands *(functions concluded 2-92)*	640
The Oklahoma School of **SCIENCE** and Mathematics	645
Oklahoma Center for the Advancement of **SCIENCE** and Technology	650
SECRETARY of State	655
Department of **SECURITIES**	660
Board of Regents of **SEMINOLE** State College	665
SHEEP and Wool Commission	670
State Board of Licensed **SOCIAL** Workers	675
SOUTHERN Growth Policies Board	680
Oklahoma **SOYBEAN** Commission *(abolished 7-1-97)*	685
Board of Examiners for **SPEECH–LANGUAGE** Pathology and Audiology	690
STATE Agency Review Committee	695
STATE Use Committee (*Formerly:* Committee on Purchases of Products and Services of the Severely **HANDICAPPED**) – *See* Title 304	
Oklahoma **STUDENT** Loan Authority	700
TASK Force 2000	705
Oklahoma **TAX** Commission	710
Oklahoma Commission for **TEACHER** Preparation	712
TEACHERS' Retirement System	715
State **TEXTBOOK** Committee	720
Oklahoma **TOURISM** and Recreation Department	725
Department of **TRANSPORTATION**	730
Oklahoma **TRANSPORTATION** Authority	731
State **TREASURER**	735
Board of Regents of **TULSA** Community College	740
Oklahoma **TURNPIKE** Authority *(name changed - see Title 731)*	745
Board of Trustees for the **UNIVERSITY** Center at Tulsa	750
UNIVERSITY Hospitals Authority	752
UNIVERSITY Hospitals Trust	753
Board of Regents of the **UNIVERSITY** of Oklahoma	755
Board of Regents of the **UNIVERSITY** of Science and Arts of Oklahoma	760
Oklahoma **USED** Motor Vehicle and Parts Commission	765
Oklahoma Department of **VETERANS** Affairs	770
Board of **VETERINARY** Medical Examiners	775
Oklahoma Department of **CAREER** and Technology Education (*Formerly:* Oklahoma Department of **VOCATIONAL** and Technical Education)	780
Oklahoma **WATER** Resources Board	785
Board of Regents of **WESTERN** Oklahoma State College	790
Oklahoma **WHEAT** Commission	795
Department of **WILDLIFE** Conservation	800
WILL Rogers and J.M. Davis Memorials Commission	805

Notices of Rulemaking Intent

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

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

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

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

[OAR Docket #05-720]

RULEMAKING ACTION:

Notice of proposed EMERGENCY and PERMANENT rulemaking

PROPOSED RULES:

Subchapter 41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants

Part 1. General Provisions

252:100-41-1.1. [NEW]

Part 3. Hazardous Air Contaminants

252:100-41-3. [NEW]

252:100-41-4. [NEW]

Subchapter 42. Control of Toxic Air Contaminants [NEW]

Appendix O. Toxic Air Contaminants (TAC) Maximum Acceptable Ambient Concentrations(MAAC)[NEW]

SUMMARY:

The Department is proposing to redefine the state air toxics program. Amendments are proposed to Subchapter 41, Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants, to partition 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. Subchapter 41 will contain the federal requirements for hazardous air pollutants (HAP) and asbestos. Two new sections would be added to Part 3 as 252:100-41-3 and -4.

The program proposed in Subchapter 42 intends to provide a more effective approach to the control of toxic air contaminants (TAC), while continuing to protect the public and environment from the potentially harmful effects of TAC. When ambient air monitoring indicates that a TAC Maximum Acceptable Ambient Concentration (MAAC) Action Level is exceeded in such a way as to endanger the public health, the Department may propose and then may designate an Area of Concern (AOC). After a final designation, the Department shall develop a strategy for bringing the ambient air concentration of the TAC in the Area of Concern (AOC) under the TAC MAAC.

Proposed Appendix O, Toxic Air Contaminants (TAC) Maximum Acceptable Ambient Concentrations (MAAC), includes substances that are considered toxic and harmful to human health, are emitted within the state of Oklahoma, and are able to be monitored at the proposed ambient standard levels with available technology. Appendix O was established using EPA's Residual Risk Report to Congress, which includes information on risk assessment and the risk management process. The EPA's IRIS database was used to gather human health affects information for each substance in Appendix O.

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 April 20, 2005. For comments received at least 5 business days prior to the council meeting, staff will post written responses on our web page at least 1 day prior to the Council meeting and provide hard copy written responses to these comments to the council and the public at that council meeting. Oral comments may be made at the April 20, 2005 hearing and at the appropriate Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Council at 9:00 a.m. on Wednesday, April 20, 2005, at OSU at Tulsa, North Hall Room 150, 707 North Greenwood, Tulsa, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on June 21, 2005 at Roman Nose Resort Park Lodge, Route 1, Box 2-2, Watonga, OK.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

Please send written comments to Lisa Donovan (e-mail: lisa.donovan@deq.state.ok.us) 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.

ADDITIONAL COMMENTS:

Notice was previously published on March 15, 2005, at which time the date and location of the Environmental Quality Board hearing was unknown.

At the April 20, 2005 Air Quality Council meeting, Subchapter 5 of Chapter 100 was not recommended to the Environmental Quality Board and is not included in this notice.

[OAR Docket #05-720; filed 4-22-05]

Submissions for Review

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

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

TITLE 268. OKLAHOMA COUNCIL ON FIREFIGHTER TRAINING
CHAPTER 1. AGENCY RULES AND REGULATIONS

[OAR Docket #05-616]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Chapter 1. [NEW]
SUBMITTED TO GOVERNOR:
March 28, 2005
SUBMITTED TO HOUSE:
March 28, 2005
SUBMITTED TO SENATE:
March 28, 2005

[OAR Docket #05-616; filed 4-12-05]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 30. LABELING REQUIREMENTS

[OAR Docket #05-705]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
475:30-1-4. [AMENDED]
SUBMITTED TO GOVERNOR:
April 1, 2005
SUBMITTED TO HOUSE:
April 1, 2005
SUBMITTED TO SENATE:
April 1, 2005

[OAR Docket #05-705; filed 4-22-05]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 55. PSEUDOEPHEDRINE CONTROL

[OAR Docket #05-706]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
475:55-1-1. [NEW]
475:55-1-2. [NEW]
475:55-1-3. [NEW]
475:55-1-4. [RESERVED]
475:55-1-5. [RESERVED]
475:55-1-6. [NEW]
475:55-1-7. [NEW]
475:55-1-8. [NEW]
475:55-1-9. [NEW]
475:55-1-10. [NEW]
475:55-1-11. [NEW]
475:55-1-12. [NEW]
SUBMITTED TO GOVERNOR:
April 1, 2005
SUBMITTED TO HOUSE:
April 1, 2005
SUBMITTED TO SENATE:
April 1, 2005

[OAR Docket #05-706; filed 4-22-05]

TITLE 720. STATE TEXTBOOK COMMITTEE
CHAPTER 10. TEXTBOOK SELECTION

[OAR Docket #05-703]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 3. Bidding Procedures
720:10-3-5. Materials to be considered for adoption [AMENDED]
SUBMITTED TO GOVERNOR:
March 31, 2005
SUBMITTED TO HOUSE:
March 31, 2005

SUBMITTED TO SENATE:
March 31, 2005

[OAR Docket #05-703; filed 4-21-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 1. ORGANIZATION AND METHOD OF OPERATIONS

[OAR Docket #05-634]

RULEMAKING ACTION:
Submission for gubernatorial/legislative review.
RULES:
765:1-1-2. [AMENDED]
SUBMITTED TO GOVERNOR:
February 18, 2005
SUBMITTED TO HOUSE:
February 18, 2005
SUBMITTED TO SENATE:
February 18, 2005

[OAR Docket #05-634; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 2. INFORMAL AND FORMAL PROCEDURES

[OAR Docket #05-635]

RULEMAKING ACTION:
Submission for gubernatorial/legislative review.
RULES:
Subchapter 1. Informal procedures - consumer complaints
765:2-1-3. [AMENDED]
SUBMITTED TO GOVERNOR:
February 18, 2005
SUBMITTED TO HOUSE:
February 18, 2005
SUBMITTED TO SENATE:
February 18, 2005

[OAR Docket #05-635; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 10. USED MOTOR VEHICLE DEALERS

[OAR Docket #05-636]

RULEMAKING ACTION:
Submission for gubernatorial/legislative review.
RULES:
Subchapter 1. Licensing qualifications, procedures and fees
765:10-1-8. [AMENDED]
SUBMITTED TO GOVERNOR:
February 18, 2005
SUBMITTED TO HOUSE:
February 18, 2005
SUBMITTED TO SENATE:
February 18, 2005

[OAR Docket #05-636; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 10. USED MOTOR VEHICLE DEALERS

[OAR Docket #05-644]

RULEMAKING ACTION:
Submission for gubernatorial/legislative review.
RULES:
Subchapter 3. Operation
765:10-3-1. [AMENDED]
SUBMITTED TO GOVERNOR:
March 23, 2005
SUBMITTED TO HOUSE:
March 23, 2005
SUBMITTED TO SENATE:
March 23, 2005

[OAR Docket #05-644; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 15. USED MOTOR VEHICLE SALESMEN

[OAR Docket #05-637]

RULEMAKING ACTION:
Submission for gubernatorial/legislative review.
RULES:
Subchapter 1. Licensing qualifications, procedures and fees
765:15-1-3. [AMENDED]
SUBMITTED TO GOVERNOR:
February 18, 2005
SUBMITTED TO HOUSE:
February 18, 2005
SUBMITTED TO SENATE:
February 18, 2005

[OAR Docket #05-637; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 16. ADVERTISING

[OAR Docket #05-645]

RULEMAKING ACTION:
Submission for gubernatorial/legislative review.
RULES:
Subchapter 1. General Provisions
765:16-1-2. [AMENDED]
Subchapter 3. Specific Advertising Regulations
765:16-3-7. [AMENDED]
765:16-3-11. [AMENDED]
765:16-3-12. [NEW]
SUBMITTED TO GOVERNOR:
March 23, 2005
SUBMITTED TO HOUSE:
March 23, 2005
SUBMITTED TO SENATE:
March 23, 2005

[OAR Docket #05-645; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 20. WHOLESALE USED MOTOR VEHICLE DEALERS

[OAR Docket #05-638]

RULEMAKING ACTION:
Submission for gubernatorial/legislative review.
RULES:
Subchapter 1. Licensing qualifications, procedures and fees
765:20-1-7. [NEW]
SUBMITTED TO GOVERNOR:
February 18, 2005
SUBMITTED TO HOUSE:
February 18, 2005
SUBMITTED TO SENATE:
February 18, 2005

[OAR Docket #05-638; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 25. AUTOMOTIVE DISMANTLER AND PARTS RECYCLERS

[OAR Docket #05-639]

RULEMAKING ACTION:
Submission for gubernatorial/legislative review.
RULES:
Subchapter 1. Licensing qualifications, procedures and fees
765:25-1-7. [AMENDED]
SUBMITTED TO GOVERNOR:
February 18, 2005
SUBMITTED TO HOUSE:
February 18, 2005
SUBMITTED TO SENATE:
February 18, 2005

[OAR Docket #05-639; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 30. BUYER'S IDENTIFICATION CARDS

[OAR Docket #05-640]

RULEMAKING ACTION:
Submission for gubernatorial/legislative review.
RULES:
Subchapter 1. Licensing qualifications, procedures and fees
765:30-1-7. [NEW]
Subchapter 7. Salvage pools and salvage disposal sales
765:30-7-1. [AMENDED]
765:30-7-3. [NEW]
SUBMITTED TO GOVERNOR:
February 18, 2005
SUBMITTED TO HOUSE:
February 18, 2005
SUBMITTED TO SENATE:
February 18, 2005

[OAR Docket #05-640; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 35. MANUFACTURED HOME DEALERS

[OAR Docket #05-641]

RULEMAKING ACTION:
Submission for gubernatorial/legislative review.
RULES:
Subchapter 3. Licensing qualifications, procedures and fees
765:35-3-7. [AMENDED]
SUBMITTED TO GOVERNOR:
February 18, 2005
SUBMITTED TO HOUSE:
February 18, 2005

SUBMITTED TO SENATE:
February 18, 2005

[OAR Docket #05-641; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 36. MANUFACTURED HOME MANUFACTURERS

[OAR Docket #05-642]

RULEMAKING ACTION:
Submission for gubernatorial/legislative review.
RULES:
Subchapter 3. Licensing qualifications, procedures and fees
765:36-3-7. [AMENDED]
SUBMITTED TO GOVERNOR:
February 18, 2005
SUBMITTED TO HOUSE:
February 18, 2005
SUBMITTED TO SENATE:
February 18, 2005

[OAR Docket #05-642; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 37. MANUFACTURED HOME INSTALLERS

[OAR Docket #05-643]

RULEMAKING ACTION:
Submission for gubernatorial/legislative review.
RULES:
Subchapter 3. Licensing qualifications, procedures and fees
765:37-3-7. [AMENDED]
Subchapter 5. Operation
765:37-5-4. [NEW]
SUBMITTED TO GOVERNOR:
February 18, 2005
SUBMITTED TO HOUSE:
February 18, 2005
SUBMITTED TO SENATE:
February 18, 2005

[OAR Docket #05-643; filed 4-15-05]

Gubernatorial Approvals

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

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

TITLE 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 1. ADMINISTATRIVE OPERATIONS

[OAR Docket #05-667]

RULEMAKING ACTION:
Gubernatorial Approval
RULES:
185:1-1-4. [AMENDED]
185:1-1-8. [AMENDED]
185:1-1-14. [AMENDED]
185:1-1-15. [REVOKED]
185:1-1-16. [AMENDED]
185:1-1-17. [AMENDED]
GUBERNATORIAL APPROVAL:
April 6, 2005

[OAR Docket #05-667; filed 4-18-05]

TITLE 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 10. CRIME VICTIMS COMPENSATION PROGRAM

[OAR Docket #05-668]

RULEMAKING ACTION:
Gubernatorial Approval
RULES:
185:10-1-1. [AMENDED]
185:10-1-3. [AMENDED]
185:10-1-4. [AMENDED]
185:10-1-6. [AMENDED]
185:10-1-8. [AMENDED]
185:10-1-10. [AMENDED]
185:10-1-11. [AMENDED]
185:10-1-14. [REVOKED]
GUBERNATORIAL APPROVAL:
April 6, 2005

[OAR Docket #05-668; filed 4-18-05]

TITLE 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 15. SEXUAL ASSAULT EXAMINATION FUND

[OAR Docket #05-669]

RULEMAKING ACTION:
Gubernatorial Approval
RULES:
185:15-1-2. [AMENDED]
185:15-1-3. [AMENDED]
185:15-1-4. [AMENDED]
185:15-1-5. [AMENDED]
185:15-1-6. [AMENDED]
185:15-1-7. [AMENDED]
GUBERNATORIAL APPROVAL:
April 6, 2005

[OAR Docket #05-669; filed 4-18-05]

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

[OAR Docket #05-672]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Office Of Client Advocacy
Part 1. Administration
340:2-3-2. [AMENDED]
340:2-3-26. [NEW]
Part 3. Investigations
340:2-3-32. [AMENDED]
340:2-3-34. through 340:2-3-38. [AMENDED]
Part 5. Grievances
340:2-3-45. through 340:2-3-46. [AMENDED]
340:2-3-50. [AMENDED]
Part 7. Grievance and Abuse Review Committee
340:2-3-62. through 340:2-3-63. [AMENDED]
Part 9. Ombudsman Programs
340:2-3-71. through 340:2-3-72. [AMENDED]
(Reference APA WF # 04-33)
GUBERNATORIAL APPROVAL:
April 8, 2005

[OAR Docket #05-672; filed 4-19-05]

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

[OAR Docket #05-673]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Human Resources Management Division (HRMD)
Part 1. General Provisions
340:2-1-7. through 340:2-1-8. [NEW]
Part 3. Internal Human Resources
340:2-1-25. through 340:2-1-27. [AMENDED]
340:2-1-29. [AMENDED]
340:2-1-34. [AMENDED]
Part 7. Recruitment, Selection, and Placement
340:2-1-78. through 340:2-1-79. [AMENDED]
340:2-1-81. through 340:2-1-82. [AMENDED]
340:2-1-84. [AMENDED]
(Reference APA WF# 04-37)
GUBERNATORIAL APPROVAL:
April 8, 2005

[OAR Docket #05-673; filed 4-19-05]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 5. ADULT PROTECTIVE SERVICES

[OAR Docket #05-674]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
340:5-1-6. [AMENDED]
Subchapter 3. Reports of Maltreatment of Vulnerable Adults
340:5-3-4. [AMENDED]
340:5-3-6. [AMENDED]
Subchapter 5. Investigation of Adult Protective Services Referrals
340:5-5-2. through 340:5-5-4. [AMENDED]
340:5-5-6. [AMENDED]
Subchapter 7. Long Term Investigations Section
340:5-7-2. through 340:5-7-7. [NEW]
(Reference APA WF # 04-06 and 04-34)
GUBERNATORIAL APPROVAL:
April 8, 2005

[OAR Docket #05-674; filed 4-19-05]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 25. CHILD SUPPORT ENFORCEMENT DIVISION

[OAR Docket #05-688]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Scope~~,~~ and Applicability~~, and General Provisions~~
340:25-1-1.1. through 340:25-1-1.2. [AMENDED]
Subchapter 5. Operational Policies
Part 9. Disclosure of Information
340:25-5-67. [AMENDED]
Part 15. Case Initiation, Case Management, and Case Closure
340:25-5-110. through 340:25-5-110.1. [AMENDED]
340:25-5-114. [AMENDED]
340:25-5-117. through 340:25-5-118. [AMENDED]
340:25-5-123. through 340:25-5-124. [AMENDED]
340:25-5-124.2. [AMENDED]
340:25-5-133. [AMENDED]
Part 17. Past Support
340:25-5-140. through 340:25-5-140.1. [AMENDED]
Part 20. Medical Support
340:25-5-169. [AMENDED]
Part 21. Establishment
340:25-5-178. [AMENDED]
340:24-5-179.1. [AMENDED]
340:25-5-185.1. [AMENDED]
Part 22. Review and Modification
340:25-5-198.1. [AMENDED]
Part 23. Enforcement
340:25-5-201.1. [AMENDED]
340:25-5-211.1. through 340:25-5-213. [AMENDED]
Part 33. Interstate and International Cases
340:25-5-270. [AMENDED]
Part 38. IV-D and Non-IV-D Central Case Registry Information
340:25-5-340. [AMENDED]
Part 39. Accounting and Distribution
340:25-5-350.1. [AMENDED]
340:25-5-350.3. [AMENDED]
(Reference APA WF 04-35)
GUBERNATORIAL APPROVAL:
April 8, 2005

[OAR Docket #05-688; filed 4-21-05]

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

[OAR Docket #05-675]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 9. Procedures Relating to Case Changes
340:40-9-2. [AMENDED]
Subchapter 10. Electronic Benefit Transfer (EBT) System for Child Care [NEW]
340:40-10-1. through 340:40-10-4. [NEW]
Subchapter 13. Child Care Rates and Provider Issues
340:40-13-4. [REVOKED]
(Reference APA WF 04-38)
GUBERNATORIAL APPROVAL:
April 8, 2005

[OAR Docket #05-675; filed 4-19-05]

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

[OAR Docket #05-689]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
Part 1. Scope and Applicability
340:75-1-12.6. through 340:75-1-12.7. [AMENDED]
Subchapter 7. Foster Home Care
Part 2. Development of Resources
340:75-7-12. [AMENDED]
340:75-7-14. [AMENDED]
340:75-7-18. [AMENDED]
340:75-7-24. [AMENDED]
Part 4. Foster Parents' Roles and Responsibilities
340:75-7-37. through 340:75-7-38. [AMENDED]
Part 5. Eligibility and Payments
340:75-7-51. through 340:75-7-53. [AMENDED]
Part 6. Foster Home Care Support Services
340:75-7-65. [AMENDED]
Part 8. Continuous Quality Assessment of a Resource Home
340:75-7-94. [AMENDED]
Part 25. Emergency Foster Care Program
340:75-7-262. [AMENDED]
Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services Division Services
Part 1. Therapeutic Foster Care
340:75-8-1. [AMENDED]
340:75-8-2. through 340:75-8-3. [REVOKED]
340:75-8-4. [AMENDED]
340:75-8-5. [REVOKED]
340:75-8-6. through 340:75-8-9. [AMENDED]
340:75-8-11. through 340:75-8-13. [AMENDED]
Subchapter 15. Adoptions
Part 8. Adoptive Placement Process
340:75-15-59. [AMENDED]
Part 10. Adoptive Family Assessment and Preparation Process
340:75-15-83. through 340:75-15-84. [AMENDED]
340:75-15-88. [AMENDED]
Part 12. Post Placement Services
340:75-15-103. [AMENDED]
340:75-15-106. [AMENDED]
(Reference APA WF 04-31)
GUBERNATORIAL APPROVAL:
April 8, 2005

[OAR Docket #05-689; filed 4-21-05]

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

[OAR Docket #05-690]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 6. Permanency Planning
Part 13. Independent Living
340:75-6-110. [AMENDED]
340:75-6-115. through 340:75-6-115.1. [AMENDED]
340:75-6-115.3. through 340:75-6-115.5. [AMENDED]
340:75-6-115.10. [NEW]
Subchapter 7. Foster Home Care
Part 2. Development of Resources
340:75-7-15. [AMENDED]
Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services Division Services
Part 3. DDSD Services for ~~Custody~~ Children
340:75-8-36. through 340:75-8-40. [AMENDED]
Subchapter 11. Child Welfare Community-Based Residential Care
Part 17. Contracted Community-Based Residential Care Providers
340:75-11-230. [AMENDED]
340:75-11-231. through 340:75-11-232. [REVOKED]
340:75-11-233. through 340:75-11-234. [AMENDED]
340:75-11-235. [REVOKED]
340:75-11-236. through 340:75-11-240. [AMENDED]
Part 19. Residential Diagnostic and Evaluation Services
340:75-11-250. [AMENDED]
340:75-11-251. through 340:75-11-253. [REVOKED]
Part 21. Residential Intensive Treatment Services

340:75-11-265. [AMENDED]
340:75-11-266. through 340:75-11-268. [REVOKED]
Part 23. Specialized Community Homes
340:75-11-285. [REVOKED]
340:75-11-286. through 340:75-11-287. [AMENDED]
340:75-11-288. [REVOKED]
340:75-11-289. [AMENDED]
340:75-11-290. through 340:75-11-292. [REVOKED]
Part 25. Non-Funded and Funded Contracted Level B Placements
340:75-11-300. through. 340:75-11-301. [AMENDED]
340:75-11-302. through 340:75-11-307. [REVOKED]
Part 27. Residential Maternity Services
340:75-11-320. through 340:75-11-322. [AMENDED]
340:75-11-323. [REVOKED]
Part 29. Non-Funded and Funded Level C Placements
340:75-11-330. [AMENDED]
340:75-11-331. through 340:75-11-337. [REVOKED]
Part 31. Contracted Level D Placements
340:75-11-350. [AMENDED]
340:75-11-351. through 340:75-11-353. [REVOKED]
Part 33. Contracted Level D Plus and Level E Placements
340:75-11-360. [AMENDED]
340:75-11-361. through 340:75-11-363. [REVOKED]
Part 35. Contracted Level E Placements [REVOKED]
340:75-11-370. through 340:75-11-373. [REVOKED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children in ~~Substitute~~ Out-of-Home Care
Part 2. Title IV-E Eligibility and Reimbursability
340:75-13-11. through 340:75-13-13. [AMENDED]
340:75-13-15. through 340:75-13-17. [AMENDED]
340:75-13-19. [AMENDED]
340:75-13-20. [REVOKED]
340:75-13-21. through 340:75-13-22. [AMENDED]
Part 3. Income and Resources ~~to~~ of the Child
340:75-13-30. [NEW]
(Reference APA WF 04-36)

GUBERNATORIAL APPROVAL:
April 8, 2005

[OAR Docket #05-690; filed 4-21-05]

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

[OAR Docket #05-691]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
Part 1. Licensing Services - Child Care
340:110-1-4. through 340:110-1-6. [AMENDED]
340:110-1-8. through 340:110-1-8.1. [AMENDED]
340:110-1-8.3. through 340:110-1-9.3. [AMENDED]
340:110-1-9.5. through 340:110-1-10. [AMENDED]
340:110-1-14. [AMENDED]
340:110-1-17. [AMENDED]
340:110-1-21. [AMENDED]
Part 3. Licensing Services - Residential Care and Agencies
340:110-1-43.1. [AMENDED]
340:110-1-45. through 340:110-1-47.2. [AMENDED]
340:110-1-51. [AMENDED]
340:110-1-54. [AMENDED]
Subchapter 3. Licensing Standards for Child Care Facilities
Part 1. Requirements for Child Care Centers
340:110-3-7.1. [AMENDED]
Part 9. Requirements for Residential Child Care Facilities
340:110-3-154. [AMENDED]
340:110-3-154.3. [AMENDED]
340:110-3-168. [AMENDED]
Subchapter 5. Requirements for Child-Placing Agencies
Part 5. Requirements for Foster Family Homes
340:110-5-60. [AMENDED]
(Reference APA WF 04-32)

GUBERNATORIAL APPROVAL:
April 8, 2005

[OAR Docket #05-691; filed 4-21-05]

TITLE 465. OKLAHOMA MOTOR VEHICLE COMMISSION
CHAPTER 15. ADVERTISING

[OAR Docket #05-627]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 3. Specific Advertising Regulations
465:15-3-8. [AMENDED]
465:15-3-14. [AMENDED]
465:15-3-15. [NEW]

GUBERNATORIAL APPROVAL:
March 9, 2005

[OAR Docket #05-627; filed 4-13-05]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-618]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
590:1-1-2. System purpose and authority [AMENDED]

590:1-1-9. Designee Board members [NEW]

GUBERNATORIAL APPROVAL:

April 6, 2005

[OAR Docket #05-618; filed 4-12-05]

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

[OAR Docket #05-619]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions
590:10-1-1. Purpose [AMENDED]
590:10-1-7. Non-state agency contributions [AMENDED]
590:10-1-15. Hazardous Duty Members [AMENDED]
590:10-1-17. Offset and recovery [NEW]
590:10-1-18. Release of records [NEW]
590:10-1-19. Mailing lists [NEW]
Subchapter 3. Credited Service
590:10-3-12. Military service credit [AMENDED]
590:10-3-13. Credit for involuntary furlough [NEW]
Subchapter 7. Retirement Benefits
590:10-7-2. Involuntary furlough [AMENDED]
590:10-7-6. Failure to submit documents [AMENDED]
590:10-7-10. Final benefit [AMENDED]
Subchapter 8. Department of Corrections Benefits [NEW]
590:10-8-1. Department of Corrections Hazardous Duty Members [NEW]
590:10-8-2. Post-Hazardous Duty Members [NEW]
590:10-8-3. Continuation of Hazardous Duty benefits [NEW]
590:10-8-4. Maximum Participation as a Hazardous Duty Member [NEW]
590:10-8-5. Normal retirement date for Post-Hazardous Duty Members [NEW]
590:10-8-6. Employer Responsibility for Continuation of Hazardous Duty Benefits [NEW]
Subchapter 10. Department of Corrections Death in Performance of Duty Benefits [NEW]
590:10-10-1. Eligibility for Benefit [NEW]
590:10-10-2. Killed in Performance of Duty [NEW]
590:10-10-3. Mortally Wounded in Performance of Duty [NEW]
590:10-10-4. Exclusions [NEW]
590:10-10-5. Surviving Spouse Benefit [NEW]
590:10-10-6. Surviving Spouse Benefit Election [NEW]
590:10-10-7. Surviving Child Benefit [NEW]
590:10-10-8. Filing for Surviving Spouse and Surviving Child Benefits [NEW]
Subchapter 19. Medicare Gap Benefit Option [NEW]
590:10-19-1. Purpose and intent [NEW]
590:10-19-2. Definitions [NEW]
590:10-19-3. Medicare Gap Benefit option [NEW]
590:10-19-4. Irrevocable election of Medicare Gap Benefit option [NEW]
590:10-19-5. Medicare Gap Benefit formula [NEW]
590:10-19-6. Eligible Members [NEW]
590:10-19-7. Eligibility exclusions [NEW]
590:10-19-8. Calculation of the Medicare Gap Benefit [NEW]
590:10-19-9. Medicare Gap Benefit Inapplicable for joint annuitants [NEW]
590:10-19-10. Pop-up of the Medicare Gap Benefit [NEW]
590:10-19-11. Minimum benefit amount [NEW]
590:10-19-12. Calculation of Cost-of-Living Adjustments [NEW]
590:10-19-13. Medicare Gap benefits and post-retirement employment [NEW]
590:10-19-14. Payments to an alternate payee under a QDRO [NEW]

GUBERNATORIAL APPROVAL:

April 6, 2005

[OAR Docket #05-619; filed 4-12-05]

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

[OAR Docket #05-620]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

590:15-1-1. Purpose [AMENDED]
590:15-1-2. Administration [AMENDED]
590:15-1-4. ~~Final average~~ Average monthly salary and maximum compensation [AMENDED]
590:15-1-5. Final benefit and Death benefit [AMENDED]
590:15-1-17. Military service credit [AMENDED]

GUBERNATORIAL APPROVAL:

April 6, 2005

[OAR Docket #05-620; filed 4-12-05]

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

[OAR Docket #05-621]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:
Subchapter 5. Assets, Credits, Accounts and Reports
590:25-5-6. Records [AMENDED]
GUBERNATORIAL APPROVAL:
April 6, 2005

[OAR Docket #05-621; filed 4-12-05]

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

[OAR Docket #05-622]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 19. Administration of Plan
590:35-19-8. Records [AMENDED]
GUBERNATORIAL APPROVAL:
April 6, 2005

[OAR Docket #05-622; filed 4-12-05]

TITLE 715. TEACHERS' RETIREMENT SYSTEM CHAPTER 10. GENERAL OPERATIONS

[OAR Docket #05-629]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Membership Provisions
715:10-1-2. [AMENDED]
715:10-1-3. [AMENDED]
715:10-1-5. [AMENDED]
Subchapter 5. Establishing Other Service Credits
715:10-5-1. [AMENDED]
715:10-5-18. [AMENDED]
715:10-5-27. [AMENDED]
715:10-5-28. [AMENDED]
Subchapter 9. Survivor Benefits
715:10-9-2. [AMENDED]
Subchapter 13. Contributions for Membership Service
715:10-13-1. [AMENDED]
715:10-13-3. [AMENDED]
Subchapter 15. Service Retirement
715:10-15-1. [AMENDED]
715:10-15-2. [AMENDED]
715:10-15-7.1. [AMENDED]
715:10-15-10. [AMENDED]
Subchapter 17. Post-Retirement Employment
715:10-17-13. [AMENDED]
Subchapter 19. Tax-Sheltered Annuity Program
715:10-19-8. [AMENDED]
715:10-19-9. [AMENDED]
GUBERNATORIAL APPROVAL:
April 6, 2005

[OAR Docket #05-629; filed 4-13-05]

TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 25. HIGHWAY CONTRACTORS

[OAR Docket #05-681]

RULEMAKING ACTION:
Gubernatorial approval
PROPOSED RULES:
Subchapter 3. Contractor Prequalification and Proposals
730:25-3-5. [AMENDED]
730:25-3-6. [AMENDED]
GUBERNATORIAL APPROVAL:
February 8, 2005

[OAR Docket #05-681; filed 4-19-05]

TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 30. HIGHWAY DESIGN

[OAR Docket #05-680]

RULEMAKING ACTION:
Gubernatorial approval
RULE:
Subchapter 9. Permitting of Oversize, Overweight, and Special Combination Vehicles
730:30-9-15. [AMENDED]
GUBERNATORIAL APPROVAL:
March 23, 2005

[OAR Docket #05-680; filed 4-19-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 1. ORGANIZATION AND METHOD OF OPERATIONS

[OAR Docket #05-646]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
765:1-1-2. [AMENDED]

GUBERNATORIAL APPROVAL:
March 31, 2005

[OAR Docket #05-646; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 2. INFORMAL AND FORMAL PROCEDURES

[OAR Docket #05-647]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Informal Procedures - consumer complaints
765:2-1-3. [AMENDED]
GUBERNATORIAL APPROVAL:
March 31, 2005

[OAR Docket #05-647; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 10. USED MOTOR VEHICLE DEALERS

[OAR Docket #05-648]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:10-1-8. [AMENDED]
GUBERNATORIAL APPROVAL:
March 31, 2005

[OAR Docket #05-648; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 15. USED MOTOR VEHICLE SALESMEN

[OAR Docket #05-649]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:15-1-3. [AMENDED]
GUBERNATORIAL APPROVAL:
March 31, 2005

[OAR Docket #05-649; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 20. WHOLESALE USED MOTOR VEHICLE DEALERS

[OAR Docket #05-650]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:20-1-7. [NEW]
GUBERNATORIAL APPROVAL:
March 31, 2005

[OAR Docket #05-650; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 25. AUTOMOTIVE DISMANTLER AND PARTS RECYCLERS

[OAR Docket #05-651]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Licensing qualifications, procedures and fees
765:25-1-7. [AMENDED]
GUBERNATORIAL APPROVAL:
March 31, 2005

[OAR Docket #05-651; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 30. BUYER'S IDENTIFICATION CARDS

[OAR Docket #05-652]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Licensing qualifications, procedures and fees
765:30-1-7. [NEW]
Subchapter 7. Salvage Pools and Salvage Disposal Sales
765:30-7-1. [AMENDED]
765:30-7-3. [NEW]

GUBERNATORIAL APPROVAL:
March 31, 2005

[OAR Docket #05-652; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 35. MANUFACTURED HOME DEALERS

[OAR Docket #05-653]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Licensing qualifications, procedures and fees
765:35-3-7. [AMENDED]
GUBERNATORIAL APPROVAL:
March 31, 2005

[OAR Docket #05-653; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 36. MANUFACTURED HOME MANUFACTURERS

[OAR Docket #05-654]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Licensing qualifications, procedures and fees
765:36-3-7. [AMENDED]
GUBERNATORIAL APPROVAL:
March 31, 2005

[OAR Docket #05-654; filed 4-15-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 37. MANUFACTURED HOME INSTALLERS

[OAR Docket #05-655]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Licensing qualifications, procedures and fees
765:37-3-7. [AMENDED]
Subchapter 5. Operation
765:37-5-4. [NEW]
GUBERNATORIAL APPROVAL:
March 31, 2005

[OAR Docket #05-655; filed 4-15-05]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 1. ORGANIZATION AND PROCEDURE OF OKLAHOMA WATER RESOURCES BOARD

[OAR Docket #05-662]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Organization, Meetings And Comprehensive Water Plan
785:1-3-1. Origin, composition and operations of the Board [AMENDED]
Subchapter 5. Rules
785:1-5-3. Amending of rules or Standards by Board [AMENDED]
GUBERNATORIAL APPROVAL:
March 23, 2005

[OAR Docket #05-662; filed 4-15-05]

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

[OAR Docket #05-697]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 17. Combined Pesticide
Part 11. Standards for Application of Pesticide
35:30-17-24.1. [NEW]
AUTHORITY:
State Board of Agriculture and the Oklahoma Agricultural Code; 2 O.S., §§ 2-4(2), 2-18, and 3-81 et seq.
DATES:
Adoption:
March 30, 2005
Approved by Governor:
April 6, 2005
Effective:
Immediately upon Governor's approval
Expiration:
Effective through July 14, 2006 unless superseded by another rule or disapproved by the Legislature
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
This emergency rule will assure cotton producers in specified counties will not suffer any undue economic hardship arising from potential damage occurring from the application of ester formulations of 2,4-D to adjacent agricultural lands. The herbicide is a growth regulator that can severely damage the cotton plants causing a reduction in lint production and mortality in some cases. High winds and extreme temperatures are commonplace in Southwest Oklahoma. These two conditions make the drifting of 2,4-D more likely during the cotton growing season, which ranges from May until October of each year. Because the beginning of the growing season is nearing, the agency finds a compelling public interest and immediate need for these emergency rules. Permanent rules cannot be effective in time to ensure the protections to cotton producers.
ANALYSIS:
Cotton acres located within Harmon, Jackson, and Tillman Counties are particularly sensitive to the presence of 2,4-D. Cotton Lint and Cotton Seed values in Oklahoma for 2004 total $70,068,000.00. Cotton ranks as one of the major agronomic crops for southwest Oklahoma. Spraying pasturelands for weed control in the spring often overlaps with the planting and emergence of cotton, especially irrigated cotton. Pastures are sprayed with a combination of 2,4-D and fertilizer. Most of these type tank mixes use ester formulations of 2,4-D, which is very prone to drift and subject to off-target movement during times of temperature inversion.
CONTACT PERSON:
Bill Taylor, (405) 522-6347

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 17. COMBINED PESTICIDE

PART 11. STANDARDS FOR APPLICATION OF PESTICIDE

35:30-17-24.1. Restricted use areas

(a) Applications of ester formulations of 2,4-Dichlorophenoxyacetic acid (2,4-D) type herbicides to agricultural lands shall not be made in Harmon, Jackson, and Tillman counties between 12:01 a.m. of May 1 of each calendar year through 11:59 p.m. of October 15 of each calendar year.

(b) Failure to comply with this section shall be considered a use that is not suitable or safe.

[OAR Docket #05-697; filed 4-20-05]

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

[OAR Docket #05-623]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-40. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 51. Habilitation Services
317:30-5-482. [AMENDED]
(Reference APA WF # 04-16A)
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:
December 9, 2004

Approved by Governor:
January 28, 2005
Effective:
Immediately upon Governor's approval or February 1, 2005, 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 to provide a cost effective alternative to services currently provided to Developmental Disabilities Services recipients in the In Home Supports Waiver. The Oklahoma Department of Human Services expects a cost savings in displacing the current cost of hourly Habilitation Training Specialist services. The revisions will be budget neutral to the agency. However, the Developmental Disabilities Services Division of OKDHS, who is responsible for paying the state share for Adult Day Services, is estimating an annual savings of $139,400.
ANALYSIS:
Developmental Disabilities Services rules are issued to establish criteria for a new service, Adult Day Services. Adult Day Services provides assistance with retention or improvement in self-help, adaptive, and socialization skills including the opportunity to interact with peers in order to promote maximum level of independence and functioning. The service takes place in a non-residential setting, separate from the home or facility in which the service recipient resides and will be included on his/her Plan of Care. Services are normally furnished four or more hours per day on a regularly scheduled basis, for one or more days per week. The Oklahoma Department of Human Services (OKDHS) will pay the state share for this service. It is anticipated that some recipients will use Adult Day Services in lieu of Habilitation Training Specialist services. The cost for a six hour day of Habilitation Training Specialist services is $76.80, while the rate for Adult Day Services is $45 per day. The Developmental Disabilities Services Division of OKDHS estimates a savings of $21.80 per recipient day, for an estimated annual savings of $139,400 in state dollars. Further revisions bring rules in line with other sections of rules by adding the existing Intensive Personal Supports service to these sections of rules.
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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 FEBRUARY 1, 2005, WHICHEVER IS LATER:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-40. Home and Community Based Waiver Services

The State of Oklahoma has a Medicaid waiver to provide home and community based services to mentally retarded recipients who would otherwise require institutional care in an intermediate care facility for the mentally retarded. Area professional assessment teams are interdisciplinary teams which perform the initial client assessment to determine a diagnosis of mental retardation and eligibility for waiver services. They also develop the individual plan of care for each recipient. The services which are available include: Case management, habilitation services, specialized foster care, respite care and homemaker services. Following is a brief description of each service:

(1) **Case management services.** Case management is a system under which the responsibility for locating, coordinating and monitoring a group of services rests with a specific person.

(2) **Habilitation services.** Habilitation services are services which are needed to ensure optimal functioning of the recipient of home and community based services. Services include physical therapy, occupational therapy, nutritional services, psychiatric services, psychological services, speech therapy, audiological examination/treatment, habilitation training, employment support services, ~~and~~ dental examination, personal supports, and adult day services.

(3) **Specialized foster care.** Specialized foster care is family like care and services provided to recipients by individuals and families living in their own homes.

(4) **Respite care.** Respite care is services designed to provide temporary or intermittent support to clients to relieve the family or primary care provider in planned absences or emergencies.

(5) **Homemaker services.** Homemaker services are services to assure client safety and well-being when the regular caretaker is absent or unable to perform domestic activities such as meal preparation, shopping, household cleaning and personal hygiene and care services.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 51. HABILITATION SERVICES

317:30-5-482. Description of services

Habilitation Services include the services described in this Section.

(1) **Dental services.**

(A) **Minimum qualifications.** Providers of dental services must have a non-restrictive licensure to practice dentistry in the State of Oklahoma by the Board of Governors of Registered Dentists of Oklahoma.

(B) **Description of services.** Dental service includes oral examination, two bite-wing x-rays, prophylaxis, topical fluoride treatment, development of a plan of care on the specified form and routine training of client or primary care giver regarding oral hygiene.

(C) **Coverage limitations.** Services are limited to 5 each 12 months.

(2) **Nutritional services.**

(A) **Minimum qualifications.** Providers must be licensed by the Oklahoma State Board of Medical Examiners and registered as a dietitian with the Commission of Dietetic Registration.

(B) **Description of services.** Nutritional services include evaluation and consultation in diet to eligible individuals, or their guardian, six years of age and older. Services are intended to maximize the individual's nutritional health. Services are provided in any community setting as specified in the individual's IHP. A minimum of 15 minutes for encounter and record documentation is required.

(C) **Coverage limitations.** A unit is 15 minutes, with a limit of 192 units each 12 months.

(3) **Occupational therapy services.**

(A) **Minimum qualifications.** Occupational therapists and occupational therapy assistants must have current licensure by the Oklahoma State Board of Medical Licensure and Supervision. Occupational therapy assistants must be employed by the occupational therapist.

(B) **Description of services.** Skilled occupational therapy services include evaluation, treatment consultation, program development/management and equipment monitoring. Skilled occupational therapy services may also include the use of occupational therapy assistants, within the limits of their practice. Services are intended to help the consumer achieve greater independence to reside and participate in the community. Services are rendered in any community setting as specified in the individual's habilitation plan. The provision of services include written report or record documentation in the individual's record, as required.

(C) **Coverage limitations.** Payment is made for compensable services to the individual occupational therapist for direct services or for services provided by a qualified occupational therapy assistant within their employment. Services provided by occupational therapy assistants must be identified on the claim form by the use of the occupational therapy assistant's individual provider number in the servicing provider field. Payment is made in 15 minute units, with a limit of 480 units each 12 months. Payment is not allowed solely for written reports or record documentation.

(4) **Physical therapy services.**

(A) **Minimum qualifications.** Physical therapists and physical therapy assistants must be licensed with the Oklahoma State Board of Medical Licensure and Supervision. The physical therapy assistant must be employed by the physical therapist.

(B) **Description of services.** Skilled physical therapy services include evaluation, treatment, consultation, program development/management and equipment monitoring. Skilled physical therapy services may also include the use of physical therapy assistants, within the limits of their practice. Services are intended to help the consumer to achieve greater independence to reside and participate in the community. Services are provided in any community setting as specified in the individual's habilitation plan. The provision of services include written report or record documentation in the individual's record, as required.

(C) **Coverage limitations.** Payment is made for compensable services to the individual physical therapist for direct services or for services provided by a qualified physical therapy assistant within their employment. Services provided by physical therapy assistants must be identified on the claim form by the use of the physical therapy assistant's individual provider number in the servicing provider field. Payment is made in 15 minute units with a limit of 480 units each 12 months. Payment is not allowed solely for written reports or record documentation.

(5) **Psychological services.**

(A) **Minimum qualifications.** Qualification as a provider of psychological services requires non-restrictive licensure as a psychologist by the Oklahoma Psychologist Board of Examiners, or in the state which service is provided.

(B) **Description of services.** Psychological services include evaluation, psychotherapy, consultation and behavioral treatment provided to eligible individuals six years of age and older. Service is provided in any community setting as specified in the individual's habilitation plan. Services are intended to maximize an individual's psychological and behavioral well-being. Services are provided in both individual and group (6 person maximum) format. A minimum of 15 minutes for each individual encounter and 15 minutes for each group encounter and record documentation of each treatment session is included and required.

(C) **Coverage limitations.**

(i) Limitations for psychological services are as follows:

(I) Psychotherapy Services and Behavior Treatment Services (Individual): Unit: 15 minutes.

(II) Cognitive/Behavioral Treatment (Group): Unit: 15 minutes.

(ii) Psychological services will be authorized for a period not to exceed six months.

(I) Initial authorization is through the case manager, with review and approval by the case manager supervisor.

(II) Initial authorization will not exceed 192 units (48 hours of service).

(III) Monthly progress notes will include a statement of hours and type of service provided, and an empirical measure of client status as it relates to each objective in the treatment plan.

(IV) If progress notes are not submitted to the case manager for each month of service provision, authorization for payment will be

withdrawn until such time as progress notes are completed.

(iii) Treatment extensions may be authorized by the Area Manager based upon evidence of continued need and effectiveness of treatment.

(I) Evidence of continued need of treatment and/or treatment effectiveness is submitted by the service provider to the case manager and will include, as a minimum, completion of the Service Utilization and Evaluation protocol.

(II) When revising a treatment plan to accommodate recommendations of a required committee review or a Department of Human Services audit, the Provider may bill for only one revision. The time for preparing the revision will be clearly documented and will not exceed four hours.

(III) Treatment extensions will be for no more than 24 hours (96 units) of service per request.

(iv) Provider shall develop, implement, evaluate and revise the treatment plan corresponding to the relevant goals and objectives, for which the provider is responsible, identified in the IHP. No more than 12 hours (48 units) may be billed for the preparation of a treatment plan. Any clinical document shall be prepared within 45 days of the request; further payments will be suspended until the requested document is provided.

(v) Psychological Technicians shall provide no more than 140 billable hours (560 units) of service per month to consumers. The psychologist must maintain a record of all billable services provided by a psychological technician.

(6) **Psychiatric Services.**

(A) **Minimum qualifications.** Qualification as a provider of psychiatric services requires a non-restrictive license in the State of Oklahoma.

(B) **Description of services.** Psychiatric services include outpatient evaluation, psychotherapy, medication and prescription and management and consultation provided to eligible individuals six years of age and older. Services are provided in any community setting as specified in the individual's habilitation plan. Services are intended to contribute to the individual's psychological well-being. A minimum of 30 minutes for encounter and record documentation is required.

(C) **Coverage limitations.** A unit is 30 minutes and is limited to 200 units each 12 months.

(7) **Speech/language services.**

(A) **Minimum qualifications.** Qualification as a provider of speech/language services requires non-restrictive licensure as a speech/language pathologist by the State Board of Examiners for Speech Pathology and Audiology.

(B) **Description of services.** Speech therapy includes evaluation, treatment and consultation in communication and oral motor/feeding activities provided to eligible individuals six years of age and older. Services are intended to maximize the individual's community living skills and may be provided in any community setting as specified in the individual's habilitation plan. A minimum of 15 minutes for encounter and record documentation is required.

(C) **Coverage limitations.** A unit is 15 minutes and is limited to 288 units each 12 months.

(8) **Habilitation Training Specialist Services (HTS).**

(A) **Minimum qualifications.** Providers must complete the Oklahoma Department of Human Services/Developmental Disabilities Services Division (~~DHS/DDSD~~ OKDHS/DDSD) sanctioned training curriculum in accordance with the schedule authorized by DDSD.

(B) **Description of services.** HTS services include participation in evaluation, assistance and training in self-care, daily living and prevocational skills provided to eligible individuals six years of age and older. Services are provided in any community setting as specified in the individual's habilitation plan. Pre-authorized HTS services accomplish the same objectives as other HTS services but is limited to situations where the HTS provider is unable to obtain required professional and administrative oversight from an oversight agency approved by the Authority. For pre-authorized HTS services, the service provider will receive oversight from DDSD area staff. This service must be pre-approved by the DDSD administrator.

(C) **Coverage limitations.** Coverage limitations for HTS services are as follows:

(i) Habilitation Training Specialist Services: Payment Limitation: As specified in IHP. A unit is one hour.

(ii) Habilitation Training Specialist Services (Pre-Vocational): Limitation: As specified in IHP. A Unit is one hour.

(iii) Habilitation Training Specialist Services (Preauthorized): Limitation: As specified in IHP. A Unit is one hour.

(D) **Habilitation training provisions.** Individual HTS services providers will be limited to a maximum of 40 hours per week regardless of the number of clients served. More than one Habilitation Training Specialist may provide care to a client on the same day. However, payment cannot be made for services provided by two or more Habilitation Training Specialists to the same client during the same hours of a day.

(9) **Audiology services.**

(A) **Minimum qualifications.** Audiologists must have licensure as an audiologist by the State Board of Examiners for Speech Pathology and Audiology.

(B) **Description of services.** Audiology services includes individual evaluation, treatment and consultation in hearing provided to eligible individuals

six years of age and older. Services are intended to maximize the individual's auditory receptive abilities. Services are provided in any community setting as specified in the individual's habilitation plan. A minimum of 15 minutes for encounter and record documentation is required.

(C) **Coverage limitations.** A unit is 15 minutes and is limited to 288 units each 12 months.

(10) **Employment Training Services.**

(A) **Minimum qualifications.** Employment specialists must have completed the ~~Department of Human Services/Developmental Disabilities Services Division (DHS/DDSD)~~ OKDHS/DDSD sanctioned training curriculum.

(B) **Description of services.** Employment Training Services include evaluation, training, supportive assistance and remunerative employment in meaningful vocational activity provided in accordance with OAC 317:40-7 to eligible individuals 16 years of age or older who have previously resided in an ICF/MR and are unable to receive services funded by Rehabilitation Services Division. Services are intended to allow individuals to engage in meaningful work. The services are offered in generic employment settings in which individuals without disabilities are also employed.

(C) **Coverage limitations.** A unit is one hour. The number of hours which may be used per Plan of Care year is the number of hours per week the consumer works times 6.5.

(11) **Center-Based Prevocational Services.**

(A) **Minimum qualifications.** Paraprofessional staff must complete the ~~DHS/DDSD~~ OKDHS/DDSD designated training curriculum.

(B) **Description of services.** Center-based services are provided in accordance with OAC 317:40-7-6 and include activities designed to teach concepts such as task completion, problem solving, safety, promptness and skills that prepare an individual for paid or unpaid employment. These are not job-task oriented but are, instead, aimed at generalized result. These services are provided in segregated settings, i.e., sheltered workshops. Eligible individuals must have previously resided in an ICF/MR, be unable to receive this service from the Department of Rehabilitation Services or the public schools and if compensated, are compensated at less than 50 per cent of minimum wage.

(C) **Coverage limitations.** A unit is one hour and the payment is based upon the number of hours the recipient participates in the service. The number of units a recipient may receive is limited to 15 hours per week unless an exception is approved in accordance with OAC 317:40-7-21.

(12) **Community-Based Prevocational Services.**

(A) **Minimum qualifications.** Community-based skill training specialists must comply with the ~~DHS/DDSD~~ OKDHS/DDSD training requirements.

(B) **Description of Services.** Community-based services are provided in accordance with OAC 317:40-7-5 in sites typically used by others in the community which promote individual independence and inclusion within the community. Examples of such activities include unpaid work experience (volunteering), job sampling, or training through trade schools, libraries and other community groups. Eligible individuals must have previously resided in an ICF or ICF/MR and be unable to receive these services from the Department of Rehabilitation Services or the public schools.

(C) **Coverage limitations.** A unit is one hour and the payment is based upon the number of hours the recipient participates in the service. For individuals determined to require enhanced supports, an enhanced rate may be approved by the interdisciplinary team and included in the plan of care in accordance with OAC 317:40-7-12. A unit is one hour and the payment is based upon the number of hours the recipient participates in the service. The number of reimbursable units is limited to 30 per week, per recipient.

(13) **Job Coaching Services.**

(A) **Minimum qualifications.** Job coaches must have a high school diploma or have passed the general educational development test (G.E.D.) and be certified as job coaches through the ~~DHS/DDSD~~ OKDHS/DDSD designated training.

(B) **Description of services.** Job coaching includes primarily on-site training and all other activities initiated by certified agency staff promoting an individual's capacity to secure and maintain an integrated job of choice paying at or above minimum wage, in accordance with OAC 317:40-7-7. Enclaves consisting of two to eight employees, needing continuous support, situated in close proximity at an integrated work site are included in job coaching services even through these programs often reimbursed at less than minimum wage. Billing for job coaching services is authorized when on-site supports by a certified job coach are provided more than 20% of the individual's compensable work time. Eligible individuals must be 16 years of age or older, have previously resided in an ICF or ICF/MR and are unable to receive these services through the Department of Rehabilitation Services or through the state or local education agency.

(C) **Coverage limitations.** A unit is one hour and payment is for each hour of work performed by the recipient. For individuals determined to require enhanced supports, an enhanced rate for each hour of work performed by the recipient may be approved by the interdisciplinary team and included in the plan of care. Reimbursable units are limited to 30 per week per recipient.

(14) **Stabilization/Extended service.**

(A) **Minimum qualifications.** Job coaches must have a high school diploma or have passed the general educational development test (G.E.D.) and be certified as job coaches through the DHS/DDSD designated training.

(B) ~~**Stabilization and extended services**~~ **Description of services.** Stabilization and extended services are ongoing support services and other appropriate services needed to support and maintain an individual with severe disabilities in an integrated competitive employment site in accordance with OAC 317:40-7-11. These services are provided when the job coach intervention time required at the job site is 20% or less of the individual's total work hours. Extended services must include, at a minimum, twice monthly monitoring at the work site to assess employment stability, unless the individualized vocational plan provides for off-site monitoring. If off-site monitoring is determined to be appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month. Eligible individuals must be 16 years of age or older, have previously resided in an ICF or ICF/MR and are unable to receive these services through the Department of Rehabilitation Services or through the state or local education agency.

(C) **Coverage limitations.** Reimbursement is based on the number of hours the recipient is employed at a rate of minimum wage or above with a maximum of 30 units per week per individual.

(15) **Intensive Personal Supports.**

(A) **Minimum qualifications.** Intensive Personal Supports provider agencies must have current, valid contracts with OHCA and OKDHS/DDSD and ensure that any staff member providing Intensive Personal Supports has completed the training in accordance with OAC 340:100-3-38.

(B) **Description of services.** Intensive Personal Supports are support services provided to Homeward Bound class members who need an enhanced level of direct support in order to successfully reside in a community based setting. Intensive Personal Supports build upon the level of support provided by a Habilitation Training Specialist or Daily Living Supports staff by utilizing a second staff person on duty to provide assistance and training in self-care, daily living, recreational, and habilitation activities.

(C) **Coverage limitations.** Intensive Personal Supports are limited to 24 hours per day and must be included in the class member's Individual Plan in accordance with OAC 340:100-5-53, be authorized in the Plan of Care, and be provided in conjunction with Habilitation Training Services.

(16) **Adult Day Services.**

(A) **Minimum qualifications.** Adult Day Service provider agencies must meet the licensing requirements set forth by Section 1-873 *et seq* of Title 63 of the Oklahoma Statutes and comply with OAC 310:605, Adult Day Care Centers. Provider agencies must also be approved by the DDSD of OKDHS and have a valid OHCA contract for Adult Day Services.

(B) **Description of services.** Adult Day Services is a structured, comprehensive program that provides a variety of health, social, and related support services in a protective environment for some portion of a day.

(C) **Coverage limitations.** Services are furnished four or more hours per day on a regularly scheduled basis, for one or more days per week. A unit is one day. All services must be authorized in the service recipient's Individual Plan and reflected in the approved plan of care.

[OAR Docket #05-623; filed 4-12-05]

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

[OAR Docket #05-625]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 5. Eligibility and Countable Income
Part 1. Determination of Qualifying Categorical Relationships
317:35-5-2. [AMENDED]
317:35-5-8. [NEW]
Subchapter 7. Medical Services
Part 5. Determination of Eligibility for Medical Services
317:35-7-37. [AMENDED]
317:35-7-48. [NEW]
Part 7. Certification, Redetermination and Notification
317:35-7-60. [AMENDED]
317:35-7-60.1. [NEW]
(Reference APA WF # 04-14)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 441.20
DATES:
Adoption:
February 10, 2005
Approved by Governor:
March 23, 2005
Effective:
Immediately upon Governor's approval or April 1, 2005, 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 will allow federal financial participation for what is currently State only dollars, thus maximizing state dollars.
ANALYSIS:
Medical Assistance for Adults and Children-Eligibility rules are revised to establish program guidelines for a new federally approved Family Planning Waiver program. Currently, approximately 17 states have obtained waivers that expand Medicaid coverage to include family planning services. Oklahoma has requested a five-year waiver to expand Medicaid eligibility for family

planning benefits to Oklahoma women, men and couples who are ages 19 and older, with family incomes at or below 185% of the Federal Poverty Level, who are not otherwise eligible for Medicaid and who do not have creditable health insurance coverage. In Oklahoma, the number of women in need of publicly funded family planning services exceeds the number of women actually receiving services. Typically, less than one-third actually receives services. Medicaid reimbursed births have increased about 20% since 1995 and without intervention, are expected to continue to grow. The majority, (approximately 63%) of recent Medicaid births were reported as unintended. Among the target population, having greater access, choices, and information regarding family planning services is expected to result in a greater fertility control, fewer unintended pregnancies, and reduced pregnancy-related costs. Blending Title XIX Medicaid with Title X family Planning to expand eligibility will increase access by providing a greater number of effective family planning services to a greater number of people. The family planning package will include a set of basic services funded through Medicaid, plus outreach and education services funded through Title X, Family Planning. Rule revisions are needed in order to implement the Family Planning Waiver program allowing federal financial participation for what is currently State only dollars for the Oklahoma Department of Health, thus maximizing state dollars.

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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 APRIL 1, 2005, WHICHEVER IS LATER:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 1. DETERMINATION OF QUALIFIED CATEGORICAL RELATIONSHIPS

317:35-5-2. Categorically related programs

(a) Categorical relationship is established using the same definitions of age, disability and blindness as are used by the Social Security Administration (SSA) in determining eligibility for Supplemental Security Income (SSI) or SSA benefits. If the individual is a SSA/SSI recipient in current payment status (including presumptive eligibility), ~~or an AFDC~~ a TANF recipient, or is under age 19, categorical relationship is automatically established. Categorical relationship to pregnancy-related services is established when the determination is made by medical evidence that the individual is or has been pregnant. Pregnancy-related services include all medical services provided within the scope of the program during the prenatal, delivery and post-partum periods. ~~To be related to AFDC, an individual must be under the age of 19.~~ For an individual age 19 or over to be related to AFDC, the individual must have a minor dependent child ~~under the legal age of 18~~ who is deprived of parental support. Categorical relationship to Refugee services is established in accordance with OAC 317:35-5-25. Categorical relationship for the Breast and Cervical Cancer Treatment program is established in accordance with OAC 317:35-21. Categorical relationship for the Family Planning Waiver Program is established in accordance with OAC 317:35-5-8. To be eligible for Medicaid benefits, an individual must be related to one of the following:

(1) Aged
(2) Disabled
(3) Blind
(4) Pregnancy
(5) Aid to Families With Dependent Children
(6) Refugee
(7) Breast and Cervical Cancer Treatment program
(8) Family Planning Waiver Program

(b) The Authority may provide Medicaid to reasonable categories of individuals under age 21 who are not receiving cash assistance under any program but who meet the income requirement of the State's approved AFDC plan. Individuals eligible for Medicaid benefits include individuals between the ages of 19 and 21:

(1) for whom a public agency is assuming full or partial financial responsibility who are in the custody of the State as reported by the Oklahoma Department of Human Services and in foster homes, private institutions or public facilities; or
(2) in adoptions subsidized in full or in part by a public agency; or
(3) individuals under age 21 receiving active treatment as inpatients in public psychiatric facilities or programs if inpatient psychiatric services for individuals under age 21 are provided under the State Plan and the individuals are supported in full or in part by a public agency.

317:35-5-8. Determining categorical relationship for the Family Planning Waiver Program

All uninsured women and men ages 19 and older, regardless of pregnancy or paternity history, with family income at or below 185% of the federal poverty level and who are otherwise ineligible for Medicaid benefits are categorically related to the Family Planning Waiver Program.

SUBCHAPTER 7. MEDICAL SERVICES

PART 5. DETERMINATION OF ELIGIBILITY FOR MEDICAL SERVICES

317:35-7-37. Financial eligibility of individuals categorically related to AFDC, ~~or~~ pregnancy-related services or Family Planning Waiver Program

(a) **AFDC and/or pregnancy-related services.**

(1) In determining financial eligibility for an individual related to AFDC or pregnancy-related services, the income of the following persons (if living together or if living apart as long as there has been no break in the family relationship) are considered. These persons include:

(~~1~~ A) the individual;
(~~2~~ B) the spouse of the individual;

(~~3~~ C) the biological or adoptive parent(s) of the individual who is a minor dependent child. Income of the stepparent of the minor dependent child is determined according to OAC 35-10-26(a)(8);

(~~4~~ D) minor dependent children of the individual if the children are being included in the case for Medicaid. If the individual is 19 years or older and not pregnant, at least one minor dependent child must be living in the home and included in the case for the individual to be categorically related to AFDC;

(~~5~~ E) blood related siblings, of the individual who is a minor child, if they are included in the case for Medicaid;

(~~6~~ F) a caretaker relative and spouse (if any) and minor dependent children when the caretaker relative is to be included for coverage.

(~~b~~ 2) The family has the option to exclude minor dependent children or blood related siblings [~~OAC 317:35-7-37(a)(4) and (5)~~ OAC 317:35-7-37(1)(D) and (E)] and their income from the eligibility process. However, for the adult to be eligible, at least one minor child and his/her income [see ~~OAC 317:35-7-37(d)~~ OAC 317:35-7-37(a)(4)] must be included in the case. The worker has the responsibility to inform the family of the most advantageous consideration in regard to coverage and income. When determining financial eligibility for an individual related to AFDC or pregnancy-related services, consideration is not given to income of any person who is aged, blind or disabled and ~~receives SSI or~~ is determined to be categorically needy.

(~~c~~ 3) An individual categorized as aged, blind, or disabled who is not an SSI recipient has an option to be categorically related to either AFDC or ABD. The individual may be included in the AFDC related benefit group pending determination of eligibility for ABD or SSI if all eligibility requirements are met.

(~~d~~ 4) An individual who receives SSI cannot be included in the AFDC related benefit group. When the only dependent child is receiving SSI, the natural or adoptive parent(s) or caretaker relative may be related to AFDC if all other factors of eligibility are met. The benefit group will consist of the adult(s) only. Applicants and recipients are informed of their responsibility to report to the OKDHS if any member of the benefit group makes application for SSI or becomes eligible for SSI.

(b) **Family Planning Waiver Program.** In determining financial eligibility for the FPW program the income of the individual and spouse (if any) is considered. The individual has the option to include or exclude minor dependent children and their income in the eligibility process. The worker has the responsibility to inform the individual of the most advantageous consideration in regard to coverage and income.

317:35-7-48. Eligibility for the Family Planning Waiver Program

(a) Women and men ages 19 and above are eligible to receive family planning services if they meet all of the conditions of eligibility in paragraphs (1), (2), and (3) of this Section. This is regardless of pregnancy or paternity history and includes women who gain eligibility for family planning services due to a pregnancy, but whose eligibility ends 60 days postpartum.

(1) The income is at or below 185% of the federal poverty level.

(2) The individual is not otherwise eligible for Medicaid.

(3) The individual is uninsured or has health insurance coverage but this coverage excludes all coverage for family planning services.

(b) All health insurance is listed on the OKDHS computer system in order for OHCA Third Party Liability Unit to verify insurance coverage.

(c) Income for the Family Planning Waiver Program does not require verification, unless questionable. If the income is questionable the worker must verify the income.

(d) There is not an asset test for Family Planning Waiver Program.

PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION

317:35-7-60. Certification for Medical Services

(a) The rules in this Section apply to all categories of eligibles **EXCEPT**:

(1) categorically needy SoonerCare Health Benefit recipients who are categorically related to AFDC or Pregnancy Related Services, AND

(2) who if eligible, would be enrolled in SoonerCare, or

(3) individuals categorically related to the Family Planning Waiver Program.

(b) An individual determined eligible for Medical Services may be certified for a medical service provided on or after the first day of the third month prior to the month of application. The certification period is determined beginning with the month the medical service was received or expected to be received or the month of application for categorically needy cases in which a medical service has not been received. The period of certification may cover retroactive or future months. Assignment of the certification period is dependent on the categorical relationship. Form MA-2, Medical Assistance Computation Work Sheet, is used to determine the certification period. ~~Children in DHS custody who are placed outside the home are assigned a certification period of 12 months.~~ The certification period in family cases is assigned for the shortest period of eligibility determined for any individual in the case.

(1) **Certification as categorically needy.** A categorically needy individual who is categorically related to ABD is assigned a certification period of 12 months. A categorically needy individual who is determined eligible for a State Supplemental Payment (SSP) is certified effective the month of application. If the individual is also eligible for payment for medical services received during the three months preceding the month of application, the ~~application for~~ Medicaid benefit is ~~processed in as a Medical Assistance Only case~~ certified for the appropriate months. ~~A categorically needy individual who is~~

~~categorically related to ABD but is not being certified for SSP is assigned a certification period of six months. The~~ If the individual is not eligible for SSP the first month of certification is the month that a medical service was provided or, if no medical service was provided, the month of application. ~~A child in DHS custody or Indian Tribal custody (under Foster Care agreement with DHS) who is determined eligible, is certified effective the month custody was granted. There is not a spenddown on a case certified as categorically needy.~~

(A) **Certification of individuals categorically needy and categorically related to ABD.** The certification period for the individual categorically related to ABD can be assigned for up to ~~six~~ 12 months. The individual must be determined as categorically needy for each month of the certification period. The certification period is ~~six~~ 12 months unless the individual:

(i) is certified as eligible in a money payment case during the ~~six-month~~ 12 month period;

(ii) is certified for long-term care during the ~~six-month~~ 12 month period;

(iii) becomes ineligible for medical assistance after the initial month;

(iv) becomes ineligible as categorically needy; or

(v) is deceased.

(B) **Certification period.** If ~~the certification period was determined as six months and~~ any of the situations listed in subparagraph (A) of this paragraph occur after the initial month, the case is closed by the worker.

(i) If income and/or resources change after certification causing the case to exceed the categorically needy maximums, the case is closed.

(ii) A pregnant individual included in an ABD case which closes continues to be eligible for pregnancy related services through the postpartum period.

(2) **Certification of individuals categorically related to ABD and eligible as Qualified Medicare Beneficiaries Plus.** ~~In the event of a SSP case, the effective date of the QMBP benefit is the month of certification. If the individual is not eligible for SSP, the Medicaid benefit, except for the Medicare Part B premium buy-in,~~ The Medicaid benefit may be certified on the first day of the third month prior to the month of application or later. ~~The~~ If the individual receives Medicare and is eligible for SSP, the effective date of certification for the Medicare Part B premium buy-in is the month of certification for SSP. If the individual receives Medicare and is not eligible for SSP, the effective date of certification for the Medicare Part B premium buy-in is the first day of the month following the month in which the eligibility determination is made (regardless of when application was made).

(A) An individual determined eligible for QMBP benefits is assigned a certification period of 12 months. At any time during the certification period that the individual becomes ineligible, the case is closed using regular negative action procedures.

(B) At the end of the certification period a redetermination of QMBP eligibility is required, using the same forms and procedures as for ABD categorically needy individuals. ~~However, a redetermination of QMBP eligibility must also be done at the same time the dually eligible individual has a redetermination of eligibility for other Medicaid benefits, i.e., as categorically needy and receiving SSP or as a long-term care recipient.~~

(3) **Certification of ~~individual~~ individuals categorically related to ABD and eligible as Qualified Disabled and Working Individual.** The Social Security Administration is responsible for referrals of individuals potentially eligible for QDWI. Eligibility factors verified by the SSA are Medicare Part A eligibility and discontinuation of disability benefits due to excessive earnings. When the ~~DHS~~ OKDHS State Office receives referrals from SSA the county will be notified and is responsible for obtaining an application and establishing other factors of eligibility. If an individual contacts the county office stating he/she has been advised by SSA that they are a potential QDWI, the county takes a Medicaid application. If the individual does not have verification of eligibility factors determined by SSA, the county contacts ~~DHS~~ OKDHS, FSSD, State Office, for assistance in verifying those factors. The verification will be obtained by ~~DHS~~ OKDHS State Office and sent to the county office. The effective date of certification for QDWI benefits is based on the date of application and the date all eligibility criteria, including enrollment for Medicare Part A, are met. For example, if an individual applies for benefits in October and is already enrolled in Medicare Part A, eligibility can be effective October 1 (or up to three months prior to October 1, if all eligibility criteria are met during the three month period). However, if in the example, the individual's enrollment for Part A is not effective until November 1, eligibility cannot be effective until that date. Eligibility can never be effective prior to July 1, 1990, the effective date of this provision. These cases will be certified for a period of 12 months. At the end of the 12-month period, eligibility redetermination is required. If the individual becomes ineligible at any time during the certification period, the case is closed. The reason for closure is 69, and the worker completes the Notice to Client form.

(4) **Certification of ~~Individual Categorically Related~~ individuals categorically related to ABD and ~~Eligible~~ eligible as Specified Low-Income Medicare Beneficiary (SLMB).** The effective date of certification of SLMB benefits may begin on the first day of the third month prior to the month of application or later. A certification can never be earlier than the date of entitlement of Medicare Part A. An individual determined eligible for SLMB benefits is assigned a certification period of 12 months. At any time during the certification period the individual becomes ineligible, the case is closed using

standard negative action procedures. At the end of the certification period a redetermination of SLMB eligibility is required. A redetermination of SLMB eligibility must also be done at the same time a dually eligible individual has a redetermination of eligibility for other Medicaid benefits such as long-term care.

(5) **Certification of individuals categorically related to disability and eligible for TB related services.**

(A) An individual determined eligible for TB related services may be certified the first day of the third month prior to the month of application or later, as long as verification is received of a diagnosis of TB infection.

(B) A certification period of 12 months will be assigned. At any time during the certification period that the individual becomes ineligible, the case is closed using the regular negative action procedures.

(C) At the end of the certification period a new application will be required if additional treatment is needed.

(6) **Certification of ~~Individual Categorically Related~~ individuals categorically related to ABD and ~~Eligible~~ eligible as Qualifying Individuals.** The effective date of certification for the QI-1 may begin on the first day of the third month prior to the month of application or later. A certification can never be earlier than the date of entitlement of Medicare Part A. An individual determined eligible for QI benefits is assigned a certification period of 12 months. At any time during the certification period the individual becomes ineligible, the case is closed using standard negative action procedures. At the end of the certification period, a redetermination of QI eligibility is required.

(A) Since the State's allotment to pay Medicare premiums for this group of individuals is limited, the State must limit the number of QIs so that the amount of assistance provided during the year does not exceed the State's allotment for that year.

(B) Persons selected to receive assistance ~~in a calendar year~~ are entitled to receive assistance with their Medicare premiums for the remainder of the federal fiscal year, but not beyond, as long as they continue to qualify. The fact that an individual is selected to receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year.

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

The effective date of certification for the Family Planning Waiver Program is the first day of the month of application or later. An individual determined eligible for the Family Planning Waiver Program is assigned a certification period of 12 months. At any time during the certification period the individual becomes ineligible, the case is closed using standard negative action procedures. At the end of the certification period, a redetermination of eligibility is required.

[OAR Docket #05-625; filed 4-12-05]

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

[OAR Docket #05-624]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
317:35-5-41. [AMENDED]
(Reference APA WF # 04-19)
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:
December 9, 2004
Approved by Governor:
January 28, 2005
Effective:
Immediately upon Governor's approval or February 1, 2005, 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 that establish an annuity valuation process for determining the value of the annuity and thereby eliminating an eligibility loophole within agency rules. Without this revision, long term care state expenditures will continue to increase as more and more individuals continue to protect assets through estate planning in order to become Medicaid eligible.
ANALYSIS:
Medical Assistance for Adults and Children-Eligibility, capital resources for individuals related to aged, blind, and disabled specific, rules are revised to establish criteria for the consideration of annuities purchased after January 31, 2005 when determining their availability to the applicant/recipient. Nation wide, individuals have been using annuities as a form of estate planning in order to become eligible for Medicaid. Currently, a Medicaid applicant/recipient could be eligible for assistance if the Oklahoma Department of Human Service (OKDHS) worker, using life expectancy tables, determines that the client will receive fair market value from the annuity during an applicant's/recipient's lifetime. Critically ill people presently can invest large amounts of money into the annuities, receive very little pay out in their remaining lifetime, and the balance reverts to their beneficiaries. Revisions would eliminate this loophole by presuming that the annuity has value, as the vast majority can be sold, and counting that value as an available resource. The applicant/recipient will be given the opportunity to prove that the annuity cannot be sold or has a lower value. Further revisions provide clarification of procedures used by the OKDHS worker to determine the status of loans.
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 FEBRUARY 1, 2005, WHICHEVER IS LATER:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 5. COUNTABLE INCOME AND RESOURCES

317:35-5-41. Determination of capital resources for individuals categorically related to aged, blind and disabled

(a) **General.** The term capital resources is a general term representing any form of real and/or personal property which has an available money value. All available capital resources, except those required to be disregarded by law or by policies of the OHCA or OKDHS are considered in determining need. Available resources are those resources which are in hand or under the control of the individual.

(1) In defining need, OHCA and OKDHS recognize the importance of a recipient retaining a small reserve for emergencies or special need and has established a maximum reserve a client or family may hold and be considered in need.

(2) Capital resources are evaluated on a monthly basis in determining eligibility for an applicant for medical services. An applicant is determined ineligible for any month resources exceed the resource standard at any time during that month. When a recipient has resources which exceed the resource standard, case closure action is taken for the next possible effective date.

(3) State law is specific on the mutual responsibility of spouses for each other. Therefore, if husband and wife are living together, a capital resource and/or income available to one spouse constitutes a resource and/or income to the other. When there is a break in the family relationship and the husband and wife are separated, but not divorced or legally separated, they constitute a possible resource to each other and this possible resource is explored to determine what, if any, resource can be made available. When spouse is in a nursing facility, see Subchapter 9 and 19 of this Chapter.

(4) Household equipment used for daily living is not considered a resource.

(5) Each time that need is determined, gross income and the equity of each capital resource are established. Equity equals current market value minus indebtedness. The recipient may change the form of capital resources from time to time without affecting eligibility so long as the equity is not decreased in doing so or increased in excess of the allowable maximum reserve. In the event the equity is decreased as the result of a sale or transfer, the reduction in the equity is evaluated in relation to policy applicable to resources disposed of while receiving assistance.

(b) **Eligibility.** In determining eligibility based on resources, only those resources available for current use or those which the client can convert for current use (no legal impediment involved) are considered as countable resources. Examples of legal impediments include, but are not limited to, clearing an estate, probate, petition to sell or appointment of legal guardian.

(1) Generally, a resource is considered unavailable if there is a legal impediment to overcome. However, the client must agree to pursue all reasonable steps to initiate legal action within 30 days. While the legal action is in process, the resource is considered unavailable.

(2) If a determination is made and documented that the cost of making a resource available exceeds the gain, the client will not be required to pursue action to make it available.

(3) Determination of available and unavailable resources must be well documented in the case record.

(4) The major types of capital resources are listed in (c) and (d) of this Section. The list is not intended to be all inclusive and consideration must be given to all resources.

(c) **Home/real property.** Home property is excluded from resources regardless of value. For purposes of the home property resource exclusion, a home is defined as any shelter in which the individual has an ownership interest and which is used by the individual as his/her principal place of residence. The home may be either real or personal property, fixed or mobile. Home property includes all property which is adjacent to the home. Home property in a revocable trust under the direct control of the individual, spouse, or legal representative retains the exemption as outlines in OAC 317:35-5-41(c)(6). Property has a value regardless of whether there is an actual offer to purchase. Verification of home/real property value is established by collateral contacts with specialized individuals knowledgeable in the type and location of property being considered.

(1) The home may be retained without affecting eligibility during periods when it is necessary to be absent for illness or other necessity. The OHCA has not set a definite time limit to the client's absence from the home. When it is determined that the client does not have a feasible plan for and cannot be expected to return to his/her home, the market value of the property is considered in relation to the reserve. The client is responsible for taking all steps necessary to convert the resource for use in meeting current needs. If the client is making an effort to make the resource available, a reasonable period of time is given (not to exceed 90 days) to convert the resource. He/she is advised in writing that the 90-day period begins with the determination that the property be considered in relation to the reserve. The 90-day period is given only if efforts are in progress to make the resource available. Any extension beyond the initial 90-day period is justified only after interviewing the client, determining that a good faith effort to sell is still being made and failure to sell is due to

circumstances beyond the control of the client. A written notification is also provided to the client at any time an extension is allowed. Detailed documentation in the case record is required.

(2) If the client fails or is unwilling to take steps necessary to convert the resource for use in meeting current needs, continuing eligibility cannot be established and the client is advised as to the effective date of closure and of the right to receive assistance when the resources are within the maximum reserve provided other conditions of eligibility continue to be met.

(3) When a recipient sells his/her home with the intention of purchasing another home or when an insurance payment for damage to the home is received, a reasonable period of time is given to reinvest the money in another home. A reasonable period of time is considered to be not in excess of a 90-day period. Extensions beyond the 90 days may be justified only after interviewing the client, determining that a good faith effort is still being made and that completion of the transaction is beyond his/her control. This must be documented in the case record.

(4) At the point a recipient decides not to reinvest the proceeds from the sale of his/her home in another home, the recipient's plan for use of the proceeds is evaluated in relation to rules on resources disposed of while receiving assistance.

(5) A home traded for another home of equal value does not affect the recipient's eligibility status. If the home is traded for a home of lesser value, the difference may be invested in improvement of the new home.

(6) Absences from home for up to 90 days for trips or visits of six months for medical care (other than nursing facilities) do not affect receipt of assistance or the home exclusion as long as the individual intends to return home. Such absences, if they extend beyond those limits, may indicate the home no longer serves as the principal place of residence. Absence from home due to nursing facility care does not affect the home exclusion as long as the individual intends to return home within 12 months from the time he/she entered the facility. The Acknowledgment of Temporary Absence/Home Property Policy form is completed at the time of application for nursing facility care when the applicant has home property. After explanation of temporary absence, the client, guardian or responsible person indicates whether there is or is not intent to return to the home and signs the form.

(A) If at the time of application the applicant states he/she does not have plans to return to the home, the home property is considered a countable resource. For recipients in nursing facilities, a lien may be filed in accordance with OAC 317:35-9-15 and OAC 317:35-19-4 on any real property owned by the recipient when it has been determined, after notice and opportunity for a hearing, that the recipient cannot reasonably be expected to be discharged and return home. However, a lien shall not be filed on the home property of the recipient while any of the persons described in OAC 317:35-9-15(b)(1) and OAC 317:35-19-4(b)(1) are lawfully residing in the home:

(B) If the individual intends to return home, he/she is advised that:

(i) the 12 months of home exemption begins effective with the date of entry into the nursing home regardless of when application is made for Medicaid benefits, and

(ii) after 12 months of nursing care, it is assumed there is no reasonable expectation the recipient will be discharged from the facility and return home and a lien may be filed against real property owned by the client for the cost of medical services received.

(C) "Intent" in regard to absence from the home is defined as a clear statement of plans in addition to other evidence and/or corroborative statements of others.

(D) At the end of the 12-month period the home property becomes a countable resource unless medical evidence is provided to support the feasibility of the client to return to the home within a reasonable period of time (90 days). This 90-day period is allowed only if sufficient medical evidence is presented with an actual date for return to the home.

(E) A client who leaves the nursing facility must remain in the home at least three months for the home exemption to apply if he/she has to re-enter the facility.

(F) However, if the spouse, minor child(ren) under 18, or relative who is aged, blind or disabled or a recipient of TANF resides in the home during the individual's absence, the home continues to be exempt as a resource so long as the spouse or relative lives there (regardless of whether the absence is temporary).

(G) For purpose of this reference a relative is defined as: son, daughter, grandson, granddaughter, stepson, stepdaughter, in-laws, mother, father, stepmother, stepfather, halfsister, halfbrother, niece, nephew, grandmother, grandfather, aunt, uncle, sister, brother, stepbrother, or stepsister.

(H) Once a lien has been filed against the property of an NF resident, the property is no longer considered as a countable resource.

(7) Mineral rights associated with the home property are considered along with the surface rights and are excluded as a resource. However, mineral rights which are not associated with the home property are considered as a resource. Since evaluation and salability of mineral rights fluctuate, the establishment of the value of mineral rights are established based on the opinion of collateral sources. Actual offers of purchase are used when established as a legitimate offer through a collateral source. Mineral rights not associated with home property which are income producing are considered in the same way as income producing property.

(8) The market value of real estate other than home property owned by the client or legal dependent and encumbrances against such property are ascertained in determining the equity (including the cost to the client of a merchantable title to be determined when the reserve approaches the maximum). The market value of real estate other than the home owned by the applicant is established on the basis of oral and/or written information which the applicant has on hand **and** counsel with persons who have specialized knowledge about this kind of resource. Refer to (12) of this subsection for exclusion of real estate that produces income.

(9) Land which is held by an enrolled member of an Indian tribe is excluded from resources as it cannot be sold or transferred without the permission of other individuals, the tribe, or a federal agency. If permission is needed, the land is excluded as a resource.

(10) A life estate conveys upon an individual or individuals for his/her lifetime, certain rights in property. Its duration is measured by the lifetime of the tenant or of another person; or by the occurrence of some specific event, such as remarriage of the tenant. The owner of a life estate has the right of possession, the right to use the property, the right to obtain profits from the property and the right to sell his/her life estate interest. However, the contract establishing the life estate may restrain one or more rights of the individual. The individual does not have title to all interest in the property and does not have the right to sell the property other than the interest owned during his/her lifetime. He/she may not usually pass it on to heirs in the form of an inheritance.

(A) When a life estate in property is not used as the client's home, it is necessary to establish the value. A computer procedure is available to compute the value of a life estate by input of the current market value of the property and the age of the life estate owner.

(B) The value of a life estate on mortgaged property is based on equity rather than market value and the age of the individual.

(C) In the event the client does not accept as valid the value of the life estate as established through this method, the client will secure written appraisal by two persons who are familiar with current values. If there is substantial unexplained divergence between these appraisals, the worker and the client will jointly arrange for the market value to be established by an appraisal made by a third person who is familiar with current market values and who is acceptable to both the client and the worker.

(11) Homestead rights held by a client in real estate provide the client with shelter (or shelter and income) so long as he/she resides on the property. Payment for care in a nursing facility provided to the recipient through Medicaid constitutes a waiver of the homestead rights of the recipient. If the client moves from the property, a lien is filed, or the client otherwise abandons his/her homestead rights, the property becomes subject to administration. Since a homestead right cannot be sold, it does not have any value.

(12) Real and/or personal property which produces income is excluded if it meets the following conditions.

(A) **Trade or business property.** The existence of a trade or business may be established through business tax returns that would be used to compute self-employment earnings. If the current business tax return is unavailable, the existence of the business may be determined through other business forms, records, partnership, a detailed description of the business and its activities, etc. Once it is established that a trade or business exists, any property (real or personal) connected to it and in current use is excluded. This exclusion includes liquid assets, such as a bank account(s) necessary for the business operation. All property used by a trade or business and all property used by an employee in connection with employment is excluded as property essential to self support. The income from the trade or business is determined as any other self-employment income.

(B) **Non-trade or non-business property.** Property which produces income but is not used in a trade or business is excluded if the total equity value does not exceed $6000, and the net return equals at least 6% of the equity annually. An equity value in excess of $6000 is a countable resource. If the equity exceeds $6000 and 6% return is received on the total equity, only the amount in excess of $6000 is a countable resource. An annual return of less than 6% is acceptable if it is beyond the individual's control, and there is a reasonable expectation of a future 6% return. Liquid resources cannot be excluded as income producing property or meeting the $6000/6% rule (mortgages, including contract for deed, and notes which are income producing are considered as liquid resources). The $6000/6% rule applies to all resources in total, and not separately. Examples of non-business income producing property are rental property, timber rights, mineral rights, etc.

(d) **Personal property.**

(1) **Property used to produce goods and services.** Personal property necessary to perform daily activities or to produce goods for home consumption is excluded if the equity value does not exceed $6000. An equity value in excess of $6000 is a countable resource. The property does not have to produce a 6% annual return. The $6000 equity maximum includes all such resources in total and does not pertain to each item separately. Examples of property used to produce goods and services are tractors, woodcutting tools, mechanized equipment for gardening, livestock grown for home consumption, etc.

(2) **Cash savings and bank accounts.** Money on hand or in a savings account is considered as reserve. The client's statement that he/she does not have any money on hand or on deposit is sufficient unless there are indications to the contrary. When there is information to the contrary or when the client does not have records to

verify the amount on deposit, verification is obtained from bank records. Title 56, O.S., Section 1671 provides that financial records obtained for the purpose of establishing eligibility for assistance or services must be furnished without cost to the client or the Agency.

(A) Checking accounts may or may not represent savings. Current bank statements are evaluated with the client to establish what, if any, portion of the account represents savings. Any income which has been deposited during the current month is not considered unless it exceeds what is considered as ordinary maintenance expense for the month.

(B) Accounts which are owned jointly by the client and a non-recipient person are considered available to the client in their entirety unless it can be established what part of the account actually belongs to each of the owners and the money is actually separated and the joint account dissolved. When the recipient is in a nursing facility and the spouse is in the home or if both are institutionalized, a joint bank account may be maintained with one-half of the account considered available to each.

(3) **Life insurance policies.** If the total face value of all life insurance policies owned by an individual is $1500 or less, the policies (both face value and cash surrender value) are excluded as resources.

(A) If the total face value of all policies owned by an individual exceeds $1500, the net cash surrender value of such policies must be counted as resources. Life insurance policies which do not provide a cash surrender value (e.g., term insurance) are not used in determining whether the total face value of all policies is over $1,500.

(B) The face value of a life insurance policy which has been assigned to fund a prepaid burial contract must be evaluated and counted according to the policy on burial funds or, if applicable, the policy on the irrevocable burial contract.

(C) The net cash surrender value of insurance (i.e., cash surrender value less any loans or unpaid interest thereon) usually can be verified by inspection of the insurance policies and documents in the client's possession or by use of the Request to Insurance Company form.

(D) Dividends which accrue and which remain with the insurance company increase the amount of reserve. Dividends which are paid to the client are considered as income.

(E) If an individual has a life insurance policy which allows death benefits to be received while living, and the individual meets the insurance company's requirements for receiving such proceeds, the individual is not required to file for such proceeds. However, if the individual does file for and receive the benefits, the payment will be considered as income in the month it is received and countable as a resource in the following months to the extent it is available. The payment of such benefits is not considered a conversion of a resource because the cash surrender value of the insurance policy is still available to the individual. The individual is in effect, receiving the death benefits and not the cash surrender value.

(4) **Burial spaces.** The value of burial spaces for an individual, the individual's spouse or any member of the individual's immediate family will be excluded from resources. "Burial spaces" means conventional gravesites, crypts, mausoleums, urns, and other repositories which are customarily and traditionally used for the remains of deceased persons. "Immediate family" means individual's minor and adult children, including adopted children and step-children; and individual's brothers, sisters, parents, adoptive parents, and the spouse of these individuals. Neither dependency nor living in the same household will be a factor in determining whether a person is an immediate family member.

(5) **Burial funds.** Revocable burial funds not in excess of $1500 are excluded as a resource if the funds are specifically set aside for the burial arrangements of the individual or the individual's spouse. Any amount in excess of $1500 is considered as a resource. Burial policies which require premium payments and do not accumulate cash value are not considered to be prepaid burial policies.

(A) "Burial funds" means a prepaid funeral contract or burial trust with a funeral home or burial association which is for the individual's or spouse's burial expenses.

(B) The face value of a life insurance policy, when properly assigned by the owner to a funeral home or burial association, may be used for purchasing "burial funds" as described in (5)(A) of this subsection.

(C) The burial fund exclusion must be reduced by the face value of life insurance policies owned by the individual or spouse; and amounts in an irrevocable trust or other irrevocable arrangement.

(D) Interest earned or appreciation on the value of any excluded burial funds are excluded if left to accumulate and become a part of the burial fund.

(E) If the client did not purchase his/her own prepaid burial, even if his/her money was used for the purchase, the client is not the "owner" and the prepaid burial funds cannot be considered a resource to him/her. However, if the client's money was used by another to purchase the prepaid burial, the rules on transfer of property must be applied since the purchaser (owner) could withdraw the funds any time.

(6) **Irrevocable burial contract.** Oklahoma law provides that a purchaser (buyer) of a prepaid funeral contract may elect to make the contract irrevocable. The irrevocability cannot become effective until 30 days after purchase.

(A) If the irrevocable election was made prior to July 1, 1986 and the client received assistance on July 1, 1986, the full amount of the irrevocable contract is not considered a countable resource. This exclusion applies only if the client does not add to the amount

of the contract. Interest accrued on the contract is not considered as added by the client. Any break in assistance will require that the contract be evaluated at the time of reapplication according to rules in (B) of this paragraph.

(B) If the effective date for the irrevocable election or application for assistance is July 1, 1986 or later:

(i) the face value amount in an irrevocable contract cannot exceed $7,500, plus accrued interest.

(ii) a client may exclude the face value, up to $7,500, plus accrued interest in any combination of irrevocable contract, revocable prepaid account, designated account or cash value in life insurance policies not used to fund the burial policy, regardless of the face value, provided the cash value in policies and designated accounts does not exceed $1500. When the amount exceeds $7,500, the client is ineligible for assistance. Accrued interest is not counted as a part of the $7,500 limit regardless of when it is accrued.

(iii) the face value of life insurance policies used to fund burial contracts is counted towards the $7,500 limit.

(C) For an irrevocable contract to be valid, the election to make it irrevocable must be made by the purchaser (owner) or the purchaser's guardian or an individual with power of attorney for the purchaser (owner).

(D) In instances where Management of Recipient's Funds form is on file in the nursing facility, the form serves as a power of attorney for the administrator to purchase and/or elect to make irrevocable the burial funds for the client.

(7) **Medical insurance.** When a client has medical insurance, the available benefits are applied toward the medical expense for which the benefits are paid. The type of insurance is clarified in the record. If an assignment of the insurance is not made to the provider and payment is made directly to the client, the client is expected to apply the payment to the cost of medical services. Any amount remaining after payment for medical services is considered in relation to the reserve.

(8) **Stocks, bonds, mortgages and notes.** The client's equity in stocks and bonds (including U.S. Savings Bonds series A thru EE) is considered in relation to the reserve. The current market value less encumbrances is the equity. In general, determination of current market value can be obtained from daily newspaper quotations, brokerage houses, banks, etc.

(A) The current value of U.S. Savings bonds which have been held beyond the maturity date is the redemption value listed in the table on the back of the bond for the anniversary date most recently reached. If the bond has been held beyond maturity date, it has continued to draw interest. An acceptable determination of the value may be made by checking against a chart at the bank.

(B) The amount which can be realized from notes and mortgages and similar instruments, if offered for immediate sale, constitutes a reserve. Notes and mortgages and similar instruments have value regardless of whether there is an actual offer. Appraisals obtained from bankers, realtors, loan companies and others qualified to make such estimates are obtained in determining current market value. When a total reserve approaches the maximum, it is desirable to get two or more estimates.

(C) Mortgages (including contracts for deed) and notes which are income producing are liquid countable resources.

(9) **Trust accounts.** Monies held in trust for an individual applying for or receiving Medicaid must have the availability of the funds determined. Funds held in trust are considered available when they are under the direct control of the individual or his/her spouse, and disbursement is at their sole discretion. Funds may also be held in trust and under the control of someone other than the individual or his/her spouse, such as the courts, agencies, other individuals, etc., or the Bureau of Indian Affairs (BIA).

(A) **Availability determinations.** The social worker should be able to determine the availability of a trust using the definitions and explanations listed in (B) of this subsection. However, in some cases, the worker may wish to submit a trust to the OKDHS State Office for determination of availability. In these instances, all pertinent data is submitted to Family Support Services Division, Attention: Health Related and Medical Services Section, for a decision.

(B) **Definition of terms.** The following words and terms, when used in this paragraph, shall have the following meaning, unless the context clearly indicates otherwise:

(i) **Beneficiary.** Beneficiary means the person(s) who is to receive distributions of either income or principal, or on behalf of whom the trustee is to make payments.

(ii) **Corpus/principal.** Corpus/principal means the body of the trust or the original asset used to establish the trust, such as a sum of money or real property.

(iii) **Discretionary powers.** Discretionary powers means the grantor gives the trustee the power to make an independent determination whether to distribute income and/or principal to the beneficiary(ies) or to retain the income and add it to the principal of the trust.

(iv) **Distributions.** Distributions means payments or allocations made from the trust from the principal or from the income produced by the principal (e.g., interest on a bank account).

(v) **Grantor (trustor/settlor).** Grantor (trustor/settlor) means the individual who establishes the trust by transferring certain assets.

(vi) **Irrevocable trust.** Irrevocable trust means a trust in which the grantor has expressly not retained the right to terminate or revoke the trust and reclaim the trust principal and income.

(vii) **Pour over or open trust.** Pour over or open trust means a trust which may be expanded from time to time by the addition to the trust principal (e.g., a trust established to receive the monthly payment of an annuity, a workers' compensation settlement, a disability benefit or other periodic receivable). The principal may accumulate or grow depending upon whether the trustee distributes the receivable or permits it to accumulate. Generally, the terms of the trust will determine the availability of the income in the month of receipt and the availability of the principal in subsequent months.

(viii) **Primary beneficiary.** Primary beneficiary means the first person or class of persons to receive the benefits of the trust.

(ix) **Revocable trust.** Revocable trust means a trust in which the grantor has retained the right to terminate or revoke the trust and reclaim the trust principal and income. Unless a trust is specifically made irrevocable, it is revocable. Even an irrevocable trust is revocable upon the written consent of all living persons with an interest in the trust.

(x) **Secondary beneficiary.** Secondary beneficiary means the person or class of persons who will receive the benefits of the trust after the primary beneficiary has died or is otherwise no longer entitled to benefits.

(xi) **Testamentary trust.** Testamentary trust means a trust created by a will and effective upon the death of the individual making the will.

(xii) **Trustee.** Trustee means an individual, individuals, a corporation, court, bank or combination thereof with responsibility for carrying out the terms of the trust.

(C) **Documents needed.** To determine the availability of a trust for an individual applying for or receiving Medicaid, copies of the following documents are obtained:

(i) Trust document;

(ii) When applicable, all relevant court documents including the Order establishing the trust, Settlement Agreement, Journal Entry, etc.; and

(iii) Documentation reflecting prior disbursements (date, amount, purpose).

(D) **Trust accounts established on or before August 10, 1993.** The rules found in (i) - (iii) of this subparagraph apply to trust accounts established on or before August 10, 1993.

(i) **Support trust.** The purpose of a support trust is the provision of support or care of a beneficiary. A support trust will generally contain language such as "to provide for the care, support and maintenance of ...", "to provide as necessary for the support of ...", or "as my trustee may deem necessary for the support, maintenance, medical expenses, care, comfort and general welfare." Except as provided in (I)-(III) of this unit, the amount from a support trust deemed available to the beneficiary is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the beneficiary, assuming the full exercise of discretion by the trustee(s) for distribution of the maximum amount to the beneficiary. The beneficiary of a support trust, under which the distribution of payments to the beneficiary is determined by one or more trustees who are permitted to exercise discretion with respect to distributions, may show that the amounts deemed available are not actually available by:

(I) Commencing proceedings against the trustee(s) in a court of competent jurisdiction;

(II) Diligently and in good faith asserting in the proceedings that the trustee(s) is required to provide support out of the trust; and

(III) Showing that the court has made a determination, not reasonably subject to appeal, that the trustee must pay some amount less than the amount deemed available. If the beneficiary makes the showing, the amount deemed available from the trust is the amount determined by the court. Any action by a beneficiary or the beneficiary's representative, or by the trustee or the trustee's representative, in attempting a showing to make the Agency or the State of Oklahoma a party to the proceeding, or to show to the court that Medicaid benefits may be available if the court limits the amounts deemed available under the trust, precludes the showing of good faith required.

(ii) **Medicaid Qualifying Trust (MQT).** A Medicaid Qualifying Trust is a trust, or similar legal device, established (other than by will) by an individual or an individual's spouse, under which the individual may be the beneficiary of all or part of the distributions from the trust and such distributions are determined by one or more trustees who are permitted to exercise any discretion with respect to distributions to the individual. A trust established by an individual or an individual's spouse includes trusts created or approved by a representative of the individual (parent, guardian or person holding power of attorney) or the court where the property placed in trust is intended to satisfy or settle a claim made by or on behalf of the individual or the individual's spouse. This includes trust accounts or similar devices established for a minor child pursuant to Title 12 Oklahoma Statute § 83. In addition, a trust established jointly by at least one of the individuals who can establish an MQT and another party or parties (who do not qualify as one of these individuals) is an MQT as long as it meets the other MQT criteria. The

amount from an irrevocable MQT deemed available to the individual is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the individual assuming the full exercise of discretion by the trustee(s). The provisions regarding MQT apply even though an MQT is irrevocable or is established for purposes other than enabling an individual to qualify for Medicaid; and, whether or not discretion is actually exercised.

(I) **Similar legal device.** MQT rules listed in of this subsection also apply to "similar legal devices" or arrangements having all the characteristics of an MQT except that there is no actual trust document. An example is the client petitioning the court to irrevocably assign all or part of his/her income to another party (usually the spouse). The determination whether a given document or arrangement constitutes a "similar legal device" should be made by the OKDHS Office of General Counsel, Legal Unit.

(II) **MQT resource treatment.** For revocable MQTs, the entire principal is an available resource to the client. Resources comprising the principal are subject to the individual resource exclusions (e.g., the home property exclusion) since the client can access those resource items without the intervention of the trustee. For irrevocable MQTs, the countable amount of the principal is the maximum amount the trustee can disburse to (or for the benefit of) the client, using his/her full discretionary powers under the terms of the trust. If the trustee has unrestricted access to the principal and has discretionary power to disburse the entire principal to the client (or to use it for the client's benefit), the entire principal is an available resource to the client. Resources transferred to such a trust lose individual resource consideration (e.g., home property transferred to such a trust is no longer home property and the home property exclusions do not apply). The value of the property is included in the value of the principal. If the MQT permits a specified amount of trust income to be distributed periodically to the client (or to be used for his/her benefit), but those distributions are not made, the client's countable resources increase cumulatively by the undistributed amount.

(III) **Income treatment.** Amounts of MQT income distributed to the client are countable income when distributed. Amounts of income distributed to third parties for the client's benefit are countable income when distributed.

(IV) **Transfer of resources.** If the MQT is irrevocable, a transfer of resources has occurred to the extent that the trustee's access to the principal (for purposes of distributing it to the client or using it for the client's benefit) is restricted (e.g., if the trust stipulates that the trustee cannot access the principal but must distribute the income produced by that principal to the client, the principal is not an available resource and has, therefore, been transferred).

(iii) **Special needs trusts.** Some trusts may provide that trust benefits are intended only for a beneficiary's "special needs" and require the trustee to take into consideration the availability of public benefits and resources, including Medicaid benefits. Some trusts may provide that the trust is not to be used to supplant or replace public benefits, including Medicaid benefits. If a trust contains such terms and is not an MQT, the trust is not an available resource.

(E) **Trust accounts established on or after August 11, 1993.** The rules found in (i) - (iii) of this subparagraph apply to trust accounts established on or after August 11, 1993.

(i) For purposes of this subparagraph, the term "trust" includes any legal document or device that is similar to a trust. An individual is considered to have established a trust if assets of the individual were used to form all or part of the principal of the trust and if the trust was established other than by will and by any of the following individuals:

(I) the individual;

(II) the individual's spouse;

(III) a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(IV) a person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(ii) Where trust principal includes assets of an individual described in this subparagraph and assets of any other person(s), the provisions of this subparagraph apply to the portion of the trust attributable to the assets of the individual. This subparagraph applies without regard to the purposes for which the trust is established, whether the trustees have or exercise any discretion under the trust, and restrictions on when or whether distributions may be made from the trust, or any restrictions on the use of the distribution from the trust.

(iii) There are two types of trusts, revocable trusts and irrevocable trusts.

(I) In the case of a revocable trust, the principal is considered an available resource to the individual. Home property in a revocable trust under the direct control of the individual,

spouse or legal representative retains the exemption as outlined in OAC 317:35-5-41(c)(6). Payments from the trust to or for the benefit of the individual are considered income of the individual. Other payments from the trust are considered assets disposed of by the individual for purposes of the transfer of assets rule and are subject to the 60 months look back period.

(II) In the case of an irrevocable trust, if there are any circumstances under which payments from the trust could be made to or for the benefit of the individual, the portion of the principal of the trust, or the income on the principal, from which payment to the individual could be made shall be considered available resources. Payments from the principal or income of the trust shall be considered income of the individual. Payments for any other purpose are considered a transfer of assets by the individual and are subject to the 60 months look back period. Any portion of the trust from which, or any income on the principal from which no payment could under any circumstances be made to the individual is considered as of the date of establishment of the trust (or if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of the asset transfer rules and are subject to the 60 months look back period.

(F) **Exempt trusts.** Subparagraph (E) of this paragraph shall not apply to the following trusts:

(i) A trust containing the assets of a disabled individual under the age of 65 which was established for the benefit of such individual by the parent, grandparent, legal guardian of the individual or a court if the State receives all amounts remaining in the trust on the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual. This type of trust requires:

(I) The trust may only contain the assets of the disabled individual.

(II) The trust must be irrevocable and cannot be amended or dissolved without the written agreement of the Oklahoma Department of Human Services or the Oklahoma Health Care Authority.

(III) Trust records shall be open at all reasonable times to inspection by an authorized representative of the OHCA or OKDHS.

(IV) The exception for the trust continues after the disabled individual reaches age 65. However, any addition or augmentation after age 65 involves assets that were not the assets of an individual under age 65; therefore, those assets are not subject to the exemption.

(V) Establishment of this type of trust does not constitute a transfer of assets for less than fair market value if the transfer is made into a trust established solely for the benefit of a disabled individual under the age of 65.

(VI) Payments from the trust are counted according to SSI rules. According to these rules, countable income is anything the individual receives in cash or in kind that can be used to meet the individual's needs for food, clothing and shelter. Accordingly, any payments made directly to the individual are counted as income to the individual because the payments could be used for food, clothing, or shelter for the individual. This rule applies whether or not the payments are actually used for these purposes, as long as there is no legal impediment which would prevent the individual from using the payments in this way. In addition, any payments made by the trustee to a third party to purchase food, clothing, or shelter for the individual can also count as income to the individual. For example, if the trustee makes a mortgage payment for the individual, that payment is a shelter expense and counts as income.

(VII) A corporate trustee may charge a reasonable fee for services in accordance with its published fee schedule.

(VIII) The OKDHS Supplemental Needs Trust form is an example of the trust. Social workers may give the sample form to the client or his/her representative to use or for their attorney's use.

(IX) To terminate or dissolve a Supplemental Needs Trust, the social worker sends a copy of the trust instrument and a memorandum to OKDHS Family Support Services Division, Attention: HR&MS explaining the reason for the requested termination or dissolution of the Supplemental Needs Trust, and giving the name and address of the trustee. The name and address of the financial institution and current balance are also required. Health Related and Medical Services notifies OHCA/TPL to initiate the recovery process.

(ii) A trust (known as the Medicaid Income Pension Trust) established for the benefit of an individual if:

(I) The individual is in need of long-term care and has countable income above the categorically needy standard for long-term care (OKDHS Appendix C-1) but less than $2500 per month.

(II) The Trust is composed only of pension, social security, or other income of the individual along with accumulated income in the trust. Resources can not be included in the trust.

(III) All income is paid into the trust and the applicant is not eligible until the trust is established and the monthly income has been paid into the trust.

(IV) The trust must retain an amount equal to the client's gross monthly income less the current categorically needy standard of OKDHS Appendix C-1. The Trustee shall distribute the remainder.

(V) The income disbursed from the trust is considered as the monthly income to determine the cost of their care, and can be used in the computations for spousal diversion.

(VI) The trust must be irrevocable and cannot be amended or dissolved without the written agreement of the OHCA. Trust records shall be open at all reasonable times to inspection by an authorized representative of the OHCA or OKDHS.

(VII) The State will receive all amounts remaining in the trust up to an amount equal to the total Medicaid benefits paid on behalf of the individual subsequent to the date of establishment of the trust.

(VIII) Accumulated funds in the trust may only be used for medically necessary items not covered by Medicaid, or other health programs or health insurance and a reasonable cost of administrating the trust. Reimbursements cannot be made for any medical items to be furnished by the nursing facility. Use of the accumulated funds in the trust for any other reason will be considered as a transfer of assets and would be subject to a penalty period.

(IX) The trustee may claim a fee of up to 3% of the funds added to the trust that month as compensation.

(X) An example trust is included on OKDHS form M-11. Social Workers may give this to the client or his/her representative to use or for their attorney's use as a guide for the Medicaid Income Pension Trust.

(XI) To terminate or dissolve a Medicaid Income Pension Trust, the social worker sends a memorandum with a copy of the trust to OKDHS Family Support Services Division, Attention: HR&MS, explaining the reason for the requested termination or dissolution of the Medicaid Income Pension Trust, and giving the name and address of the trustee. The name and address of the financial institution, account number, and current balance are also required. Health Related and Medical Services notifies OHCA/TPL to initiate the recovery process.

(iii) A trust containing the assets of a disabled individual when all of the following are met:

(I) The trust is established and managed by a non-profit association;

(II) The trust must be made irrevocable;

(III) The trust must be approved by the Department of Human Services and may not be amended without the permission of the Department of Human Services;

(IV) The disabled person has no ability to control the spending in the trust;

(V) A separate account is maintained for each beneficiary of the trust but for the purposes of investment and management of funds, the trust pools these accounts;

(VI) The separate account on behalf of the disabled person may not be liquidated without payment to OHCA for the medical expenses incurred by the recipients;

(VII) Accounts in the trust are established by the parent, grandparent, legal guardian of the individual, the individual, or by a court;

(VIII) To the extent that amounts remaining in the beneficiary's account on the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts an amount equal to the total medical assistance paid on behalf of the individual. A maximum of 30% of the amount remaining in the beneficiary's account at the time of the beneficiary's death may be retained by the trust.

(G) **Funds held in trust by Bureau of Indian Affairs (BIA).** Interests of individual Indians in trust or restricted lands shall not be considered a resource in determining eligibility for assistance under the Social Security Act or any other federal or federally assisted program.

(H) **Disbursement of trust.** At any point that disbursement occurs, the amount disbursed is counted as a non-recurring lump sum payment in the month received. Some trusts generate income on a regular basis and the income is sent to the beneficiary. In those instances, the income is treated as unearned income in the month received.

(10) **Retirement funds.** The rules regarding the countable value, if any, of retirement funds are found in subparagraph (A) - (B) of this paragraph:

(A) **Annuities.**

(i) Annuities purchased prior to February 1, 2005. An annuity gives the right to receive fixed, periodic payments either for life or a term of years. ~~An annuity also meets the general definition of a trust, because it is a legal entity created by a grantor for the benefit of designated beneficiaries, under the management of some individual or entity with fiduciary responsibility to manage the trust for the benefit of the beneficiaries. Because an annuity meets this definition of a trust, it is treated as a trust. This means the~~ The annuity instrument itself must be examined to determine the provisions and requirements of the annuity. For example, it is determined whether the individual can access

the principal of the annuity; e.g., can it be cashed in. If so, the annuity is treated as a revocable trust (OAC 317:35-5-41(d)(9)(E)(iii)(I). If the individual cannot access the principal, the annuity is treated as an irrevocable trust. In this instance, it must also be determined what part of the annuity can, under any circumstances, be paid to, or for the benefit of the individual. When making such a determination, the date of application is used or, if later, the date of institutionalization (for an institutionalized individual) or the date of creation of the annuity (for a non-institutionalized individual). Also, these dates are used in determining whether the transfer of asset provisions apply to a particular annuity. If the annuity provides for payments to be made to the individual, those payments would be considered income to the individual. Any portion of the principal of the annuity that could be paid to or on behalf of the individual would be treated as a resource to the individual and portions of the annuity that cannot be paid to or for the benefit of the individual are treated as transfers of assets. Annuities may also be a transfer of assets for less than fair market value. The worker determines, in accordance with the OKDHS life expectancy tables, whether the client will receive fair market value from the annuity during his/her projected lifetime. Any funds used to purchase the annuity that will not be repaid to the client during his/her projected lifetime, are a transfer of assets and the appropriate penalty period is imposed.

(ii) Annuities purchased after January 31, 2005.

(I) An annuity is presumed to be an available resource to the individual who will receive the payments because the annuity can be sold. The value of the annuity is the total of all remaining payments, discounted by the Applicable Federal Rate set by the IRS for the valuation of annuities for the month of application or review.

(II) The applicant or recipient may rebut the presumption that the annuity can be sold by showing compelling evidence to the contrary, in which case the annuity is not considered available. The applicant or recipient may also rebut the presumed annuity value by showing compelling evidence that the actual value of the annuity is less than the presumed value.

(B) **Other retirement investment instruments.** This subparagraph relates to individual retirement accounts (IRA), Keogh plans, profit sharing plans, and work related plans in which the employee and/or employer contribute to a retirement account.

(i) **Countability of asset.** In each case, the document governing the retirement instrument must be examined to determine the availability of the retirement benefit at the time of application. Retirement benefits are considered countable resources if the benefits are available to the applicant and/or spouse. Availability means that the applicant and/or spouse has an option to receive retirement benefits or is actually receiving benefits. For example, a retirement instrument may make a fund available at the time of termination of employment, at age 65, or at some other time. A retirement fund is not a countable resource if the applicant is currently working and must terminate employment in order to receive benefits. An individual may have the choice of withdrawing the monies from the retirement fund in a single payment or periodic payments (i.e., monthly, quarterly, etc.). If the individual elects to receive a periodic payment, the payments are considered as income as provided in OAC 317:35-5-42(c)(3). If the monies are received as a lump sum, the rules at OAC 317:35-5-42(c)(3)(C)(i) apply.

(ii) **Asset valuation.** Valuation of retirement benefits is the amount of money that an individual can currently withdraw from the fund or is actually receiving. Valuation does not include the amount of any penalty for early withdrawal. Taxes due on the monies received by the applicant are not deducted from the valuation.

(iii) **Timing of valuation.** Retirement funds are a countable resource in the month that the funds are available to the applicant. For purposes of this subsection, the month that the funds are available means the month following the month of application for the funds. For example, the retirement instrument makes retirement funds available at age 65. The applicant turns 65 on January 1st. The applicant makes a request for the funds on February 1st and the monies are received on June 1st. The retirement fund would be considered as a countable resource in the month of March. The resource would not be counted in the month in which it is later received.

(11) **Automobiles, pickups, and trucks.** Automobiles, pickups, and trucks are considered in the eligibility determination for Medicaid benefits.

(A) **Exempt automobiles.** One automobile is excluded from counting as a resource to the extent its current market value (CMV) does not exceed $4,500. The CMV in excess of $4,500 is counted against the resource limit; or exempt one automobile, pickup or truck per family regardless of the value if it is verified that the car is used:

(i) for medical services 4 times a year to obtain either medical treatment or prescription drugs; or

(ii) for employment purposes; or

(iii) especially equipped for operation by or transportation of a handicapped person.

(B) **Other automobiles.** The equity in other automobiles, pickups, and trucks is considered in

relation to the reserve. The current market value, less encumbrances on the vehicle, is the equity. Only encumbrances that can be verified are considered in computing equity.

(i) The market value of each year's make and model is established on the basis of the "av'g. Trade In" value as shown in the current publication of the National Automobile Dealers Association (NADA) on "Cars, Trucks, and Imports" which is provided monthly to each county office by the OKDHS State Office.

(ii) If a vehicle's listing has been discontinued in the NADA book, the household's estimate of the value of the vehicle is accepted unless the worker has reason to believe the estimate is incorrect.

(iii) The market value of a vehicle no longer operable is the verified salvage value.

(iv) In the event the client and worker cannot agree on the value of the vehicle, the client secures written appraisal by two persons who are familiar with current values. If there is substantial unexplained divergence between these appraisals or between the book value and one or more of these appraisals, the worker and the client jointly arrange for the market value to be established by an appraisal made by a third person who is familiar with current values and who is acceptable to both the client and the worker.

(12) **Resource disregards.** In determining need, the following are not considered as resources:

(A) The coupon allotment under the Food Stamp Act of 1977;

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

(C) Education grants (excluding Work Study) scholarships, etc., that are contingent upon the student regularly attending school. The student's classification (graduate or undergraduate) is not a factor;

(D) Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes:

(i) an acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan agreement is not written, OKDHS Form ADM-103, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or Form ADM-103 are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified.

(ii) If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) and the lender's verification of the loan are required to indicate that the loan is bona fide. ~~If the loan agreement is not written, Form Adm-103, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or Form Adm-103 are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified;~~

(iii) Proceeds of a loan secured by an exempt asset are not an asset.

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

(F) Special allowance for school expenses made available upon petitions (in writing) from funds held in trust for the student;

(G) Benefits from State and Community Programs on Aging (Title III) are disregarded. Income from the Older American Community Service Employment Act (Title V), including AARP and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as earned income. Both Title III and Title V are under the Older Americans Act of 1965 amended by PL 100-175 to become the Older Americans Act amendments of 1987;

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

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

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

(K) Any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska

Native which are exempt from taxation under the Settlement Act;

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

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

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

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

(P) Interests of individual Indians in trust or restricted lands. However, any disbursements from the trust or the restricted lands are considered as income;

(Q) Resources set aside under an approved Plan for Achieving Self-Support for Blind or Disabled People (PASS). The Social Security Administration approves the plan, the amount of resources excluded and the period of time approved. A plan can be approved for an initial period of 18 months. The plan may be extended for an additional 18 months if needed, and an additional 12 months (total 48 months) when the objective involves a lengthy educational or training program;

(R) Payments made to individuals because of their status as victims of Nazi persecution (PL 103-286);

(S) A migratory farm worker's out-of-state homestead is disregarded if the farm worker's intent is to return to the homestead after the temporary absence;

(T) Payments received under the Civil Liberties Act of 1988. These payments are to be made to individuals of Japanese ancestry who were detained in interment camps during World War II;

(U) Dedicated bank accounts established by representative payees to receive and maintain retroactive SSI benefits for disabled/blind children up to the legal age of 18. The dedicated bank account must be in a financial institution, the sole purpose of which is to receive and maintain SSI underpayments which are required or allowed to be deposited into such an account. The account must be set up and verification provided to SSA before the underpayment can be released; and

(V) Payments received as a result of participation in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation". These payments are made to hemophilia patients who are infected with HIV. Payments are not considered as income or resources. A penalty cannot be assessed against the individual if he/she disposes of part or all of the payment. The rules at OAC:35-5-41(d)(9) regarding the availability of a trust do not apply if an individual establishes a trust using the settlement payment.

(e) **Changes in capital resources.** Rules on transfer or disposal of capital resources are not applicable. See OAC 317:35-9, OAC 317:35-17, and OAC 317:35-19 if the individual enters a nursing home or receives Home and Community Based Waiver Services, HCBWS/MR or ADvantage waiver services.

(1) **Resources of an applicant.** If the resource(s) of an applicant is in a form which is not available for immediate use, such as real estate, mineral rights, or one of many other forms, and the applicant is trying to make the resource available, the applicant may be certified and given a reasonable amount of time to make this available. A reasonable amount of time would normally not exceed 90 days. The client is notified in writing that a period of time not to exceed 90 days will be given to make the resource available. Any extension beyond the initial 90-day period is justified only after interviewing the client, determining that a good faith effort to sell is still being made and failure to sell is due to circumstances beyond the control of the client.

(2) **Capital resources acquired while receiving assistance.** If the recipient acquires resources which increase his/her available reserve above the maximum, he/she is ineligible for assistance unless there are specific plans for using the resources in compliance with rules on "resources disposed of while receiving assistance". The term "using the resource" is construed to mean that the resource has been encumbered or actually transferred. If the facts show a reasonable delay in executing the plan to use the required resource or if the resource is in a form which is not available for immediate use (such as real estate, mineral rights, or one of many other forms), and if efforts are in progress to make the resource available, the recipient is given a reasonable amount of time to make this available. The client is notified in writing that a period of time not to exceed 90 days will be given to make the resources available.

(A) Any extension beyond the initial 90 day period is justified only after interviewing the client, determining that a good faith effort is still being made and that failure to make the resource available is due to circumstances beyond the control of the client.

(B) Money borrowed on any of the client's resources, except the home, merely changes his/her resource from one form to another. Money borrowed on the home is evaluated in relation to the reserve.

(f) **Maximum reserve.** Maximum reserve is a term used to designate the largest amount which a recipient can have in one or more nonexempt resources, and still be considered to be in need. A recipient's reserve may be held in any form or combination of forms. If the resources of the applicant or recipient exceed the maximums listed on OKDHS Appendix C-1, he/she is not eligible.

(1) For each minor blind or disabled child up to the legal age of 18 living with parent(s) whose needs are not included in ~~an~~ a TANF grant, or receiving SSI and/or SSP, the resource limit is the same as the individual limit as shown on OKDHS Appendix C-1. If the parent's resources exceed the maximum amount, the excess is deemed available to the child (resources of an ineligible child are not deemed to an eligible child). If there is more than one eligible child, the amount is prorated.

(2) If the minor blind or disabled child up to the legal age of 18 is residing in a nursing facility, or a medical facility if the confinement lasts or is expected to last for 30 days, the parent(s)' resources are not deemed to the child.

(3) Premature infants (i.e., 37 weeks or less) whose birth weight is less than 1200 grams (approximately 2 pounds 10 ounces) will be considered disabled by SSA even if no other medical impairment(s) exist. In this event, the parents resources are not deemed to the child until the month following the month in which the child leaves the hospital and begins living with his/her parents.

(4) when both parents are in the home and one parent is included in an aged, blind or disabled case and the spouse is included in an TANF case with the children, the resources of both parents are evaluated in relation to eligibility for SSI and therefore not considered on the AFDC case. All resources of the parents would be shown on the aged, blind or disabled case.

[OAR Docket #05-624; filed 4-12-05]

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

[OAR Docket #05-626]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 5. Client Services
Part 9. Service Provisions
317:40-5-113. [NEW]
(Reference APA WF # 04-16B)
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:
December 9, 2004
Approved by Governor:
January 28, 2005
Effective:
Immediately upon Governor's approval or February 1, 2005, 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 to provide a cost effective alternative to services currently provided to Developmental Disabilities Services recipients in the In Home Supports Waiver. The Oklahoma Department of Human Services expects a cost savings in displacing the current cost of hourly Habilitation Training Specialist services. The revisions will be budget neutral to the agency. However, the Developmental Disabilities Services Division of OKDHS, who is responsible for paying the state share for Adult Day Services, is estimating an annual savings of $139,400.
ANALYSIS:
Developmental Disabilities Services rules are issued to establish criteria for a new service, Adult Day Services. Adult Day Services provides assistance with retention or improvement in self-help, adaptive, and socialization skills including the opportunity to interact with peers in order to promote maximum level of independence and functioning. The service takes place in a non-residential setting, separate from the home or facility in which the service recipient resides and will be included on his/her Plan of Care. Services are normally furnished four or more hours per day on a regularly scheduled basis, for one or more days per week. The Oklahoma Department of Human Services (OKDHS) will pay the state share for this service. It is anticipated that some recipients will use Adult Day Services in lieu of Habilitation Training Specialist services. The cost for a six hour day of Habilitation Training Specialist services is $76.80, while the rate for Adult Day Services is $45 per day. The Developmental Disabilities Services Division of OKDHS estimates a savings of $21.80 per recipient day, for an estimated annual savings of $139,400 in state dollars. Further revisions bring rules in line with other sections of rules by adding the existing Intensive Personal Supports service to these sections of rules.
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 FEBRUARY 1, 2005, WHICHEVER IS LATER:

SUBCHAPTER 5. CLIENT SERVICES

PART 9. SERVICE PROVISIONS

317:40-5-113. Adult Day Services

(a) **Introduction.** Adult Day Services are provided by agencies approved by the Developmental Disabilities Services Division (DDSD) of the Oklahoma Department of Human Services (OKDHS) that have a valid Oklahoma Health Care Authority contract for providing Adult Day Services. This service is available through the Community Waiver and through the In-Home Supports Waiver for Adults. Adult Day Services is a structured, comprehensive program that provides a variety of health, social, and related support services in a protective environment for some portion of a day. Individuals who participate in adult day services receive these services on a planned basis during specified hours. Adult day services are designed to work toward the goals of:

(1) promoting the individual's maximum level of independence;

(2) maintaining the individual's present level of functioning as long as possible, preventing or delaying further deterioration;
(3) assisting the individual in achieving the highest level of functioning possible;
(4) providing support, respite, and education for families and other caregivers; and
(5) fostering socialization and peer interaction.

(b) **Eligibility requirements.** Adult Day Services are provided to eligible service recipients whose teams have determined the service is appropriate to meet their needs. Service recipients must:
(1) require ongoing support and supervision in a safe environment when away from their own residence;
(2) be 18 years of age or older; and
(3) not pose a threat to others.

(c) **Provider requirements.** Provider agencies must:
(1) meet the licensing requirements set forth by Section 1-873 et seq of Title 63 of the Oklahoma Statutes;
(2) comply with OAC 310:605, Adult Day Care Centers;
(3) allow DDSD staff to make announced or unannounced visits to the facility during the hours of operation;
(4) provide the DDSD Case Manager a copy of the individualized plan of care; and
(5) submit incident reports in accordance with OAC 340:100-3-34.

(d) **Coverage.** The service recipient's Individual Plan (IP) contains detailed descriptions of services to be provided and documentation of hours of services. All services must be authorized in the IP and reflected in the approved plan of care. Arrangements for care must be made with the service recipient's case manager.

[OAR Docket #05-626; filed 4-12-05]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 55. PSEUDOEPHEDRINE CONTROL

[OAR Docket #05-707]

RULEMAKING ACTION:
Emergency Adoption
RULES:
475:55-1-1. Purpose [NEW]
475:55-1-2. Characteristics of exempt pseudoephedrine products [NEW]
475:55-1-3. Pharmacy requirements [NEW]
475:55-1-6. Special registration for distribution centers [NEW]
475:55-1-7. Lawful possession of Schedule V pseudoephedrine [NEW]
475:55-1-8. Records and invoices [NEW]
475:55-1-9. Labeling [NEW]
475:55-1-10. Prescriptions [NEW]
475:55-1-11. Distributor and warehouse storage of Schedule V pseudoephedrine products [NEW]
475:55-1-12. Criteria for exemption [NEW]
AUTHORITY:
63 O.S.§§ 2-212, 2-301.
DATES:
Adoption:
May 19, 2004.
Approved by Governor:
June 16, 2005
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 Governor recently signed House Bill 2176, which places certain products containing pseudoephedrine in Schedule V of the Controlled Dangerous Substances (CDS) Act, into law. The bill had an emergency clause since pseudoephedrine is the key ingredient in the illegal manufacturing of methamphetamine, a drug that has heavily burdened Oklahoma with the costs of investigating, prosecuting, and incarcerating meth criminals. Oklahoma has had to absorb the costs of rehabilitating meth addicts and cleaning up the damage caused by meth labs to the environment. The people of Oklahoma have lost their lives to meth addiction and the violence that it generates.
ANALYSIS:
The proposed rules will facilitate the implementation of House Bill 2176 that was recently signed into law. The rules will provide guidance for pharmacies, manufacturers, distributors, and wholesalers of pseudoephedrine that are affected by it.
CONTACT PERSON:
Scott Rowland (405) 521 - 2885; srowland@obn.state.ok.us

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

475:55-1-1. Purpose

(a) The Oklahoma Bureau of Narcotics and Dangerous Drugs Control has been granted statutory authority by 63 O.S., 2-301 to "promulgate rules and regulations relating to the registration and control of the manufacture, distribution, dispensing, prescribing, administering or use for scientific purposes of controlled dangerous substances within this state." Furthermore, 63 O.S., 2-212 authorizes the Oklahoma Bureau of Narcotics and Dangerous Drugs Control to promulgate rules specifically for Schedule V pseudoephedrine products. These statutes, as well as the entire Oklahoma Uniform Controlled Dangerous Substances Act, O.S. 63 Chapter 2, and the Oklahoma Administrative Code Title 475, are used as guiding authorities for the specific points of these rules and regulations.

(b) The rules of this Chapter specify the requirements for pseudoephedrine control in Oklahoma. Included in this Chapter are characteristics of exempt pseudoephedrine products, pharmacy requirements, dispensing pseudoephedrine products, thirty-day requirement, special registration for distribution centers, lawful possession of Schedule V pseudoephedrine products, records and invoices, labeling, prescriptions, distributor and warehouse storage of Schedule V pseudoephedrine, and criteria for exemption.

475:55-1-2. Characteristics of exempt pseudoephedrine products

(a) All products that are either: (1) soft gelatin liquid-filled capsules; or, (2) liquid preparations, are exempt from Schedule V. Conversely, all solid dosage forms of medications, including powders, that contain any quantity of pseudoephedrine are classified as Schedule V controlled dangerous substances and are subject to the rules of this section.

(b) The term "gel capsule," as specified in O.S. Title 63, means any soft gelatin liquid-filled capsule that contains a liquid suspension, which, in the case of pseudoephedrine, is suspended in a matrix of glycerin, polyethylene glycol, and propylene glycol, along with other liquid substances. Regardless of the product manufacturers' labeling, a gelatin-covered solid does not constitute a "gel capsule" under this provision.

(c) The term "active ingredient," as specified in O.S. Title 63, shall include the matrix of glycerin, polyethylene glycol, and propylene glycol that is found in liquid capsules.

(d) Nothing in this section shall exempt from Schedule V status any liquid preparation that is found in an illegal laboratory, is associated with an illegal laboratory, or is in any form other than that manufactured and sold by a registered manufacturer for medicinal purposes.

(e) Products containing pseudoephedrine that are dispensed pursuant to a valid prescription by a registrant are exempt from classification as Schedule V. As such, these are not restricted to the limitations of five (5) refills within a six (6) month period -instead, they are regulated the same as any non-scheduled prescription drug. Any product that is dispensed by prescription must be kept in a container that is supplied by the pharmacy and must be labeled in a manner consistent with any other prescription.

475:55-1-3. Pharmacy requirements

Schedule V pseudoephedrine substances may be sold only in licensed pharmacies that are registered with the Oklahoma Bureau of Narcotics and Dangerous Drugs Control. These substances, as a special class of Schedule V controlled substances, shall be kept in a locked environment (shelving unit, safe, cabinet, etc.) that is within view of the pharmacy, or behind the pharmacy counter. As specified in 63 OS, 2-303 (1), 2-304 (A)-4, and OAC 475:20-1-2, the pharmacist and those with access to pseudoephedrine products will have an affirmative duty to guard against the theft and diversion of these products.

475:55-1-6. Special registration for distribution centers

Wholesale distribution centers located in Oklahoma that are engaged in interstate business to states in which Schedule V pseudoephedrine products may be sold legally can apply for and be granted a limited Schedule V pseudoephedrine pharmacy distributor license from the Oklahoma Bureau of Narcotics and Dangerous Drugs Control. Eligibility for this registration shall be subject to the applicant's meeting the following conditions:

(1) Applicant is actively engaged in the interstate sale of grocery or pharmaceutical items;

(2) Applicant's sales are not limited to pseudoephedrine items alone, or to pseudoephedrine items in conjunction with other items associated with the illegal manufacture of methamphetamine or other controlled drugs;

(3) Applicant does not have a history of association with the diversion of pseudoephedrine, or of having failed to guard against the diversion of pseudoephedrine or other products used in manufacturing illegal drugs;

(4) Applicant provides a list of customers, and they do not have a history of association with the diversion of pseudoephedrine, or of having failed to guard against the diversion of pseudoephedrine or other products used in manufacturing illegal drugs;

(5) Applicant meets the security conditions determined by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control in 475:20 of this code. However, the security for pseudoephedrine shall be less restrictive than for other pharmaceutical Schedule V controlled drugs and shall be held to a level commensurate with the nature of wholesale distribution;

(6) Other conditions, as determined on a case-by-case basis by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control.

455:55-1-7. Lawful possession of Schedule V pseudoephedrine

(a) The following persons are allowed to lawfully possess Schedule V pseudoephedrine while in the course of legitimate business:

(1) Any Schedule V pseudoephedrine-only limited pharmaceutical distributor, or its agents, licensed by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control;

(2) Any wholesale drug distributor, or its agents, licensed by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control;

(3) Any manufacturer of controlled drugs, or its agents, licensed by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control;

(4) A pharmacist licensed by the Oklahoma State Board of Pharmacy; and,

(5) A physician, certified registered nurse anesthetist, advance practice nurse, physician's assistant, or other person, registered with the Oklahoma Bureau of Narcotics and Dangerous Drugs Control who is allowed to possess and dispense controlled drugs.

(b) These individuals will be required to guard against the diversion of controlled
drugs and are subject to the rules and regulations pertaining to registrants handling, reporting, dispensing controlled dangerous drugs, and submission to inspections by peace officers as set forth in 63 O.S. and OAC 475.

475:55-1-8. Records and invoices

Any distributor or retailer of Schedule V pseudoephedrine products must keep readily retrievable records, as specified in

475:25-1-3 (b), and invoices pertaining to the receipt and sale of the substance. These records do not have to be kept separate from other records, if and only if such records can be produced within a reasonable period of time (no more than 2 days) as requested by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control or other persons legally authorized to request these records. All records must be kept for a minimum of two (2) years.

475:55-1-9. Labeling

Schedule V pseudoephedrine products shall be exempt from the labeling requirements for other prescriptions or other Schedule V controlled drugs. Pseudoephedrine products that are obtained pursuant to a valid prescription and exempt from Schedule V classification must have an attached pharmacy label consistent with other non-scheduled drugs obtained by prescription.

475:55-1-10. Prescriptions

The nine (9) gram per month threshold limit shall not apply to Schedule V pseudoephedrine products that are dispensed for a valid prescription.

475:55-1-11. Distributor and Warehouse Storage of Schedule V Pseudoephedrine Products

Scheduled pseudoephedrine products shall be stored in a locked area that is monitored; however, they will not be required to be kept in a special locked cage. Pharmaceutical distributors and warehouses are responsible for establishing security measures to guard against diversion as specified in Chapter 20 of this code.

475:55-1-12. Criteria for exemption

(a) Any person may request an exemption or conditional exemption of Schedule V classification for a specific product. The decision of whether to grant an exemption shall be made by the Director of the Oklahoma Bureau of Narcotics and Dangerous Drugs Control, who will take the following into consideration:

(1) Ease with which the product can be converted to methamphetamine;

(2) Ease with which pseudoephedrine is extracted from the substance and whether it forms an emulsion, salt, or other form;

(3) Whether the product contains a "molecular lock" that renders it incapable of being converted into methamphetamine;

(4) Presence of other ingredients that render the product less likely to be used in the manufacture of methamphetamine; and,

(5) Any pertinent data that can be used to determine the risks of the substance being used in the illegal manufacture of methamphetamine or any other controlled substance.

(b) The burden of proof for exemption shall be upon the person requesting the exemption. The petitioner shall provide the Oklahoma Bureau of Narcotics and Dangerous Drugs Control with evidence that the product has been formulated in such a way as to serve as an effective general deterrent to the conversion of pseudoephedrine into methamphetamine. Such evidence shall include the furnishing of a valid scientific study, conducted by a professional laboratory and evincing professional quality chemical analysis, which is in accordance with uniform parameters set forth in writing by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. This report shall include documentable and reviewable data and a clear delineation of methodology.

[OAR Docket #05-707; filed 4-22-05]

Permanent Final Adoptions

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

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

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

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

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

[OAR Docket #05-663]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 12. Agricultural Development and Forestry Grants
35:1-12-12. [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and 2-4(29); 47 O.S. § 1104.5
DATES:
Comment period:
January 3, 2005 through February 3, 2005
Public hearing:
February 3, 2005
Adoption:
February 17, 2005
Submitted to Governor:
February 18, 2005
Submitted to House:
February 18, 2005
Submitted to Senate:
February 18, 2005
Gubernatorial approval:
March 23, 2005
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 14, 2005
Final adoption:
April 14, 2005
Effective:
May 26, 2005
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule implements the provisions of House Bill 1994 which created an Urban Forestry and Beautification license plate. Fees for the special plate are deposited in the Urban Forestry and Beautification Revolving Fund. The proposed rule provides for administration of the fund.
CONTACT PERSON:
Kurt Atkinson, Forestry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6147

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 12. AGRICULTURAL DEVELOPMENT AND FORESTRY GRANTS

35:1-12-12. Urban forestry and beautification grants

(a) All monies from sales of urban forestry and beautification license plates accruing to the Urban Forestry and Beautification Revolving Fund may be budgeted and expended for the purpose of contracting with or providing grants to nonprofit organizations that develop and operate programs to encourage urban forestry and beautification pursuant to guidelines developed by the Department.

(b) The Department may initiate the grants process at any time so long as the revolving fund balance exceeds Two Thousand Five Hundred Dollars ($2,500).

(c) In no case shall the total amount of grants awarded from the revolving fund exceed ninety percent (90%) of the revolving fund balance at the time grants are awarded.

[OAR Docket #05-663; filed 4-18-05]

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

[OAR Docket #05-664]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 14. Oklahoma Boll Weevil ~~Quarantine~~ [AMENDED]
35:30-14-7. [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29), 3-50.1; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
January 3, 2005 through February 3, 2005
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February 3, 2005
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February 17, 2005
Submitted to Governor:
February 18, 2005
Submitted to House:
February 18, 2005
Submitted to Senate:
February 18, 2005
Gubernatorial approval:
March 23, 2005
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 14, 2005

Final adoption:
April 14, 2005
Effective:
May 26, 2005
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule allows for destruction of volunteer or noncommercial cotton within elimination zones.
CONTACT PERSON:
Sancho Dickinson, Director, Plant Industry and Consumer Services, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-5879

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 14. OKLAHOMA BOLL WEEVIL ~~QUARANTINE~~

35:30-14-7. Cotton destruction in elimination zones

(a) Volunteer and other noncommercial cotton in elimination zones shall be managed in the same manner and at the same expense as commercial cotton.

(b) When volunteer and other noncommercial cotton is located within an elimination zone, the owner shall be notified in writing that the cotton has the potential to host boll weevils and ordering that the cotton be destroyed.

(1) The notification shall state that the owner has two (2) weeks from the date of the letter to destroy the volunteer or noncommercial cotton.

(2) If the owner fails to comply with the letter, the Department shall destroy the cotton by any available means and the costs associated with the destruction shall be assessed to the owner and the failure shall be a violation of the Oklahoma Boll Weevil eradication Act.

[OAR Docket #05-664; filed 4-18-05]

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

[OAR Docket #05-665]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Combined Pesticide
Part 5. Prerequisites for Licensing
35:30-17-11. [AMENDED]
Part 7. Identification of Equipment Used by Commercial Applicators
35:30-17-16. [REVOKED]
Part 19. Minimum Fumigation Standards for Structures
35:30-17-76. [REVOKED]
Part 21. Standards for Disposal of Pesticide and Pesticide Containers
35:30-17-93. through 35:30-17-95. [AMENDED]
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
DATES:
Comment period:
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Public hearing:
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Gubernatorial approval:
March 23, 2005
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 14, 2005
Final adoption:
April 14, 2005
Effective:
May 26, 2005
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules provide for revisions to several areas of Subchapter 17. Combined Pesticide. The first change amends Section 35:30-17-11 and allows the Department to reject a proposed name of a commercial or noncommercial applicator and require a different name if the requested name is so similar to another licensee that confusion to the public regarding the licensees could exist. In addition, the proposed rule cleans up and clarifies language regarding time periods and requirement for certified applicators. Section 35:30-17-16 revokes a rule requiring a commercial aerial applicator to place a decal provided by the Department on their airplane. The rule is no longer necessary because other means of identification are readily available at no cost to the Department. Section 35:30-17-76 is also revoked as the use of Ethylene Dibromide (EDB) is no longer registered in the State of Oklahoma. Sections 35:30-17-93, 94, and 95 are each amended to allow for pressure rinsing as an alternative or in addition to triple rinsing for pesticide containers.
CONTACT PERSON:
Sandra Wells, Plant Industry and Consumer Services, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-5993

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26 2005:

SUBCHAPTER 17. COMBINED PESTICIDE

PART 5. PREREQUISITIES FOR LICENSING

35:30-17-11. Application for license required

(a) Prior to issuance of any license, an applicant shall properly complete a license application.

(b) An application for license shall be considered properly filed when the Board has received the following:

(1) An application completed and signed prior to January 1 of the license year.

(2) Cash, check, or money order in the proper amount.

(3) Certificate of insurance.

(c) A commercial pesticide applicator operating under more than one business identity or name from a single business location shall be licensed separately for each business identity or name.

(d) A commercial pesticide applicator with a single business identity or name but operating from more than one business location shall be licensed at each separate business location.

(e) ~~Each business location licensed shall have a minimum of one certified applicator at that location who is certified in each licensed category for which application is made.~~ If the name selected by an applicant for a license to act, operate, or do business or advertise as a commercial or noncommercial applicator in the State of Oklahoma is the same or so near the same as that of another licensee already doing business in the state as to cause confusion in the minds of the people or is likely to deceive the public, the Department may require the applicant to apply for a license under a different name that is distinguishable from the names of existing licensees. Any determination made pursuant to this rule shall be at the sole discretion of the Department.

(f) ~~A franchised business shall have a separate license and separate certified applicator at each business location.~~ Each business location licensed shall have a minimum of one certified applicator at that location who is certified in each licensed category for which application is made.

(g) ~~Established time periods for the issuance, renewal or denial of all certifications and licenses required by law shall be as follows:~~

~~(1) The Department shall review a new application within fifteen (15) working days from the date received.~~

~~(2) Any renewal application for certification or license received prior to the renewal date established by the Board shall be considered valid until a final determination is made.~~

~~(3) Following review, if it is determined that the requirements have been met, the appropriate certification or license shall be issued within ten (10) working days of the determination date.~~

~~(4) Following review, if it is determined that the requirements have not been met, the appropriate certification or license shall be denied. Notification of the denial shall be made in writing to applicant within ten (10) working days of the determination. The notification shall state the reason(s) for the denial and identify steps necessary to meet the requirements for issuance.~~ A franchised business shall have a separate license and a separate certified applicator at each business location.

(h) Established time periods for the issuance, renewal or denial of all certifications and licenses required by law shall be as follows:

(1) The Department shall review a new application within fifteen (15) working days from the date received.

(2) Any renewal application for certification or license received prior to the renewal date established by the Board shall be considered valid until a final determination is made.

(3) Following review, if it is determined that the requirements have been met, the appropriate certification or license shall be issued within ten (10) working days of the determination date.

(4) Following review, if it is determined that the requirements have not been met, the appropriate certification or license shall be denied. Notification of the denial shall be made in writing to the applicant within ten (10) working days of the determination. The notification shall state the reasons for the denial and identify steps necessary to meet the requirements for issuance.

PART 7. IDENTIFICATION OF EQUIPMENT USED BY COMMERCIAL APPLICATORS

35:30-17-16. Aircraft identification [REVOKED]

~~Each aircraft used by a commercial applicator to apply pesticides shall be identified by a decal provided by the Board bearing the "N" identification number of the aircraft. If restricted pesticides are used, this shall apply to noncommercial applicators.~~

PART 19. MINIMUM FUMIGATION STANDARDS FOR STRUCTURES

35:30-17-76. Ethylene Dibromide [REVOKED]

~~Ethylene Dibromide (EDB) shall not be used as a fumigant on stored grain or as a spot fumigant on grain milling machinery.~~

PART 21. STANDARDS FOR DISPOSAL OF PESTICIDE AND PESTICIDE CONTAINERS

35:30-17-93. Handling pesticide containers by commercial applicators

The following procedure governs handling of pesticide containers other than bulk pesticide containers by commercial applicators:

(1) Full or partially full containers~~.~~:

(A) Pesticide containers shall be stored in a secure and locked enclosure.

(B) Pesticide containers shall be free of leaks.

(C) The storage area shall be maintained in good condition without unneccessary debris.

(D) Storage areas shall be identified by signs.

(2) Empty containers. Empty containers shall be stored in a secured area~~. Empty containers shall be~~ and kept for no more than ninety (90) days ~~after~~ following use.

(3) Metal, glass, and plastic containers~~.~~ :

(A) All metal, glass, and plastic containers shall be triple-rinsed or pressure rinsed immediately after the pesticide is removed by the following or equivalent procedures:

(i) Using water or a detergent as a rinse capable of removing the pesticide, each container shall

be filled with rinse equal to approximately ten percent (10%) of the volume of pesticides originally in the container.

(ii) The rinse shall be agitated thoroughly on all interior surfaces of the container. Agitation ~~may~~ shall be accomplished by use of agitation equipment approved by the Department or by manual agitation of the rinse.

(iii) The rinsing procedure shall be repeated three times.

(iv) If the rinsate containing the rinse can be used in subsequent applications of the pesticide without reducing the effectiveness of the pesticide, the rinsate may be placed in the containment tank specified for that pesticide. If the rinsate is not classified as a controlled industrial waste upon disposal, it ~~may~~ shall be placed in an approved surface impoundment.

(B) Upon completion of the triple-rinsing or pressure rinsing procedures, containers ~~may~~ shall be disposed of as follows:

(i) ~~By disposal~~ Disposal in any permitted solid waste facility or sanitary landfill~~. Prior to disposal in a solid waste facility, the pesticide applicator shall pierce~~ so long as all metal and plastic containers are pierced in ~~both ends,~~ each end;

(ii) Return, if possible, to the pesticide sales agent or the pesticide manufacturer pursuant to prior ~~agreements,~~ agreement; or

(iii) ~~By resale~~ Resale to a third party for recycling or reconditioning.

(C) All pesticides shall be removed from paper and plastic bags to the maximum extent possible when the pesticide is initially mixed for application. Paper and plastic containers shall be disposed of as follows:

(i) Cut all sides of the container and open the container fully, without folds or crevices, on a flat surface. Shake any pesticides remaining in the opened container into the pesticide mix~~, and~~.

(ii) After cutting and flattening the pesticide containers, dispose of containers in a solid waste facility or sanitary landfill.

35:30-17-94. Unused portions of pesticides ~~and/or~~ and rinsate of pesticides which, upon disposal, are classified as hazardous waste

(a) Procedures for constructive recycling by commercial applicators of unused portions of pesticides ~~and/or~~ and rinsate of pesticides ~~which~~ that, upon disposal, are classified as hazardous wastes under EPA regulations shall include the following:

(1) Applicators of pesticides may recover and constructively reuse any unused portions of the pesticides ~~and/or~~ and any rinsate by one of the following methods:

(A) ~~By immediate~~ Immediate reapplication of the unused portion of the pesticide ~~and/or the~~ and rinsate in accordance with label and labeling requirements~~,~~;

(B) ~~By transferring~~ Transferring to a closed containment system meeting the requirement of 35:30-17-95~~,~~; or

(C) ~~By disposal~~ Disposal in a permitted controlled industrial waste facility.

(2) All unused pesticides ~~and/or~~ and rinsate from pesticides classified as a controlled industrial waste upon disposal shall be removed from containment tanks less than ninety (90) days after generation, unless the applicator has obtained a permit from the Oklahoma Department of Environmental Quality for longer periods of storage.

(3) In less than ninety (90) days after the final application for the season of a pesticide classified as a hazardous waste upon disposal, the applicator shall remove the contents of each containment tank, triple rinse or pressure rinse the containment tank by appropriate procedures ~~equivalent to triple rinsing~~, and apply the tank contents and rinsate in accordance with label and labeling requirements governing the initial application of the pesticide.

(b) A farmer disposing of waste pesticides from their personal use which are hazardous wastes shall triple rinse or pressure rinse each emptied pesticide container in accordance with 40 CFR 261.33 (c) and dispose of the pesticide residues in a manner consistent with the disposal instructions of the pesticide label.

35:30-17-95. Closed containment systems and commercial applicators

Any commercial applicator who elects to install a closed containment system for pesticides classified as a controlled industrial waste upon disposal, shall have the system completed and operational before the issuance of the certification or license. Requirements for the systems are:

(1) **Containment tanks~~.~~:**

(A) Different containment tanks shall be installed for different pesticides ~~and/or~~ and rinsate of pesticides. The same containment tanks ~~may~~ shall only be used for two or more pesticides when the pesticides are physically and chemically compatible and when the mixing is not prohibited by ~~their~~ the labels.

(B) Each containment tank shall:

(i) Be constructed of material of sufficient strength and compatible with the pesticide ~~and/or~~ and rinsate placed within the tank.

(ii) Be free of leaks, cracks, holes, or other deterioration.

(iii) Be in good operating order.

(iv) Be designed to allow drainage of the entire contents and be triple rinsed or pressure rinsed.

(v) Be equipped with stopcocks at appropriate locations to prevent any leakage of the contents during storage or transfer of the contents.

~~(vi) File final plans and specifications for approval by the Board for the construction of a closed containment system prior to the start of construction. The Board may consult with and seek the advice of Waste Management of the Oklahoma~~

~~Department of Environmental Quality prior to approval.~~

(C) File final plans and specifications for approval by the Board for the construction of a closed containment system prior to the start of construction. The Board shall consult with and seek the advice of the Oklahoma Department of Environmental Quality prior to approval.

(2) **Containment tank foundation~~.~~:**

(A) The containment tank foundation shall be solidly constructed of a material sufficiently impervious to contain leaks, spills, and accumulated pesticides ~~and/or~~ and rinsate of pesticides.

(B) The foundation covering shall be free of cracks ~~which might allow leakage~~.

(C) The foundation shall be sloped to facilitate cleanup of inadvertent spills.

(D) The foundation shall be constructed with a rim of sufficient height to contain run-off from cleanup activities or inadvertent spills and be protected from flood waters.

(E) The foundation shall be constructed to discharge all liquids into a sump.

(F) Tanks shall be located at a sufficient elevation to allow visual detection of leakage of the contents.

(3) ~~Storage requirements. All containment tanks shall be located in a secured area and protected from flood waters.~~

~~(4) Location requirements; submission of preliminary site plans.~~ **Containment systems** shall be located a suitable distance from any adjacent buildings, property lines, or public access roads, shall be in a secured area, and shall be protected from flood waters. Site plans showing location of the containment system shall be submitted for the approval of the Board prior to construction. ~~These plans may be rudimentary; the purpose of the submission is to avoid unnecessary expense by the applicator.~~

(4) Final plans~~. File final~~ Final plans and specifications for the construction of a closed containment system shall be submitted to the Board for approval ~~by the Board for the construction of a closed containment system~~ and shall be subject to the approval of ~~Waste Management,~~ the Oklahoma Department of Environmental Quality~~,~~ prior to the start of construction.

[OAR Docket #05-665; filed 4-18-05]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 1. ADMINISTRATIVE ORGANIZATION AND OPERATIONS

[OAR Docket #05-708]

RULEMAKING ACTION:
Permanent final adoption
RULES:
Subchapter 1. General Provisions
140:1-1-2. [AMENDED]
140:1-1-5. [NEW]
Subchapter 3. Board Purpose and Organization
140:1-3-9. [AMENDED]
AUTHORITY:
Board of Chiropractic Examiners; Title 59 O.S. § 161.5, 161.6, 161.8, 161.9, and 161.10(a).
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Failure of the Legislature to disapprove the rules resulted in approval on April 14, 2005.
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SUPERSEDED EMERGENCY ACTIONS:
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ANALYSIS:
The amendments to Chapter 1 include changes to the definitions to bring the code into compliance with the changes made during the 2004 Legislative session to Title 59 O.S. § 161.5, 161.6, 161.8, 161.9, and 161.10(a).
CONTACT PERSON:
Beth Kelly, Executive Director, Oklahoma Board of Chiropractic Examiners, 201 N.E. 38th Terrace, Suite 3, Oklahoma City, Oklahoma 73105 (405) 524-6223

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

140:1-1-2. Definitions

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

"Accredited Chiropractic College" means a chiropractic educational institution, which is accredited by the Commission on Accreditation of the Council on Chiropractic Education or its successor.

"Act" means the Oklahoma Chiropractic Practice Act, 59 O.S. 1991, §§161.1 et seq.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S.1991, §§ 250 et seq.

"Advisory Committee" means the committee appointed by the Board to advise and assist the Board in the investigation of the qualifications for licensure, complaints as to the conduct

of chiropractic physicians, and for such other matters as the Board delegates to them.

"Applicant" means any person submitting an application for licensure to the Board.

"Board" means the Board of Chiropractic Examiners.

"Chiropractic" means the science and art that teaches health in anatomic relation and disease or abnormality in anatomic. disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto in humans.

"Chiropractic physician" or **"licensee"** means a person who holds an original license to practice chiropractic in this state.

"Continuing education requirements" means attendance by a licensee at a minimum of (16) sixteen hours of Chiropractic education seminars as required for a renewal license.

~~(A) Eight (8) hours of the sixteen required by law must be clinical in nature, and the other remaining eight (8) may consist of practice management, philosophy , and or other non-clinical topics.~~

~~(B) Four (4) hours of continuing education may be acquired out of state with first having obtained a pre-approval from the Board of Chiropractic Examiners.~~

~~(C) Three (3) hours of continuing education may also be acquired by attending a National Chiropractic Meeting.~~

"Emergency meeting" means a meeting of the board, which is called pursuant to the Open Meeting Act based upon exigent circumstances, which require expedited attention, by the board to the matters concerned.

"Examination" means the process used by the Board, prior to the issuance of an original license, to test the qualifications and knowledge of an applicant on any or all of the following: current statutes, rules, or any of those subjects listed in Section 161.8 of the Act.

"Executive Director" means the Executive Director of the Board.

"Final order" means on order made by the Board pursuant to the APA and which is subject to judicial review.

"Individual proceeding" means the formal process employed by the Board to provide a hearing for a licensee of the Board to provide a hearing for the licensee of the Board accused of a violation of the Act and in which the Board may take action against such person's original license to practice chiropractic in this state

"Licensure" means the Board's process with respect to the grant, denial, renewal, revocation, or suspension of an original or renewal license.

"Meaningful Research" means research that develops or expands scientific knowledge and helps to provide effective and appropriate care for patients.

"OAC" means the Oklahoma Administrative Code.

"Order" means a formal or official decision of the Board including, but not limited to, final orders.

"Original license" means a license which grants initial authorization to practice chiropractic in this state issued by the Board to an applicant found by the Board to meet the requirements for licensure of the Act,

(A) by examination pursuant to § 161.7 of the Act and 140:10-3-1 through 140:10-3-4; or

(B) by ~~reciprocity~~ relocation of practice pursuant to § 161.9 of the Act and 140:10-3-5.

"Party" means a person or agency named and participating or properly seeking and entitled by law to participate in an individual proceeding.

"Person" means any individual, association, governmental subdivision, or public or private organization of any character other than an agency.

~~**"Reciprocity"** means the ability of an applicant to obtain Oklahoma Licensure on the following conditions:~~

~~(A) The applicant is of good moral character;~~

~~(B) The requirements for licensure in the state, country, territory or province in which the applicant is licensed are deemed by the Board to be equivalent to the requirements for obtaining an original license by examination in this state at the date of such license;~~

~~(C) The applicant has no disciplinary matters pending against him or her in any state, country, territory or province;~~

~~(D) The license being reciprocated was obtained by examination in the state, country, territory or province wherein it was issued, or was obtained by examination of the National Board of Chiropractic Examiners;~~

~~(E) The applicant passes an oral interview and a practical examination given by the Board; and~~

~~(F) The applicant meets all other requirements of the Oklahoma Chiropractic Practice Act.~~

"Regular meetings" means regular meetings of the Board held at such times and places as scheduled by the Board and includes continued and reconvened meetings as may be allowed pursuant to the Open Meetings Act. Provided, however, that continued and reconvened meetings shall be as limited by the Open Meeting Act.

"Relocation of Practice" means the ability for an applicant to obtain a chiropractic license on the following conditions:

(A) The applicant is of good moral character;

(B) The applicant shall submit documentary evidence that they have been in active practice for five (5) years immediately preceding the date of application;

(C) The applicant has had no disciplinary action pending against their license in any other state, country or province:

(D) The licensee requesting relocation of practice shall comply with the jurisprudence assessment examination administered by the Board of Chiropractic Examiners of this state.

(E) The applicant may be requested to appear before the Board for a personal interview, and:

(F) The applicant shall meet all other requirements set forth in the Oklahoma Chiropractic Practice Act.

"Renewal license" means a license issued by the Board on or before the first day of January of each year to a licensee, which authorizes the licensee to practice chiropractic in this state for the succeeding calendar year.

"Revocation" means the recalling, annulling or rendering inoperative of an original license or renewal license, or both, by the Board, after notice and an opportunity for a hearing in an individual proceeding.

"Rule or **rules"** means the rules of the Board promulgated pursuant to the APA or its successor statutes.

"Rule-making" means the process employed by the Board for the promulgation of a rule.

"Scope of practice" means chiropractic is the science and art that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto in humans. The scope of practice of chiropractic shall include those diagnostic and treatment services and procedures, which have been taught by an accredited chiropractic college and have been approved by the Board of Chiropractic Examiners. Such diagnostic and treatment services and procedures shall include the following: Chiropractic physicians may examine, analyze and diagnose the human body to correct, relieve or prevent diseases and abnormalities by the use of any physical, chemical, electrical, or thermal method; use or order diagnostic radiological imaging; use or order laboratory testing; and use any other method of examination for diagnosis and analysis taught by an accredited chiropractic college and approved by the Board of Chiropractic Examiners. In addition, Chiropractic physicians may adjust, manipulate and treat the human body by manual, mechanical, chemical, electrical, or natural methods; by the use of physiotherapy; meridian therapy; by utilizing hygienic, sanitary and therapeutic measures; by the administration of naturopathic and homeopathic remedies, by the application of first aid or by performing any other treatment taught by an accredited chiropractic college and approved by the Board of Chiropractic Examiners. Nothing in this rule shall permit a Chiropractic Physician to prescribe legend drugs, beyond injectable nutrients, as is currently the law in Title 59 Section 161.12 of the Oklahoma Statutes.

"Secretary-Treasurer" means the Secretary-Treasurer of the Board.

"Special meeting" means all meetings of the Board other than regular or emergency meetings.

"Suspension" means temporary discontinuance or cessation, with an expectation of reinstatement, of an original license or renewal license, or both, by the Board after notice and an opportunity for a hearing as required in an individual proceeding.

140:1-1-5. State associations

All state chiropractic associations shall annually submit to the Board the names of their current officers within sixty (60) days of election of the officers by the association, and shall designate which officers shall represent the association at all Board meetings. Only those officers designated by the association as its representatives and those employees of the association holding written authorization signed by the association chairman will be allowed to represent the official views, opinions, and desires of the association at the Board meetings. The association may designate up to three (3) officers as representatives.

SUBCHAPTER 3. BOARD PURPOSE AND ORGANIZATION

140:1-3-9. Duties of the Secretary-Treasurer

The duties of the Secretary-Treasurer of the Board shall be to:

~~(1) keep a record of all proceedings of the Board and to certify actions of the Board;~~

~~(2) receive and care for all monies received by the Board and cause same to be disbursed pursuant to orders of the Board and in accordance with state law;~~

~~(3) submit, at the first regular meeting of the Board after the beginning of each fiscal year, a full, itemized report of the receipts and disbursements for the prior fiscal year, showing the amount on hand;~~

~~(4) maintain a current roster of the name, license number and address of each chiropractic physician in this state;~~

~~(5) maintain a docket of all reports of the Advisory Committee;~~

~~(6) cause proper public notice of all meetings of the Board, in accordance with the Oklahoma Open Meeting Act, and provide notice of such meetings to the other members of the Board;~~

~~(7) file with the appropriate state officer or agency, after approval by the Board, all plans, programs, estimates of funds needed, or other information required of the Board pursuant to the provisions of 62 O.S.1991, §§41.1 et seq.; and~~

~~(8) perform such other duties as are prescribed in the Act or by the Board.~~

(1) supervise office personnel employed by the Board;

(2) oversee the administrative functions of the Board's administrative office;and

(3) submit a full itemized report at the first regular meeting of the Board after the end of each fiscal year of receipts and disbursements for the prior fiscal year, showing the amount of funds available.

[OAR Docket #05-708; filed 4-22-05]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 3. DISCIPLINARY PROCEDURES

[OAR Docket #05-709]

RULEMAKING ACTION:
Permanent final adoption
RULES:
Subchapter 1. General Provisions
140:3-1-2. [AMENDED]
Subchapter 3. Filing and Disposition of Complaints
140:3-3-2. [AMENDED]
AUTHORITY:
Oklahoma Board of Chiropractic Examiners; 59 O.S., § 161.6,161.12, and 161.18
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N/A
ANALYSIS:
The amendments to Chapter 3 include changes to the definitions to bring the code into compliance with changes made during the 2004 Legislative session, and to amend language in the rules in the section regarding disposition of complaints due to procedural changes internally at the board office.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

140:3-1-2. Definitions

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

"Act" means the Oklahoma Chiropractic Practice Act, 59 O.S. 1991, §§161.1 et seq.

"Advisory Committee" means the committee appointed by the Board to advise and assist the Board in the investigation of the qualifications for licensure, complaints as to the conduct of chiropractic physicians, and for such other matters as the Board delegates to them.

"Board" means the Board of Chiropractic Examiners.

"Chiropractic" means the science and art that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto.

"Chiropractic physician" or **"licensee"** means a person who holds an original license to practice chiropractic in this state.

"Code of Ethics" means the Oklahoma Chiropractic Code of Ethics~~, Section 161.18~~ OAC 140:15-7-5.~~ of the Act.~~

"Complaints" means a written statement by the person alleging that a chiropractic physician has committed a violation of the Act or the rules of the Board.

"Examination" means the process used by the Board prior to the issuance of an original license to test the qualifications and knowledge of an applicant on any or all the following: current statutes, rules or any of those subjects listed in Section 161.8 of the Act.

"Final order" means an order made by the Board pursuant to the APA and which is subject to judicial review.

"Individual proceeding" means the formal process employed by the Board to provide a hearing for a licensee of the Board to provide a hearing for the licensee of the Board accused of a violation of the Act and in which the Board may take action against such person's original license to practice chiropractic in this state.

"Letter of Concern" means a letter issued by the Board to a chiropractic physician to advise a said chiropractic physician of a probable violation of the Act or the rules of the Board.

"Order" means a formal or official decision of the Board including, but not limited to, final orders.

"Original license" means a license which grants initial authorization to practice chiropractic in this state issued by the Board to an applicant found by the Board to meet the requirements for licensure of the Act,

(A) by examination pursuant to § 161.7 of the Act and 140:10-3-1 through 140:10-3-4; or

(B) by ~~reciprocity~~ relocation of practice pursuant to § 161.9 of the Act and 140:10-3-5.

"Party" means a person or agency named and participating or properly seeking and entitled by law to participate in an individual proceeding.

"Penalty" means one or more of the penalties specified in subsection A of §161.12 of the Act.

"Person" means any individual, association, governmental subdivision, or public or private organization of any character other than an agency.

~~"Reciprocity"~~"Relocation of Practice" means the ability of an applicant to obtain Oklahoma Licensure on the following conditions:

(A) The applicant is of good moral character;

(B) The requirements for licensure in the state, country, territory or province in which the applicant is licensed are deemed by the Board to be equivalent to the requirements for obtaining an original license by examination in this state at the date of such license;

(C) The applicant has no disciplinary matters pending against him or her in any state, country, territory or province;

(D) The license being ~~reciprocated~~ relocated was obtained by examination in the state, country, territory or province wherein it was issued, or was obtained by examination of the National Board of Chiropractic Examiners;

(E) The applicant passes ~~an oral interview and a practical~~ any examination given by the Board; and

(F) The applicant meets all other requirements of the Oklahoma Chiropractic Practice Act.

"Renewal license" means a license issued by the Board on or before the first day of January of each year to a licensee which authorizes the licensee to practice chiropractic in this state for the succeeding calendar year.

"Revocation" means the recalling, annulling or rendering inoperative of an original license or renewal license, or both, by the Board, after notice and an opportunity for a hearing in an individual proceeding.

"Summary suspension" means the temporary suspension of a license to practice chiropractic medicine by the Board without notice or an opportunity for a hearing.

"Violation" means a violation of the Act or rules of the Board for which the Board is empowered to take disciplinary action against a licensee.

SUBCHAPTER 3. FILING AND DISPOSITION OF COMPLAINTS

140:3-3-2. Procedures for complaints against chiropractic physicians

(a) Any person may submit to the Board a complaint against a chiropractic physician. In the event a complaint is initiated by ~~the~~ a member of the Board or the Advisory Committee and such complaint involves the member of the Board or the Advisory Committee to the extent that such member of the Board or Advisory Committee cannot render an impartial decision in the matter, the member ~~or~~ of the Board or Advisory Committee shall recuse himself from further action, investigation or other matter related to said complaint.

(b) The Board shall make available a form which may be used for the filing of complaints.

(c) Each complaint reviewed by the Board shall be investigated and a written report made to the Board as set forth in subsections (e), (f),(g) ~~(e), (f)~~ and ~~(g)~~ (h) of this section within ~~six (6)~~ twelve (12)months of receipt of the complaint by the Advisory Committee. No member of the Board shall review any complaint or discuss any complaint with any member of the Advisory Committee or any other person, including the complainant and the chiropractic physician named in the complaint, except that the Board may review the written report of the Advisory Committee as provided in (e), (f), and (g) of this section.

(1) No member of the Advisory Committee or the investigator may, in any way, discuss any complaint or the details therein with any person without order from the Board or a Court of competent jurisdiction. Discussion or disclosure of any complaint or information therein by an Advisory Committee member or investigator may result in that Advisory Committee member's removal from the investigation committee and other such sanctions as the Board deems appropriate.

(2) The amount of time for investigation of a complaint received by the Board by the Advisory Committee may be extended beyond the ~~six (6)~~ twelve (12) month period of time upon a showing of good cause by either the complainant and /or the chiropractic physician named in the complaint.

(d) Upon receipt of the complaint, the Advisory Committee or investigator shall provide the chiropractic physician named in the complaint with a ~~copy~~ notice of the complaint and shall require said chiropractic physician to provide a written response to the complaint within twenty (20) days of mailing of a copy of the ~~complaint~~ notice to said chiropractic physician. The failure of a chiropractic physician to respond to such a request of the Advisory Committee or investigator shall be grounds for disciplinary action by the Board.

(e) It shall be the duty of the Advisory Committee or investigator to investigate the complaint fully and in a manner consistent with due process requirements and the APA. At the conclusion of the investigation, the Advisory Committee or investigator shall submit a written report to the Board detailing the findings and determination if the Advisory Committee or investigator shall make a recommendation in its written report as to further action by the Board. The Advisory Committee may assign a complaint to an individual investigator employed by the Board on a part-time or full-time basis.

(f) The written report of the Advisory Committee or investigator shall be drafted so as to keep anonymous the name of the Complainant and the chiropractic physician named in the complaint. The report shall include a brief recitation of the facts of the compliant and a statement whether the Advisory Committee or investigator found competent evidence to support the allegations contained in the complaint.

(g) The Board shall review the report of the Advisory Committee or investigator at a meeting of the Board, for which the Executive ~~Secretary~~ Director shall give proper notice to the Complainant, the chiropractic physician named in the compliant, and any other interested party. Provided, however that the Board's review of the report shall not be conducted as a hearing and the Board shall not hear testimony or receive evidence. Upon review of the report, the Board may:

(1) dismiss the complaint if the Board finds ~~that~~ there is not reasonable cause to believe that ~~the chiropractic physician named in the complaint has committed a violation;~~ there was a violation of the Chiropractic Practice Act;

(2) issue a letter of concern, pursuant to 140:3-3-3, to the chiropractic physician named in the compliant if the Board finds that there is reasonable cause to believe that said chiropractic physician has committed a violation, but such violation, if proven, is not of such a nature as to warrant the imposition of a penalty by the Board; or

(3) initiate an individual proceeding, pursuant to 140:3-3-4, against the chiropractic physician named in the complaint if the Board finds that there is reasonable cause to believe that said chiropractic physician has committed a violation and that such violation, if proven, is of such a nature as to warrant the imposition of a penalty by the Board.

(h) In the event the Board votes to issue a letter of concern in regard to a complaint, it shall thereupon be the duty of the Advisory Committee or investigator to provide the board sufficient details as to the nature of the complaint so as to assist the Board to render a meaningful letter of concern.

[OAR Docket #05-709; filed 4-22-05]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 10. LICENSURE OF CHIROPRACTIC PHYSICIANS

[OAR Docket #05-710]

RULEMAKING ACTION:
Permanent final adoption
RULES:
Subchapter 1. General Provisions
140:10-1-2. [AMENDED]
Subchapter 3. Application, Examination and Licensing
140:10-3-1. [AMENDED]
140:10-3-2. [AMENDED]
140:10-3-4. [AMENDED]
140:10-3-5. [AMENDED]
140:10-3-6. [AMENDED]
Subchapter 5. Procedures for Renewal Licenses
140:10-5-1. [AMENDED]
140:10-5-2. [AMENDED]
140:10-5-5. [AMENDED]
Subchapter 8. Administrative Fees [NEW]
140:10-8-1. [NEW]
AUTHORITY:
Board of Chiropractic Examiners; Title 59 O.S. § 161.6, 161.7, 161.8, 161.9, 161.10(a), and 161.11 of the Oklahoma Chiropractic Practice Act.
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The amendments to Chapter 10 include changes to the definitions to bring the code into compliance with the changes made during the 2004 Legislative session to Title 59 O.S. § 161.6, 161.7, 161.8, 161.9, 161.10(a), and 161.11 of the Oklahoma Chiropractic Practice Act.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

140:10-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise. In addition, the use of the masculine gender shall be deemed inclusive in this chapter to include the feminine gender.

"Accredited chiropractic college" means a chiropractic educational institution which is accredited by the Commission on Accreditation of the Council on Chiropractic Education, a national, independent accreditation body recognized and approved by the U.S. Department of Education.

"Act" means the Oklahoma Chiropractic Practice Act, 59 O.S. 1991, §§161.1 et seq.

"Advisory Committee" means the committee appointed by the Board to advise and assist the Board in the investigation of the qualifications for licensure, complaints as to the conduct of chiropractic physicians, and for such other matters as the Board delegates to them.

"Board" means the Board of Chiropractic Examiners.

"Chiropractic" means the science and art that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto.

"Chiropractic physician" or "licensee" means a person who holds an original license to practice chiropractic in this state.

~~**"Code of Ethics"** means the Oklahoma chiropractic Code of Ethics, Section 161.18 of the Act.~~

"Continuing education requirements" means attendance by a licensee at a minimum of ~~two (2) days~~ sixteen (16) hours of Chiropractic education seminars as required for a renewal license.

(A) Twelve (12) hours of the sixteen required by law must be clinical in nature, and the other remaining four (4) may consist of practice management, philosophy , and or other non-clinical topics.

(B) Twelve (12) hours of continuing education may be acquired out of state with first having obtained a pre-approval from the Board of Chiropractic Examiners.

(C) Four (4) hours of mandatory in state continuing education shall be acquired by attending continuing education offered by a registered, domestic Oklahoma association whose seminar has been approved by the Board of Chiropractic Examiners.

"Examination" means the process used by the Board, prior to the issuance of any original license, to test the qualifications and knowledge of an applicant on any or all of the following: current statutes, rules, or any of those subjects listed in Section 161.8 of the Act. ~~or knowledge of an applicant in the basic sciences and the science and art of chiropractic.~~

"Individual proceeding" means the formal process employed by the Board to provide a hearing for a licensee of the Board accused of a violation of the Act and in which the

Board may take action against such person's original license to practice chiropractic in this state.

"License renewal program" means a continuing education program which:

(A) is sponsored or administered by an ~~state chiropractic~~ association for the purpose of providing licensees an opportunity to satisfy continuing education requirements; and

(B) has been approved by the Board.

"Licensure" means the Board's process with respect to the grant, denial, renewal, revocation, or suspension of an original or renewal license.

"Original license" means a license which grants initial authorization to practice chiropractic in this state issued by the Board to an applicant found by the Board to meet the requirements for licensure of the Act:

(A) by examination pursuant to § 161.7 of the Act and 140:10-3-1 through 140:10-3-4; or

(B) by ~~reciprocity~~ relocation of practice pursuant to § 161.9 of the Act and 140:10-3-5.

~~"Reciprocity"~~"Relocation of practice" means the ability of an applicant to obtain Oklahoma ~~licensure of~~ who meets the following conditions:

(A) The applicant is of good moral character;

(B) The requirements for licensure in the state, country, territory or province in which the applicant is licensed are deemed by the Board to be equivalent to the requirements for obtaining an original license by examination in this state at the date of such license;

(C) The applicant has no disciplinary matters pending against him or her in any state, country, territory or province;

(D) The license being ~~reciprocated~~ relocation of practice was obtained by examination in the state, country, territory or province wherein it was issued, or was obtained by examination of the National Board of Chiropractic Examiners;

(E) The applicant passes ~~an oral interview and a practical~~ any examination ~~given~~ offered by the Board according to 140:10-3-1; and

(F) The applicant meets all other requirements of the Oklahoma Chiropractic Practice Act.

"Renewal license" means a license issued by the Board on or before the first day of January of each year to a licensee which authorizes the licensee to practice chiropractic in this state for the succeeding calendar year.

"Revocation" means the recalling, annulling or rendering inoperative of an original license or renewal license, or both, by the Board, after notice and an opportunity for a hearing in an individual proceeding.

SUBCHAPTER 3. APPLICATION, EXAMINATION AND LICENSING

140:10-3-1. Application for an original license by examination

(a) An application to the Board for an original license to practice chiropractic shall be made on forms created and approved by the Board and shall be signed and verified under oath by the applicant. The application shall include:

~~(1) an original, unretouched black and white photograph of the applicant, taken within six (6) months prior to the date of submission of the applicant, showing the applicant's head and shoulders, front view, which the photograph shall be approximately two inches (2"X 2") in size;~~

(1) A passport photo

(2) the affidavits of two (2) chiropractic physicians who are not related to or under financial obligation to the applicant and which state that the applicant is of good moral character;

(3) a copy of the applicant's high school diploma or transcripts, certified as being a true and correct copy;

(4) a copy of the applicant's pre-chiropractic college or university transcript or transcripts, certified:

(A) by an official of the issuing college or university as being true and correct; and

(B) by an official of the University of Oklahoma as containing at least ~~sixty (60)~~ ninety (90) hours of college credit accepted by the University of Oklahoma;

(5) a copy of the applicant's diploma from an accredited chiropractic college, certified by an official of the issuing college as being true and correct, except as provided in (b) of this Section;

(6) A money order, certified check or cashier's check payable to the Board in the amount of One Hundred Fifty Dollars ($150.00) as payment of the application fee. Such fee is not refundable under any circumstances.

(b) A senior student at an accredited chiropractic college may, prior to graduation, make application for an original license by examination. In such event, the application shall be accompanied by a statement on a form approved by the Board containing certification by an official of such college that the applicant is a senior at the college and is expected to graduate with in one (1) year from the date of the certificate. An original license shall not, however, be issued to such an applicant until the applicant has submitted to the Board a copy of the applicant's diploma from said accredited chiropractic college, certified as true and correct.

~~(c) An application and all accompanying documents must be complete and received by the Board no later than thirty (30) days prior to the date of the next scheduled examination in order to be eligible to take such examination.~~

(c) Applicants shall submit documentary evidence of completion of Parts I, II, III, IV and physiotherapy as administered by the National Board of Chiropractic Examiners with a passing score.

(d) An application and all accompanying documents must be completed and received by the Board no later than thirty (30) days prior to the date of the next scheduled examination in order to be eligible to take the examination.

(e) A fee of One Hundred Fifty Dollars ($150.00) as payment for the examination if approved by the Board of Chiropractic examiners. Such fee is not refundable under any circumstances.

140:10-3-2. Review of application

(a) Prior to each scheduled examination, the ~~Secretary-Treasurer~~ Executive Director shall report to the Board the number of completed applications received by the Board. Board members shall review each application for an original license by examination, determine if the applicant has satisfied all requirements of the Act and of this Title, and approve or disapprove each application.

(b) If an application is approved by the Board, the applicant shall be notified by the ~~Secretary-Treasurer~~ Executive Director of such approval and the time, date, and place of the next scheduled examination.

(c) If an application is disapproved by the Board, the applicant shall be notified by the ~~Secretary-Treasurer~~ Executive Director of the Board of such disapproval by the return of the application to him together with the reason therefore fully stated in writing.

(d) A fraudulent or false statement as to any material fact which is contained in any application for an original license, or the failure to provide any requested information, shall constitute sufficient cause for the disapproval of the application.

140:10-3-4. Content and conduct of examination; grading

~~(a) In order to test the qualifications and knowledge of an applicant, the examination administered by the Board shall cover those subjects prescribed in Section 161.8 of the Act. The examination shall include a written portion and a practical portion.~~

~~(b) An applicant shall forfeit his right to continue the examination if the applicant during the examination:~~

~~(1) uses a book, paper, or any other document to assist him;~~

~~(2) receives assistance of any nature from another applicant; or~~

~~(3) gives assistance of any nature to another applicant.~~

~~(c) The written portion of the examination shall:~~

~~(1) be administered by the Board in the English language; and~~

~~(2) be graded by individual members of the Board, or jointly, to the discretion of the Board.~~

~~(d) The practical portion of the examination shall be graded by the member or members of the Board which administered the same.~~

~~(e) A score of not less than sixty percent (60%) of a possible 100% on all subjects covered by the examination shall be required for an applicant to pass the examination, and with an average score of at least seventy-five percent (75%) overall. Provided, however, that the minimum score for the oral practical examination shall be seventy-five percent (75%).~~

(a) The Board of Chiropractic Examiners may administer an examination that shall include those technical, professional, and practical subjects that relate to the practice of chiropractic including, but not limited to; chiropractic principals, anatomy, histology, physiology, symptomatology, orthopedia, chemistry, spinography, diagnosis, sanitation and hygiene, pathology, public health service; and adjustology

(b) The Board may also examine each applicant in the art of chiropractic adjusting, x-ay,diagnostic laboratory procedures, physiological therapeutics and other subjects taught at an accredited chiropractic college

(c) The Board of Chiropractic Examiners may also administer the jurisprudence assessment examination to an applicant.

(d) A score of seventy-five percent (75%) or better is required to pass any examination administered by the Board.

140:10-3-5. Application for an original license by relocation of practice.

(a) An application to the Board for an original license by relocation of practice to practice chiropractic in this state shall be made on a form created and approved by the Board and the applicant may also be required to appear before the board for a personal interview, and shall be assessed a jurisprudence examination

(b) The Board may, in its discretion, refuse to grant an original license by relocation of practice to any applicant and may require the applicant to take the oral examination required by the Act.

(c) The application shall be signed and verified under oath by the applicant. The application shall include:

(1) A passport photo attached to the appropriate page of the application.

(2) the affidavits of two (2) chiropractic physicians who are not related to or underfinancial obligation to the applicant and which state that the applicant is of good moral character;

(3) a copy of the applicant's high school final transcripts or equivalent certified as being a true and correct copy;

(4) a copy of the applicant's pre-chiropractic college or university transcript or transcripts, certified:

(A) by an official of the issuing college or university as being true and correct; and

(B) by an official of the University of Oklahoma as containing at least ~~sixty (60)~~ ninety (90) hours of college credit accepted by the University of Oklahoma;

(5) a copy of the applicant's diploma from an accredited chiropractic college, certified by an official of the issuing college as being true and correct;

(6) Submit documentary evidence to the board that the applicant has been in active practice for five (5) years immediately preceding the date of application.

(7) a money order, certified check or cashier's check payable to the Board, in the amount of Three Hundred Dollars ($300.00), as payment of the application fee. Such fee is not refundable under any circumstances.

(d) Except as is otherwise approved in writing by the Board, an application and all accompanying documents must be completed as set forth in the Act and application.

(e) All documents accompanying an application for an original license by relocation of practice that are written in any language other than English shall be translated, at the expense of the applicant, into the English language and certified under seal of the proper consulate. The translation shall be submitted with the application.
(f) All applicant's must submit a certified copy of his/her birth certificate and/or naturalization papers if they were born any where other than the United States.
(g) The review of each application for an original license by relocation of practice shall be conducted by the Board, and notice of the approval or disapproval thereof shall be given by the ~~Secretary-Treasurer~~ Executive Director in the same manner as for an application for an original license by examination.
(h) A fraudulent or false statement as to any material fact, which is contained in any application for an original license by relocation of practice, or the failure to provide any requested information, shall constitute sufficient cause for the disapproval of the application.

140:10-3-6. Additional educational requirements; re-examination

(a) The Board shall not issue an original license, by examination or ~~reciprocity~~relocation of practice to an applicant until the applicant has completed all requirements of the Act and of this Title.
(b) If an applicant fails any part of any ~~the written, oral or practical portions of the~~ examination conducted or accepted by the Board three (3) times, the Board may, at its discretion, require proof of additional education or training in those subjects ~~filed~~failed by the applicant before the applicant is allowed to be re-examined.
(c) An applicant who fails any part of ~~the written, oral, or practical portions of the~~ any examination conducted or accepted by the Board may be required to retake all portions of the examination or only those parts which the applicant failed, at the discretion of the Board.
(d) No later than one (1) year after receiving a license to practice in Oklahoma, chiropractic physicians shall complete an orientation course of training approved by the Board. The orientation course hours shall count as continuing education credits for the year in which they were earned The course shall consist of no less than eight (8) hours of sexual boundaries, AIDS, and HIPPA compliance, and no less than eight (8) hours of office management procedures and new doctororientation.

SUBCHAPTER 5. PROCEDURES FOR RENEWAL LICENSE

140:10-5-1. Renewal license; requirements

(a) Except as provided in 140:10-5-4, related to senior inactive licenses, and 140:10-5-5 related to nonresident licenses, each licensee holding an original license to practice chiropractic in this state shall pay to the Board, on or before the first day of January of each year hereinafter, an annual renewal fee of ~~One Hundred Fifty Dollars ($150.00)~~ Two Hundred Twenty-Five Dollars ($225.00), which shall be accompanied by;

(1) Evidence that the licensee has satisfied Board approved chiropractic continuing education requirements; or
(2) A statement on a form created and approved by the Board, containing:
(A) An affidavit from the licensee which states:
(i) the licensee was unavoidably prevented from satisfying the continuing education requirements;
(ii) the reason or reasons therefore; and
(iii) that the licensee is not attempting to circumvent or abrogate the intent of such continuing education requirements; and
(B) the affidavits of two (2) licensed chiropractic physicians who personally know the licensee, vouch for the licensee's good standing in the chiropractic profession, and recommend that the licensee be issued a renewal license.

(b) The Board shall, upon receipt of the renewal license fee, and upon determination of compliance with the requirements of subsection A of Section 161.11 of the Act, issue a Chiropractic renewal license, which shall entitle the holder to practice chiropractic in this state during the succeeding calendar year.
(c) Attendance by a licensee at a license renewal program shall be certified by an officer of the sponsoring or administering ~~state chiropractic~~ association, which ~~the~~ officer shall have been previously approved by the Board for the purpose of providing such certification. The list of attendees from the continuing education seminar, shall be submitted no later than forty-five (45) days after the approved continuing education seminar. The list shall be submitted by the certified officer of the association, and sent to the Board after all signatures and/or time cards have been verified by the individual certified to report to the Board of Chiropractic Examiners on all seminar attendees. If there are any missing signatures and/or any other missing documentation the licensee will not be able to renew his/her license for the renewal year.
(d) Individuals who take the allowable twelve (12) hours of an approved out of state educational seminar shall be responsible for obtaining proof of attendance. The doctor shall submit proof of attendance with renewal application.
~~(e) Attendance by a licensee at a national chiropractic association meeting shall be certified by an officer of the national chiropractic association whose meeting the licensee attended.~~
(e) The Board of Chiropractic Examiners hereby recognizes the requirements adopted from time to time by the Federation of Chiropractic Licensing Boards Providers of Approved Continuing Education (FCLB PACE) as the requirements of the Board. The Board recognizes FCLB PACE Recognized Providers as satisfying the requirements of the Board for purposes of the licensure renewal process. The Board, however, reserves the approval authority for all programs based on furtherance of professional development and related areas, and in the interest of the public protection.

140:10-5-2. License renewal program approval

(a) Approval of programs to be offered to satisfy license renewal provisions of the Subchapter is vested solely in the Board. No program shall be offered, advertised or marketed ~~by an association~~ for the purpose of license renewal prior to being approved by the Board.

(b) It shall be the duty of the Board to review and consider for approval, during a meeting of the Board, every application from an~~y chiropractic~~ association, which desires to present a continuing chiropractic education program required for license renewal.

(c) The Board shall maintain a list of all ~~state chiropractic~~ associations that notify the Board of an intent to present a continuing chiropractic education program for license renewal. It shall be the duty of each association to inform the Board of any change of address or name.

(d) An~~y chiropractic~~ association may submit applications to present continuing chiropractic programs for license renewal. All applications to present continuing chiropractic program must be submitted at least ninety (90) calendar days prior to said education program being presented.

(e) The board shall create and approve a form to be used by an~~y chiropractic~~ association to apply for approval to present a continuing chiropractic education program. In order to be considered for approval, such form shall be completed by an ~~state chiropractic~~ association. An association shall submit a separate application for each program it wishes to present.

(f) The board in its discretion, may refer the application to the Advisory Committee or the Executive ~~Secretary~~ Director for review and/or information gathering.

~~(g) The Board shall conduct such meetings as are necessary before March 1 of each year to consider and approve or disapprove applications to present continuing chiropractic education programs. The Secretary-Treasurer shall cause thirty (30) days prior notice to be given to each state chiropractic association which makes application to present a program of the date, place and time of such meetings.~~

(g) No later than thirty (30) days after submission of the application the Board shall either approve or reject the application.

(h) During the meeting provided for in paragraph (b) ~~a (f)~~ of this Section, each ~~state chiropractic~~ association shall be given the opportunity to make an oral presentation of no more than fifteen (15) minutes for each application to provide the Board with any additional relevant information for such program. The board may request additional information regarding the application. ~~from an association in regard to the association's application.~~

(i) The board shall consider, among other relevant factors, the content of the program and the cost by a chiropractic physician to attend the program. The Board shall not approve programs which do not present a program of a chiropractic nature; provided no program shall be approved which is used primarily ~~or secondarily~~ as a sales promotion for the association which presents the program or any speaker who presents any part of a program or at which products or services related to the programs are offered for sale.

(j) At the conclusion of all presentations and during the same meeting, the board shall announce individually the approval or denial of the application to present a continuing chiropractic program. The Board shall state the specific reason or reasons for the denial of any application.

(k) All programs approved by the Board shall be open to all persons.

~~(l) Within thirty (30) days of completion of a continuing chiropractic education program, the chiropractic association which sponsored the program shall submit to the board a list of the names of each person who attended said program and the credit hours earned by each. Such list shall be certified by the chiropractic association which sponsored the program and be responsible for assuring that credit is awarded only to those who actually attended the program.~~

140:10-5-5. Renewal license for inactive licensees

(a) Any licensee who is a nonresident of this state and is not actively engaged in the practice of chiropractic ~~medicine~~ in this state may pay to the Board a reduced renewal license fee of ~~One Hundred Twenty-Five Dollars ($125.00)~~ One Hundred Seventy-five Dollars ($175.00). Such a licensee need not satisfy the other requirements of 140:10--1 and subsection A of Section 161.11 of the Act.

(b) A licensee seeking a renewal license under the provisions of this Section shall attach to the renewal form a statement on a form created and approved by the Board containing:

(1) an affidavit by the inactive licensee of this state:

~~(A) that the applicant is a inactive of this state;~~

(A~~B~~) that the applicant is not actively engaged in the practice of chiropractic in this state; and

(B~~C~~) that the applicant will not engage in the practice of chiropractic in this state during the succeeding calendar year; and

(2) certification that said licensee has satisfied the licensee renewal requirements in the state, country, territory or providence in which the licensee is currently engaged in the practice of chiropractic.

SUBCHAPTER 8. ADMINISTRATIVE FEES

140:10-8-1. Fees

Fee schedule

(1) Examination. The following fees shall be assessed for licensure and examination of Chiropractors:

(A) Original license: $150.00

(B) Relocation of Practice: $150.00

(C) Examination Fee: $150.00

(2) Licensure. The following fees shall be assessed for licensure of Chiropractors:

(A) Renewal fee active license $225.00

(B) Renewal fee inactive license $175.00

(C) Retired license fee $50.00

(D) Reinstatement fee not exceed $400.00

(E) Penalty fee for late renewal $100.00

(3) Duplication or modification of license. A fee of $65.00 shall be assessed for duplication or modification of original license.

(4) Miscellaneous fees: the following fees shall be assessed by the Board:

(A) Letter of good standing and/or verifications for other licensing Boards with seal: $20.00

(B) Verification of licensure: $2.00 per license

(C) Duplication of proof of license renewal: $5.00

(D) Duplication of Public Records: per page: $0.25

(E) Returned check processing fee: $20.00

(F) Duplication of certificates issued by the Board: $20.00

(G) Directory $10.00 hard copy and/or diskette

(H) Search fee for records requested for commercial purposes: $30.00

[OAR Docket #05-710; filed 4-22-05]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 15. SPECIAL CERTIFICATES AND MISCELLANEOUS PROVISIONS

[OAR Docket #05-711]

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Subchapter 1. General Provisions
140:15-1-1. [AMENDED]
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Subchapter 3. Certificates for Chiropractic Claims Consultants
140:15-3-1. [REVOKED]
140:15-3-2. [REVOKED]
Subchapter 5. Certificates for Injectables
140:15-5-2. [AMENDED]
140:15-5-3. [NEW]
Subchapter 7. Safety and Public Welfare Provisions
140:15-7-5. [NEW]
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The amendments and revocations to Chapter 15 include changes to the definitions, revocation of the section regarding claims consultants since there was no statutory authority for the certification of claims consultants according to the Board's Assistant Attorney General liaison, amendments to the section regarding injectables to include new language that clarified requirements for this certification issued by the Board, and promulgation of the code of ethics that were removed during the 2004 Legislative session and set forth in statute as a requirement that the Board promulgate into rules in Title 59 O.S. § 161.6.
CONTACT PERSON:
Beth Kelly, Executive Director, Oklahoma Board of Chiropractic Examiners, 201 N.E. 38th, Terrace, Suite 3, Oklahoma City, Oklahoma 73105, (405) 524-6223

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

140:15-1-1. Purpose

The purpose of this Chapter is to:

~~(1) Establish a registration system and standards for the education and training of chiropractic physicians who engage in the business of issuing professional opinions on the prognosis or treatment of another chiropractic physician's patient;~~

(1~~2~~) Establish a certification system and standards for the education and training ofchiropractic physicians who desire to administer injectable vitamins, minerals ornutritional supplements; and

(2)~~(3)~~Establish various requirements and prohibitions related to the practice ofchiropractic found by the Board to be in the best interest of the health, safety and welfare of the public.

140:15-1-2. Definitions

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

"Act" means the Oklahoma Chiropractic Practice Act, 59 O.S. 1991, §§161.1 et seq.

"Board" means the Board of Chiropractic Examiners.

~~**"Chiropractic claims consultant"** means a licensee who holds a current certificate issued by the Board which authorizes such licensee to engage in the business of issuing professional opinions on the condition, prognosis or treatment of another chiropractic physician's patient.~~

"Chiropractic physician" or **"licensee"** means a person who holds an original license to practice chiropractic in this state.

SUBCHAPTER 3. CERTIFICATES FOR CHIROPRACTIC CLAIMS CONSULTANTS [REVOKED]

140:15-3-1. Certain acts prohibited; exceptions [REVOKED]

~~(a) Effective January 1, 1994, no chiropractic physician shall engage in the business of issuing professional opinion on the condition, prognosis or treatment of another chiropractic physician's patient unless he has registered with the Board, pursuant to 140:15-3-2, and holds a certificate from the Board which authorizes him to act as a chiropractic claims consultant.~~

~~(b) This Section shall not apply to a chiropractic physician while he is active or serving as an expert witness in a court of this state or another state, or in a court of the United States.~~

~~(c) This Subchapter shall not be interpreted to prohibit consensual consultations between chiropractic physicians.~~

140:15-3-2. Registration with the Board; certificate [REVOKED]

~~(a) A chiropractic physician who desires to act as a chiropractic claims consultant shall register with the Board on a form prescribed by the Board and signed by said chiropractic physician.~~

~~(b) Upon receipt of the registration form, the Board shall issue a certificate to said licensee which shall entitle the holder to act as a chiropractic claims consultant in this state.~~

SUBCHAPTER 5. CERTIFICATES FOR INJECTABLES

140:15-5-2. Application for certificate; educational requirements

Any chiropractic physician who desires to administer vitamins, minerals or nutritional supplements by means of injectable procedures shall make application, on a form prescribed by the Board, for a certificate for such purpose. Each such chiropractic physician shall submit to the Board documentary evidence of satisfactory completion of at least twenty-four (24) ~~twelve (12)~~ hours of education and training in administration and use of such injectables. Such education and training shall be obtained at an educational program which has been approved by the Board and meets the following criteria: the program.

(1) is conducted under the auspices of and taught by the post graduate faculty of a chiropractic college fully accredited by the Council on Continuing Education;

(2) consist of a minimum of twenty-four (24) hours;

(3) requires completion of a certification examination given by a board independent of the entity which taught the course; and

(4) meets such other criteria as the Board deems appropriate.

140:15-5-3. Education and training

Approval of education and training in administration of vitamins, minerals, nutritional supplements by means of injectable procedures offered to satisfy the provisions of 140:15-5-1 and 140:15-5-2 is vested solely in the Board. No educational program shall be offered, advertised or marketed for the purpose of certification prior to being approved by the Board. At least ninety (90) calendar days prior to offering any education and training program, the individual or group offering said program shall submit to the Board for approval;

(1) An application to provide education and training in administration of vitamins, minerals or nutritional supplements by means of injectable procedures;

(2) The course outline and course description of such program;

(3) The faculty name(s) and credentials

(4) A complete set of course materials and examination; and

(5) Fees and or costs to each participant

SUBCHAPTER 7. SAFETY AND PUBLIC WELFARE PROVISIONS

140:15-7-5. Code of Ethics

There is hereby created the "Oklahoma Chiropractic Code of Ethics". This Code of Ethics is based upon the fundamental principle that the ultimate end and objective of the chiropractic physician's professional services and effort should be: "The greatest good for the patient."

(1) Chiropractic physicians shall attend their patients as often as they consider necessary to ensure the well-being of their patients, but should avoid unnecessary treatments;

(2) Having once undertaken to serve a patient, chiropractic physicians shall not neglect the patient. Chiropractic physicians shall not terminate their professional services to patients without taking reasonable steps to protect such patients, including due notice to them allowing sufficient time for obtaining professional services of others, delivering to their patients all papers and documents in compliance with paragraph 3 of this subsection;

(3) Chiropractic physicians shall comply with a patient's authorization to provide records, or copies of such records, to those persons whom the patient designates as authorized to inspect or receive all or part of such records. A reasonable charge may be made for the cost of copying records. Unpaid charges incurred by the patient are not grounds for refusal to release records.

(4) Subject to paragraph 3 of this subsection, chiropractic physicians should preserve and protect the patient's confidences and records, except as the patient directs or consents, or if the law requires otherwise. They should not discuss a patient's history, symptoms, diagnosis, or treatment with a lawyer until they have received the informed consent of the patient or the patient's personal representative. They should avoid exploiting the trust and dependency of their patients;

(5) Chiropractic physicians shall maintain the highest standards of professional and personal conduct and shall refrain from all illegal or morally reprehensible conduct;
(6) Chiropractic physicians shall assure that the patient possesses enough information to enable an intelligent choice in regard to proposed chiropractic treatment. The patient shall make his or her own determination on such treatment;
(7) Chiropractic physicians shall observe the appropriate laws, decisions and rules of state governmental agencies of the United States and the State of Oklahoma and cooperate with the pertinent activities.
(8) Chiropractic physicians may advertise but shall exercise utmost care that such advertising is relevant to the selection of a chiropractic physician, is accurate, truthful, not misleading, false or deceptive, and is scrupulously correct in representing the chiropractic physician's professional status and area of special competence. Communications to the public shall not appeal primarily to an individual's anxiety or create unjustified expectations of results. Chiropractic physicians shall conform to all applicable state laws, rules and judicial decisions in connection with professional advertising;
(9) Chiropractic physicians may testify either as experts or when their patients are involved in court cases, workers' compensation proceedings or in other similar proceedings in personal injury or related cases.
(10) The chiropractic profession shall address itself to improvements in licensing procedures consistent with the development of the profession and of relevant advances in science;
(11) Chiropractic physicians who are public officers part time or full time, shall not engage in activities which are, or may be perceived to be, in conflict with their official duties;
(12) Chiropractic physicians shall not commit fraud, misrepresentation, or deception which includes, but is not limited to:
(A) Practicing or attempting to practice e chiropractic under false or assumed name;
(B) Aiding, assisting, or advising another in the unlicensed practice of chiropractic;
(C) Fraud or deceit in obtaining or renewing a license to practice chiropractic;
(D) Making false or misleading statements or withholding relevant information regarding the qualifications of any individual in order to attempt to obtain a license or engage in the practice of chiropractic;
(E) Failing to report past, present, or pending disciplinary action by another licensing board or the current status of the final administrative disposition of a matter. A licensee is required to report any compromise or settlement of disciplinary action, whether voluntary or involuntary, which results in encumbrance of licensure;
(F) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so. Such reports or records shall include only those which are signed by the licensee in his/her capacity as a licensed chiropractic physician;.
(G) Submitting to any patient, insurer or third-party payor a claim for a service or treatment which was not actually provided to a patient.
(13) Chiropractic physicians shall not violate any lawful order of the Board previously entered in a disciplinary hearing or fail to comply with a lawfully issued subpoena of the Board.
(14) Chiropractic physicians shall not make statements which in any way reflect against a fellow licensee including statements which imply superiority over another licensee.

[OAR Docket #05-711; filed 4-22-05]

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

[OAR Docket #05-630]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 1. Quality Jobs Program
150:65-1-2. [AMENDED]
150:65-1-3. [AMENDED]
150:65-1-4. [AMENDED]
150:65-1-5. [AMENDED]
150:65-1-6. [AMENDED]
150:65-1-7. [AMENDED]
150:65-1-8. [AMENDED]
150:65-1-9. [AMENDED]
150:65-1-10. [AMENDED]
150:65-1-11. [AMENDED]
150:65-1-12. [AMENDED]
150:65-1-13. [AMENDED]
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The amendments provide clarification to applicants to the Quality Jobs Program.
CONTACT PERSON:
Donald R. Hackler, Jr. (405) 815-5359

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 1. QUALITY JOBS PROGRAM

150:65-1-2. Definitions

For purposes of this chapter, the following words and terms shall have the following meaning unless the context clearly indicates otherwise.

"Baseline employment" means an establishment's total number of jobs which existed in this state prior to approval of the establishment's application by the Oklahoma Department of Commerce. A job shall be deemed to exist in this state prior to approval of an establishment's application if the activities and functions for which the particular job exists have been ongoing at anytime within six months prior to approval of the establishment. Upon approval of an application or upon the start date of a project if it is more than sixty days later than the approval date, the Department shall determine an establishment's baseline employment to be its current employment or its average employment over the last four quarters. ~~whichever is greater~~.

"Combination" means an establishment, provided it meets the requirements of 68 O.S. Supp. 1994, Section 3601 et seq. and the requirements set out in 150:65-1-13 of this chapter.

"Cost-benefit analysis" means the analysis the Oklahoma Department of Commerce is required to perform to determine the estimated direct state benefits and estimated direct state costs.

"Date of determination" means the date assigned by the Department on the Incentive Offer on which a subunit and the entity of which the subunit is a part, must demonstrate a net increase in total employment in accordance with 150:65-1-12 (b) and (c) of this chapter.

"Employment of the remainder of the entity of which the subunit is a part" means total number of jobs of an entity of which the subunit is a part which existed in this state prior to approval of the subunit as an establishment by the Oklahoma Department of Commerce. Such jobs shall be deemed to exist in this state prior to approval of a subunit as an establishment if the activities and functions for which the particular job exists have been ongoing at any time within six months prior to approval of the subunit as an establishment. Upon approval of an application or upon the start date of a project of a subunit as an establishment, if it is more than sixty days later than the approval date, the Department shall determine the employment of the remainder of the entity of which the subunit is a part to be its current employment or its average employment over the last four quarters, whichever is greater.

"Entity of which the subunit is a part" means the business or governmental entity of which a subunit is a separate part as described in 68 O.S. Supp. 1994, Section 3603(8)(a) and 150:65-1-12 of this chapter.

"Estimated direct state benefits" *means the tax revenues projected...to accrue to the state as a result of new direct jobs.*[68:3603(A)(4)] Such revenues shall include:

(A) State income tax receipts from employees holding new direct jobs. The Oklahoma Department of Commerce will determine the estimated direct state benefit from personal income tax receipts by reviewing:

(i) historical data on similar or existing projects;

(ii) information provided by the establishment;

(iii) data from federal agencies such United States Bureau of the Census and the United States Department of Labor;

(iv) the most recent historical data from the Oklahoma Tax Commission on average personal tax rates by income class; and,

(v) private sector financial reports; and

(B) State sales and use tax receipts, excise tax receipts, gasoline tax receipts and other anticipated tax receipts resulting from purchases by employees holding new direct jobs. The Department will determine the estimated direct state benefit from such taxes by reviewing:

(i) information supplied by the establishment;

(ii) data from federal agencies such as the United States Department of Labor;

(iii) Oklahoma Tax Commission sales and use tax reports; and,

(iv) private sector financial reports.

"Estimated direct state costs" means the costs projected to accrue to the state as a result of new direct jobs employing new state residents and/or new state service beneficiaries. Such costs shall include:

(A) The costs of educating new state resident children. The Oklahoma Department of Commerce will determine the estimated direct state costs of such educations by using:

(i) information supplied by the establishment;

(ii) the most recent average student allocation per pupil formula provided by the Oklahoma Department of Education; and,

(iii) United States Department of Labor statistics;

(B) The costs of government services such as public health, public safety and transportation provided to new residents and/or state service beneficiaries. The Department will determine the estimated direct state costs for such government costs by examining

the state's per capita cost of providing non-common education services and estimating the amount of the state's excess capacity; and

(C) The costs of any industrial access road paid for with state funds and provided by the Oklahoma Department of Transportation; provided, the road is clearly from the facility to the thoroughfare and is clearly and primarily utilized by the establishment.

"Estimated net direct state benefits" *means the estimated direct state benefits less the estimated direct state costs.* [68:3603(A)(5)]

"Full-time equivalent employment" means employment which has a minimum six-month duration during any twelve-month time period, regardless whether the same employee holds the employment for said time.

"Line of business" means the SIC code that is reflected by the end product or services of a given project resulting in new direct jobs.

"Net benefit rate" *means the estimated net direct state benefits computed as a percentage of gross payroll... [T]he net benefit rate may be variable and shall not exceed five percent (5%).* [68:3603(A)(6)]

"New direct jobs" means full-time equivalent employment by a qualified establishment but does not include jobs which constitute an establishment's baseline employment as determined by the Oklahoma Department of Commerce pursuant to the definitions of this section. An establishment must maintain a total number of jobs equal to its baseline employment number before any job of the establishment shall be considered a new direct job.

"Quality jobs representative" means an Oklahoma Department of Commerce professional or economic development professional, trained in the Oklahoma Quality Jobs Program, who is so designated by the Executive Director, and whose responsibilities in the program include direct contact with applicants and clients, analysis of data, initiation of project proposals, preparation of project profiles and preparation of incentive offers.

"Subunit" means an establishment, provided it meets all requirements of 68 O.S. Supp. 1994, Section 3601 et seq. and the requirements set out in 150:65-1-12 of this chapter.

150:65-1-12. Subunit

(a) In order to determine the presence or to project the likelihood in a timely manner, of all the conditions that the Oklahoma Department of Commerce must require a subunit to meet in order to be determined to be an establishment under the terms of the Quality Jobs Program Act as set forth in 68 O.S. Supp. 1994, Section 3603(8)(a), the Department may consider the following:

(1) All information and conditions to determine if an entity is qualified to be an establishment pursuant to 68 O.S. Supp. 1994, Sections 3601 et seq. and 150:65-1-3 through 150:65-1-9 of this chapter;

(2) Unique or new product line within the state;

(3) New business ventures;

(4) Technologies involved and state of the art;

(5) Distribution channels;

(6) Licenses held;

(7) Financing and tax structure;

(8) Local control of operations decisions;

(9) Autonomous administrative control over capital, expenditures and hiring;

(10) Other data of management practices or of a background or financial nature requested by the Department.

(b) *The Department shall establish criteria for determining the period of time within which* [job] *gain must be demonstrated.* [68:3603(8)(b)].

(1) The Department shall assign the date of determination on which an individual subunit and the entity of which it is a part must demonstrate net gain in total employment.

(2) In order for the subunit to continue to receive incentive payments beyond the date of determination, net gain in total employment must be realized at the date of determination. If no net gain exists, the subunit is disqualified as an establishment and incentive payments cease and shall not be resumed.

(3) If net gain exists at the date of determination, incentive payments shall be paid upon claim presentment as long as conditions for payments are met ~~and as long as a net gain in total employment is documented at the time of claim~~. ~~If net gain is not documented, incentive payments shall not be made and shall not be resumed until such time as the documentation submitted with a claim reflects a net gain in total employment.~~ In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits.

(4) The Department shall set out the date of determination on the approval transmitted to the Oklahoma Tax Commission.

(5) Additionally, the Department shall identify the entity of which the subunit is a part by name and nature of establishment, whatever legal form and include any necessary description of the structure of the entity of which the subunit is a part.

(6) In determining the date of determination to be assigned to an individual subunit, the Department ~~shall~~ may require a plan to be submitted by the subunit and by the remainder of the entity of which the subunit is a part which includes information consisting of:

(A) employment forecasts for the ten years it is anticipated the subunit will receive incentive payments, for both the subunit and the remainder of the entity of which it is a part;

(B) baseline of subunit;

(C) employment of the remainder of the entity of which the subunit is a part;

(D) business decisions of the entity of which the subunit is a part such as merger, downsizing, relocation of working units, etc., and explanations or analyses of trends or strategies of the entity reflected by the decisions;

(E) effect on Oklahoma operations of such trends and strategies and discussion of less than positive net gain in employment, if applicable;

(F) recommendation of a date of determination;

(G) and, such other similar information as the Department determines is necessary to set a date of determination.

(7) Provided, the date of determination shall not extend beyond five years from the date of approval or date of project start-up, whichever is later;

(8) The plan submitted and all information considered by the Department in determining whether a subunit is an establishment shall be the criteria to set the date of determination.

(c) *The Department of Commerce shall promulgate rules to determine whether a subunit of an entity [*and the remainder of the entity of which it is a part*] achieve a net gain in total employment...and a method for determining net gain in total employment. [68:3303(8)(b)].* The method to determine whether or not a subunit, and the remainder of the entity of which the subunit is a part, achieve net gain in total employment follows:

(1) Add the baseline of the subunit and the employment of the remainder of the entity of which the subunit is a part.

(2) Add the employment numbers as reflected by the quarterly or monthly report to the Oklahoma Tax Commission for the period immediately preceding the date of determination of the subunit and the remainder of the entity of which it is a part.

(3) The sum of the latter, (paragraph (2) of this subsection) must exceed the sum of the former, (paragraph) (1) of this subsection, by at least one, for a net gain in total employment to exist.

(d) Signatories for the incentive offer shall be officers of the entity of which the subunit is a part and the local chief operating officer or employee of the subunit.

150:65-1-13. Combination

(a) *Combination means combination of corporations which have a central parent corporation which makes corporate management decisions such as those involving consolidation, acquisition, merger or expansion. [68:3603(A) (8) (a)].* Such combinations shall include:

(1) Subsidiary controlled group. One or more chains of corporations connected through stock ownership by a common corporation if:

(A) Stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common corporation, is owned by one or more of the other corporations; and

(B) The common corporation owns stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(2) Brother-sister controlled group. Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts owns stock possessing:

(A) At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and

(B) More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation taking into account the stock ownership of each person only to the extent such stock ownership is identical with respect to each such corporation.

(3) Combined group. Three or more corporations each of which is a member of a group of corporations described in (1) and (2) of this subsection and one of which:

(A) Is a common corporation included in a group of corporations described in (1) of this subsection and also

(B) Is included in a group of corporations described in (2) of this subsection.

(b) The corporations may combine payrolls to reach the payroll threshold for new direct jobs necessary to qualify as an establishment. All corporations in the combination must qualify as a basic industry, individually unless the ad valorem division of the ~~Oklahoma Tax~~ Commission has determined a group or combination of corporations is a vertically integrated or "closed loop" of manufacturers or processors together with all operations used in or necessarily incident to the conduct of the manufacturing activity (See O.A.C. 710:10-7-8 and OTC Order 91-04-26-005). In that event, the Department shall recognize all such corporations as eligible to be in the combination.

(c) A corporation that is part of any combination presently a participant in the Quality Jobs Program may not be a member of any other combination except that a corporation may reapply in combination only with one or more of the corporations it is presently joined with as a participant in the Quality Jobs Program. An individual corporation in a combination may reapply in accordance with rule 150:65-1-11.

(d) The Department ~~of Commerce~~ may qualify other combinations based on control and ownership factors on a case-by-case basis that are similar to and in keeping with this section.

(e) If the nature of the establishment's description of way of doing business, description of internal policies or practices, or other such factors so indicate, and in order to avoid job-shifting, likelihood of failure to meet threshold payroll requirements timely, or other similar concerns, the Department may require an applicant to apply in combination if it could so qualify under this section.

(f) The Department may require deletion or addition of entities regarding each combination depending upon lines of business and relationships and status as a basic industry.

(g) Signatories for the incentive ~~offer~~ contract for a combination shall be officers of the common corporation or at least three owners of stock as required in (2) of subsection (a) of this section or both, if applicable.

(h) When dealing with qualifying a combination, the entire corporation shall be included. No subunits or auxiliaries may be excluded.

[OAR Docket #05-630; filed 4-14-05]

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

[OAR Docket #05-631]

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150:100-1-1. [NEW]
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The amendments provide clarification to applicants to the Community Expansion of Nutrition Assistance program.
CONTACT PERSON:
Donald R. Hackler, Jr. (405) 815-5359

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

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.

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 #05-631; filed 4-14-05]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 105. OKLAHOMA LOCAL DEVELOPMENT AND ENTERPRISE ZONE INCENTIVE LEVERAGE ACT

[OAR Docket #05-632]

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Oklahoma Local Development and Enterprise Zone Incentive Leverage Act 62 O.S. §§ 840 847.
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These new rules provide clarification to applicants to the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act.
CONTACT PERSON:
Donald R. Hackler, Jr. (405) 815-5359

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

150:105-1-1. Purpose and scope

The purpose of these rules is to implement the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act program at the Oklahoma Department of Commerce.

150:105-1-2. 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.

"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.

"District" *means either an incentive district as authorized by Section 860 of this title or an increment district as authorized by Section 861 of this title. A district may consist of all or a portion of a project area.* [62 O.S. § 853(4)]

"Enterprise" *means any form of business organization including, but not limited to, any partnership, sole proprietorship, corporation, limited liability company or other legally constituted business entity.*[62 O.S. § 841(1)]

"Enterprise zone" *means:*

(A) *a county which:*

(i) *has experienced a decrease in population during the ten-year period preceding the date as of which an establishment either enters into a commitment to locate or announces a plan to locate within an enterprise zone or expands activity within an existing enterprise zone as determined by the Oklahoma Department of Commerce, or*

(ii) *has been determined to rank in the lowest one-third (1/3) of all counties, which for purposes of this division shall be computed as the lowest*

twenty-five (25) counties, for per capita personal income as measured by the Bureau of Economic Analysis for the Oklahoma region for the calendar year preceding the beginning of the fiscal year for which an application is made pursuant to Section 690.3 of this title,

(B) *an area within or contiguous to the corporate limits of any city or town of this state which the Oklahoma Department of Commerce determines, upon application, as an area of economic distress. For purposes of this subparagraph, an area within or contiguous to the corporate limits of a city or town may be determined to be an area of economic distress if it consists of one or more census tracts located within a city or town or contiguous to a city or town. The area as defined by this subparagraph must:*

(i) *contain a population of persons equal to or greater than thirty percent (30%) of the total population the household income for whom is equal to or less than the poverty level as measured by the U.S. Census Bureau for the Oklahoma region for the most recent year for which data is available prior to the date an application is made pursuant to Section 690.3 of this title, or*

(ii) *contain a population of persons the per capita gross income for whom is fifteen percent (15%) or more below the state per capita income,*

(C) *an area designated as a federal enterprise community as provided by Section 690.3 of this title, or*

(D) *any enterprise zone designated by the Oklahoma Department of Commerce prior to July 1, 2000;* [62 O.S. § 690.2(5)]

"Estimated direct state benefits" *is defined as the incremental state tax revenues estimated by the Oklahoma Department of Commerce to accrue to the state from new sales and/or investments originating outside the state borders during the period of apportionment of local sales taxes, as a result of the project or projects described in the related project plan.*

(A) *In projecting such benefits, the Oklahoma Department of Commerce shall consider, if practicable, whether or not the project plan involves an enterprise:*

(i) *relocating from within the state,*

(ii) *subject to or in the process of recruitment by two or more governmental entities within the state, or*

(iii) *which will be in direct competition with an existing enterprise located in the state.* [62 O.S. § 841(3)]

(B) The Department may also look to the following information to assist the Department to determine the estimated direct state benefit:

(i) The Department may review the following related to the project:

(I) historical data on similar or existing projects;

(II) information provided in the application;

(III) data from federal agencies such United States Bureau of the Census and the United States Department of Labor;

(IV) the most recent historical data from the Oklahoma Tax Commission on average personal tax rates by income class; and,

(V) private sector financial reports.

(ii) The Department may review the following related to the estimated tax benefit:

(I) information supplied in the application;

(II) data from federal agencies such as the United States Department of Labor;

(III) Oklahoma Tax Commission sales and use tax reports; and,

(IV) private sector financial reports.

"Estimated direct state costs" *means the costs projected by the Oklahoma Department of Commerce to be incurred by the state during the period of apportionment of local sales taxes, as a result of the project or projects described in the related project plan.* [62 O.S. § 841(4)] The Department may also look to the following information to assist the Department to determine the estimated direct state cost:

(A) The costs of educating new state resident children. The Department may determine the estimated direct state costs of such educations by using:

(i) information supplied in the application;

(ii) the most recent average student allocation per pupil formula provided by the Oklahoma Department of Education; and,

(iii) United States Department of Labor statistics.

(B) The costs of government services such as public health, public safety and transportation provided to new residents and/or state service beneficiaries. The Department may determine the estimated direct state costs for such government costs by examining the state's per capita cost of providing non-common education services and estimating the amount of the state's excess capacity; and

(C) The costs of any industrial access road paid for with state funds and provided by the Oklahoma Department of Transportation; provided, the road is clearly from the facility to the thoroughfare and is clearly and primarily utilized by the project.

"Estimated net direct state benefits" *means the estimated direct state benefits less the estimated direct state costs.* [62 O.S. § 841(5)]

"Facility" *means an enterprise's place of business in an enterprise zone, including land, buildings, machinery, equipment and other materials, except inventory used in business. Except as provided by subsection B of Section 11 of this act, "facility" does not include an establishment used primarily for making retail sales* [62 O.S. § 690.2(8)].

"Governing body" *means the governing board of a local governmental entity in the case of a single incentive district or increment district when the boundaries of the district are coextensive with or contained within the jurisdiction of any such*

single local governmental entity or the governing boards of a combination of counties, cities, or towns forming an incentive district or an increment district pursuant to the provisions of the Local Development Act. [62 O.S. § 841(7)]

"Incentive district" *means an area created pursuant to the provisions of the Local Development Act, including Section 856 of Title 62 of the Oklahoma Statutes.* [62 O.S. § 841(8)]

"Increment" *means that portion of ad valorem taxes in excess of the amount of that portion of the taxes which are produced by the levy at the rate fixed each year by or for each such ad valorem taxing entity upon the base assessed value of the district or as to an area later added to the district, the effective date of the modification of the plan, or that portion of sales taxes, other local taxes or local fees collected each year reasonably determined by a formula approved by the governing body to be generated by the project, which may be apportioned for specific project costs or as a specific revenue source for other public entities in the area in which the project costs take place.* [62 O.S. § 853(9)]

"Increment district" *means an area created pursuant to the provisions of the Local Development Act.* [62 O.S. § 841(9)]

"Local Development Act" is set forth at 62 O.S. §§ 850 - 869.

"Local governmental entity" *means a county, city or town forming an incentive district or an increment district pursuant to the provisions of the Local Development Act.* [62 O.S. § 841(10)]

"Net benefit rate" *means the estimated net direct state benefits computed as a percentage of gross taxable sales derived from the project during the period of apportionment of local sales taxes by the local governmental entity.* [62 O.S. § 841 (11)]

"Net leasable space" means any area of a building, structure, enclosure, or any other facility that can be leased for any lawful purpose or purposes.

"Project" *means all development activities pursuant to the objectives of the project plan.* [62 O.S. § 853(12)]

"Project area" *means the geographic boundaries within which development activities will occur. The project area may be coextensive or larger than the increment district.* [62 O.S. § 853(13)]

"Project costs" *means the expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred which are listed in the project plan as costs of and incidental to planning, approval and implementation of the project plan. Any income, special assessments, or other revenues received, or reasonably expected to be received, by the city, town or county in connection with the implementation of the project plan may be used to pay project costs. Project costs include, but are not limited to:*

(A) *capital costs, including the actual costs of the acquisition and construction of public works, public improvements, new public or private buildings, structures, and fixtures; the actual costs of the acquisition, demolition, alteration, remodeling, repair, or reconstruction of existing public or private buildings, structures, and fixtures; and the actual costs of the acquisition of land and equipment for public works, public improvements and public buildings and the actual costs of clearing and grading of such land and environmental remediation related thereto,*

(B) *financing costs, including interest paid to holders of evidences of indebtedness or other obligations issued to pay for project costs and premium paid over the principal amount of the obligations because of the redemption of the obligations before maturity,*

(C) *real property assembly costs, including clearance and preparation costs,*

(D) *professional service costs, including those incurred for architectural, planning, engineering, legal and financial advice and services,*

(E) *direct administrative costs, including reasonable charges for the time spent by employees of the city, town or county in connection with the implementation of a project plan or employees of private entities under contract with a public entity for project planning or implementation,*

(F) *organizational costs, including the costs of conducting environmental impact studies or other impact studies, the cost of publicizing the consideration of the project plan, costs incidental to creation of the district, and the cost of implementing the project plan for the district,*

(G) *interest, before and during construction and for two (2) years after completion of construction, whether or not capitalized,*

(H) *fees for bond guarantees, letters of credit and bond insurance,*

(I) *the amount of any contributions offset made in connection with the implementation of the project plan,*

(J) *the costs for determining or redetermining the base assessed value of a district,*

(K) *costs of construction of public works or improvements, including but not limited to highways, roads, streets, bridges, sewers, traffic control systems and devices, telecommunications systems, parks, water distribution and supply systems, curbing, sidewalks and any similar public improvements, common utility or service facilities, landscaping, parking, and water detention/retention systems,*

(L) *all or a portion of another taxing jurisdiction's capital costs resulting from the development or redevelopment project necessarily incurred or to be incurred in furtherance of the objectives of the plan and project, to the extent the governing body by written agreement accepts and approves such costs,*

(M) *relocation costs to the extent that a governing body determines that relocation costs shall be paid or are required to be paid by federal or state law,*

(N) *all costs incurred in the maintenance, management, marketing and other services provided through*

an active Main Street Program recognized as such by the Oklahoma Department of Commerce, and

(O) *assistance in development financing to the extent the governing body approves such financing.* [62 O.S. § 853(14)]

"Project plan" *means the approved plans of a city, town or county which may include a designated district or districts under this act in conformance with its comprehensive plan, which is intended by the payment of costs through apportionment of the increment or by the granting of incentives or exemptions to reduce or eliminate those conditions, the existence of which qualified the district, and to thereby enhance private investment of the tax bases of the taxing entities which extend into the district. Project plans may be a part of and incorporate existing neighborhood, renewal, economic development, public school and other such plans. Each project plan shall conform to the requirements specified by this act.* [62 O.S. § 853(15)]

"Public entity" *means any city, town, county, board, commission, authority, district, urban renewal authority or public trust.* [62 O.S. § 853(16)]

"Retail leasable space" means space intended for retail purposes and shall include, but not be limited to, points of sales, aisles, display areas, storage and warehouse space to support the retail purposes.

"Retail purposes" shall mean and include any transfer for a valuable consideration made in the ordinary course of trade or in the usual prosecution of the seller's business of title to tangible personal property to the purchaser for consumption or use other than resale or further processing or manufacturing. Also those businesses represented by NAICS Codes 441-454390, and 722-722410. *As used in this subsection, "retail establishment" shall not include an establishment that provides lodging, including but not limited to a hotel, apartment hotel, public rooming house or motel.[62 O.S. § 860(B).* Retail purposes and retail establishment shall be considered to be synonymous terms.

"State local enterprise matching payment" *means the payment authorized by subsection A of Section 844 of Title 62 of the Oklahoma Statutes.* [62 O.S. § 841(13)]

"State local government matching payment" *means the payment authorized by subsection D of Section 844 of Title 62 of the Oklahoma Statutes.* [62 O.S. § 841(14)]

150:105-1-3. Application Process

(a) For the purpose of evaluating the applications, the Department will require all units of local governmental interested in the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act to submit an application in a form prescribed by departmental guidelines as provided in the application packet. All applications will be required to contain sufficient information to permit the Department to comprehensively review the project proposal.

(1) The Department will make available upon request application forms and application guidelines.

(2) The forms and guidelines will provide threshold criteria information that will assist applicants in their application preparation.

(3) The guidelines and forms set forth shall apply to all applications and awards made in the program year corresponding with the application and application guidelines packet.

(b) After the Department's evaluation is completed, the Department shall forward to the Oklahoma Tax Commission the Net Benefit Rate determined by the Department, certification that the increment district is located in an enterprise zone, and a complete copy of the application submitted to the Department.

150:105-1-4. Threshold and Selection Criteria

Complete threshold requirements and selection criteria will be set forth in the application guide. The minimum threshold criteria are as follows:

(1) Project must be located entirely within an enterprise zone;

(2) No more than ten percent (10%) of the net leasable space may be used for retail purposes;

(3) State payments cannot be used to supplant local revenue currently being expended within the increment district boundaries. The application must be for a future project as opposed to a project already in process;

(4) Certification that all projects described within the related project plan will generate, in the aggregate, a minimum of either One Million Dollars ($1,000,000.00) in payroll, exclusive of payroll for construction, or Five Million Dollars ($5,000,000.00) in investment;

(5) The project must include the commitment of local governmental entity; and The project meets the time deadlines set forth in 62 O.S. § 842(I).

[OAR Docket #05-632; filed 4-14-05]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 110. OKLAHOMA QUALITY INVESTMENT ACT

[OAR Docket #05-704]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
150:110-1-1. [NEW]
150:110-1-2. [NEW]
150:110-1-3. [NEW]
150:110-1-4. [NEW]
AUTHORITY:
Director of the Oklahoma Department of Commerce; 74 O.S. §§ 5001 et seq.; Oklahoma Quality Investment Act 68 O.S. §§ 4101 - 4109.
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Failure of the Legislature to disapprove the rules resulted in approval on April 20, 2005.
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May 26, 2005
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The new rules provide clarification to applicants to the Oklahoma Quality Investment Act.
CONTACT PERSON:
Donald R. Hackler, Jr. (405) 815-5359

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

150:110-1-1. Purpose and scope

The purpose of these rules is to implement the Oklahoma Quality Investment Act at the Oklahoma Department of Commerce.

150:110-1-2. Definitions

For purposes of the Oklahoma Quality Investment Act:

"Capital costs" *means costs for land, buildings, improvements to buildings, fixtures and for machinery, equipment and other personal property used in and for the manufacturing process incurred by a qualified establishment, on or after the effective date of this act, with respect to the manufacturing site located in this state and specified in a quality investment agreement.*[68 O.S. § 4103]

"Commission" means the Oklahoma Tax Commission established pursuant to 68 O.S. Section 102, and any successor agencies thereto.

"Department" *means the Oklahoma Department of Commerce.* [68 O.S. § 4103]

"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.

"Fiscal year" *means the state fiscal year, which shall begin on July 1 of a calendar year and end on June 30 of the next calendar year.*[68 O.S. § 4103]

"Qualified establishment" *means a business entity engaged in the activity described by Industry Number 3011, Industry Group Number 301, Major Group 30 of the Standard Industrial Classification manual, latest revision. No establishment that has been certified as eligible to participate in the Oklahoma Quality Jobs Incentive Leverage Act incentive program shall be eligible for any investment payment pursuant to the Oklahoma Quality Investment Act. A qualified establishment shall enter into a quality investment agreement pertaining to a single manufacturing site as that term is defined in Section 1352 of Title 68 of the Oklahoma Statutes. No combination of other locations of an establishment or any related entities of an establishment shall be included in a quality investment agreement. An establishment may enter into additional quality investment agreements for additional sites.*[68 O.S. § 4103]

"Quality investment agreement" *means an agreement with duration, for purposes of computing the total incentive payment amount, of not more than five (5) years entered into between a qualified establishment and the Department.* [68 O.S. § 4103]

"Start date" *means the date on which a qualified establishment begins accruing benefits because of investment of new capital costs in a manufacturing site that is designated in a quality investment agreement with the Oklahoma Department of Commerce.* [68 O.S. § 4103]

150:110-1-3. Application process

(a) For the purpose of evaluating the applications, the Department will require all qualified establishments to submit an application on a form prescribed by the Department.

(1) The Department will make available upon request application forms and application guidelines.

(2) The forms and guidelines will provide threshold criteria information that will assist applicants in their application preparation.

(3) The guidelines and forms set forth shall apply to all applications and awards made in the program year corresponding with the application and application guidelines packet.

(b) Upon approval of the establishment by the Department, the Department shall enter into a quality investment agreement with the establishment for a period of not to exceed five (5) years, and the quality investment agreement shall comply with the requirements of 68 O.S. § 4104. Once the quality investment agreement is executed by the Director of the Department, or designee, and the establishment, a fully executed copy of the quality investment agreement will be forwarded to the Commission.

150:110-1-4. Threshold and selection criteria

Complete threshold requirements and selection criteria will be set forth in the application guide. The minimum threshold criteria are as follows: The project meets the requirements set forth in 68 O.S. § 4104.

[OAR Docket #05-704; filed 4-22-05]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 30. PLUMBING INDUSTRY REGULATIONS

[OAR Docket #05-656]

RULEMAKING ACTION:
PERMANENT adoption
RULES:
Subchapter 5. License Types, Bond Requirements, and Display of License Number and Firm Name
158:30-5-2. Insurance and Bond requirements [AMENDED]
AUTHORITY:
Construction Industries Board; 59 O.S. § 1002.
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Expiration:
Effective unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
"n/a"
INCORPORATIONS BY REFERENCE:
"n/a"
ANALYSIS:
These rules clarify the insurance and bonding requirements for contractors. A contractor may choose to place his license on inactive status and practice as a journeyman but not practice as an active contractor. An active license may be obtained if his inactive license is valid and the bond and insurance requirements are met. These rules also allow a qualified entity to provide an affidavit in lieu of insurance and bonding requirements. The entity assumes all financial responsibility and guarantees that the employee covered by that affidavit will only perform work on property owned by that entity. The entity must notify the Construction Industries Board upon cessation of the relationship between the entity and the employee.
CONTACT PERSON:
Jeanne Britt, Rules Liaison, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, 73107 telephone:(405) 271-2771; facsimile: (405) 271-5254; electronic mail: jeanneb@health.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 5. LICENSE TYPES, BOND REQUIREMENTS, AND DISPLAY OF LICENSE NUMBER AND FIRM NAME

158:30-5-2. Insurance and bond requirements

(a) Unless as otherwise provided in 158:30-5-2(b) below: Each active plumbing contractor must maintain a five thousand dollar ($5,000.00) corporate surety bond, payable to the Board, and must cause the surety to deposit a copy of such bond with the Plumbing Licensing Unit and with each municipality in which the bonded plumbing contractor proposes to commence plumbing work.

(b) An active plumbing contractor may satisfy the requirements of 158:30-5-2(a) above by depositing with the Plumbing Licensing Unit, either the sum of $5,000 cash, or a certificate of deposit in the sum of $5000 payable to the order of the Plumbing Licensing Revolving Fund.

(c) Failure to maintain a corporate surety bond in effect shall constitute grounds for summary suspension of a bonded plumbing contractor license immediately upon the expiration of such bond.

(d) A corporate surety bond may be accepted from any surety authorized to do business in the State of Oklahoma. It shall continue in effect until thirty (30) days have elapsed after the Bond and Insurance Unit is notified by the surety of the cancellation of such bond, unless the bond expired on a date certain on its face. Sureties must notify each municipality furnished with a copy of the bond regarding the pending cancellation if known to them.

(e) The Board shall notify the surety of the summary suspension or revocation of the license of any of its bonded licensed plumbing contractors.

(f) A bond or other surety filed in accordance with 158:30-5-3(a) shall be in lieu of filing a bond with each municipality where the plumbing contractor works, and shall be conditioned upon all the following terms:

(1) Plumbing contractors shall faithfully and properly conduct business in compliance with applicable statutes, rules of the Oklahoma Construction Industries Board, and with all the applicable ordinances of the municipality in which plumbing work is performed.

(2) Plumbing contractors shall pay all fines and penalties imposed by penalty orders of the Board and fines and penalties imposed by courts of competent jurisdiction for the violation of municipal ordinances. The Board may seek payment through the surety bond of any fines or penalties, which the licensee fails to pay.

(3) In lieu of a corporate surety, an active plumbing contractor may deposit with the Bonds and insurance Unit the required amount in lawful money or negotiable bonds of the United States, accompanied by a written instrument, to be approved by the Construction Industries Board, executed and acknowledged by the active plumbing contractor, and setting forth the conditions upon which the deposit is made. When the true owner is other than the active plumbing contractor making the deposit, the instrument shall so state and shall also be executed and acknowledged by the true owner. Upon exoneration, the

instrument and deposit may be returned by the Bonds and Insurance Unit to the depositor or the true owner, if the depositor is other than the named true owner, after application of the deposit to claims made pursuant to these Rules.

(4) Notwithstanding any provision of a security instrument to the contrary, every surety or depositor of security subjects himself to the jurisdiction of the Construction Industries Board and irrevocably appoints the Administrator as his agent upon whom any papers affecting his liability may be served. Every surety or depositor of security consents to his liability being joint and several. Consequently, judgment may be entered against the surety, or depositor of security, in accordance with his obligation simultaneously with judgment against the principal, and execution may thereupon issue.

(5) Plumbing contractors shall protect, save harmless and indemnify the State and municipalities against any liability imposed by law against the State and municipalities for the negligence of said contractor arising from any act or omission while engaged in work pursuant to the Plumbing License Law.

(6) Any aggrieved person may bring an action upon the bond for the recovery of penalty thereof to the same extent and with equal rights as though such aggrieved person had been named as the obligee in the bond.

(7) For purposes of this Section, the term plumbing contractor also includes the agents, servants, and employees of a plumbing contractor.

(g) ~~A plumbing contractor may choose, by not maintaining a current bond, not to practice as a plumbing contractor but to work instead as a journeyman with an inactive contractor license.~~ **Exceptions.** The bond and insurance requirement will be waived if:

(1) The plumbing contractor wishes to be inactive. A contractor may choose to place his license on inactive status and may practice as a journeyman but shall not practice as an active contractor. The inactive contractor can obtain an active license at any time if his inactive license is valid and the bond and insurance requirements are met; or

(2) The plumbing contractor is employed by a corporation, partnership, public entity, or political subdivision and said corporation, partnership, public entity or political subdivision submits an affidavit on behalf of the contractor that the employee will only perform plumbing work on property owned by said corporation, partnership, public entity, or political subdivision and the employer assumes all financial responsibility in lieu of the contractor providing bond and insurance. The affidavit must include a statement by the employer that the Board will be notified if the contractor is no longer employed by said employer, or if the employer no longer wishes to assume financial responsibility for the contractor.

(h) **Insurance.** A plumbing contractor shall provide proof of financial responsibility by providing a certificate of insurance, which indicates a minimum general liability policy of $50,000. The certificate shall include a 30-day cancellation notice to the Board.

[OAR Docket #05-656; filed 4-15-05]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 40. ELECTRICAL INDUSTRY REGULATIONS

[OAR Docket #05-657]

RULEMAKING ACTION:
PERMANENT adoption
RULES:
Subchapter 1. General Provisions
158:40-1-4. Standard of installation [AMENDED]
Subchapter 5. Licensing Requirements, Display of License and Firm Name, and Bond Requirements
158:40-5-5. Bond and insurance requirements [AMENDED]
AUTHORITY:
Construction Industries Board; 59 O.S. § 1689
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
2005 National Electrical Code [National Fire Protection Association Standard 70 05 (NFPA 70 05)]
Incorporating rules:
158:40-1-4
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at, Construction Industries Board, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-2771; facsimile: (405) 271-5254.
ANALYSIS:
158:40-1-4 incorporates the 2005 National Electrical Code [National Fire Protection Association Standard 70 05 (NFPA 70 05)] as the new minimum standard for electrical installations in Oklahoma. 158:40-5-5 clarifies the insurance and bonding requirements for contractors. These rules allow a qualified entity to provide an affidavit in lieu of insurance and bonding requirements. The entity assumes all financial responsibility and guarantees that the employee covered by that affidavit will only perform work on property owned by that entity. The entity must notify the Construction Industries Board upon cessation of the relationship between the entity and the employee.
CONTACT PERSON:
Jeanne Britt, Executive Assistant, Construction Industries Board, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299

telephone:(405) 271-2771; facsimile: (405) 271-5254; electronic mail: jeanneb@health.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

158:40-1-4. Standard of installation

The Construction Industries Board hereby incorporates the ~~2002~~ 2005 National Electrical Code [National Fire Protection Association Standard 70-05(NFPA 70-05)] as the minimum standard for electrical installations in Oklahoma.

SUBCHAPTER 5. LICENSING REQUIREMENTS, DISPLAY OF LICENSE AND FIRM NAME, AND BOND REQUIREMENTS

158:40-5-5. Bond and insurance requirements

(a) Each active electrical contractor must furnish a license bond in the amount of $5,000.00 to the Bonds and Insurance Unit. This bond is to be a continuous bond with a thirty (30)-day cancellation notice. Such bond shall be conditioned upon faithful and lawful performance of all work entered upon by him within the State of Oklahoma and shall be for the benefit of persons injured or suffering financial loss by reason of failure of such performance. The bond will be filed with the Bonds and Insurance Unit of the Oklahoma Construction Industries Board and be in lieu of all other license bonds to any political subdivision.

(b) Each active electrical contractor must maintain insurance coverage and furnish and maintain in effect in the Bonds and Insurance Unit of the Oklahoma Construction Industries Board, Electrical Licensing Division, a certificate of insurance therefore which indicates that the electrical contractor has a comprehensive general liability policy including manufacturers and contractors, completed operations, and independent contractors liability coverage. Limits of liability are to be no less than $50,000.00 combined single limit for bodily injury and property damage. The certificate of insurance shall provide for thirty (30) days notice to the Oklahoma Construction Industries Board, prior to cancellation or material alteration of the required insurance.

(c) Each active electrical contractor shall be aware of the requirements of Title 85 of the Oklahoma Statutes (Workers' Compensation Act and the Rules and Regulations of the Workers' Compensation Court of the State of Oklahoma, and indicate in the space provided on the application compliance therewith.)

(d) Failure to provide the complete information with current bond and insurance certificate will result in an inactive electrical contractor's license being issued until such time as the requirements are met. Failure to maintain the bond and insurance in force, as required, will result in the summary suspension of the electrical contractor's active license and the issuance of an inactive license to said electrical contractor.

(e) Electrical contractors shall pay all fines and penalties imposed by penalty orders of the Board and fines and penalties imposed by courts of competent jurisdiction for the violation of municipal ordinances. The Board may seek payment through the surety bond of any fines or penalties, which the licensee fails to pay.

(f) Exceptions. The bond and insurance requirement will be waived if the electrical contractor is employed by a corporation, partnership, public entity, or political subdivision and said corporation, partnership, public entity or political subdivision submits an affidavit on behalf of the contractor that the employee will only perform electrical work on property owned by said corporation, partnership, public entity, or political subdivision and the employer assumes all financial responsibility in lieu of the contractor providing bond and insurance. The affidavit must include a statement by the employer that the Board will be notified if the contractor is no longer employed by said employer, or if the employer no longer wishes to assume financial responsibility for the contractor.

[OAR Docket #05-657; filed 4-15-05]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 50. MECHANICAL INDUSTRY REGULATIONS

[OAR Docket #05-658]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. License Types, Limitations of Licenses, Contractor Special Requirements and Display of License Number and Firm Name.
158:50-5-3. ~~Contractor special requirements~~Bond and insurance requirements [AMENDED]
AUTHORITY:
Construction Industries Board; 59 O.S. § 1689.
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These rules clarify the insurance and bonding requirements for contractors. A contractor may choose to place his license on inactive status and practice as a journeyman but not practice as an active contractor. Inactive status removes the requirement for insurance and bonding.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 5. LICENSE TYPES, LIMITATIONS OF LICENSES, CONTRACTOR SPECIAL REQUIREMENTS AND DISPLAY OF LICENSE NUMBER AND FIRM NAME

158:50-5-3. ~~Contractor special requirements~~ Bond and insurance requirements

(a) **Bond.**

(1) A corporate surety bond, (the "bond") in the sum of five thousand dollars ($5,000.00) payable to the Oklahoma Construction Industries Board and approved by the Administrator shall be permanently deposited with the Bonds and Insurance Unit prior to the issuance of the mechanical contractor's license.

(2) Said bond shall be executed by the applicant for the contractor's license and by a surety authorized to do business in the State of Oklahoma, and shall be a continuous bond with a 30 day cancellation notice to the Board.

(3) Said bond shall be in lieu of filing a bond with each municipality where the contractor works and shall be conditioned upon all of the following terms:

(A) The mechanical contractor, his agents and employees shall faithfully and properly conduct business in compliance with all the applicable provisions of ordinances and provisions of the municipality in which he is performing mechanical work;

(B) The mechanical contractor shall pay all fines and penalties imposed by courts of competent jurisdiction for the violation of said ordinances or provisions. The Board may seek payment through the surety bond of any fines or penalties, which the licensee fails to pay.

(C) The mechanical contractor shall protect, save harmless and indemnify the municipality and the state against any liability imposed by law against said municipality or state for the negligence of said contractor, his agents or employees, which arises from any act or omission of said individuals engaged in work pursuant to the Mechanical Licensing Act;

(D) Any person aggrieved may bring an action upon the bond for the recovery of the penalty thereof to the same extent and with equal rights as though such aggrieved person had been named as the obligee in the bond.

(b) **Insurance.** A mechanical contractor shall provide proof of financial responsibility by providing a certificate of insurance, which indicates a minimum general liability policy of $50,000. The certificate shall include a 30-day cancellation notice to the Board.

(c) **Exceptions.** The bond and insurance requirement will be waived if:

(1) The mechanical contractor wishes to be inactive. A contractor may choose to place his license on inactive status and may practice as a journeyman but shall not practice as an active contractor. The inactive contractor can obtain an active license at any time if his inactive license is valid the bond and insurance requirements are met; or

(2) The mechanical contractor is employed by a corporation, partnership, public entity, or political subdivision and said corporation, partnership, public entity or political subdivision submits an affidavit on behalf of the contractor that the employee will only perform mechanical work on property owned by said corporation, partnership, public entity, or political subdivision and the employer assumes all financial responsibility in lieu of the contractor providing bond and insurance. The affidavit must include a statement by the employer that the Board will be notified if the contractor is no longer employed by said employer, or if the employer no longer wishes to assume financial responsibility for the contractor.

[OAR Docket #05-658; filed 4-15-05]

TITLE 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-717]

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The rules affected by the changes relate to Oklahoma Crime Victims Compensation Act 21 O.S. 142.1. The rules will affect the types of payments that can be awarded under the Act and the process in which those payments are made and decided upon.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

185:1-1-4. Powers and duties of the Board and Administrator

The Board or administrator shall have the duty to award compensation for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for compensation have been met. The Administrator of the Crime Victim Compensation Board may determine initial victims' claims and any victim's claim under two thousand five hundred dollars ($2500.00). The Board may delegate any other victims' claim to the administration of the Crime Victims Compensation Board at their discretion. The claimant shall have the right to appeal to the Board for any claim in dispute. The Board shall have the power:

(1) To hear and determine all matters relating to claims for compensation of two thousand five hundred dollars ($2500.00)or more and may hear claims under two thousand five hundred dollars ($2500.00). The Board or administrator shall be able to reinvestigate or re-open claims without regard to statutes of limitation. However, claims that have been inactive for a period of more than three (3) years from the date of the last action by the Board or administrator shall be deemed closed and any further action forever barred. Claim files may be destroyed after nine (9) months, following the last Board or administrative action, provided~~,~~ the claimant has not notified the Board staff of any intentions to request reconsideration of the claim.

(2) To subpoena witnesses, compel their attendance, require the production of records and other evidence, administer oaths or affirmations, conduct hearings and receive relevant evidence.

(3) To regulate its own procedures except as otherwise provided in the Act.

(4) To adopt rules and regulations to implement the provisions of the Act.

(5) To define any term not defined in the Act.

(6) To prescribe forms necessary to carry out the purposes of the Act.

(7) To have access to any reports of investigations or other data necessary to assist the
Board or administrator in making a determination of eligibility for compensation.

(8) To publicize the availability of compensation and information regarding the filing of claims.

~~(9) For good cause shown, to order the claimant to submit to a mental or physical examination or order the autopsy of a deceased victim if the results would be material to a claim. The order shall specify the time, place, manner, conditions and scope of the examination or autopsy and the person by whom it is to be made. The order shall also require the person to file with the Board a detailed written report of the examination or autopsy. The report shall set out the findings of the person making the report including results of all tests made, diagnoses, prognoses and other conclusions and reports of earlier examinations of the same conditions.~~

(~~10~~9) To order the claimant to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.

(~~11~~10) To deny, withdraw or reduce an award of compensation upon finding that the claimant did not fully cooperate with the appropriate law enforcement agencies.

~~(12)~~(11)To reconsider a decision granting or denying a compensation award, based on its own motion or on request of the claimant, providing such motion is not made after three years from the last action by the Board on a claim.

(~~13~~12) To ~~suspend~~ continue ~~the application~~ claims for compensation ~~proceedings~~ pending disposition of a criminal prosecution that has been commenced or is imminent, but the Board may make a tentative award.

(~~14~~13) To join in civil action as a party plaintiff to recover the compensation awarded if the claimant brings such action.

(~~15~~14) And the duty to prepare and transmit an annual report to the Governor, the Speaker of the House and the President Pro Tempore of the Senate.

(~~16~~15) To determine whether costs of services rendered are reasonable.

(17~~16~~) The Board and administrator shall also have such other powers and duties as provided by Statute.

(~~18~~17) To take judicial notice of general, technical, and scientific facts. ~~within their specialized knowledge.~~

(~~19~~18) In certain cases wherein mental health expenses are being claimed, the ~~b~~Board ~~and~~ or Administrator may request assistance from a panel of professionals in the

mental health field. The panel of professionals may only act in an advisory capacity to the Board.

(~~20~~19) The Board or administrator shall have the authority to set limits of compensation on any medical or mental health treatment, and require that providers of medical or mental health treatments be licensed prior to compensating for said treatment.

185:1-1-8. Opportunity to appear before the Board

(a) Pursuant to Title 21 O.S. 1981 Supp. Secs. 142.1 through 142.18 of the Oklahoma Statutes, any claimant may be represented by licensed counsel, or may represent him/herself before the Board, for any claim of $2500.00 or more, under the following circumstances:

(1) at the discretion of the claimant to provide support for a claim filed with the Board for compensation; or,

(2) at the request of the Board to provide testimony relative to a claim filed for compensation.

(b) A claimant and/or counsel shall have the opportunity to appear before the Board and shall be so notified no less than fourteen (14) days in advance of the Board meeting in which his/her claim is to be considered. If the claimant and/or counsel wish to appear before the Board to support the claim, the following procedure will be utilized by the claimant:

(1) Complete the Invitation to Appear form ~~(Appendix A)~~ which notifies the claimant of the date, time and place of the meeting in which the Board will consider his/her claim.

(2) Mail the complete Invitation to Appear form at least three (3) days prior to the scheduled meeting, to the Oklahoma Crime Victims Compensation Board. If subpoenas are requested, the claimant should follow procedures set forth in 185:1-1-13.

(3) If the Board has not received the completed Invitation to Appear form at least three (3) days prior to the scheduled meeting, it shall be assumed that the claimant or counsel does not wish to and will not appear before the Board to provide support for his/her claim.

(4) It is not mandatory that a claimant or counsel appear before the Board in order for a claim to be considered unless specifically so ordered by the Board.

185:1-1-14. Initial Board consideration

Any Board member may question the claimant and claimant's witnesses at any time during the hearing. The Board may also limit the time for witnesses testimony and or discussion. The procedure for claim consideration and Board decision will be as follows:

(1) Chairperson announces the claim to be considered.

(2) The Administrative Staff or Victim-Witness Coordinator answers any questions the Board may have relative to the facts of the case.

(3) Claimant and/or counsel presents testimony (if present).

(4) Board questions claimant and/or counsel.

(5) Claimant and/or counsel presents witnesses (if present).

(6) Board questions witnesses.

(7) The Board goes into executive session, as necessary, for discussion of confidential information.

(~~7~~8) Board renders decision.

185:1-1-15. Claims review and appellant procedures [REVOKED]

~~Claims review and appellant procedures, including time constraints, can be found in 185:10-1-8 and 185:10-1-10.~~

185:1-1-16. Filing of support statements

If a claimant wishes to file a written statement regarding a claim, which was not attached to the claim submitted to the Board, the claimant's name and claim number shall be written at the top, right hand corner of each page and submitted to the Administrator at least ~~five (5)~~ ten (10) days prior to the Board meeting wherein the claim is to be considered.

185:1-1-17. Claimant notification of Board decision

Claimants will be mailed a decision and order within ~~fifteen (15)~~ twenty (20) calendar days of the meeting wherein the decision is rendered.

[OAR Docket #05-717; filed 4-22-05]

TITLE 185. CRIME VICTIMS COMPENSATION BOARD
CHAPTER 10. CRIME VICTIMS COMPENSATION PROGRAM

[OAR Docket #05-718]

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CONTACT PERSON:
Tina Harman, Public Information Officer, District Attorneys Council, 421 N.W. 13th, Ste. 290, Oklahoma City, OK 73103, 405-264-5006

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

185:10-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S. 250 et seq. The purpose of the Board shall be to hear and decide ~~all~~ matters relating to the Crime Victims Compensation claims. The Board or administrator shall award compensation to victims of crime for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

185:10-1-3. Definitions

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

"Allowable expenses" means:

(A) charges incurred for needed products, services and accommodations, including, but not limited to, medical care, wage loss, rehabilitation, rehabilitative occupational training, and other remedial treatment and care.

(B) any reasonable expenses related to funeral, cremation or burial, up to the statutory limit.

(C) reasonable costs for counseling family members of a homicide victim, and

(D) reasonable costs associated with homicide crime scene clean up.

"Board" means the Oklahoma Crime Victims Compensation Board, hereinafter referred to as the Board.

"Claimant" means any of the following persons applying for compensation under this act:

(A) a victim,

(B) a dependent of a victim who has died because of criminally injurious conduct, or

(C) a person authorized to act on behalf of any of the persons listed above. The Board has the discretion to require sufficient proof of authority to act on behalf of a victim.

"Collateral source" means a source of benefits or advantages for economic loss for which the claimant would otherwise be eligible to receive compensation under this Act which the claimant has received, or which is readily available to the claimant from the sources identified by statute.

"Criminally injurious conduct" means a misdemeanor or felony which occurs or is attempted in Oklahoma, or against a resident of this state in a state that does not have an eligible crime victims compensation program, as such term is defined in the Federal Victims of Crime Act of 1984, Public Law 98-473; that results in bodily injury, threat of bodily injury or death to a victim.

(A) "Criminally injurious conduct" results in personal injury or death to a victim which is:

(i) punishable by fine, imprisonment or death, or

(ii) if the act is committed by a child, could result in such child being adjudicated a delinquent child.

(B) Pursuant to 21 O.S. 142.11, an award may be made whether or not any person is prosecuted or convicted as an adult offender or adjudicated a delinquent child. Proof of conviction of a person whose acts give rise to a claim or a copy of the adjudication order for a delinquent child whose acts give rise to a claim is conclusive evidence that the crime was committed. The Board or administrator may continue a claim pending disposition of a criminal prosecution or delinquent child adjudication that has been commenced or is imminent, but may make a tentative award.

(C) The term "criminally injurious conduct" shall not include acts arising out of the negligent maintenance or use of a motor vehicle unless the vehicle was:

(i) operated or driven by the offender while under the influence of alcohol, with a blood alcohol level in excess of the legal limit, or any other intoxicating substance or,

(ii) operated or driven by the offender with the intent to injure or kill the victim or,

(iii) in a manner imminently dangerous to another person and evincing a depraved mind, although without any premeditated design to injure or effect the death of any particular person.

(iv) or the offense involved willful, malicious or felonious failure to stop after being involved in a personal injury accident to avoid detection or prosecution, provided the victim of the accident was a pedestrian or was operating a vehicle moved solely by human power or a mobility device at the time of contact.

(D) The term "criminally injurious conduct" shall include an act of terrorism, as defined in Section 2331

of Title 18, United States Code, committed outside the United States.

"Dependent" means a natural person wholly or partially dependent upon the victim for care or support, and includes a child of a victim born after the death of the victim where the death occurred as a result of criminally injurious conduct.

"Economic loss" means monetary detriment consisting only of allowable expense, work loss, replacement services loss and, if injury causes death, economic loss and replacement services loss of a dependent, but shall not include non economic loss.

"Economic loss of a dependent" means loss after death of the victim of contributions of things of economic value to the dependent, not including services which would have been received from the victim if he or she had not suffered the fatal injury.

"Non-economic detriment" means pain, suffering, inconvenience, physical impairment and nonpecuniary damage.

"Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income, but for the benefit of self or family, if the victim had not been injured or died.

"Replacement services loss of a dependent" means the loss reasonably incurred by dependents after death of the victim in obtaining ordinary and necessary services in lieu of those the deceased victim would have performed for their benefit had the deceased victim not suffered the fatal injury, less expenses of the dependent avoided by reason of death of the victim and not subtracted in calculating the economic loss of the dependent.

"Victim" means a person victimized within the State of Oklahoma who suffers personal injury or death as a result of criminally injurious conduct and shall include a resident of this state who is injured or killed by an act of terrorism committed outside the United States.

"Work loss" means loss of income from work the victim would have performed if such person had not been injured or died, reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake, or loss of income from work the victim's caregiver would have performed if the injuries of the victim sustained as a result of criminally injurious conduct had not created the need for the caregiver to miss work to care for the injured victim.

185:10-1-4. Eligibility criteria for compensation

(a) The criminally injurious conduct leading to the filing of the compensation claim must have occurred in Oklahoma. Beginning November 1, 1989, residents of Oklahoma who are victimized in states without eligible crime victims compensation programs, as such term is defined in the federal Victims of Crime Act of 1984, Public Law 98-473, will be eligible claimants under the Oklahoma Crime Victims Compensation Act. Proof of conviction of the person causing the criminally injurious injury to the victim is conclusive evidence that the crime was committed.

(b) The incident must have occurred on or after October 19, 1981.

(c) The incident must have been reported to law enforcement officials within 72 hours or would have been reported within the period of time except for good cause shown. In claims wherein the victim is under the age of eighteen (18), the crime resulting in the claim must have been reported to authorities within seventy-two (72) hours after disclosure to a responsible adult except for good cause shown. This shall also apply to persons who are diagnosed as mentally handicapped.

(d) The claim for compensation must be filed in the Oklahoma City office within one (1) year of the incident date or death of the victim. The Board may, at its discretion, waive this requirement, if the Board finds there was good cause for failure to file the claim within one (1) year, but in no event shall the filing of a claim be permitted after two (2) years from the date of injury or death upon which the claim is based. The good cause exception shall be permitted only for injury or death occurring on or after November 1, 1989. If the victim is mentally handicapped, or is a child under eighteen (18) years of age, the Board may use the date the criminal incident was disclosed to a responsible adult when establishing whether or not the claim was timely filed.

(e) The victim must have suffered ~~personal~~ physical or psychological injury or death as a result of the criminal action of another.

(f) The claimant and/or victim must have cooperated with law enforcement officials, the District Attorneys office, and the Crime Victims Compensation Board during entire investigation. In the event the Board or administrator finds the claimant and/or victim was not cooperative, a claim may be denied, withdrawn, or reduced.

(g) The net amount of compensation requested in the claim must not have been paid by a collateral source, however, the Board or administrator shall not require any claimant to seek or accept any collateral source contribution, unless the claimant was receiving such benefits prior to the occurrence giving rise to the claim under the provisions of the Act.

(h) The claimant and/or victim was not the offender or an accomplice of the offender, and, the compensation award shall not be used to benefit the offender or accomplice. Number one through ~~five~~ four below were developed in accordance with Section 7129 of the Victims of Crime Act.

(1) In determining whether a compensation award can be made without unjustly enriching an offender, the Board or administrator shall evaluate whether the victim has reported the crime and is cooperating with the criminal justice system in the investigation and prosecution of the crime, and whether the victim will do what is possible to prevent access by the offender to compensation paid to the victim. If the victim is cooperating fully, and if the offender will not benefit from or have access to a substantial portion of any cash award made by the Board to the victim, then the award shall not be declined on the basis that the award would benefit the offender.

(2) A determination that the award would benefit the offender shall not be based solely on the presence of the offender in the household at the time of the award. The

presence of the offender in the household is only one factor to be considered in determining that he/she would benefit from the award; a determination of whether the offender will benefit from an award shall be made in each case, based on the totality of the circumstances.

(3) In determining whether an award would benefit the offender, the Board must weigh whether the benefit to the offender is substantial or in-consequential. Factors to be considered include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his/her living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award may not be reduced or denied.

(4) Collateral resources available to the victim from the offender shall be examined. Collateral resources may include court-ordered restitution, an offending spouse's medical insurance, or other resources of the offender available to cover the victim's expenses. In evaluating the availability of collateral resources, a determination shall be made first as to whether the offender has a legal responsibility to pay; second, whether the offender has resources to pay; and third, whether payment is likely. The victim shall not be penalized for the failure of an offender to meet legal obligations to pay for the costs of the victim's recovery. If the offender fails to meet legal responsibilities to pay restitution or provide for the medical and support needs of a spouse or child, or if the offender impedes payment of insurance that may be available to cover a spouse's or child's expenses, the Board will attempt to meet the victim's needs to the extent allowed, and may pursue whatever actions are appropriate to seek reimbursement from the offender. The Board is subrogated to any restitution the offender may owe the victim if an award is made.

(i) The claim must not have been the result of negligent maintenance or use of a motor vehicle by the offender, unless the vehicle was operated or driven by the offender while under the influence of alcohol or any other intoxicating substance or, unless the vehicle was operated or driven by the offender with the intent to injure or kill the victim or in a manner imminently dangerous to another person and evincing a depraved mind, although without any premeditated design to injure or effect the death of any particular person or the offense involved willful, malicious or felonious failure to stop after being involved in a personal injury accident to avoid detection or prosecution, provided the victim of the accident was a pedestrian or was operating a vehicle moved solely by human power or a mobility device at the time of contact.

(j) Compensation may be diminished or denied to the extent or degree of responsibility for the cause of the injury or death attributable to the victim, as determined by the Board or administrator. Compensation may also be diminished or denied if the Board or administrator finds that the victim was legally intoxicated or under the influence of a controlled dangerous substance (CDS), and the victim's intoxicated state contributed to his/her injury or death. Any person over the age of 18, injured while voluntarily riding with a legally intoxicated driver or someone under the influence of a CDS, may be found to have contributed to his/her injury or death, provided there is evidence that the victim knew of the drivers intoxicated state prior to the injury.

185:10-1-6. Maximum compensation amounts and methods of payment

(a) Compensation payable to a victim or claimant sustaining economic loss due to injury or death may not exceed the statutory limit.

(b) Compensation for work loss, replacement services loss, dependents economic loss and dependents replacement services loss may not exceed the statutory limit.

(c) The Board or administrator may provide for the payment to a claimant in a lump sum or in installments.

(d) Upon request of the claimant, the Board or administrator may convert future economic loss, other than allowable expense, to a lump sum, but only upon a finding by the Board, or administrator that the award in a lump sum will promote the interest of the claimant.

(e) An award payable in installments for future economic loss may be made only for a period that the Board can reasonably determine future economic loss and may be modified by the Board provided there is a finding that a significant change in circumstances has occurred.

(f) The Board may review claims in the order in which they appear on the docket. Claim payments will be made in the same manner. Once the Crime Victims Compensation Fund has been depleted, all remaining claims on the docket may be continued and placed on the next docket when funds become available.

~~(g) Chiropractic care is compensable at a rate of no more than what is allowed by the rules of the State Insurance Board.~~

(~~h~~g) Mental health treatment for the victim is a compensable loss. The Board may, at any time, refer a claim to the Mental Health Review Panel for review and advice regarding length and relevance of treatment being provided, and whether the treatment was as a direct result of the crime. ~~The Mental Health Review Panel shall consists of two psychologists, one psychiatrist, one licensed professional counselor and one licensed social worker.~~ Panel members agree to provide this service to the Board at no cost. Panel members may create documents to assist them in their review of the claims with the guidance and support of the Victims Compensation division staff. After the Mental Health Review Panel reports their findings, the claim will be set on a future Board docket for review and decision.

185:10-1-8. Application review procedure

(a) A victim, dependent of a victim, or person legally acting on behalf of the victim, must first secure a copy of the Official Victims Compensation Claim Form. ~~from their local District Attorney's office or from the Crime Victims Compensation Board office in Oklahoma City.~~ In the event assistance is needed by the claimant in completing the form, such assistance will be provided by the victim-witness coordinator, or by the

staff located at the District Attorneys Council in Oklahoma City.

(b) A claim form must be completed, signed and received ~~by~~ at the ~~Board~~ District Attorneys Council within one (1) year of the incident date or death of the victim. If the Board or administrator finds good cause for failure to file the claim within one (1) year, the filing period may be extended up to, but not exceeding, two (2) years, beginning with incidents occurring on or after November 1, 1989.

(c) The victims compensation staff shall log the claim form as being received and forward it to the victim-witness coordinator in the district where the crime occurred. Upon completion, the claim shall be returned to the Oklahoma City office for processing.

(d) The Board, victim-witness coordinators, and staff have the authority to conduct investigations and/or request any additional information from the victim and/or claimant, the investigating law enforcement agency, medical personnel and/or facilities, witnesses, employers and others as may be deemed necessary for the proper review and verification of the claim.

(e) The staff shall make a thorough analysis of the claim once it is completed and received from the victim-witness coordinator. ~~The staff/ Victim Witness Coordinator will then prepare the claim summary and submit it to the Board no less than ten (10) days in advance of the Board meeting wherein the claim is to be considered.~~

(f) Once the claim has been ~~cleared~~ reviewed (staff review and summary completed), the claim will be placed on the next appropriate Board or administrative docket for consideration. A claim must be ~~cleared~~ reviewed at least fifteen (15) calendar days prior to a Board meeting for consideration at that meeting. Those claims not ~~cleared~~ reviewed fifteen (15) calendar days prior to a regular meeting shall be considered at the next scheduled Board meeting. New claims will be reviewed by the staff in the order in which the completed claims are received in the Oklahoma City office.

(g) Agendas and supporting material shall be mailed to the Board no less than ten (10) calendar days in advance of the Board meeting.

(h) Notification of Board meetings shall be filed with the Secretary of State in accordance with the Open Meeting Law. Copies of the meeting agendas giving date, location and time of meetings shall be posted in conspicuous places on the premises of the building wherein the Board meetings will be held and/or at offices of the Crime Victims Compensation Board. Claimants whose compensation claims are to be considered by the Board will be mailed notification of the meeting no less than fourteen (14) calendar days in advance and will have the opportunity to appear and be heard, and to offer evidence and argument on any issue relevant to the claim. ~~Claimants may also examine witnesses and offer evidence in reply to any matter of an evidentiary nature in the record relevant to the claim~~

(i) Once a decision is made by the Board, the claimant shall be mailed notification of the decision within twenty (20) days. ~~On claims which are declined, the decision and order of the Board shall be sent certified mail.~~

185:10-1-10. Appeals procedure

(a) In the event a claim for compensation is denied, the Crime Victims Compensation Board staff shall notify the claimant by ~~certified~~ mail, ~~return receipt requested~~ within twenty (20) days.

(b) The claimant shall have the right to appeal and may do so by notifying the Crime Victims Compensation Board Administrator, in writing, ~~by certified mail, return receipt requested,~~ of the intent to appeal within thirty (30) calendar days of the date of the notification letter setting forth the Board~~'s~~ or administrative decision.

(c) If the claimant is not satisfied with the ~~Board's~~ decision, he/she shall then be entitled to a hearing before the Board. The hearing shall be held within one hundred twenty (120) calendar days of the date of the notice from the claimant stating intent to appeal.

(d) In an appeals hearing, all parties shall be afforded an opportunity to appear and be heard. A record of the proceedings shall be made and shall be transcribed upon request of any party who shall pay transcription costs unless otherwise ordered by the Board. ~~Also, a copy of the documentation provided to the Board for use in deciding the claim shall be copied and mailed to the claimant ten (10) calendar days in advance of the meeting.~~ Transcription requests must be made within sixty (60) days of proceeding.

(e) The Board may, without a hearing, settle a claim by stipulation, agreed settlement, consent order or default.

(f) The Board shall render its decision in writing, relative to the appeal within ~~ten (10)~~ twenty (20) calendar days of the hearing. ~~and the applicant will be notified by mail.~~

(g) In the event the claimant remains dissatisfied with the decision of the Board subsequent to the appeals hearing, the claimant may file a petition with the District Court of Oklahoma County or in the county wherein the claimant currently resides.

185:10-1-11. Subrogation rights of the Board

Upon an award of compensation by the Board or administrator ~~for personal injury or death~~, the Board shall be subrogated to the rights of the claimant to the extent of the award.

185:10-1-14. Life insurance as a collateral source [REVOKED]

~~Life insurance is a collateral source as defined by O.S. 21, 142.3(4f).~~

[OAR Docket #05-718; filed 4-22-05]

TITLE 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 15. SEXUAL ASSAULT EXAMINATION FUND

[OAR Docket #05-719]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
185:15-1-2. [AMENDED]
185:15-1-3. [AMENDED]
185:15-1-4. [AMENDED]
185:15-1-5. [AMENDED]
185:15-1-6. [AMENDED]
185:15-1-7. [AMENDED]
AUTHORITY:
Oklahoma District Attorneys Council, Oklahoma Crime Victims Compensation Act, 21 O.S. 142.1.
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules affected by the changes relate to Oklahoma Crime Victims Compensation Act 21 O.S. 142.1. The rules will affect the types of payments that can be awarded under the Act and the process in which those payments are made and decided upon.
CONTACT PERSON:
Tina Harman, Public Information Officer, District Attorneys Council, 421 N.W. 13th, Ste. 290, Oklahoma City, OK 73103, 405-264-5006

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

185:15-1-2. Definitions

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

"Fund" means the Sexual Assault Examination Fund as established in Title 21 of the Oklahoma Statutes, Sections 142.19 and 142.20.

"Qualified Registered Nurse" To be considered qualified to perform a forensic sexual assault examination and receive payment through the Sexual Assault Examination Fund, Registered Nurses must be registered with the State Board of Nurse Registration and receive at least ~~20~~ 40 hours of in-service training in the field of forensic evidence collection and rape trauma.

"Sexual assault" means:

(A) rape or rape by instrumentation, as defined in Title 21 of the Oklahoma Statutes; or

(B) forcible ~~oral~~ sodomy, as defined in Title 21 of the Oklahoma Statutes.

"Sexual assault forensic examination" means procedures performed by a physician or a Qualified Registered Nurse to collect from the body of the victim, evidence of the sexual assault. This may include vaginal swabbing, vaginal wash, taking of blood samples, pubic combing, and any other procedures requested by the investigating law enforcement agency to obtain evidence of the crime of sexual assault.

185:15-1-3. Application by victim

(a) In order to be eligible for payment by the fund for expenses of a sexual assault forensic examination, the victim of the crime must sign, prior to the examination, the portion of the Official ~~Application for~~ Sexual Assault Examination ~~Payment Appendix A of this Chapter~~ Application provided by the Oklahoma Crime Victims Compensation Board. If the victim is under the age of 18, or under the supervision of a legal guardian, the parent or guardian of the victim must ~~also~~ sign the application form.

~~(b) The victim is personally responsible for obtaining all required signatures on the application.~~

(~~c~~b) The victim's application must be accompanied by a copy of an itemized statement from the medical facility where the examination was conducted and/or from the Physician or Qualified Registered Nurse, if applicable.

(~~d~~c) Should medications be prescribed by the medical authority conducting the sexual assault examination, a receipt will be required prior to reimbursement of said medication. Medication fees may be included in the hospital bill, providing the medication was dispensed at the hospital.

185:15-1-4. Duties of the physician or qualified registered nurse

(a) The physician or qualified registered nurse who conducts the forensic examination of the victim must complete and sign the portion of the Official Application for Sexual Assault Examination Payment ~~(refer to Appendix A of this Chapter),~~ designated "~~H~~. Examining Physician or Qualified Registered Nurse."

(b) The physician or qualified registered nurse is responsible for collecting the evidence in a professional manner and preserving the evidence for shipment to a law enforcement forensic laboratory in the manner designated by the law enforcement officer in charge of investigating the sexual assault of the victim.

185:15-1-5. Duties of the District Attorney

(a) The District Attorney, or authorized Assistant District Attorney, for the District where the sexual assault was committed must complete and sign that portion of the Official Application for Sexual Assault Examination Payment ~~(refer to Appendix A of this Chapter)~~, designated "~~III~~. District Attorney."

(b) The District Attorney or authorized Assistant District Attorney, by his/her signature on the application, must affirm that:

(1) the crime was committed within his/her jurisdiction;

(2) the crime could be the basis of a legitimate criminal prosecution by the State of Oklahoma; and

(3) ~~the District Attorney, or authorized Assistant District Attorney, recommends that the Fund pay the expense of the forensic examination and/or medications incident to the sexual assault as deemed necessary by the medical authority conducting the examination, not to exceed the statutory maximum.~~ at the time the forensic exam was performed, there existed reason to believe that the individual was the victim of a sexual assault in his/her jurisdiction.

185:15-1-6. Insurance

(a) The payment of a sexual assault examination will be made, regardless of whether the victim is medically insured, providing said examination is approved by the District Attorney or an authorized Assistant District Attorney in the jurisdiction where the sexual assault occurred.

(b) In order to provide anonymity to the sexual assault victim and maintain confidentiality, any victim who has obtained a forensic sexual assault examination, will not be required to provide information to the Board relative to employment or insurance; and, shall not be required to file a claim with any private insurance company for the payment of a forensic sexual assault examination.

(c) If the victim or claimant chooses to file an insurance claim for the sexual assault examination, reimbursement should be made to the Sexual Assault Examination Fund upon payment from the insurance company.

(d) For sexual assault exams performed on adults and children, Medicaid or any other federally funded program is considered a collateral source and payment will not be made unless the denial of benefits is provided.

185:15-1-7. Limitation of payment by the fund

(a) In all cases, the maximum payment by the fund for any one forensic sexual assault examination shall not exceed the statutory maximum.

(b) Payments from the Fund shall be made directly to the medical facility where the examination was performed.

(c) Under no circumstances shall the Fund make any payment for the expenses of medical treatment of the victim, or for any other expense other than the expense of the forensic sexual assault examination, unless authorized by statute.

(d) In the event there is a fee from the physician or a qualified registered nurse, as well as a bill from the hospital, the statutory maximum shall be prorated between both service providers if both bills are submitted at the same time.

[OAR Docket #05-719; filed 4-22-05]

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

[OAR Docket #05-670]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Special Education
210:15-13-4. [NEW]
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70 O. S. § 3-104, State Board of Education
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Subchapter 13. Special Education
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May 5, 2004
Register Publication:
21 Ok Reg 1970
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04-895
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The purpose of the rule is to improve the quality of service provided to deaf and hearing impaired students by 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. The rule provides clarification to the Oklahoma Educational Interpreter for the Deaf Act and provides clarification regarding experience, comparable levels of proficiency, continuing education, and maintenance of a registry of interpreters as set forth in law.
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75,

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 13. SPECIAL EDUCATION

210:15-13-4. Oklahoma Educational Interpreter for the Deaf Act

In order to be considered an Educational Interpreter, an individual must meet the requirements set out in law or a comparable level of proficiency must be demonstrated.

(1) **Comparable level of proficiency.** A comparable level of proficiency may be obtained by passage of the following assessments defined as:

(A) Educational Interpreter Performance Assessment (EIPA) equals a 3.5 at the level in which the person interprets (i.e., elementary or secondary).

(B) Educational Sign Skills Evaluation for Signed Exact English (SEE) equals a 3.5 at the level in which the person interprets (i.e., elementary or secondary).

(C) National Council for Interpreter's (NCI) Certificate.

(2) **Experience.** Three year's experience in the field of deaf education is clarified as including interpreting in non-educational settings.

(3) **System of continuing education.**

(A) Educational interpreters must complete 10 continuing education units annually, 50% of which must include training in educational interpreting.

(B) In order to receive credit for continuing education units the course workshop or seminar must have been preapproved by the Oklahoma State Department of Education (OSDE).

(4) **The Registry of Interpreters.** The OSDE will develop a list of educational interpreters and in conjunction with the Department of Rehabilitation Services (DRS) maintain the list.

[OAR Docket #05-670; filed 4-19-05]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #05-671]

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RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 17. Full (Subject Matter) Competencies for Licensure and Certification
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Subchapter 9. Professional Standards: Teacher Education and Certification
Part 17. Full (Subject Matter) Competencies for Licensure and Certification
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21 Ok Reg 3047
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04-1202
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
Teachers will have the opportunity to become licensed/certified in English as a Second Language (ESL). This rule establishes the teacher competencies for the licensure/certification. Limited English proficient students will benefit academically as a result of having teachers with increased ESL teaching skills.
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 17. FULL (SUBJECT MATTER) COMPETENCIES FOR LICENSURE AND CERTIFICATION

210:20-9-172. Full (subject matter) competencies for licensure and certification

Full (subject matter) competencies are listed in (1) through ~~(40)~~(41) by subject/content area.

(1) **Art education.** The candidate for licensure and certification:

(A) Has a sound philosophical understanding of visual art education and is able to support, justify, and implement the visual art curriculum.

(B) Has an understanding of past, current, and future trends and issues in art education as well as art education research.

(C) Has a knowledge of developmentally appropriate visual art content including aesthetics, art criticism, and art history, around a core of art production.

(D) Has a working knowledge of and has had experience in integration of the arts with other fine arts areas as well as other academic disciplines.

(E) Understands and has experience in the application of the elements and principles of art and design.

(F) Understands art history including various styles, periods, ethnic groups, and cultures from around the world.

(G) Has a knowledge of aesthetics (the field of study that relates to beauty in the arts) and art criticism (art review and commentary), along with teaching strategies appropriate for both areas that involve a variety of media and awareness of developmental levels.

(H) Understands and has experience in various methods of art production and creative development including drawing, figure drawing, color and design, painting, printmaking, sculpture, clay, applied design, and technology. Additional experience should involve metal, stone, fiber, papermaking, wood, and mixed media.

(I) Has proficiency in teaching strategies that are developmentally appropriate and inclusive of various student learning styles and is sensitive to the needs of diverse ethnic and cultural groups and those with disabilities.

(J) Develops a portfolio of his/her own artwork.

(K) Understands that contests and competitions have a valuable place in art education; however, they should not drive the development of the local curriculum.

(L) Has a knowledge of a wide variety of arts resources including community resources, materials, equipment, and information about exhibitions and/or major collections.

(M) Recognizes the important role of technology in education and that it may serve as a supportive tool in art education.

(N) Understands the art-related competencies in the Oklahoma core curriculum and knows how to incorporate them into various art classes.

(2) **Business education.** Competencies for business education are fulfilled by meeting competencies for vocational business.

(3) **Driver/safety education.** The candidate for licensure and certification:

(A) Applies, models, and teaches appropriate learning strategies for the safe operation of motor vehicles.

(B) Understands the social and emotional forces that influence the psychological makeup of young drivers and how these forces affect their driving behavior.

(C) Understands basic driving maneuvers including the universal concepts of defensive driving.

(D) Understands the physical laws of nature and the statutory laws that govern the safe operation of motor vehicles.

(E) Has an understanding of the basic mechanical systems that make up a motor vehicle and their influence on its operational limits.

(4) **Early childhood education (pre-kindergarten-third grade).** The competencies related to Early Childhood Education relate more specifically to the processes of learning and/or information processing than presentation of specific subject matter. The candidate for licensure and certification knows, understands, and uses:

(A) Factors that influence the development of young children, the sequence and interdependency of all areas, (i.e., physical, social, emotional, cognitive, and language) and uses that knowledge to meet the needs and characteristics of the group and individual children (birth to eight years of age) while respecting their unique rates of development.

(B) Positive child guidance strategies wich help children learn to make responsible decisions regarding their own behavior and contributes to the development of self-control, self-motivation, and self-respect.

(C) The knowledge of how young children think, process information, and develop concepts in content areas including language, literacy, mathematics, science, health, safety, nutrition, social studies, art, music, drama, and movement.

(D) Integrative approaches (e.g., themes, topics, projects) to enable children to see and experience content areas and make meaningful connections to the child's life experience.

(E) Curriculum in regards to the children's needs and interests, as well as, developmentally appropriate skills and concepts.

(F) Developmentally appropriate strategies when planning, implementing, articulating, and evaluating (e.g., play, independent work, small group projects, group discussions, cooperative learning, open-ended questions, inquiry, and problem solving experiences.)

(G) A bias-free learning environment (indoors and outdoors) which is physically and psychologically safe for young children through the use of a balanced schedule, learning centers, and appropriate transitions and routine.

(H) Curriculum strategies, schedules, and the environment to meet the specific needs, interests, and experiences of all children with complex characteristics (i.e., adapting for those with disabilities, developmental delays, diverse cultures, or special abilities).

(I) Collaboration strategies regularly with families and other agencies in the community to enhance and support children's learning and development.

(J) Behaviors that recognize and respect diversity, how it influences learning, and builds connections among children's families, communities, and schools.

(K) Performance assessment (i.e., observation and documentation) and formal assessment to evaluate young children's development and learning for the purpose of planning appropriate and challenging programs, environments, and interactions and adapting for individual differences.

(L) Formative and summative evaluation measures to ensure comprehensive quality of the total program for children in reciprocal partnerships, with families, and the community.

(M) The historical, social, and ethical foundations of early childhood education which enables the teacher to articulate a philosophy and rationale for appropriate principles and practices.

(N) Self evaluation of teaching techniques and outcomes and modifies curriculum, strategies, schedules and environment to maximize the learning environment and enhance psychological safety for children.

(O) Knowledge to advocate for children by articulating to family, community and others the goals and methods used in the early childhood classroom.

(P) Instructional strategies/plans based on the Oklahoma core curriculum.

(Q) Understands and applies the following competencies in reading instruction as appropriate to the abilities of the student.

(i) Knows the stages of language development and the structure of the English language and alphabetic writing system including phonology, morphology, and orthography and their relationships to spelling and meaning.

(ii) Understands that primary language (oral) directly impacts the secondary languages (reading, writing, spelling). Knows and applies knowledge of implicit and explicit instruction in developing oral language. Knows the relationship of oral language to literacy.

(iii) Knows the developmental process of reading in order to assess, interpret, describe, develop appropriate instruction, monitor, reteach and reassess student's reading performance for concepts about print, phonological and phonemic awareness, phonics, spelling, word recognition, vocabulary, comprehension, fluency, and writing.

(iv) Identifies and applies all developmental levels of phonemic awareness to provide appropriate instruction in understanding words are made up of phonemes and that phonemes can be rearranged and manipulated to make different words that compose oral speech.

(v) Knows and provides appropriate systematic explicit and implicit phonological instruction for the application of spelling-sound correspondences for word analysis and for structural analysis for word recognition and word meaning development.

(vi) Knows and applies the relationships between spelling patterns and sounds of speech; knows how to support the student at each stage of spelling development; knows how to focus direct and indirect instruction to guide the student toward spelling proficiency.

(vii) Knows and applies knowledge of appropriate explicit and implicit instruction for vocabulary development (e.g., singular and plural).

(viii) Knows and applies strategies that promote comprehension and strategies to support children's understanding for the various elements of the different genres of text.

(ix) Knows and applies strategies and instructional approaches to support response to text and promote comprehension for literal, inferential, and critical/evaluative level (e.g., guided reading, literature and research circles).

(x) Knows and applies knowledge of instructional techniques to assist students with self-monitoring and self-corrections~~,~~ (i.e., semantics, syntax, and graphophonics).

(xi) Knows and applies the instructional strategies which contribute to the development of fluent reading.

(xii) Knows how to promote children's interest and engagement in reading and writing.

(R) Understands and applies the following competencies in mathematics instruction as appropriate to the abilities of the student.

(i) Builds on children's natural interest in mathematics and uses it to make sense of their physical and social worlds.

(ii) Establishes mathematics curriculum based on current knowledge of young children's cognitive, linguistic, physical and social-emotional development that builds on children's varying experiences.

(iii) Uses teaching practices that enhance children's problem-solving and reasoning processes which includes representing, communicating, and connecting mathematical ideas.

(iv) Understands that the curriculum should be coherent and compatible with known relationships and sequences of important mathematical ideas and that provides for children's deep and lasting interaction with key mathematical ideas.

(v) Introduces mathematical concepts, methods, and language through a variety of appropriate experiences and teaching strategies, including integrating mathematics with other activities and allowing ample time, materials and teacher support for children to explore and manipulate mathematical ideas.

(vi) Enhances children's mathematical knowledge, skills and strategies by providing an ongoing process of collecting information from multiple sources to determine a student's strengths and weaknesses in order to plan appropriate educational services.

(S) Understands and applies the following competencies in science instruction as appropriate to the abilities of the student.

(i) Plans an inquiry-based science program that develops a curriculum design to meet the interests, knowledge, understanding, abilities, and experiences of students in a framework of yearlong and short-term goals for students.

(ii) Selects teaching and assessment strategies that support the development of student understanding and encourage a community of science learners.

(iii) Guides and facilities learning through focused interaction with students, recognizes and responds to student diversity, and encourages and models the skills of inquiry in order for all students to participate in science learning.

(iv) Uses ongoing multiple methods and systematically gathers data about students understanding and abilities.

(v) Designs and manages learning environments that provide students with the time, space and resources needed for developing science skills.

(vi) Uses a variety of instructional strategies to implement an integrated/interdisciplinary curriculum and understands the interaction between the sciences and the process skills.

(T) Understands and applies the following competencies in social studies instruction as_appropriate to the abilities of the student.

(i) Designs and manages learning environments that provide opportunities for students to exhibit traits of good citizenship in a variety of settings and situations.

(ii) Selects teaching and assessment strategies that support the development of student understanding of their community and culture.

(U) Understands and applies the following competencies in the use of technology as appropriate to the abilities of the student.

(i) Bases the use of technology on the knowledge of how young children think, process information and develop concepts in content areas.

(ii) Enhances children's cognitive and social abilities through the appropriate use of technology.

(iii) Integrates technology into the learning environment and uses it as one of many options to support children's learning.

(iv) Promotes equitable access to technology for all children and their families.

(v) Advocates in collaboration with parents for more appropriate technology applications for all children.

(5) Elementary education. The competencies developed in specific subject areas such as mathematics, art, science, etc., have been developed on a prekindergarten through 12th grade continuum. Because of this, it is unnecessary for the elementary education competencies to address anything more than the processes through which the subject matter competencies will be presented in the classroom. The candidate for licensure and certification:

(A) Understands his/her role and the variety of approaches to the organization of elementary schools.

(B) Understands the essential nature and importance of interaction and communication with students, parents, community members and colleagues.

(C) Models the role of the lifelong learner.

(D) Understands the role of the teaching profession in curriculum change and school improvement.

(E) Understands the link between child development, curriculum, and instruction.

(F) Understands and uses a variety of strategies to:

(i) select methods of assessment appropriate to each of the subject matter areas and to the age, development, and characteristics of students,

(ii) interpret and communicate assessment results accurately and ethically, and

(iii) integrate information gained from assessments into instructional plans.

(G) Has a knowledge of current research findings about teaching and learning.

(H) Analyzes his/her teaching practices through a variety of techniques.

(I) Understands appropriate classroom management systems and discipline practices.

(J) Understands the selection and use of materials, resources, and technology appropriate to individual differences.

(K) Creates an environment that facilitates learning experiences which make subject matter meaningful to students.

(L) Understands the subject matter areas common to the elementary curriculum and the integration of those subject matter areas.

(M) Facilitates learning groups as appropriate to the needs and/or interests of students and the goals of the lesson.

(N) Understands and applies the following competencies in reading instruction.

(i) Knows the stages of language development and the structure of the English language and alphabetic writing system including phonology, morphology, and orthography and their relationships to spelling and meaning.

(ii) Understands that primary language (oral) directly impacts the secondary languages (reading, writing, spelling). Knows and applies knowledge of implicit and explicit instruction in developing

oral language. Knows the relationship of oral language to literacy.

(iii) Knows the developmental process of reading in order to assess, interpret, describe, develop appropriate instruction, monitor, reteach and reassess student's reading performance for concepts about print, phonological and phonemic awareness, phonics, spelling, word recognition, vocabulary, comprehension, fluency, and writing.

(iv) Identifies and applies all developmental levels of phonemic awareness to provide appropriate instruction in understanding words are made up of phonemes and that phonemes can be rearranged and manipulated to make different words that compose oral speech.

(v) Knows and provides appropriate systematic explicit and implicit phonological instruction for the application of spelling-sound correspondences for word analysis and for structural analysis for word recognition and word meaning development.

(vi) Knows and applies the relationships between spelling patterns and sounds of speech; knows how to support the student at each stage of spelling development; knows how to focus direct and indirect instruction to guide the student toward spelling proficiency.

(vii) Knows and applies knowledge of appropriate explicit and implicit instruction for vocabulary development, e.g., prefixes, suffixes and roots.

(viii) Knows and applies strategies that promote comprehension and strategies to support children's understanding for the various elements of the different genres of text.

(ix) Knows and applies strategies and instructional approaches to support response to text and promote comprehension for literal, inferential, and critical/evaluative level, e.g., guided reading, literature and research circles.

(x) Knows and applies knowledge of instructional techniques to assist students with self-monitoring and self-corrections, i.e., semantics, syntax, and graphophonics.

(xi) Knows and applies the instructional strategies which contribute to the development of fluent reading.

(xii) Knows how to promote children's interest and engagement in reading and writing.

(O) Understands interdisciplinary teaching and collaboration.

(P) Understands that all students can develop proficiencies in the Oklahoma core curriculum.

(6) **English.** The candidate for licensure and certification:

(A) Maintains current knowledge of content-area concepts of written and oral communication, literature, and language systems (phonetic, semantic, syntactic, pragmatic). For purposes herein, language systems and what they mean or include are:

(i) **"Phonetic"** means the letter/sound system of a particular language.

(ii) **"Pragmatic"** means the use of particular language and its conventions that convey meaning in a cultural context.

(iii) **"Semantic"** means the meaning system of a given language.

(iv) **"Syntactic"** means the structure, order, and organization of a given language.

(B) Applies comprehension, analysis, interpretation, synthesis and evaluation of auditory, written, and visual messages. For purposes herein, these terms have the following meaning and include:

(i) **"Auditory messages"** means spoken language, intonation.

(ii) **"Visual messages"** means visual graphics such as illustrations, pictures, photographs, symbols, and signs, body language, facial expressions.

(iii) **"Written messages"** means connected discourse, text.

(C) Applies appropriate learning strategies for reading, writing, studying, and researching.

(D) Communicates effectively in speaking and writing, using appropriate language conventions. For purposes herein, **"language conventions"** means grammar, figurative language, mechanics, specialized vocabulary, technical terms.

(E) Understands the influences of social and historical contexts and culture on language and literature and adapts instruction accordingly.

(F) Uses the understanding of language acquisition and language learning processes to develop student proficiencies and to modify instruction for second-language learners.

(G) Establishes a reflective and creative learning environment.

(H) Uses a variety of assessment strategies to evaluate student proficiencies in the language arts and to modify instruction appropriately.

(I) Uses technology to accomplish professional goals and to develop student's literacy proficiencies.

(J) Understands and teaches strategies appropriate to a variety of forms (genres), text organizations, and structures, including functional print and informational print. For purposes herein:

(i) **"Functional print"** means environmental print messages (i.e., signs, logos, labels, directions);

(ii) **"Genre"** means a particular type of literature (i.e., short story, novel, poem, essay, drama)

(iii) **"Informational print"** includes reference materials, telephone books, almanacs, dictionaries.

(K) Understands the literacy process (i.e., reading process and writing process), and provides effective instruction in literacy skills and strategies.

(L) Understands, teaches, and implements Oklahoma's core curriculum.

(7) **Family and consumer sciences.** Competencies for family and consumer sciences are fulfilled by meeting competencies for vocational family and consumer sciences.

(8) **Foreign languages.** The candidate for licensure and certification will possess competencies as specified in (A) through (G).

(A) **Listening (K-12).** The candidate for licensure and certification:

(i) Understands main ideas and supporting details of oral presentations and conversations (e.g., prepared speeches, news broadcasts, interviews, short lectures).

(ii) Understands spontaneous speech on a variety of basic topics.

(iii) Comprehends sustained conversation or narrative of general topics (secondary only).

(B) **Speaking (K-12).** The candidate for licensure and certification:

(i) Narrates and describes events, objects, and activities with supporting details.

(ii) Participates in spontaneous, face-to-face conversation involving more complicated skills and social situations, such as elaborating, apologizing, debating.

(iii) Initiates, sustains, and closes a general conversation.

(iv) Displays some ability to support opinions, explain in detail, and make assumptions (secondary only).

(v) Uses varied strategies, such as paraphrasing or restating, to facilitate communication in the language being studied (secondary only).

(C) **Reading (K-12).** The candidate for licensure and certification:

(i) Reads authentic (from the culture of the language studied) materials, such as selected short stories, poetry, and other literary works, articles, personal correspondence, and simple technical material written for the general reader.

(ii) Comprehends facts in authentic (from the culture of the language studied) texts and materials and makes appropriate inferences.

(iii) Comprehends authentic (from the culture of the language studied) communications via various media and technology.

(D) **Writing (K-12).** The candidate for licensure and certification:

(i) Communicates by writing simple facts and ideas.

(ii) Expresses narratives and descriptions of a factual nature.

(iii) Writes professional and social correspondence (secondary only).

(E) **Culture (K-12).** The candidate for licensure and certification:

(i) Is knowledgeable about the products of the culture of the language being taught.

(ii) Is knowledgeable about practices of the culture of the language being taught.

(iii) Is able to compare and contrast local culture and cultures of the language being taught.

(F) **Second language acquisition (K-12).** The candidate for licensure and certification:

(i) Is knowledgeable about first language development and its relation to second language learning.

(ii) Is knowledgeable about varied teaching approaches, methods, and strategies.

(iii) Is knowledgeable about varied second language assessment strategies and techniques that are developmentally appropriate.

(G) **The Oklahoma core curriculum** (K-12). The candidate for licensure and certification:

(i) Understands Oklahoma's core curriculum for languages, and

(ii) Implements the skills and knowledge appropriate to the level(s) taught.

(9) **Journalism.** The candidate for licensure and certification:

(A) Maintains current knowledge of concepts, theories, and practical application of such in the field of journalism, including those associated with print media, news gathering, writing, research, graphic design, photography, technology, law, and ethics.

(B) Applies comprehension, analysis, interpretation, and evaluation of auditory, written, and visual communication. Projects can be created based on this knowledge, i.e., newspapers, yearbooks, magazines, or broadcasts.

(C) Applies appropriate learning strategies for research, writing, organization, editing, and presentation of written and visual messages to different audiences.

(D) Communicates effectively in oral presentation, written communication, and visual design.

(E) Understands the influence of social and historical context of culture on journalism and adapts instruction accordingly.

(F) Understands the impact and importance of cultural diversity on the communication process.

(G) Establishes a reflective and creative learning environment.

(H) Uses a variety of assessment strategies and teaching methods to encourage creativity, to inspire critical thinking to develop problem-solving techniques, and to establish and maintain excellence in all journalism pursuits.

(I) Uses technology to accomplish professional goals and to develop students' journalistic proficiencies in all aspects of the subject, including, but not limited to, desktop publishing, photojournalism, written communication, graphic design, and research.

(J) Understands and can teach strategies appropriate to a variety of journalistic areas, including print media, graphic arts, printing technology, broadcast media, electronic media, advertising, business management practices, public relations, and professional writing.

(K) Is prepared to teach students in the following areas:

(i) desktop publishing;

(ii) writing for print and electronic media;

(iii) editing;

(iv) photography and videography;

(v) graphic design and typography;

(vi) headline, preview, promotion, and caption writing.

(L) Is prepared to teach

(i) research skills;

(ii) interviewing;

(iii) ethics, law, and responsibilities of the press;

(iv) journalism history;

(v) television, video, radio and multimedia production;

(vi) staff management, organization and leadership techniques;

(vii) business management and accounting procedures.

(M) Is knowledgeable of professional resources, including state, regional, and national scholastic press associations, workshops, conferences, contests, and publications.

(N) Understands the importance of effective verbal and visual communication skills.

(O) Understands the role of co-curricular and extracurricular activities in the development of student interests as an extension of classroom instruction.

(P) Understands, teaches, and implements Oklahoma's core curriculum.

(10) **Library-media specialist.** The candidate for licensure and certification:

(A) Defines a program of information literacy and integrates it into the curriculum

(B) Defines a school library media program emphasizing information problem-solving skills and integrates it into the curriculum.

(C) Motivates and guides students and faculty in recognizing literature as an essential base of cultural and practical knowledge and in reading for pleasure as well as for information.

(D) Communicates effectively with students, faculty, staff, administrators, parents, other colleagues, and the general public by the ability to:

(i) exhibit communication skills necessary for collaborative planning with teachers.

(ii) develop and implement an effective public relations program to communicate library media program goals, needs, and accomplishments.

(E) Applies basic principles of evaluating and selecting resources and equipment to support the educational goals of the school by the ability to:

(i) develop selection policies which reflect curricular and instructional objectives, and informational and recreational needs of students and teachers.

(ii) develop criteria for evaluating and selecting specific print and non-print materials and equipment.

(iii) develop a collection of bibliographic aids, tools, and other sources to obtain current reviews and information about materials and equipment.

(iv) develop and implement procedures for preview, evaluation, selection, and acquisition of materials and equipment consistent with the district policy.

(v) reevaluate and maintain materials and equipment.

(F) Uses resources to support the personal, developmental, and curricular needs of students, and the instructional development needs of the faculty by the ability to:

(i) use a variety of ways to access information, including the use of new technologies.

(ii) provide specific information and resources in response to reference requests and recommend resources which support the curriculum.

(iii) conduct programs that include guidance in reading, listening, and viewing experiences.

(iv) assist students and staff in identifying, obtaining, using and/or producing media in appropriate formats for specific learning objectives.

(v) supervise students and staff in media production and equipment operation.

(vi) advocate resource-based learning through work with other faculty to identify appropriate instructional strategies and creative uses of resources.

(G) Recognizes the value of new technologies for information and instruction and assists faculty and students in their use by the ability to:

(i) recognize the importance of technological advancement to the education process.

(ii) demonstrate an understanding of the basic concepts, terminology, and applications of emerging technology.

(iii) recognize curricular implications that result from emerging technology and educational trends.

(iv) provide leadership in incorporating innovations into education.

(v) identify sources of information related to technological advancements.

(vi) provide technical advice and services for educational access to technology.

(H) Implements policies and procedures for effective and efficient acquisition, cataloging, processing,

circulating, and maintaining equipment and resources to ensure access by the ability to:

(i) classify and catalog all print and nonprint media according to professionally accepted systems.

(ii) organize and maintain a current catalog and shelf list of all media.

(iii) implement procedures for initial processing, circulation, maintenance, service, and inventory of equipment and materials.

(I) Develops, implements, and evaluates school library media programs, including management of personnel, resources, and facilities by the ability to:

(i) assess the informational and instructional needs of students and faculty.

(ii) establish short- and long-range goals based on identified needs, the goals and objectives of the school district, state and national guidelines, and research findings.

(iii) prepare, justify, and administer a library media program budget.

(iv) prepare plans for new or renovated library media facilities.

(v) develop policies that assure optimum use of materials, equipment, facilities, and staff to support the curriculum.

(vi) train, supervise, and evaluate support staff, volunteers, and student helpers.

(vii) apply federal and state laws pertaining to media including those regarding copyright, privacy, and access to materials.

(viii) prepare statistical records and written reports.

(ix) assess and implement the use of new technologies for library media center management, educational applications, and information retrieval.

(x) evaluate the library media program based on established goals and standards.

(xi) apply effective management principles.

(xii) advocate, initiate, and implement agreements for resource sharing.

(J) Serves as a learning facilitator within schools and as a leader of faculty, administration, and students in the development of effective strategies for teaching and learning with the ability to:

(i) teach traditional and electronic skills in the retrieval, evaluation, and utilization of information to enable students to become independent learners.

(ii) plan and implement professional development programs.

(K) Demonstrates a commitment to professionalism by the ability to:

(i) exhibit comprehension of the roles, interrelationships, and interdependency of all types of libraries and information agencies.

(ii) exhibit an understanding of the role of the school library media program as a central element in the intellectual life of the school.

(iii) demonstrate a commitment to promoting intellectual freedom.

(iv) demonstrate professional integrity through ethical behavior.

(v) apply appropriate research findings and conduct action research to improve the library media program.

(vi) develop selection criteria that reflect relevant theories of learning and instruction.

(vii) apply basic principles of instructional design in producing resources for specified learning goals or objectives.

(11) **Elementary mathematics.**

(A) **Overview.** The goal of teacher preparation programs in mathematics, in partnership with common education, is to prepare future teachers for the twenty-first century. Teacher preparation programs must recognize the changes in society to prepare adaptive teachers who are capable of providing equitable schooling for all students of the twenty-first century. Teacher preparation programs must recognize that learning to teach effectively does not consist solely of acquiring content skills. Theory alone cannot create an effective teacher. Effective teaching also must include the processes or pedagogy of teaching that incorporate actual experiences with students and other teacher candidates within a body or bodies of knowledge. Teacher preparation programs are challenged with providing a rigorous body of content which is not isolated from the strategies of teaching and the application of that content.

(B) **Commitment.** The candidate for licensure and certification recognizes the individuality and worth of each student, believes that all students can learn and apply mathematics, and demonstrates these beliefs in practice.

(C) **Knowledge of students, mathematics and teaching.** The candidate for licensure and certification:

(i) Uses knowledge of child development and knowledge about the effects of this development on the learning of mathematics to guide curricular and instructional decisions. This will include primary, intermediate, and middle level philosophy, structure, organization, and child development.

(ii) Understands students' environment and cultural background, individual learning differences, student attitudes and aspirations, and community expectations and values on the learning of their students.

(iii) Has a broad and deep knowledge of the concepts, principles, techniques, and reasoning methods of mathematics that is used to set curricular goals and shape teaching.

(iv) Understands significant connections among mathematical ideas and the applications of these ideas to problem-solving in mathematics, in other disciplines, and in the world outside of school.

(v) Has experiences with practical applications of mathematical ideas and is able to incorporate these in their curricular and instructional decisions.

(vi) Is proficient in, at least, the mathematics content needed to teach the mathematics skills described in Oklahoma's core curriculum from multiple perspectives. This includes, but is not limited to, a concrete and abstract understanding of number systems and number sense, geometry, measurement, statistics and probability, functions, and algebra necessary to effectively teach the mathematics content skills addressed in the first through eighth grade as well as the mathematics process skills of problem-solving, reasoning, communication, and connections.

(vii) Is proficient in the use of a variety of instructional strategies to include, but not limited to, cooperative learning, use of concrete materials, use of technology (i.e., calculators and computers), and writing strategies to stimulate and facilitate student learning.

(viii) Is proficient in the design of instructional units which incorporate the mathematical processes of problem-solving, reasoning, communication, and connections into the instruction of content skills.

(ix) Has knowledge of how to teach and use this knowledge to make curriculum decisions, design instructional strategies and assessment plans, and choose materials and resources for mathematics instruction.

(x) Stimulates and facilitates student learning by using a wide range of formats, strategies, technologies, and procedures, and assuming a variety of roles to guide students' learning of mathematics.

(xi) Helps students learn mathematics by creating a safe and positive environment in which they take responsibility for learning.

(xii) Develops students' abilities to reason and think mathematically, to investigate and explore patterns, to discover structures and relationships, to formulate and solve problems, and to justify and communicate conclusions.

(xiii) Employs a range of formal and informal assessment methods to evaluate student learning in light of well-defined goals. Results should be used to guide the teaching process and provide opportunities for students to reflect on the strengths and weaknesses of individual performance.

(D) **Reflection and growth.** The candidate for licensure and certification:

(i) Regularly reflects on what one teaches and how one teaches.

(ii) Keeps informed of changes in mathematics and in the teaching of mathematics, continually seeking to improve his/her knowledge and practice.

(iii) Supports the involvement of families in their children's education, helps the community understand the role of mathematics and mathematics instruction in today's world, and, to the extent possible, involves the community in support of instruction.

(iv) Collaborates with peers and other education professionals to strengthen their school's programs, advance knowledge, and contribute to improving practice within the field.

(12) **Intermediate mathematics.**

(A) **Overview.** The goal of teacher preparation programs in mathematics, in partnership with common education, is to prepare future teachers for the twenty-first century. Teacher preparation programs must recognize the changes in society to prepare adaptive teachers who are capable of providing equitable schooling for all students of the twenty-first century. Teacher preparation programs must recognize that learning to teach effectively does not consist solely of acquiring content skills. Theory alone cannot create an effective teacher. Effective teaching also must include the processes or pedagogy of teaching that incorporate actual experiences with students and other teacher candidates within a body or bodies of knowledge. Teacher preparation programs are challenged with providing a rigorous body of content which is not isolated from the strategies of teaching and the application of that content.

(B) **Commitment.** The candidate for licensure and certification recognizes the individuality and worth of each student, believes that all students can learn and apply mathematics, and incorporates these beliefs into practice.

(C) **Knowledge of students, mathematics and teaching.** The candidate for licensure and certification:

(i) Has an understanding of middle level philosophy, structure, organization, and child development as well as an understanding of secondary level structure and child development.

(ii) Uses knowledge of child development and knowledge about the effects of this development on the learning of mathematics to guide curricular and instructional decisions.

(iii) Understands students' environment and cultural background, individual learning styles, student attitudes and aspirations, and community expectations and values on the learning of students.

(iv) Has a broad and deep knowledge of the concepts, principles, techniques, and reasoning

methods of mathematics that is used to set curricular goals and shape teaching.

(v) Understands significant connections among mathematical ideas and the applications of these ideas to problem-solving in mathematics, in other disciplines, and in the world outside of school.

(vi) Has experiences with practical applications of mathematical ideas and is able to incorporate these in curricular and instructional decisions.

(vii) Is proficient in, at least, the mathematics content needed to teach the mathematics skills described in Oklahoma's core curriculum from multiple perspectives. This includes, but is not limited to, a concrete and abstract understanding of number systems and number theory, geometry and measurement, statistics and probability, functions, algebra, discrete mathematics, and calculus necessary to effectively teach the mathematics skills addressed in the sixth through eighth grade as well as the core and extended core skills in the algebra, geometry, functions, statistics, and probability sections of grades 9-12 in Oklahoma's core curriculum. This would also include the process skills and core skills addressed in the trigonometry and calculus sections of grades 9-12 in the Oklahoma core curriculum.

(viii) Is proficient in the use of a variety of instructional strategies to include, but is not limited to, cooperative learning, use of concrete materials, use of technology (i.e., calculators and computers), and writing strategies to stimulate and facilitate student learning.

(ix) Is proficient in the design of instructional units which incorporate the mathematical processes of problem-solving, reasoning, communication, and connections into the instruction of content skills.

(x) Has knowledge of how to teach and uses this knowledge in making curriculum decisions, designing instructional strategies and assessment plans, and choosing materials and resources for mathematics instruction.

(xi) Helps students learn mathematics by creating a safe and positive environment in which they take responsibility for learning.

(xii) Uses content knowledge and pedagogy to develop students' abilities to reason and think mathematically, to investigate and explore patterns, to discover structures and relationships, to formulate and solve problems, and to justify and communicate conclusions.

(xiii) Employs a range of formal and informal assessment methods to evaluate student learning in light of well-defined goals. Results should be used to guide the teaching process and provide opportunities for students to reflect on the strengths and weaknesses of individual performance.

(D) **Reflection and growth.** The candidate for licensure and certification:

(i) Keeps informed of changes in mathematics and in the teaching of mathematics, continually seeking to improve knowledge and practice. He/she regularly reflects on what is taught and how it is taught.

(ii) Supports the involvement of families in their children's education, helps the community understand the role of mathematics and mathematics instruction in today's world, and, to the extent possible, involves the community in support of instruction.

(iii) Collaborates with peers and other education professionals to advance knowledge and contribute to improving practice within the field.

(13) **Advanced/secondary mathematics.**

(A) **Overview.** The goal of teacher preparation programs in mathematics, in partnership with common education, is to prepare future teachers for the twenty-first century. Teacher preparation programs must recognize the changes in society to prepare adaptive teachers who are capable of providing equitable schooling for all students of the twenty-first century. Teacher preparation programs must recognize that learning to teach effectively does not consist solely of acquiring content skills. Theory alone cannot create an effective teacher. Effective teaching also must include the processes or pedagogy of teaching that incorporate actual experiences with students and other teacher candidates within a body or bodies of knowledge. Teacher preparation programs are challenged with providing a rigorous body of content which is not isolated from the strategies of teaching and the application of that content.

(B) **Commitment.** The candidate for licensure and certification recognizes the individuality and worth of each student, believes that all students can learn and apply mathematics, and incorporates these beliefs into practice.

(C) **Knowledge of students, mathematics and teaching.** The candidate for licensure and certification:

(i) Has an understanding of the middle level philosophy, structure, organization, and child development as well as an understanding of the secondary level structure and child development.

(ii) Uses knowledge of child development and knowledge about the effects of this development on the learning of mathematics to guide curricular and instructional decisions.

(iii) Understands students' environment and cultural background, individual learning styles, student attitudes and aspirations, and community expectations and values on the learning of students.

(iv) Has a broad and deep knowledge of the concepts, principles, techniques, and reasoning

methods of mathematics that is used to set curricular goals and shape teaching.

(v) Understands significant connections among mathematical ideas and the applications of these ideas to problem solving in mathematics, in other disciplines, and in the world outside of school.

(vi) Has experiences with practical applications of mathematical ideas and is able to incorporate these in curricular and instructional decisions.

(vii) Is proficient in, at least, the mathematics content needed to teach the mathematics skills described in Oklahoma's core curriculum from multiple perspectives. This includes, but is not limited to, a concrete and abstract understanding of number systems and number theory, geometry and measurement, statistics and probability, functions, algebra, discrete mathematics, and calculus necessary to effectively teach the mathematics skills addressed in the sixth through twelfth grade in the Oklahoma core curriculum. (The depth and breadth of knowledge should be much greater than for the Intermediate Mathematics certification.)

(viii) Is proficient in the use of a variety of instructional strategies to include, but is not limited to, cooperative learning, use of concrete materials, use of technology (i.e., calculators and computers), and writing strategies to stimulate and facilitate student learning.

(ix) Is proficient in the design of instructional units which incorporate the mathematical processes of problem-solving, reasoning, communication, and connections into the instruction of content skills.

(x) Has knowledge of how to teach and uses this knowledge in making curriculum decisions, designing instructional strategies and assessment plans, and choosing materials and resources for mathematics instruction.

(xi) Helps students learn mathematics by creating a safe and positive environment in which they take responsibility for learning.

(xii) Uses content knowledge and pedagogy to develop students' abilities to reason and think mathematically, to investigate and explore patterns, to discover structures and relationships, to formulate and solve problems, and to justify and communicate conclusions.

(xiii) Employs a range of formal and informal assessment methods to evaluate student learning in light of well-defined goals. Results should be used to guide the teaching process and provide opportunities for students to reflect on the strengths and weaknesses of individual performance.

(D) **Reflection and growth.** The candidate for licensure and certification:

(i) Keeps informed of changes in mathematics and in the teaching of mathematics, continually seeking to improve knowledge and practice. He/she regularly reflects on what is taught and how it is taught.

(ii) Supports the involvement of families in their children's education, helps the community understand the role of mathematics and mathematics instruction in today's world, and, to the extent possible, involves the community in support of instruction.

(iii) Collaborates with peers and other education professionals to advance knowledge and contribute to improving practice within the field.

(14) **Middle level personnel.** The competencies developed here focus on middle level philosophy, structure, organization, and student development. Subject matter competencies can be pulled from the K-12 competencies developed by the subject matter committees. The candidate for licensure and certification:

(A) Understands the history, philosophy, principles, structure, and organization of middle level education as it relates to early adolescence.

(B) Uses methods and materials for interdisciplinary instruction at the middle school level.

(C) Demonstrates an understanding of child-centered versus content-centered methodologies to meet the individual needs of middle level students.

(D) Has knowledge and skills pertaining to classroom management, organization, and student discipline at the middle school level.

(E) Understands the unique developmental characteristics and needs of the early adolescent, focusing on cognitive, physical, and social development.

(F) Establishes an environment using active participation to teach problem-solving and communication skills (reading, listening, writing, and speaking) as an integral part of all instruction.

(G) Understands curriculum-based teacher advisory programs, which foster character, responsibility, respect for others, and active community involvement.

(H) Understands the need to work collaboratively with other teachers, staff members, parents, resource persons, and community groups to enhance and support the education of young adolescents.

(I) Uses a variety of instructional strategies that address different learning styles to meet the needs of early adolescents.

(J) Models the role of the lifelong learner.

(K) Insures that all students develop proficiencies in the Oklahoma core curriculum.

(15) **Instrumental/general music.** The candidate for licensure and certification:

(A) Understands the basic philosophy of music education and is able to justify music within the school curriculum.

(B) Understands how music and fine arts experiences enhance student life experience and can promote music and the other arts in the community as well as within the school (including group motivational strategies and group management methods).

(C) Participates in ongoing professional development which includes involvement with professional associations and current experiences in performing endeavors.

(D) Has knowledge of effective methodologies and practices for encouraging self-analysis and musical independence.

(E) Has mastery of a major instrument, including appropriate techniques of breathing, embouchure (mouth position), posture, and hand position.

(F) Has a broad understanding of music history, including various styles and musical contributions of different cultural and ethnic groups.

(G) Has the ability to play an instrument(s) and teach a beginning instrumental music class, using current methods and quality music literature (collection of written music) for band, small ensemble, and solo.

(H) Is able to recognize and evaluate the sequential development of students, including those with disabilities.

(I) Has knowledge of where to locate printed musical resources and professional consultants.

(J) Has a working knowledge of how music integrates with all other academic disciplines, including other fine arts areas.

(K) Has the skill to collaborate and coordinate experiences with teachers of other academic disciplines, including other fine arts areas.

(L) Has competency in conducting techniques.

(M) Is able to teach basic fundamentals of embouchure (mouth position), hand position, technique and other related skills, of all the standard band and orchestra instruments at a basic Grade 6-8 level, including making a characteristic sound.

(N) Is able to sing a diatonic melody at sight, using a consistent sight-singing method, and the skill to teach that method appropriately at each grade level. **"Diatonic"** means relating to a musical scale having eight tones to the octave and using a fixed pattern of intervals without chromatic deviation.

(O) Is able to count rhythms using a consistent rhythm reading system and demonstrates the skill to teach that method appropriately at each grade level.

(P) Has knowledge of music education approaches such as Carl Orff, Zoltar Kodaly and Jaques-Dalcroze and is able to prepare and teach a lesson according to each of these approaches.

(Q) Has basic proficiency in piano, including a knowledge of keyboard harmony and is able to play functional progressions and simple accompaniments.

(R) Has the ability to use technology in the music classroom, such as basic knowledge of MIDI (musical instrument digital interface), sequencing and notational software programs, sound system set-up, and to make successful recordings of music ensembles.

(S) Understands basic laws of copyright pertaining to the correct use of copyrighted printed music and related responsibilities.

(T) Understands the competencies in General Music in Oklahoma's core curriculum and exhibits the skill to incorporate them into various instrumental music classes.

(16) **Vocal/general music.** The candidate for licensure and certification:

(A) Understands the basic philosophy of music education and is able to justify music within the school curriculum.

(B) Understands how music and fine arts experiences enhance student life experience and can promote music and the other arts in the community as well as within the school (including group motivational strategies and group management methods).

(C) Has knowledge of effective methodologies and practices for encouraging self-analysis and musical independence.

(D) Understands proper breathing techniques and tone production techniques.

(E) Has a knowledge of quality literature (collection of written music), both choral and solo, as well as folk songs appropriate for children.

(F) Understands the changing voice, both male and female.

(G) Has knowledge of where to locate professional consultants and printed music resources, such as music stores, music publisher catalogues,and textbook companies.

(H) Has a working knowledge of how to coordinate vocal music with all academic disciplines including other fine arts areas.

(I) Has proficiency in piano, including knowledge of scales, chords and the ability to warm up a choir and play simple accompaniments.

(J) Participates in ongoing professional development which includes involvement with professional associations.

(K) Has the ability to recognize and evaluate sequential musical development for all students, including those with disabilities.

(L) Has competency in conducting, including the ability to show musical nuance (subtle distinction or variation).

(M) Is able to prepare a series of lesson plans appropriate to each teaching level K-12.

(N) Has the ability to sing a diatonic melody at sight, using a consistent sight singing method and the skill to teach that method appropriately at each grade level. **"Diatonic"** means relating to a musical scale having eight tones to the octave and using a fixed pattern of intervals without chromatic deviation.

(O) Has the ability to count rhythms using a consistent rhythmic reading system and the skills to teach that method appropriately at each grade level.

(P) Has knowledge of the music education approaches such as Carl Orff, Zoltar Kodaly and Jaques-Dalcroze and is able to prepare and teach a lesson according to each of these approaches.

(Q) Has broad knowledge and understanding of music history including various styles, periods and cultures.

(R) Has broad knowledge and understanding of a variety of music and musical practices representative of different cultural and ethnic groups.

(S) Has the ability to use technology in the music classroom, such as basic knowledge of MIDI (musical instrument digital interface), sequencing and notational software programs, sound system set-up, and to make successful recordings of music ensembles.

(T) Understands basic laws of copyright pertaining to the correct use of copyrighted printed music and related responsibilities.

(U) Understands the competencies in General Music in Oklahoma's core curriculum and exhibits the skill to incorporate them into various vocal music classes.

(17) **Physical education/health/safety.** Competencies specified in both (A) Physical Education/Safety and (B) Health/Safety are required for licensure and certification:

(A) **Physical education/safety.** The candidate for licensure and certification:

(i) Understands the Oklahoma core curriculum and is able to develop instructional strategies/plans based on the Physical Education Section of the Oklahoma core curriculum.

(ii) Knows the developmental levels of growth and coordination of children (Grades K-12) and provides appropriate learning opportunities that support the physical and intellectual development of all students.

(iii) Understands and uses a variety of both psychomotor and cognitive assessment strategies to evaluate and modify the teaching/learning process.

(iv) Understands and utilizes physical education activities for curriculum integration.

(v) Applies movement concepts and principles to the learning and development of rhythm and motor skills for the following:

(I) locomotor movement

(II) nonlocomotor movement

(III) manipulative skills

(vi) Promotes participation and involvement in age-appropriate physical activities/sports suitable for lifelong participation in the following areas:

(I) lifetime activities/sports (i.e., skiing, camping, hiking, clogging)

(II) individual activities/sports (i.e., golf, tennis, self-defense, spelunking)

(III) nontraditional team activities/sports (i.e., korfball, lacrosse, square dancing)

(IV) traditional team activities/sports (i.e., basketball, volleyball, softball)

(vii) Understands adaptive learning activities for students with special needs.

(viii) Knows and can demonstrate appropriate fitness, wellness, and personal management components including:

(I) Fitness. Fitness includes: flexibility; muscular strength; cardiovascular fitness endurance; contraindicated exercises (traditional exercises which have been proven, through research, to be damaging to the body); nutrition.

(II) Wellness. Wellness encompasses: body composition; stress management; safety and accident prevention; designing and assessing personal fitness program; weight control; consumer education.

(III) Personal management skills: cooperation; sportsmanship; self-discipline; goal setting; following rules.

(B) **Health/safety.** The candidate for licensure and certification:

(i) Communicates the concepts, purposes, and importance of health education; as evidenced by the following indicators:

(I) Describes the discipline of health education within the school setting.

(II) Describes the interdependence of health education and the other components of a coordinated school health program.

(III) Delivers accurate and up-to-date information about the most common comprehensive school health education components; including but not limited to: community and environmental health; consumer health; disease prevention and control; healthy communication; human growth and development; mental and emotional health; nutrition; personal health; safety and injury prevention; substance abuse.

(IV) Provides a rationale for health education, grades 1-12.

(V) Understands the variables that shape decisions about health behaviors.

(VI) Defines the role of the health education teacher within a coordinated school health program.

(VII) Explains the importance of health education.

(VIII) Identifies the kinds of school and community support necessary to implement a coordinated school health education program.

(IX) Understands the importance of ongoing professional development for health education teachers.

(X) Describes the importance of modeling positive, healthful behaviors.

(ii) Assesses the health education needs and interests of students.

(I) Uses information about health needs and interests of students.

(II) Recognizes behaviors that promote or compromise health.

(iii) Plans school health instruction.

(I) Selects realistic program goals and objectives.

(II) Identifies a scope and sequence plan for school health instruction.

(III) Plans health education lessons which reflect the abilities, needs, interests, developmental levels, and cultural backgrounds of students.

(IV) Describes effective ways to promote cooperation with and feedback from administrators, parents, and other community members.

(V) Determines procedures which are compatible with school policy for implementing curricula.

(VI) Develops activities to meet program goals and objectives based on the Health/Safety, and for grades 7-12, HIV/AIDS Prevention Education Sections of Oklahoma's core curriculum and on the National Health Education Standards.

(iv) Implements school health instruction.

(I) Employs a variety of strategies to facilitate implementation of a school health education curriculum; strategies include: provides a core health education curriculum; integrates health and other content areas; uses technology as a strategy to deliver health education; involves parents, guardians, or custodians of students in the teaching/learning process.

(II) Incorporates appropriate resources and materials including: selects valid and appropriate sources of information about health; uses school and community resources within a comprehensive program; refers students to valid and appropriate sources of health information.

(III) Employs appropriate strategies for dealing with health issues.

(IV) Adapts existing health education curricular models to community and student needs and interests.

(v) Evaluates the effectiveness of school health instruction.

(I) Uses appropriate criteria and methods unique to health education for evaluating student achievement.

(II) Interprets and applies student evaluation results to improve health instruction.

(18) **Psychometrist.** The candidate for licensure and certification:

(A) Understands and integrates into practice the philosophical, historical, and legal foundations of special education as applicable to the role of the psychometrist/educational diagnostician, in the following areas, including laws, regulations, and policies/procedures related to special education assessment, placement, and due process.

(B) Demonstrates knowledge, understanding, and application of ethical issues and standards of professional practice within the educational setting, in the following areas:

(i) ethical conduct and legal issues of the profession

(ii) role and function of the psychometrist/educational diagnostician

(iii) confidentiality

(iv) professional issues/standards

(v) training standards for particular instruments and procedures

(vi) continuing professional growth/development

(C) Demonstrates knowledge and skills in assessment, diagnosis, evaluation, and eligibility determination within the multidisciplinary team process for children with disabilities who may require special education services or early childhood intervention services, as follows:

(i) collection of assessment data for infants through school-age children, including the selection, administration, accurate scoring, and reporting of instruments and procedures appropriate to the areas of concern such as basic academic skills, cognitive/intellectual, developmental, perception, language, adaptive behavior, and classroom behavior

(ii) the adequacy, appropriate use, and limitations of assessment and evaluation instruments and procedures to be used by the psychometrist/educational diagnostician for educational purposes and recommendations

(iii) nondiscriminatory assessment strategies for culturally and linguistically diverse children

(D) Has knowledge and skills in effective communication and collaboration within the multidisciplinary team process, in the following areas:

(i) consultation for instructional interventions and problem-solving

(ii) educational recommendations and decision-making

(E) Understands and integrates into practice basic psychological foundations, including:

(i) cultural diversity

(ii) child and adolescent development

(iii) human exceptionalities

(iv) learning/educational psychology

(F) Understands and integrates into practice educational foundations, including:

(i) education of the exceptional learner

(ii) instructional and remedial techniques

(iii) the educational service delivery system

(19) **Reading specialist.** The candidate for licensure and certification shall possess the competencies specified in (A) through (D) of this paragraph:

(A) **Reading philosophy and professional roles.** Competencies are:

(i) Provides reading instructions so as to facilitate the process of reading development in which teacher and learner work together as members of a community of readers.

(ii) Has knowledge of the linguistic, dialectal, and developmental differences in readers that may affect instructional strategies.

(iii) Knows the principles and issues of major theories of language development as they relate to reading instruction.

(iv) Applies flexible approaches to reading instruction that recognize the uniqueness of individual students.

(v) Develops strategies for working with school staff, other reading specialists, and professionals within and beyond the school to foster reading development for individuals and groups.

(vi) Understands reading as a constructive process in which the experience of the reader, the text, and the requirements of the reading event interact in the creation of meaning.

(vii) Identifies appropriate interaction with staff members (e.g., content, special, classroom teachers) to facilitate reading development for all students.

(viii) Recognizes factors and procedures related to the involvement of parents and/or school and community groups at all stages of reader development.

(ix) Identifies and understands procedures involved in determining curriculum needs for reading programs.

(x) Identifies criteria and/or procedures involved in planning reading curriculum.

(xi) Identifies appropriate methods and resources related to the reading process for promoting professional growth for self and school staff.

(B) **Instructional practices.** Competencies are:

(i) Understands emergent literacy development and the types of experiences and concepts that support learning to read.

(ii) Applies knowledge of and provides appropriate instruction of graphophonemic relationships.

(iii) Understands the relationship among word knowledge (i.e., word attack and word recognition), reading fluency, and comprehension.

(iv) Identifies various word attack strategies (i.e., semantic clues, syntactic clues, graphophonemic clues), and various word recognition strategies (i.e., those that promote meaningful vocabulary growth).

(v) Provides appropriate instruction of strategies that promote comprehension at the literal, inferential, and critical/evaluative levels for both narrative and expository texts.

(vi) Understands the importance of adjusting reading strategies for different reading purposes.

(vii) Provides appropriate instruction of various techniques and study strategies (i.e., locating, organizing, and interpreting information).

(viii) Identifies content area reading strategies that activate and/or develop background knowledge.

(ix) Assists students in applying reading-related strategies to new learning situations.

(x) Understands the issues and procedures involved in teacher modeling, teacher-guided application, and independent practice.

(xi) Develops proficiencies in providing instruction associated with a variety of reading instructional approaches, including phonics, language experience, basal (basic) readers, and literature-based.

(xii) Implements cooperative learning strategies during reading instruction.

(xiii) Analyzes the strengths and weaknesses of the use of readability formulas in assessing instructional materials.

(xiv) Identifies appropriate criteria for selecting instructional materials (e.g., textbooks, reference books, computer software).

(xv) Analyzes issues and procedures involved in modifying curriculum to meet the needs of individual students.

(xvi) Recognizes the factors involved in organizing reading instruction to encourage individual student success.

(xvii) Promotes meaningful parent/guardian-child interaction related to reading.

(xviii) Creates a reading environment to increase student's motivation to read widely and independently and to promote reading as a lifelong habit.

(C) **Reading diagnosis.** Competencies are:

(i) Identifies factors that contribute to reading difficulties.

(ii) Understands the nature of reading difficulties (e.g., students' knowledge and strategies, factors embedded in the reading materials, instructional factors).

(iii) Implements, interprets, and uses informal and formal assessment and evaluation procedures for identifying and diagnosing reading difficulties (e.g., observation, criterion-referenced tests, norm-referenced tests, miscue analysis, informal reading inventories, anecdotal records).

(iv) Understands, analyzes, and creates case studies for diagnostic purposes.

(v) Identifies issues, procedures, and limitations involved in using oral diagnostic tests, silent

diagnostic tests, visual and auditory screening, and observational diagnostic techniques.

(vi) Identifies activities and/or strategies appropriate for individual or group instruction for students with reading difficulty.

(D) **Evaluation and assessment.** Competencies are:

(i) Identifies characteristics, strengths, and weaknesses of formal and informal tests and instruments (i.e., criterion-referenced, norm-referenced, achievement tests, diagnostic tests, checklists, observations, and anecdotal records.)

(ii) Analyzes issues involved in the use of tests and other evaluation instruments for classification or placement, diagnosis, or other evaluative purposes.

(iii) Selects tests or other instruments appropriate for a given evaluation purpose.

(iv) Understands the principles and/or procedures involved in the interpretation of test results.

(v) Identifies procedures for cooperating with various professionals in assessment, evaluation, and instructional planning for students with special needs.

(vi) Identifies criteria for evaluating reading programs.

(20) **Reserve Officers' Training Corps (ROTC).** Competency for ROTC certification will be verified by a recommendation from the appropriate ROTC Regional Headquarters.

(21) **School counselor.**

(A) The candidate for licensure and certification:

(i) Uses an understanding of human development to provide a comprehensive, developmental guidance and counseling program.

(ii) Understands the impact of environmental influences on students' development and achievement, and helps students develop strategies to resolve or cope with situations that may hinder learning.

(iii) Demonstrates an appreciation of human diversity by providing equitable guidance and counseling services for all students and by promoting a climate of mutual respect that helps students value themselves and others.

(iv) Uses effective leadership skills to plan, implement, and evaluate a comprehensive, developmental guidance and counseling program to address the needs of all students.

(v) Provides guidance and counseling services to address the needs and concerns of students and to help students develop skills to use in future situations.

(vi) Facilitates the educational and career development of individual students to help all students achieve success.

(vii) Uses formal and informal assessment to provide information about and to students, to monitor student progress, and to recommend changes to the student's educational environment.

(viii) Consults with parents and school personnel, provides professional expertise, and establishes collaborative relationships that foster a support system for students, parents, and the school community.

(ix) Establishes strong and positive ties with the home and the community to promote and support students' growth in school and beyond the school setting.

(x) Has knowledge of professional ethical codes, the importance of professional development, and the need to work with colleagues to advance the profession.

(B) Competency for School Counselor certification may also be verified by the Nationally Certified School Counselor (NCSC) credential.

(22) **School nurse.** Competency for School Nurse certification will be verified by a current registered nurse's license issued by the Oklahoma State Board of Nurse Registration and Nursing Education.

(23) **School psychologist.**

(A) The candidate for licensure and certification:

(i) Understands and integrates into practice the principles of professional school psychology, including:

(I) ethical conduct and legal issues

(II) confidentiality

(III) role and function of the school psychologist

(IV) service delivery models

(V) professional issues/standards

(VI history and foundations

(VII) continuing professional growth/development

(ii) Demonstrates knowledge and skills in a comprehensive range of assessment, diagnosis, evaluation, and eligibility or intervention determination within the multidisciplinary team process, including:

(I) for children with disabilities who may require special education, early childhood intervention services, or other exceptional needs

(II) assessment for interventions

(III) collection of assessment data for infants through school-age children, including the selection, administration, accurate scoring, reporting, and interpretation of instruments and procedures appropriate to the areas of concern

(IV) the adequacy, appropriate uses, and limitations of assessment and evaluation instruments and procedures to be used by the school psychologist

(V) nondiscriminatory assessment strategies for culturally and linguistically diverse children

(iii) Demonstrates knowledge and skills in prevention, intervention, consultation, and counseling, including:

(I) behavioral and social skills

(II) cognitive/intellectual

(III) child developmental

(IV) academic learning/instructional

(V) mental health needs

(VI) crisis prevention/intervention

(iv) Demonstrates knowledge and skills in effective communication and collaboration, including:

(I) consultation for interventions and problem-solving

(II) recommendations and decision-making concerning educational and mental health needs of children

(III) working with families, children, professionals, and other service systems

(v) Demonstrates knowledge and application of statistics, research methodologies/designs, measurement, and program evaluation.

(vi) Understands and integrates into practice psychological foundations including:

(I) biological bases of behavior (developmental, neuropsychological, physiological, and other biological influences on behavior)

(II) social bases of behavior (social psychology and development)

(III) cultural diversity and cultural bases of behavior

(IV) child and adolescent development

(V) human exceptionalities and individual differences

(VI) human learning

(vii) Understands and integrates into practice educational foundations, including:

(I) education of the exceptional learner

(II) instructional and remediation techniques/intervention methods

(III) organization and operation of the schools

(IV) the educational and alternative service delivery systems

(B) Competency for School Psychologist certification may also be verified by the Nationally Certified School Psychologist (NCSP) credential.

(24) **Elementary science.** The candidate for licensure and certification:

(A) Is able to plan an inquiry-based science program for students using as a framework, Oklahoma's core curriculum. In doing this, one

(i) Develops a framework of yearlong and short-term goals for students.

(ii) Understands curriculum design to meet the interests, knowledge, understanding, abilities, and experiences of students.

(iii) Selects teaching and assessment strategies that support the development of student understanding and encourage a community of science learners.

(iv) Works with colleagues within and across disciplines and grade levels.

(B) Is able to guide and facilitate learning. In doing this, one

(i) Focuses and supports inquiries while interacting with students.

(ii) Facilitates discussion among students about scientific ideas.

(iii) Challenges students to accept and share responsibility for their own learning.

(iv) Recognizes and responds to student diversity and encourages all students to participate fully in science learning.

(v) Encourages and models the skills of scientific inquiry, as well as the curiosity, openness to new ideas and data, and questioning that characterizes science.

(C) Is able to engage in ongoing assessment of one's own teaching and of student learning. In doing this, one

(i) Uses multiple methods and systematically gathers data about student understanding and ability.

(ii) Analyzes assessment data to guide teaching.

(iii) Guides students in the evaluation of their work.

(iv) Uses student data, observations of teaching, and interaction with colleagues to reflect on and improve teaching practice.

(v) Uses student assessment information and classroom observation to report student achievement to students and parents.

(D) Is able to design and manage learning environments that provide students with the time, space, and resources needed for developing science skills. In doing this, one

(i) Structures the time so that students are able to engage in extended investigations.

(ii) Creates a setting for student work that is flexible and supportive of science inquiry.

(iii) Ensures a safe working environment.

(iv) Makes the available science tools, materials, media, and technological resources accessible to students.

(v) Identifies and uses resources outside the school.

(vi) Engages students in designing the learning environment.

(E) Is able to develop communities of science learners that reflect the intellectual rigor of scientific

inquiry and the climate conducive to science learning. In doing this, one

(i) Respects the diverse needs, skills, and experiences of all students.

(ii) Enables students to have a significant voice in decisions about the content and context of their work and prepares students to take responsibility for learning.

(iii) Encourages collaboration among students.

(iv) Structures and facilitates ongoing formal and informal discussion based on a shared understanding of rules of scientific discourse.

(v) Models and emphasizes the skills and value of scientific inquiry.

(F) Is able to use a variety of instructional strategies to implement an integrated/ interdisciplinary curriculum.

(G) Is able to teach with a broad understanding of all content areas and to understand the interaction between the sciences and the process skills. Content areas and concepts within each are listed in subparagraphs (A) through (C) herein:

(i) Physical science content

(I) Properties of objects and materials

(II) Properties and changes of properties in matter

(III) Position and motion of objects

(IV) Motion and force

(V) Light, heat, electricity, and magnetism

(VI) Transfer of energy

(ii) Earth/space content

(I) Properties of earth materials

(II) Objects in the sky

(III) Changes in earth and sky

(IV) Structure of the earth system

(V) Earth's history

(VI) Earth in the solar system

(iii) Life science content

(I) The characteristics of organisms

(II) The life cycle of organisms

(III) Organisms and environment

(IV) Structure and function in living systems

(V) Reproduction and heredity

(VI) Regulation and behavior

(VII) Population and ecosystem

(VIII) Diversity and adaption of organisms

(H) Is able to develop conceptual understanding for science content using the process skills listed in Oklahoma's core curriculum, in Grades K through 8. Identified science concepts and/or science content areas are:

(i) System, order and organization

(ii) Constancy, change, equilibrium and measurement

(iii) Form and function

(iv) Abilities of technological design

(v) Abilities to distinguish between natural objects and objects made by humans

(vi) Understanding about science and technology

(vii) Science as a human endeavor

(viii) Nature of science

(ix) History of science

(x) Personal health

(xi) Characteristics and changes in populations

(xii) Population, resources, and environment

(xiii) Types of resources

(xiv) Natural hazards

(xv) Changes in environments

(xvi) Science and technology in local challenges

(xvii) Risk and benefits

(xviii) Science and technology in society

(25) **Earth science 6-12.** The candidate for licensure and certification:

(A) Is able to plan an inquiry-based science program for students using as a framework, Oklahoma's core curriculum. In doing this, one

(i) Develops a framework of yearlong and short-term goals for students.

(ii) Understands curriculum design to meet the interests, knowledge, understanding, abilities and experiences of students.

(iii) Selects teaching and assessment strategies that support the development of student understanding and encourage a community of science learners.

(iv) Works with colleagues within and across disciplines and grade levels.

(B) Is able to guide and facilitate learning. In doing this, one:

(i) Focuses and supports inquiries while interacting with students.

(ii) Facilitates discussion among students about scientific ideas.

(iii) Challenges students to accept and share responsibility for their own learning.

(iv) Recognizes and responds to student diversity and encourages all students to participate fully in science learning.

(v) Encourages and models the skills of scientific inquiry, as well as the curiosity, openness to new ideas and data, and questioning that characterizes science.

(C) Is able to engage in ongoing assessment of own teaching and of student learning. In doing this, one

(i) Uses multiple methods and systematically gathers data about student understanding and ability.

(ii) Analyzes assessment data to guide teaching.

(iii) Guides students in the evaluation of their work.

(iv) Uses student data, observations of teaching, and interaction with colleagues to reflect on and improve teaching practice.

(v) Uses student assessment information and classroom observation to report student achievement to students and parents.

(D) Is able to design and manage learning environments that provide students with the time, space, and resources needed for developing science skills. In doing this, one

(i) Structures the time so that students are able to engage in extended investigations.

(ii) Creates a setting for student work that is flexible and supportive of science inquiry.

(iii) Ensures a safe working environment.

(iv) Makes the available science tools, materials, media, and technological resources accessible to students.

(v) Identifies and uses resources outside the school.

(vi) Engages students in designing the learning environment.

(E) Is able to develop communities of science learners that reflect the intellectual rigor of scientific inquiry and the climate conducive to science learning. In doing this, one

(i) Respects the diverse needs, skills, and experiences of all students.

(ii) Enables students to have a significant voice in decisions about the content and context of their work and prepares students to take responsibility for learning.

(iii) Encourages collaboration among students.

(iv) Structures and facilitates ongoing formal and informal discussion based on a shared understanding of rules of scientific discourse.

(v) Models and emphasizes the skills, attitudes, and value of scientific inquiry.

(F) Is able to use a variety of instructional strategies to implement an integrated interdisciplinary curriculum.

(G) Is able to teach with a broad understanding of all content areas and understand the interaction between the sciences and the process skills. Identified Earth/Space Science content areas are:

(i) Structure of the earth system

(ii) Earth's history

(iii) Earth in the solar system

(iv) Energy in the Earth system

(v) Geochemical cycles

(vi) The universe and Earth's system

(H) Is able to develop conceptual understanding for science content using the process skills listed in Oklahoma's core curriculum, in Grades 6 through 12. Identified science concepts and/or science content areas are:

(i) System, order and organization

(ii) Evidence, models and explanation

(iii) Constancy, change, equilibrium and measurement

(iv) Form and function

(v) Abilities of technological design

(vi) Understanding about science and technology

(vii) Science as a human endeavor

(viii) Nature of science

(ix) Nature of scientific knowledge

(x) History of science

(xi) Historical perspectives

(xii) Personal health

(xiii) Personal and community health

(xiv) Population, resources, and environments

(xv) Population growth

(xvi) Natural hazards

(xvii) Natural resources

(xviii) Risks and benefits

(xix) Environmental quality

(xx) Natural and human induced hazards

(xxi) Science and technology in society

(xxii) Science and technology in local, national, and global challenges

(26) **Biological sciences 6-12.** The candidate for licensure and certification:

(A) Is able to plan an inquiry-based science program for students using as a framework, Oklahoma's core curriculum. In doing this, one:

(i) Develops a framework of yearlong and short-term goals for students.

(ii) Understands curriculum design to meet the interests, knowledge, understanding, abilities, and experiences of students.

(iii) Selects teaching and assessment strategies that support the development of student understanding and encourage a community of science learners.

(iv) Works with colleagues within and across disciplines and grade levels.

(B) Is able to guide and facilitate learning. In doing this, one:

(i) Focuses and supports inquiries while interacting with students.

(ii) Facilitates discussion among students about scientific ideas.

(iii) Challenges students to accept and share responsibility for their own learning.

(iv) Recognizes and responds to student diversity and encourages all students to participate fully in science learning.

(v) Encourages and models the skills of scientific inquiry, as well as the curiosity, openness to new ideas and data, and questioning that characterizes science.

(C) Is able to engage in ongoing assessment of own teaching and of student learning. In doing this, one:

(i) Uses multiple methods and systematically gathers data about student understanding and ability.

(ii) Analyzes assessment data to guide teaching.

(iii) Guides students in the evaluation of their work.

(iv) Uses student data, observations of teaching, and interaction with colleagues to reflect on and improve teaching practice.

(v) Uses student assessment information and classroom observation to report student achievement to students and parents.

(D) Is able to design and manage learning environments that provide students with the time, space and resources needed for developing science skills. In doing this, one:

(i) Structures the time so that students are able to engage in extended investigations.

(ii) Creates a setting for student work that is flexible and supportive of science inquiry.

(iii) Makes the available science tools, materials, media, and technological resources accessible to students.

(iv) Engages students in designing the learning environment.

(E) Is able to develop communities of science learners that reflect the intellectual rigor of scientific inquiry and the climate conducive to science learning. In doing this, one:

(i) Respects diverse needs, skills, and experiences of all students.

(ii) Enables students to have a significant voice in decisions about the content and context of their work and prepares students to take responsibility for learning.

(iii) Encourages collaboration among students.

(iv) Structures and facilitates ongoing formal and informal discussion based on a shared understanding of rules of scientific discourse.

(v) Models and emphasizes the skills and value of scientific inquiry.

(F) Is able to use a variety of instructional strategies to implement an integrated interdisciplinary curriculum.

(G) Is able to teach with a broad understanding of all content areas and understands the interaction between the sciences and the process skills. Identified Biological Sciences content areas are:

(i) Structure and function in living systems

(ii) Reproduction and heredity

(iii) Regulation and behavior

(iv) Population and ecosystem

(v) Diversity and adaption of organisms

(vi) The cell

(vii) The molecular basis of heredity

(viii) Biological adaptation

(ix) The interdependence of organisms

(x) Matter, energy, organization in living systems

(xi) Behavior of organisms

(H) Is able to develop conceptual understanding for science content using the process skills listed in Oklahoma's core curriculum, in Grades 6 through 12. Identified Science concepts and content areas are:

(i) System, order, and organization

(ii) Evidence, models, and explanation

(iii) Constancy, change, equilibrium, and measurement

(iv) Form and function

(v) Abilities of technological design

(vi) Understanding about science and technology

(vii) Science as a human endeavor

(viii) Nature of science

(ix) Nature of scientific knowledge

(x) History of science

(xi) Historical perspectives

(xii) Personal health

(xiii) Personal and community health

(xiv) Population, resources, and environments

(xv) Population growth

(xvi) Natural hazards

(xvii) Natural resources

(xviii) Risks and benefits

(xix) Environmental quality

(xx) Natural and human induced hazards

(xxi) Science and technology in society

(xxii) Science and technology in local, national, and global challenges

(27) **Physical sciences 6-12.** The candidate for licensure and certification:

(A) Is able to plan an inquiry-based science program for students using as a framework, Oklahoma's core curriculum. In doing this, one:

(i) Develops a framework of yearlong and short-term goals for students.

(ii) Understands curriculum design to meet the interests, knowledge, understanding, abilities, and experiences of students.

(iii) Selects teaching and assessment strategies that support the development of student understanding and encourage a community of science learners.

(iv) Works with colleagues within and across disciplines and grade levels.

(B) Is able to guide and facilitate learning. In doing this, one:

(i) Focuses and supports inquiries while interacting with students.

(ii) Facilitates discussion among students about scientific ideas.

(iii) Challenges students to accept and share responsibility for their own learning.

(iv) Recognizes and responds to student diversity and encourages all students to participate fully in science learning.

(v) Encourages and models the skills of scientific inquiry, as well as the curiosity, openness to new ideas and data, and questioning that characterizes science.

(C) Is able to engage in ongoing assessment of own teaching and of student learning. In doing this, one:

(i) Uses multiple methods and systematically gathers data about student understanding and ability.

(ii) Analyzes assessment data to guide teaching.

(iii) Guides students in the evaluation of their work.

(iv) Uses student data, observations of teaching, and interaction with colleagues to reflect on and improve teaching practice.

(v) Uses student assessment information and classroom observation to report student achievement to students and parents.

(D) Is able to design and manage learning environments that provide students with the time, space, and resources needed for developing science skills. In doing this, one:

(i) Structures the time so that students are able to engage in extended investigations.

(ii) Creates a setting for student work that is flexible and supportive of science inquiry.

(iii) Ensures a safe working environment.

(iv) Makes the available science tools, materials, media, and technological resources accessible to students.

(v) Identifies and uses resources outside the school.

(vi) Engages students in designing the learning environment.

(E) Is able to develop communities of science learners that reflect the intellectual rigor of scientific inquiry and the climate conducive to science learning. In doing this, one:

(i) Respects the diverse needs, skills, and experiences of all students.

(ii) Enables students to have a significant voice in decisions about the content and context of their work and prepares students to take responsibility for learning.

(iii) Encourages collaboration among students.

(iv) Structures and facilitates ongoing formal and informal discussion based on a shared understanding of rules of scientific discourse.

(v) Models and emphasizes the skills and value of scientific inquiry.

(F) Is able to use a variety of instructional strategies and use integrated and interdisciplinary curriculum.

(G) Is able to teach with a broad understanding of all content areas and understands the interaction between the sciences and the process skills. Identified Physical Science concepts and content areas are:

(i) Properties and changes of properties in matter

(ii) Motions and force

(iii) The structure of atoms

(iv) Structure and properties of matter

(v) Chemical reactions

(vi) Conservation of energy

(vii) Interactions of energy and matter

(viii) The earth system

(ix) The Universe

(H) Is able to develop conceptual understanding for science content using the process skills listed in Oklahoma's core curriculum, in Grades 6 through 12. Identified Science concepts and content areas are:

(i) System, order, and organization

(ii) Evidence, models, and explanation

(iii) Constancy, change, equilibrium, and measurement

(iv) Form and function

(v) Abilities of technological design

(vi) Understanding about science and technology

(vii) Science as a human endeavor

(viii) Nature of science

(ix) Nature of scientific knowledge

(x) History of science

(xi) Historical perspectives

(xii) Personal health

(xiii) Personal and community health

(xiv) Population, resources, and environments

(xv) Population growth

(xvi) Natural hazards

(xvii) Natural resources

(xviii) Risks and benefits

(xix) Environmental quality

(xx) Natural and human induced hazards

(xxi) Science and technology in society

(xxii) Science and technology in local, national, and global challenges

(28) **Chemistry 6-12.** The candidate for licensure and certification:

(A) Is able to plan an inquiry-based science program for students using as a framework, Oklahoma's core curriculum. In doing this, one:

(i) Develops a framework of yearlong and short-term goals for students.

(ii) Understands curriculum design to meet the interests, knowledge, understanding, abilities, and experiences of students.

(iii) Selects teaching and assessment strategies that support the development of student understanding and encourage a community of science learners.

(iv) Works with colleagues within and across disciplines and grade levels.

(B) Is able to guide and facilitate learning. In doing this, one:

(i) Focuses and supports inquiries while interacting with students.

(ii) Facilitates discussion among students about scientific ideas.

(iii) Challenges students to accept and share responsibility for their own learning.

(iv) Recognizes and responds to student diversity and encourages all students to participate fully in science learning.

(v) Encourages and models the skills of scientific inquiry, as well as the curiosity, openness to new ideas and data, and questioning that characterizes science.

(C) Is able to engage in ongoing assessment of own teaching and of student learning. In doing this, one:

(i) Uses multiple methods and systematically gathers data about student understanding and ability.

(ii) Analyzes assessment data to guide teaching.

(iii) Guides students in the evaluation of their work.

(iv) Uses student data, observations of teaching, and interaction with colleagues to reflect on and improve teaching practice.

(v) Uses student assessment information and classroom observation to report student achievement to students and parents.

(D) Is able to design and manage learning environments that provide students with the time, space, and resources needed for developing science skills. In doing this, one:

(i) Structures the time so that students are able to engage in extended investigations.

(ii) Creates a setting for student work that is flexible and supportive of science inquiry.

(iii) Ensures a safe working environment.

(iv) Makes the available science tools, materials, media, and technological resources accessible to students.

(v) Identifies and uses resources outside the school.

(vi) Engages students in designing the learning environment.

(E) Is able to develop communities of science learners that reflect the intellectual rigor of scientific inquiry and the climate conducive to science learning. In doing this, one:

(i) Respects the diverse needs, skills, and experiences of all students.

(ii) Enables students to have a significant voice in decisions about the content and context of their work and prepares students to take responsibility for learning.

(iii) Encourages collaboration among students.

(iv) Structures and facilitates ongoing formal and informal discussion based on a shared understanding of rules of scientific discourse.

(v) Models and emphasizes the skills and value of scientific inquiry.

(F) Is able to use a variety of instructional strategies and use integrated and interdisciplinary curriculum.

(G) Is able to teach with a broad understanding of all content areas and understands the interaction between the sciences and the process skills. Identified Chemistry concepts and content areas are:

(i) Structures and properties of matter

(ii) Chemical reactions

(iii) Transfer of energy

(iv) The structure of atoms

(v) Properties and changes of properties in matter

(H) Is able to develop conceptual understanding for science content using the process skills listed in Oklahoma's core curriculum, in Grades 6 through 12. Identified Science concepts and content areas are:

(i) System, order, and organization

(ii) Evidence, models, and explanation

(iii) Constancy, change, equilibrium, and measurement

(iv) Form and function

(v) Abilities of technological design

(vi) Understanding about science and technology

(vii) Science as a human endeavor

(viii) Nature of science

(ix) Nature of scientific knowledge

(x) History of science

(xi) Historical perspectives

(xii) Personal health

(xiii) Personal and community health

(xiv) Population, resources, and environments

(xv) Population growth

(xvi) Natural hazards

(xvii) Natural resources

(xviii) Risks and benefits

(xix) Environmental quality

(xx) Natural and human induced hazards

(xxi) Science and technology in society

(xxii) Science and technology in local, national, and global challenges

(29) **Physics 6-12.** The candidate for licensure and certification:

(A) Is able to plan an inquiry-based science program for students using as a framework, Oklahoma's core curriculum. In doing this, one:

(i) Develops a framework of yearlong and short-term goals for students.

(ii) Understands curriculum design to meet the interests, knowledge, understanding, abilities, and experiences of students.

(iii) Selects teaching and assessment strategies that support the development of student understanding and encourage a community of science learners.

(iv) Works with colleagues within and across disciplines and grade levels.

(B) Is able to guide and facilitate learning. In doing this, one:

(i) Focuses and supports inquiries while interacting with students.

(ii) Facilitates discussion among students about scientific ideas.

(iii) Challenges students to accept and share responsibility for their own learning.

(iv) Recognizes and responds to student diversity and encourages all students to participate fully in science learning.

(v) Encourages and models the skills of scientific inquiry, as well as the curiosity, openness to new ideas and data, and questioning that characterizes science.

(C) Is able to engage in ongoing assessment of own teaching and of student learning. In doing this, one:

(i) Uses multiple methods and systematically gathers data about student understanding and ability.

(ii) Analyzes assessment data to guide teaching.

(iii) Guides students in the evaluation of their work.

(iv) Uses student data, observations of teaching, and interaction with colleagues to reflect on and improve teaching practice.

(v) Uses student assessment information and classroom observation to report student achievement to students and parents.

(D) Is able to design and manage learning environments that provide students with the time, space, and resources needed for developing science skills. In doing this, one:

(i) Structures the time so that students are able to engage in extended investigations.

(ii) Creates a setting for student work that is flexible and supportive of science inquiry.

(iii) Ensures a safe working environment.

(iv) Makes the available science tools, materials, media, and technological resources accessible to students.

(v) Identifies and uses resources outside the school.

(vi) Engages students in designing the learning environment.

(E) Is able to develop communities of science learners that reflect the intellectual rigor of scientific inquiry and the climate conducive to science learning. In doing this, one:

(i) Respects the diverse needs, skills, and experiences of all students.

(ii) Enables students to have a significant voice in decisions about the content and context of their work and prepares students to take responsibility for learning.

(iii) Encourages collaboration among students.

(iv) Structures and facilitates ongoing formal and informal discussion based on a shared understanding of rules of scientific discourse.

(v) Models and emphasizes the skills and value of scientific inquiry.

(F) Is able to use a variety of instructional strategies and use integrated and interdisciplinary curriculum.

(G) Is able to teach with a broad understanding of all content areas and understands the interaction between the sciences and the process skills. Identified Physics concepts and content areas are:

(i) Motions and forces

(ii) Conservation of energy

(iii) Transfer of energy

(iv) Interactions of energy and matter

(H) Is able to develop conceptual understanding for science content using the process skills listed in Oklahoma's core curriculum, in Grades 6 through 12. Identified Science concepts and content areas are:

(i) System, order, and organization

(ii) Evidence, models, and explanation

(iii) Constancy, change, equilibrium, and measurement

(iv) Form and function

(v) Abilities of technological design

(vi) Understanding about science and technology

(vii) Science as a human endeavor

(viii) Nature of science

(ix) Nature of scientific knowledge

(x) History of science

(xi) Historical perspectives

(xii) Personal health

(xiii) Personal and community health

(xiv) Population, resources, and environments

(xv) Population growth

(xvi) Natural hazards

(xvii) Natural resources

(xviii) Risks and benefits

(xix) Environmental quality

(xx) Natural and human induced hazards

(xxi) Science and technology in society

(xxii) Science and technology in local, national, and global challenges

(30) **Social Studies**

(A) **United States History/Oklahoma History/government/economics.** The candidate for licensure and certification:

(i) Knows the major themes of United States history and their interrelatedness.

(ii) Understands how the political growth, major events, and individuals affected the development of the United States.

(iii) Examines and analyzes historical documents which contributed to the establishment and growth of the government of the United States.

(iv) Identifies and describes events, trends, individuals, and movements which shaped the social, economic, and cultural development of the United States.

(v) Analyzes events and identifies individuals who defined and continue to impact the role of the United States in world affairs.

(vi) Knows the roles and function of government and the foundations, structure, and function of American government.

(vii) Identifies and explains the rights and responsibilities of citizens of the United States.

(viii) Describes the characteristics of local and state governments and the national government, and the relationships among the different levels of government.

(ix) Analyzes how the American political process works and the relationship of the process to the individual as a citizen of the state and the nation.

(x) Identifies and analyzes the events which led to Oklahoma's historical, political, economic, and cultural development.

(xi) Identifies important individuals and groups which have had an influence on Oklahoma's heritage.

(xii) Identifies the diverse geographic features and resources found in Oklahoma and describes their influence on Oklahoma's historical development and economy.

(xiii) Understands basic application of economic theories.

(xiv) Interprets economic trends in historical, political, and geographic contexts.

(xv) Analyzes the influence of the past on the present and uses a knowledge of history and government to anticipate and plan for the future, evaluating alternative courses of action.

(xvi) Applies the skills of analysis, interpretation, research, and decision-making to develop an understanding of history, government, and economic concepts.

(xvii) Knows the content of the Oklahoma core curriculum for United States History, Oklahoma History, government, and economics.

(B) **World History/geography.** The candidate for licensure and certification:

(i) Compares and contrasts differing sets of ideas, personalities, and institutions of world cultures and major historical periods.

(ii) Analyzes the cause and effect of relationships, multiple causation and perspectives, including the importance of the individual on historical events.

(iii) Analyzes the influence of the past on the present and uses a knowledge of history and geography to anticipate and plan for the future, evaluating alternative courses of action.

(iv) Interprets given historical data in order to evaluate information in its context.

(v) Knows the six elements of geographic organization: the world in spatial terms, places and regions, physical systems, human systems, environment and society, and application of geographic data, and applies them to developing an understanding of geography concepts.

(vi) Applies the skills of analysis, interpretation, research, and decision-making to develop an understanding of history and geographic concepts.

(vii) Knows the content of the Oklahoma core curriculum for World History and Geography.

(C) **Psychology/sociology.** The candidate for licensure and certification:

(i) Exhibits a basic intellectual grasp of psychological and sociological theories, vocabulary, history, and recent trends in the fields of psychology and sociology.

(ii) Understands basic concepts relative to social, developmental, abnormal and clinical psychology, learning theory (classical, operant, and cognitive), and other significant areas in the discipline of psychology, such as the scientific method.

(iii) Knows basic brain-based research and theory, and how biology and behavior interact.

(iv) Recognizes the differences among experimental, classical, and conditioning approaches to the study of psychology.

(v) Analyzes and interprets how today's psychologists view behavior in the following areas: the biological, the cognitive, the person-centered, and the psycho-dynamic perspectives.

(vi) Knows the theories and measurement of intelligence testing.

(vii) Knows basic concepts relative to group behavior, ethnicity, social mores, crime, demographics and current social issues.

(viii) Knows and analyzes culture, social structure, social stratification, social institutions, socialization, social movements, and social problems, as sociological concepts.

(ix) Knows and applies the basic sociological research processes, e.g., hypothesis formulations, sampling

(31) **Special Education (birth through twelfth grade).** For purposes of providing special education services and identifying competencies deemed necessary for licensure and certification, four areas of disabilities have been identified within the overall field of special education; these are Blind/Visual Impairment, Deal/Hard of Hearing,

Mild-Moderate Disabilities, and Severe-Profound/Multiple Disabilities. Competencies identified at the early childhood level and deemed common to all areas of disabilities are addressed in (A) and apply to all candidates for licensure and certification in any area of special education. Additional competencies in each of the four areas listed above in this paragraph are addressed in (B) through (E).

(A) **Competencies common to all areas of disabilities.** The candidate for licensure and certification:

(i) Understands the historical, social, and ethical foundations; legal and regulatory; and current trends and issues of early childhood, early childhood special education, and special education.

(ii) Identifies specific/common disabilities in children and the implications for development and learning.

(iii) Plans and implements programming and curricula using current best practices and principles of early childhood education.

(iv) Understands typical and atypical development and the interdependency of all developmental areas, and respects each child's unique characteristics and their implications for learning.

(v) Demonstrates knowledge and skills in selection and administration of developmental screening, assessment, and evaluation instruments and methods which are comprehensive, nondiscriminatory for linguistic and cultural differences, formal and informal, and appropriate for children with early childhood disabilities.

(vi) Participates and collaborates with all team members in conducting the evaluation/assessment within the multidisciplinary team process.

(vii) Understands and demonstrates knowledge of the individualized family service plan (IFSP)/individualized education program (IEP) process by:

(I) using assessment results, in partnership with the family and other team members, to develop the IFSP/IEP

(II) monitoring IFSP/IEP progress

(viii) Understands and implements early childhood curricula by adapting educational strategies, schedules and environments (individual, group, home settings) to meet the specific needs, interests, and experiences of all children.

(ix) Understands and participates in the transition process across programs and service systems by:

(I) planning for and linking current developmental learning experiences and teaching strategies with those of the next educational setting

(II) communicating options for programs and services at the next level, while assisting the family in planning for transition.

(x) Develops and uses formative and summative program evaluation to ensure comprehensive quality of programs and services for children and their families.

(xi) Collaborates and consults regularly with families, other team members, and agencies to enhance and support children's learning and development by:

(I) assisting families in identifying resources, priorities, and concerns, and in accessing appropriate services

(II) respecting parents' choices and goals for their children

(III) implementing services for children and their families, consistent with laws, regulations, and procedural safeguards

(xii) Uses positive and supportive early childhood guidance, teaching, and behavioral strategies which help all children learn to make responsible decisions regarding their own behavior and contribute to the development of self-control, self-motivation, and self-worth.

(xiii) Demonstrates professionalism and ethical practice, including:

(I) advocacy on behalf of young children and their families to improve quality of programs and services for young children and for early childhood special education

(II) implementation of a professional development plan which incorporates best practices and principles.

(B) **Blind/visual impairment.** The candidate for licensure and certification:

(i) Understands the philosophical, historical, and legal foundations of special education for students with visual impairment including.

(I) trends and issues in special education

(II) special education policies and procedures

(III) laws and regulations regarding special education

(ii) Demonstrates knowledge of characteristics of students with visual impairments.

(iii) Demonstrates knowledge and skills in assessment, diagnosis, evaluation, and eligibility determination within the multidisciplinary team process for students with visual impairments including:

(I) procedures relevant to the impact of specific visual disorders on learning and experience, as well as procedures used for screening, prereferral, referral, and identification of students with visual impairments:

(II) vision screening methods

(III) functional vision assessment

(IV) learning media assessment

(V) orientation and mobility

(VI) independent living skills

(VII) vocational skills
(VIII) assistive technology
(IX) recreation and leisure skills
(X) classroom observation

(iv) Understands and demonstrates knowledge of the individualized education programs (IEP) process by:
(I) using assessment results, in partnership with team members, to develop the IEP
(II) monitoring IEP progress

(v) Demonstrates knowledge and skills to plan and implement appropriate and effective individualized education programs for students with visual impairments, based upon knowledge of subject matter and adaptation of curriculum and materials to meet individual abilities and sensory, conceptual and communication needs, including:
(I) social interaction skills
(II) recreation and leisure skills
(III) use of assistive technology
(IV) prerequisite skills and concepts for orientation and mobility instruction
(V) independent living skills
(VI) career education
(VII) visual efficiency skills
(VIII) literacy skills
(IX) organizational skills

(vi) Plans and manages supportive educational environments relative to the student's specific visual condition, including:
(I) acquisition and use of unique assistive technology (e.g., computers, printers, scanners, screen access, note-taking devices, software, speech output devices, CCTV, etc.)
(II) acquisition and use of specialized equipment and materials (Braille writer, abacus, slate and stylus, paper, Braille/large print/cassette textbooks, tactile maps, charts, graphs, optical, and nonoptical aids, etc.)
(III) modification of the physical environment
(IV) implementation of appropriate instructional strategies
(V) incorporation of basic orientation and mobility skills

(vii) Demonstrates knowledge and applies skills relative to the management of student behavior and social interaction skills unique to students with visual impairments, including:
(I) influences of the disability (ies) and other factors impacting the child's behavior and social skills
(II) instruction in social interaction skills, adaptive behavior, and appropriate behaviors
(III) appropriate behavior management and ethical considerations using a variety of interventions and techniques

(viii) Demonstrates knowledge and skills in communication and collaborative partnerships, including:
(I) communication with families, professionals, ancillary personnel, student peers, and community members to improve the quality of education for students with visual impairments
(II) interrelationships of resource and related service providers
(III) educational activities regarding specific visual conditions through inservice, consultation, etc.
(IV) transition planning

(ix) Demonstrates knowledge and skills to promote successful transitions at all levels of the education process and in various environments, including:
(I) completion of secondary level program/postsecondary planning
(II) transitions across programs and service delivery systems

(x) Demonstrates knowledge and skills in providing an appropriate education for students in the least restrictive environment, including the full continuum of placement alternatives

(xi) Demonstrates management skills pertaining to the various service delivery models representing the full continuum of placement options for students with visual impairments, including:
(I) time management and scheduling
(II) record keeping
(III) prioritizing caseload
(IV) roles and responsibilities
(V) travel issues relevant to service delivery
(VI) site specific climate and culture

(xii) Demonstrates professional and ethical conduct and advocacy for the unique needs of all students with visual impairments regardless of the availability of services.

(C) **Deaf/hard of hearing.** The candidate for licensure and certification:

(i) Understands the philosophical, historical, and legal foundations of special education for students who are deaf or hard of hearing, including:
(I) trends and issues in special education
(II) special education policies and procedures
(III) laws and regulations regarding special education

(ii) Demonstrates knowledge of characteristics and development of students who are deaf or hard of hearing, including:
(I) communication features (visual, spatial, tactile, auditory) necessary to enhance cognitive, emotional, and social development
(II) etiologies (causes) of hearing loss

(III) effects of onset, age of identification, and provision of services

(iii) Demonstrates knowledge and skills in assessment, diagnosis, evaluation, and eligibility determination within the multidisciplinary team process for students who are deaf or hard of hearing, including

(I) use of the natural/native/preferred language or mode of communication of the student

(II) interpretation of results for use in educational programming

(iv) Understands and demonstrates knowledge of the individualized education program (IEP) process by:

(I) using assessment results, in partnership with team members, to develop the IEP

(II) monitoring IEP progress

(v) Demonstrates knowledge and skills to plan and implement appropriate and effective instruction for students who are deaf or hard of hearing based upon knowledge of subject matter, curriculum goals, and students' individual abilities and needs by use of:

(I) multimedia skills

(II) techniques for modifying and adapting curriculum and materials to meet physical, sensory, cognitive, cultural, and communication needs in various learning environments

(vi) Plans and manages supportive teaching and learning environments that maximize opportunities for visually oriented and/or auditory learning and facilitate participation of students who are deaf or hard of hearing using:

(I) knowledge of current devices and assistive technology, including their application and resources (e.g., captioning, computers, augmentative communication devices, etc.)

(II) classroom management techniques

(vii) Demonstrates knowledge and skills in managing student behavior and social interaction skills, including:

(I) appropriate behavioral management and ethical considerations using a variety of interventions and techniques

(II) influences of the disability(ies) and other factors impacting the child's behavior and social interaction skills

(viii) Understands how language develops naturally and that early comprehensible communication influences the development of the whole child.

(ix) Demonstrates proficiency in the languages and modes of communication that are used in the instruction of students who are deaf or hard of hearing.

(x) Understands the social and cultural aspects of the deaf perspective and deaf experience.

(xi) Demonstrates knowledge and skills in communication and forming collaborative partnerships with families, professionals, and community members to improve the quality of education for students who are deaf or hard of hearing.

(xii) Demonstrates knowledge and skills to promote successful transitions at all levels of the education process and in various environments, including:

(I) completion of secondary level program/postsecondary planning

(II) transitions across programs and service delivery systems

(xiii) Demonstrates knowledge and skills in providing an appropriate education for students in the least restrictive environment, including the full continuum of placement alternatives.

(xiv) Demonstrates professional and ethical conduct in matters related to the education of students who are deaf or hard of hearing.

(D) **Mild-moderate disabilities.** The candidate for licensure and certification will demonstrate his/her mastery of these standards through the master of the Council for Exceptional Children's (CEC) Core Knowledge and Skills and through the mastery of the CEC Knowledge and Skill Base for Teachers of Students in Individualized General Curriculums. The candidate:

(i) Understands the philosophical, evidence-based principals and theories, historical and legal foundations of special education, and how these influence professional practices. These would include:

(I) trends and issues in special education;

(II) special education policies and procedures;

(III) laws and regulations regarding special education;

(IV) issues of human diversity and its relevance to special education;

(V) human issues that influence the field of special education; and

(VI) relationships of special education to the organization and functions of schools, school systems, and agencies.

(ii) Understands the similarities and differences in human development, the characteristics of all learners, and how exceptional conditions interact with the domains of human development to respond to varying abilities and behaviors of individuals with disabilities while demonstrating respect for their students.

(iii) Understands the effects that a disability (including aspects of cognition, communication, physical, medical, and social/emotional) can have on learning and how primary language, culture and familial background can interact with the student's

disabilities to impact academic, and social abilities, attitudes, values, interests and career options. The understanding of these learning differences and their possible interactions provide the foundation upon which a special educator individualizes instruction to provide meaningful and challenging learning for students with disabilities.

(iv) Possesses a repertoire of evidenced-based instructional strategies to individualize instruction for students with disabilities and emphasizes the development, maintenance, and generalization of knowledge and skills across environments, settings, and the life span. These evidenced-based instructional strategies should:

(I) promote positive learning results in the general curriculum in age-appropriate settings;

(II) promote multiple methods for teaching reading;

(III) modify learning environments;

(IV) enhance critical thinking, problem solving and performance skills;

(V) promote self-determination;

(VI) enhance integration and coordination of related services for educational benefit; and

(VII) promote transition.

(v) Demonstrates knowledge and skills in creating positive and safe learning environments for students with disabilities, and that also foster active engagement of students with disabilities. In addition, special educators foster environments that:

(I) value diversity;

(II) promote independence and productivity;

(III) assist general education colleagues in integrating students with disabilities;

(IV) use direct motivational and instructional interventions;

(V) utilize positive behavior supports and crisis management techniques;

(VI) guide and direct paraprofessionals and others; and

(VII) provide specialized school health practices and techniques for health and safety.

(vi) Understands typical and atypical language development and uses strategies to enhance language development and teach communication skills to students with disabilities. This is accomplished by using:

(I) effective language models;

(II) augmentative, alternative and assistive technologies;

(III) communication strategies and resources to facilitate understanding of subject matter for students with disabilities and those students with disabilities whose primary language is not English; and

(IV) matching communication methods to the student's language proficiency and cultural and linguistic differences.

(vii) Develops long- and short-range instructional plans anchored in both general and special education curricula emphasizing:

(I) effective modeling;

(II) efficient guided practice;

(III) modifications based on ongoing analysis of the individuals learning progress;

(IV) collaboration;

(V) individualized transition plans;

(VI) use of appropriate technologies; and

(VII) positive behavior supports.

(viii) Understands legal policies and ethical principals of multiple types of assessment information related to referral, eligibility, program planning, instruction and placement of students with disabilities including those from culturally and linguistically diverse backgrounds. Special educators use assessment information to identify supports and adaptations required for students with disabilities to access general and special curricula and participate in school, system and statewide assessment programs. Special educators regularly monitor students' progress and use appropriate technologies to support assessments. Special educators must understand:

(I) measurement theory and practices for addressing validity, reliability, norms, bias, and interpretation of assessment results and

(II) appropriate use and limitations of various assessment.

(ix) Demonstrates knowledge and skills regarding legal, professional, and ethical practices including:

(I) sensitivity to the many aspects of diversity;

(II) engaging in professional growth as lifelong learners;

(III) keeping current with evidence-based effective practices; and

(IV) participating in professional activities that benefit individuals with disabilities and their families.

(x) Routinely and effectively collaborates with families, colleagues, related service providers, community agencies and other resources in positive and culturally responsive ways to assure that the needs of students with disabilities are addressed including facilitation of successful transitions of students with disabilities across settings and services.

(E) **Severe-profound/multiple disabilities.** The candidate for licensure and certification will demonstrate his/her mastery of these standards through the mastery of the Council for Exceptional Children's (CEC) Core Knowledge and Skills and through the

mastery of the CEC Knowledge and Skill Base for Teachers of Students in Independence Curriculums. The candidate:

(i) Understands the philosophical, evidence-based principals and theories, historical and legal foundations of special education, and how these influence professional practices. These would include:

(I) trends and issues in special education;

(II) special education policies and procedures;

(III) laws and regulations regarding special education;

(IV) issues of human diversity and its relevance to special education;

(V) human issues that influence the field of special education; and

(VI) relationships of special education to the organization and functions of schools, school systems, and agencies.

(ii) Understands the similarities and differences in human development, the characteristics of all learners, and how exceptional conditions interact with the domains of human development to respond to varying abilities and behaviors of individuals with disabilities while demonstrating respect for their students.

(iii) Understands the effects that a disability (including aspects of cognition, communication, physical, medical, and social/emotional) can have on learning and how primary language, culture and familial background can interact with the student's disabilities to impact academic, and social abilities, attitudes, values, interests and career options. The understanding of these learning differences and their possible interactions provide the foundation upon which a special educator individualizes instruction to provide meaningful and challenging learning for students with disabilities.

(iv) Possesses a repertoire of evidenced-based instructional strategies to individualize instruction for students with disabilities and emphasizes the development, maintenance, and generalization of knowledge and skills across environments, settings, and the life span. These evidenced-based instructional strategies should:

(I) promote positive learning results in general and special curricula in age-appropriate settings, especially functional curricula;

(II) modify learning environments;

(III) utilize community-based instruction and vocational instruction;

(IV) enhance communication skills;

(V) enhance critical thinking, problem solving and performance skills;

(VI) promote self-determination;

(VII) enhance integration and coordination of related services for educational benefit; and

(VIII) promote transition.

(v) Demonstrates knowledge and skills in creating positive and safe learning environments for students with disabilities, and that also foster active engagement of students with disabilities. In addition, special educators foster environments that:

(I) value diversity;

(II) promote independence and productivity;

(III) assist general education colleagues in integrating students with disabilities;

(IV) use direct motivational and instructional interventions;

(V) utilize positive behavior supports and crisis management techniques;

(VI) guide and direct paraprofessionals and others; and

(VII) provide specialized school health practices and techniques for health and safety.

(vi) Understands typical and atypical language development and uses strategies to enhance language development and teach communication skills to students with disabilities. This is accomplished by using:

(I) effective language models;

(II) augmentative, alternative and assistive technologies;

(III) communication strategies and resources to facilitate understanding of subject matter for students with disabilities and those students with disabilities whose primary language is not English; and

(IV) matching communication methods to the student's language proficiency and cultural and linguistic differences.

(vii) Develops long- and short-range instructional plans anchored in both general and special education curricula emphasizing:

(I) effective modeling;

(II) efficient guided practice;

(III) modifications based on ongoing analysis of the individuals learning progress;

(IV) collaboration;

(V) individualized transition plans;

(VI) use of appropriate technologies; and

(VII) positive behavior supports.

(viii) Understands legal policies and ethical principals of multiple types of assessment information related to referral, eligibility, program planning, instruction and placement of students with disabilities including those from culturally and linguistically diverse backgrounds. Special educators use assessment information to identify supports and adaptations required for students with disabilities to access general and special curricula and participate in school, system and statewide assessment programs. Special educators regularly

monitor students' progress and use appropriate technologies to support assessments. Special educators must understand:

(I) measurement theory and practices for addressing validity, reliability, norms, bias, and interpretation of assessment results and

(II) appropriate use and limitations of various assessments.

(ix) Demonstrates knowledge and skills regarding legal, professional, and ethical practices including:

(I) sensitivity to the many aspects of diversity;

(II) engaging in professional growth as lifelong learners;

(III) keeping current with evidence-based effective practices; and

(IV) participating in professional activities that benefit individuals with disabilities and their families.

(x) Routinely and effectively collaborates with families, colleagues, related service providers, community agencies and other resources in positive and culturally responsive ways to assure that the needs of students with disabilities are addressed including facilitation of successful transitions of students with disabilities across settings and services.

(32) **Speech/drama/debate (Secondary).** The candidate for licensure and certification:

(A) Maintains a current knowledge of concepts of the field of speech communication including: oral interpretation of literature, theater, the electronic media, public speaking, argumentation, and critical thinking skills.

(B) Applies comprehension, analysis, interpretation, synthesis, and evaluation of vocal, verbal and nonverbal messages.

(C) Applies appropriate learning strategies for critical thinking, research, organization, and presentation of messages appropriate to participation in a democratic society.

(D) Communicates effectively in interpersonal, small group, and public communication situations using appropriate language and nonverbal signals.

(E) Understands the influence of social and historical contexts, and culture on public address and literature of the theater.

(F) Understands the impact of cultural diversity upon the communication process.

(G) Establishes a communication climate which encourages reflection, creativity, and critical thinking.

(H) Uses differing assessment strategies to evaluate student competencies in a variety of speaking/listening situations.

(I) Uses technology (i.e., videotaping of presentations, computers to generate visual aids and as a research tool) to enhance instruction.

(J) Understands and uses teaching strategies appropriate for the analysis and presentation of a variety of forms (genres) of public address and literature of the theater, available in electronic media and from printed sources.

(K) Understands the importance of effective communication skills in the personal and professional arenas.

(L) Understands the role of co-curricular and extracurricular activities in the development of student interest as an extension of the classroom instruction.

(M) Understands, teaches, and implements Oklahoma's Core Curriculum.

(33) **Speech-language pathologist.**

(A) The candidate for licensure and certification:

(i) Understands the models, theories and philosophies that provide the basis for the practice of speech/language pathology, in the following knowledge areas:

(I) content areas in speech/language pathology (language, articulation, voice, fluency, augmentative communication)

(II) etiologies which may contribute to communication impairments

(III) a working understanding of other assessments (medical, psychological, audiological, etc.)

(IV) modality (spoken, written, sign)

(ii) Accommodates the individual learning styles and communication/educational needs of the student.

(iii) Demonstrates the ability to screen, evaluate, and diagnose students with suspected communication impairments using a variety of formal and informal procedures.

(iv) Plans and implements intervention strategies and the appropriate service delivery models for students with communication impairments, including:

(I) determines least restrictive environment

(II) provides ongoing assessment and monitors IEP progress

(III) develops individualized education program (IEP)

(v) Facilitates the development of the student's functional and literate communication skills (i.e., how communication occurs including written language) across environments, including:

(I) developing modifications/adaptations

(II) determining transition service needs

(vi) Recognizes and understands the relationship among behavior, social interaction and communication impairments, and is able to determine

realistic expectations for the student's personal and social behavior in various settings.

(vii) Uses collaborative strategies in working with parents, school, and community to address the needs of students with communication impairments.

(viii) Promotes and maintains competence and integrity in the practice of speech/language pathology as follows:

(I) develops a plan for professional development

(II) identifies community agencies and resources

(ix) Implements practices that recognize the multicultural issues and the effect of cultural and linguistic diversity on students' communication skills and learning styles.

(x) Demonstrates knowledge of laws and regulations pertaining to students with communication impairments.

(B) Competency for Speech-language Pathologist certification may also be verified by the Certificate of Clinical Competence (C.C.C.) from the American Speech-Language Hearing Association (ASHA).

(34) **Agricultural education.** The candidate for licensure and certification shall possess the competencies specified in (A) through (F).

(A) **Agricultural business/marketing.** The candidate for licensure and certification understands the fundamental principles of agricultural business/marketing and management including principles of basic recordkeeping and methods for acquiring and managing agricultural finances.

(B) **Animal science.** The candidate for licensure and certification:

(i) Selects and handles livestock, recognizes factors related to the safe handling of animals and animal products which become food for human consumption, and understands the importance of alternative agricultural enterprises.

(ii) Understands concepts and principles of animal reproduction and the importance of livestock health and nutrition.

(C) **Plant and soil science.** The candidate for licensure and certification:

(i) Understands concepts, principles, and laboratory skills related to plant and soil science including the importance of traditional crops and alternative enterprises.

(ii) Knows factors related to the safe handling of plants and plant products which become food for human consumption and identifies causes and characteristics of common plant pests and diseases.

(D) **Agricultural mechanics.** The candidate for licensure and certification practices:

(i) shop safety, including the operation and knowledge of hand/power tools,

(ii) basic principles/concepts of power and machinery, metals and metal processes, and

(iii) basic principles of building construction.

(E) **Natural resources.** The candidate for licensure and certification:

(i) Evaluates the relationship between agriculture and the management of water, land, and air quality, and

(ii) Understands concepts and principles of plant and animal environmental factors including the handling of chemicals.

(F) **Communications/leadership.** The candidate for licensure and certification:

(i) Acknowledges the foundations of agricultural education including its purpose, functions, and the background of Future Farmers of America (FFA).

(ii) Demonstrates an understanding of basic parliamentary procedure, effective oral and written communication skills, and promotes teamwork, motivation, and leadership principles.

(35) **Marketing education.** The candidate for licensure and certification shall possess the competencies specified in (A) through (N).

(A) **Orientation.** The candidate for licensure and certification applies principles of job search and preparation skills relating to resume and portfolio development, proper completion of application forms, interview preparation, career ladder analysis, and computer technology skills relating to word-processing and computerized presentations.

(B) **Marketing.** The candidate for licensure and certification:

(i) Applies principles and concepts related to marketing.

(ii) Interprets the importance of the marketing concept and functions, how marketing affects society, factors to consider in selecting a channel of distribution, and the concept of target marketing.

(C) **Mathematical skills.** The candidate for licensure and certification:

(i) Applies basic mathematical operations used in the marketing profession as it pertains to balancing a cash drawer and the automatic and manual methods of making change.

(ii) Identifies the uses of basic algebra in marketing.

(D) **Human relations.** The candidate for licensure and certification:

(i) Applies principles of communications, decision-making, and crisis management.

(ii) Identifies characteristics of professionalism on the job and the importance of social skills.

(E) **Sales.** The candidate for licensure and certification:

(i) Applies principles relating to sales, product information, customer buying decisions, motives for buying, and sales approaches.

(ii) Demonstrates methods of handling customer/client complaints and objections.

(iii) Explains the concept and use of sales quotas.

(F) **Security precautions.** The candidate for licensure and certification:

(i) Identifies and explains prevention measures for the security problems of shoplifting, internal theft, burglary, robbery, and fraud.

(ii) Identifies common types of fraud.

(iii) Recognizes steps necessary to ensure security in shipping and receiving areas.

(iv) Identifies precautions for safety on the job.

(G) **Economics.** The candidate for licensure and certification:

(i) Applies principles related to the classification of goods and services and the types of economic resources.

(ii) Compares the types of economic systems and their relationship to the economy.

(iii) Identifies the factors which affect economics including economic utility (form, place, time, possession), competition, supply and demand, and the role of government in business.

(iv) Understands the characteristics and importance of a private enterprise system and international trade.

(v) Identifies the measure and importance of the gross domestic product (GDP) to marketing.

(H) **Promotion.** The candidate for licensure and certification:

(i) Applies principles related to the use of promotional activities, including the use of media, design and display arrangements, and the print ad.

(ii) Explains the role of the promotional plan.

(I) **Merchandising.** The candidate for licensure and certification applies principles related to shipping and receiving, inventory control systems, calculation of inventory shrinkage, and industrial purchasing.

(J) **Business ownership/entrepreneurship.** The candidate for licensure and certification:

(i) Identifies the common types of business ownership in a free enterprise system and the advantages/disadvantages of each.

(ii) Discusses the importance of marketing strategies to businesses as they apply the principles of the product mix, product/service planning, marketing decisions for a proposed business, structuring a business, and using four " Ps" of marketing - product, pricing, place, and promotional strategies.

(K) **Applied management.** The candidate for licensure and certification:

(i) Applies principles of selecting store personnel, recruiting applicants for job openings, interviewing job candidates, and reducing labor turnover.

(ii) Recognizes the importance of new-employee orientation.

(iii) Understands knowledge of employee motivational theories.

(L) **Credit.** The candidate for licensure and certification:

(i) Applies principles of extending credit to business and customers and the three Cs of credit: character, capacity to pay, and capital.

(ii) Identifies the reasons for extending credit.

(M) **Business and industry.** The candidate for licensure and certification:

(i) Develops relationships with business and industry through advisory committees, surveys, work-site learning opportunities, curriculum, and program visits.

(ii) Communicates with business and industry regarding student competencies/credentials and job performance.

(N) **Student organizations and activities.** The candidate for licensure and certification:

(i) Understands the role of student organizations in developing student professionalism and assists student organizations by coaching, chaperoning, and supervising activities.

(ii) Encourages student participation through instruction and recognition of student achievements.

(36) **Technology education.** The candidate for licensure and certification shall possess the competencies specified in (A) through (J):

(A) **Fundamentals of technology.** The candidate for licensure and certification:

(i) Understands the fundamentals of technology including important events, developments, components, and current and future trends of technology.

(ii) Defines the terms, systems, characteristics, interrelationships, and economics of technology, and their utilization in modern business and industry.

(iii) Identifies general laboratory and personal safety practices.

(B) **Problem-solving techniques.** The candidate for licensure and certification:

(i) Identifies problem-solving techniques.

(ii) Understands and applies problem-solving techniques.

(C) **Career opportunities.** The candidate for licensure and certification:

(i) Explores career opportunities based on career clusters and identifies related terms and definitions.

(ii) Identifies activities that develop employability skills.

(iii) Recognizes educational requirements and paths for occupational attainment.

(D) **Communication systems.** The candidate for licensure and certification:

(i) Understands the principles, processes, and functions of communication.

(ii) Identifies types of communication technologies.

(E) **Construction systems.** The candidate for licensure and certification:

(i) Understands and applies the principles of construction technology.

(ii) Identifies construction technologies, their effects on society, basic principles of project planning, and steps in the construction process.

(F) **Manufacturing systems.** The candidate for licensure and certification:

(i) Understands principles of manufacturing and their application.

(ii) Identifies materials, equipment, processes, and strategies utilized in manufacturing technologies.

(iii) Analyzes the role, function, and responsibilities of manufacturing in a contemporary society.

(G) **Energy, power and transportation systems.** The candidate for licensure and certification:

(i) Understands the principles and applications of energy, power, and ransportation.

(ii) Identifies forms of energy, their classification, and their characteristics.

(iii) Analyzes power systems and transportation technologies, as well as their characteristics.

(iv) Analyzes environmental and economic effects on society.

(H) **Technology education delivery systems.** The candidate for licensure and certification:

(i) Understands basic principles, terminology, system design, and issues related to technology education delivery systems and telecommunication.

(ii) Identifies terms, features, relationships, and procedures associated with the selection, operation, and maintenance of computer systems and technology education software.

(iii) Analyzes factors affecting the selection of computer hardware and software.

(I) **Business and industry.** The candidate for licensure and certification develops relationships with business and industry through advisory committees, curriculum, and work-site learning opportunities.

(J) **Student organizations and activities.** The candidate for licensure and certification:

(i) Understands the role of student organizations in encouraging student participation and implementing activities that develop leadership traits.

(ii) Integrates student activities in instruction and recognizes student achievements.

(37) **Vocational business.** The candidate for licensure and certification shall possess competencies specified in (A) through (D).

(A) **Business foundations.** The candidate for licensure and certification:

(i) Understands important events, developments and trends in the history of business.

(ii) Understands business organizational structures, organizational design and their implications.

(iii) Understands the basic principles of business law and the types and characteristics of legal instruments.

(iv) Analyzes legal issues related to business.

(v) Understands business communication.

(B) **Business management.** The candidate for licensure and certification:

(i) Understands principles of business management and their applications in the decision-making process

(ii) Applies procedures for managing human resources.

(iii) Analyzes issues related to economic and social responsibilities in business.

(iv) Analyzes factors affecting business marketing decisions.

(C) **Technology systems.** The candidate for licensure and certification:

(i) Understands basic principles and terminology related to computer technology.

(ii) Understands principles of computer system design.

(iii) Applies principles of computer technology to solve problems involving information gathering and analysis.

(iv) Applies principles of computer technology to solve problems related to project and business management.

(v) Understands information processing systems.

(vi) Analyzes data storage, retrieval and transmission systems.

(vii) Understands principles of telecommunications and applications of telecommunications in business.

(viii) Analyzes ethical and security issues involving technology systems.

(D) **Business finance and economics.** The candidate for licensure and certification:

(i) Understands basic principles and applications of accounting.

(ii) Applies procedures for processing accounting data.

(iii) Understands advanced accounting concepts and procedures.

(iv) Understands basic principles and applications of macroeconomics.

(v) Analyzes business situations in terms of microeconomic theory.

(vi) Applies basic principles of consumer economics and finance.

(38) **Vocational family and consumer sciences.** The candidate for licensure and certification shall possess the competencies specified in (A) through (I).

(A) **Child development.** The candidate for licensure and certification:

(i) Applies child development concepts and guidance techniques in the care of infants, toddlers, preschool and school-age children, as well as children in crisis or with special needs.

(ii) Analyzes issues related to children's well-being, parenting, pregnancy, prenatal care, child birth, child care services, and community resources.

(B) **Foods and nutrition.** The candidate for licensure and certification:

(i) Analyzes the relationship between food, nutrients, and the body through the application of food science principles, and healthy food choices.

(ii) Understands proper food storage/handling techniques, recipe use, food product information, serving/dining etiquette, and consumer skills.

(C) **Consumer economics and management.** The candidate for licensure and certification:

(i) Applies principles related to money management, personal financial management, time management, and economics.

(ii) Analyzes advertising influences, factors related to housing selection and maintenance, factors related to motor vehicle selection and maintenance, wills, funerals, and consumer credit.

(iii) Applies consumer protection practices and skills.

(D) **Housing and interior design.** The candidate for licensure and certification:

(i) Plans living space for human needs through the evaluation of housing and financial alternatives.

(ii) Applies elements and principles of interior design including exterior styles, interior spaces, interior treatments, furniture, accessories, and appliances.

(E) **Interpersonal relationships.** The candidate for licensure and certification:

(i) Applies principles of communications, decision making, and crisis management.

(ii) Discusses factors and issues related to parenting, family life, and aging.

(iii) Identifies the importance of self-respect and of practicing socially accepted behavior.

(F) **Clothing and textiles.** The candidate for licensure and certification:

(i) Applies wardrobe planning and grooming skills.

(ii) Applies clothing selection skills, methods of stretching the clothing dollar, care and maintenance practices, construction techniques, and knowledge of types of textiles.

(G) **Careers.** The candidate for licensure and certification:

(i) Investigates careers as they relate to personal and career goals.

(ii) Understands the job application process, factors related to work etiquette, the use of technology in the workplace, and economic principles.

(H) **Business and industry.** The candidate for licensure and certification:

(i) Develops partnerships with business and industry through advisory committees, surveys, work-site learning opportunities, curriculum, and program visits.

(ii) Communicates with business and industry regarding student competencies/credentials and job performance.

(I) **Student organizations and activities.** The candidate for licensure and certification:

(i) Understands the role of student organizations in the recognition of student achievements through curricular activities.

(ii) Encourages student participation and the development of leadership traits.

(39) **Occupational agriculture, occupational family and consumer sciences, trade and industrial education, and vocational health occupations.** Competency for occupational agriculture, occupational family and consumer sciences, trade and industrial education, and vocational health occupations will be verified by passing a state or national licensure examination developed specifically to the occupation and/or occupational testing approved by the Oklahoma Department of Vocational and Technical Education. Non-degreed vocational teachers certified under rules promulgated by the State Board of Education are exempt from the provisions of House Bill 1549, except for those provisions concerning professional development programs.

(40) **Dance education.** The candidate for licensure and certification:

(A) Has a sound philosophical understanding and knowledge of dance education and creative movement and can support, justify and implement the dance education.

(B) Has a thorough knowledge of a sequential dance/creative movement curriculum that is developmentally appropriate for each grade level and inclusive of various student learning styles and those with special needs.

(C) Understands the history of dance and its role in culture and the arts worldwide.

(D) Has a working knowledge of dance integration and values the art-related competencies in Oklahoma's core curriculum.

(E) Recognizes and respects diversity and establishes environments where individuals dance content and learning are held in high regard.

(F) Understands the process of critical thinking and implements problem solving activities, analysis, reflection, decision making and creative exploration in dance.

(G) Understands the elements of dance and technical skills in performing dance including:

(i) time (i.e., fast slow, even, uneven, accent, meters)

(ii) space (i.e., levels , direction, pathways)

(iii) force (i.e., energy, weight, flow)

(iv) locomotor movements (i.e., walk, run, skip, hop, jump, slide, gallop, leap)

(v) nonlocomotor movements (i.e., bend, stretch, twist, swing)

(vi) rhythmic activities and musicality

(vii) proper skeletal alignment

(viii) efficiency and mastery of technical skills in a variety of dance forms.

(H) Understands the principals of choreography (i.e., dance improvisation, composition, and choreography).

(I) Understands the components of healthy living and fitness and the benefits of daily participation in dance activities.

(i) fitness components

(I) flexibility

(II) muscular strength

(III) agility

(IV) motor skills development and coordination

(V) body awareness, control, and balance

(VI) development and mastery of dance skills

(VII) weight control

(ii) wellness components

(I) release of stress and tension through positive dance activity

(II) positive self esteem and self-expression

(III) lifelong well being

(IV) weight control

(J) Has a working knowledge of dance choreography and teaching strategies to help students create, study, interpret and evaluate works of art.

(K) Has knowledge of dance resources including community resources, materials, equipment, and proper facilities, and can adapt a variety of resources and materials that supports students as they learn through and about dance.

(L) Promotes the understanding of dance as an artistic, kinesthetic, educational, social, cultural and theatrical experience.

(M) Provides a safe environment and creates a setting for productive learning.

(N) Collaborates with colleagues, artists and agencies in the community to promote arts education opportunities.

(O) Recognizes the important role of technology in dance education.

(P) Uses a variety of assessment and evaluation methods and can evaluate student learning.

(41) **English as a second language (ESL) PK-12.** The candidate for licensure and certification:

(A) **Language.** The candidate for licensure and certification:

(i) Demonstrates knowledge, understanding, and application of the fundamentals of linguistics as related to the development of listening, speaking, reading, and writing for social and academic purposes.

(ii) Understands and applies knowledge of current theories and practices that facilitate second language acquisition and literacy development in the classroom.

(iii) Understands the role of the primary language in acquiring English as a new language.

(iv) Understands and applies knowledge of how sociocultural variables effect individual learners in facilitating the process of learning English.

(B) **Culture.** The candidate for licensure and certification:

(i) Knows, understands, and uses the major concepts, principles, theories, and research related to the nature and role of culture in language development and academic achievement that support individual student's learning.

(ii) Understands and applies knowledge about home/school communication to enhance ESL teaching and build partnerships with students' families.

(iii) Knows, understands, and uses knowledge of how cultural groups and ESL students' cultural identities affect language learning and school achievement.

(iv) Understands and applies knowledge about world events that have an impact on ESL students' learning.

(v) Knows and uses teaching strategies that are developmentally appropriate and inclusive of various learning styles and is sensitive to the needs of diverse cultural groups.

(C) **Planning, implementation, and managing instruction.** The candidate for licensure and certification:

(i) Knows, understands, and applies concepts, research, and best practices to plan standards-based instruction based on language development and the Oklahoma core curriculum that provides for students of varying educational backgrounds in a supportive and accepting environment.

(ii) Knows, manages, and implements instruction around standards-based subject matter and language learning objectives that incorporates a variety of activities and learning opportunities that integrate listening, speaking, reading, writing, and comprehension for a variety of academic and social purposes.

(iii) Knows and is able to use a variety of resources and instructional strategies to teach ESL students the English language and content areas.

(iv) Understands and applies the following competencies in reading instruction as appropriate to the abilities of the student.

(I) Knows the stages of language development and the structure of the English language and alphabetic writing system including phonology, morphology, and orthography and their relationships to spelling and meaning.

(II) Understands that primary language (oral) directly impacts the secondary languages (reading, writing, spelling). Knows and applies knowledge of implicit and explicit instruction in developing oral language. Knows the relationship of oral language to literacy.

(III) Knows the developmental process of reading in order to assess, interpret, describe, develop appropriate instruction, monitor, reteach and reassess student's reading performance for concepts about print, phonological and phonemic awareness, phonics, spelling, word recognition, vocabulary, comprehension, fluency, and writing.

(IV) Identifies and applies all developmental levels of phonemic awareness to provide appropriate instruction in understanding words are made up of phonemes and that phonemes can be rearranged and manipulated to make different words that compose oral speech.

(V) Knows and provides appropriate systematic explicit and implicit phonological instruction for the application of spelling-sound correspondences for word analysis and for structural analysis for word recognition and word meaning development.

(VI) Knows and applies the relationships between spelling patterns and sounds of speech; knows how to support the student at each stage of spelling development; knows how to focus direct and indirect instruction to guide the student toward spelling proficiency.

(VII) Knows and applies knowledge of appropriate explicit and implicit instruction for vocabulary development (e.g., prefixes, suffixes, roots, singular, and plural).

(VIII) Knows and applies strategies that promote comprehension and strategies to support children's understanding for the various elements of the different genres of text.

(IX) Knows and applies strategies and instructional approaches to support response to text and promote comprehension for literal, inferential, and critical/evaluative level (e.g., guided reading, literature and research circles).

(X) Knows and applies knowledge of instructional techniques to assist students with self-monitoring and self-corrections, (i.e., semantics, syntax, and graphophonics).

(XI) Knows and applies the instructional strategies which contribute to the development of fluent reading.

(XII) Knows how to promote children's interest and engagement in reading and writing.

(D) **Assessment.** The candidate for licensure and certification:

(i) Understands various issues of standardized assessments as they affect ESL students' learning and academic performance.

(ii) Understands different types of assessments and their purposes.

(iii) Understands and is able to use a variety of language proficiency assessment instruments.

(iv) Interprets and integrates assessment information into instructional plans.

(v) Understands the importance of different assessment strategies and uses them in the evaluation and modification of teaching and learning.

(E) **Professionalism.** The candidate for licensure and certification:

(i) Demonstrates knowledge of history, research, and current practices in the field of ESL and applies this knowledge to improve teaching and student achievement.

(ii) Pursues personal professional growth opportunities and serves as a professional resource to colleagues.

(iii) Serves as a resource liaison and advocate for ESL students and builds partnerships with students' families.

(iv) Demonstrate English fluency in listening, speaking, reading, and writing the English language.

[OAR Docket #05-671; filed 4-19-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 20. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

[OAR Docket #05-682]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
252:20-1-3. [AMENDED]
252:20-1-6. [AMENDED]

AUTHORITY:
Environmental Quality Board Powers and Duties, 27A O.S. §§ 1-3-101, 2-2-101 and 2-2-201
DATES:
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May 17 through June 22, 2004
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Failure of the Legislature to disapprove the rules resulted in approval on March 30, 2005
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SUPERCEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
Incorporated standards:
40 CFR Parts 355, 370 and 372 as of July, 2003
Incorporating rules:
252:20-1-3
Availability:
From the contact person
ANALYSIS:
On February 11, 1999, EPA raised the thresholds that trigger Material Safety Data Sheet (MSDS) reporting and annual chemical inventory reporting under sections 311 and 312 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), for gasoline and diesel fuel stored entirely underground at retail gas stations that comply with requirements for underground storage tanks (USTs). The final rule, 40 CFR 370.20, promulgated new threshold levels of 75,000 gallons for gasoline and 100,000 gallons for diesel fuel. The purpose of these new thresholds was to relieve most retail gas stations from reporting gasoline and diesel fuel under EPCRA. The change reduced reporting burdens while preserving the important public health and safety benefits of the hazardous chemical reporting requirements. The DEQ has followed the federal rule change but did not update its rule to reflect this change. The proposed amendment in OAC 252:20-1-3 changes the date of incorporation by reference to include EPA's 1999 changes. However, since the Code of Federal Regulations is published in July each year, we have used the most current CFR date of July 1, 2003 in our incorporation by reference. Other proposed amendments involve changing addresses.
CONTACT PERSON:
Please send written comments to Monty Elder, Customer Services Division, Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, 73102. Mailing address: P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677. Telephone (405) 702-1000. Fax (405) 702-1001. E-mail address: monty.elder@deq.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005.

252:20-1-3. Incorporations by reference

(a) **Reference to CFR.** Reference to Title 40 of the Code of Federal Regulations (40 CFR) shall mean (unless otherwise specifically provided) the Superfund, Emergency Planning, and Community Right-to-Know Regulations, ~~revised as of July 1, 1995~~ July, 2003.

(b) **Incorporation.** The following Parts of 40 CFR are, unless otherwise specified, incorporated by reference in their entirety:

(1) Part 355 (Emergency Planning and Notification);

(2) Part 370 (Hazardous Chemical Reporting: Community Right -to-Know);

(3) Part 372 (Toxic Chemical Release Reporting: Community Right-to-Know).

(c) **Interface with CFR.** In the Parts of 40 CFR incorporated by reference, the term "Commission" shall mean the Department.

(d) **References incorporated.** Incorporation by reference of a provision of the Code of Federal Regulations also incorporates all citations and definitions contained therein.

(e) **Penalties.** Penalties cited in 40 CFR are subject to limitations under Oklahoma law.

252:20-1-6. Address for submitting reporting forms

(a) **Non-confidential.** All non-confidential forms, sanitized versions of materials submitted under a Claim of confidentiality, and separate Tier Two Confidential Location Information Sheets (see 40 CFR 370.41), shall be submitted to the Oklahoma Department of Environmental Quality, ~~1000 N.E. Tenth Street, Oklahoma City, OK 73117-1212~~ P.O. Box 1677, Oklahoma City, Oklahoma, 73101-1677.

(b) **Confidential.** All materials submitted under a Claim of confidentiality, except separate Tier Two Confidential Location Information Sheets, shall be submitted as described in 40 CFR 350.16 to~~: Title III Reporting Center, Environmental Protection Agency, P.O. Box 23779, Washington, D.C. 20026-3779~~ EPCRA Substantiation Packets, P.O. Box 1515, Lanham-Seabrook, MD 20703-1515 or FedEx and courier packages to EPCRA Substantiation Packets, c/o Computer Sciences Corp., Suite 300, 8400 Corporate Dr., New Carrollton, MD 20785.

[OAR Docket #05-682; filed 4-20-05]

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

[OAR Docket #05-683]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Air Quality Standards and Increments
252:100-3-4. [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and Oklahoma Clean Air Act, 27A O.S. § 2-5-101, *et seq.*
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The Department proposes to correct a reference error in subsection (a) of Section 3-4 of Subchapter 3. This citation was overlooked when the PSD requirements that were previously located in Part 5 of Subchapter 7 were moved to Part 7 of Subchapter 8.
CONTACT PERSON:
Joyce D. Sheedy, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 794-6800

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 3. AIR QUALITY STANDARDS AND INCREMENTS

252:100-3-4. Significant deterioration increments

(a) Significant deterioration, as used in the phrase Prevention of Significant Deterioration (PSD), means an increase in ambient air pollution above a baseline plus a specific increment allowed for one of three classes of areas. See OAC ~~252:100-7, Part 5~~ 252:100-8, Part 7.

(b) The allowable increments are as follows:

~~Pollutant~~	~~Maximum allowable increase (micrograms per cubic meter)~~
~~Class I Areas~~	
~~Particulate matter:~~	
~~PM-10, annual arithmetic mean~~	~~4~~
~~PM-10, twenty-four hour maximum~~	~~8~~
~~Sulfur dioxide:~~	
~~Annual arithmetic mean~~	~~2~~
~~Twenty-four hour maximum~~	~~5~~
~~Three-hour maximum~~	~~25~~
~~Nitrogen dioxide:~~	
~~(effective May 11, 1991)~~	
~~Annual arithmetic mean~~	~~2.5~~
~~Class II Areas~~	
~~Particulate matter:~~	
~~PM-10, annual arithmetic mean~~	~~17~~
~~PM-10, twenty-four hour maximum~~	~~30~~
~~Sulfur dioxide:~~	
~~Annual arithmetic mean~~	~~20~~
~~Twenty-four hour maximum~~	~~91~~
~~Three-hour maximum~~	~~512~~
~~Nitrogen dioxide:~~	
~~(effective May 11, 1991)~~	
~~Annual arithmetic mean~~	~~25~~
~~Class III Areas~~	
~~Particulate matter:~~	
~~PM-10, annual arithmetic mean~~	~~34~~
~~PM-10, twenty-four hour maximum~~	~~60~~
~~Sulfur dioxide:~~	
~~Annual arithmetic mean~~	~~40~~
~~Twenty-four hour maximum~~	~~182~~
~~Three-hour maximum~~	~~700~~
~~Nitrogen dioxide:~~	
~~(effective May 11, 1991)~~	
~~Annual arithmetic mean~~	~~50~~

(1) Class I Areas:
(A) Particulate matter:
(i) PM-10, annual arithmetic mean: maximum allowable increase is 4 micrograms per cubic meter.
(ii) PM-10, twenty-four hour maximum: maximum allowable increase is 8 micrograms per cubic meter.
(B) Sulfur dioxide:
(i) annual arithmetic mean : maximum allowable increase is 2 micrograms per cubic meter.
(ii) twenty-four hour maximum: maximum allowable increase is 5 micrograms per cubic meter.

(iii) three-hour maximum: maximum allowable increase is 25 micrograms per cubic meter.

(C) Nitrogen dioxide (effective May 11, 1991), annual arithmetic mean: maximum allowable increase is 2.5 micrograms per cubic meter.

(2) Class II Areas:

(A) Particulate matter:

(i) PM-10, annual arithmetic mean: maximum allowable increase is 17 micrograms per cubic meter.

(ii) PM-10, twenty-four hour maximum: maximum allowable increase is 30 micrograms per cubic meter.

(B) Sulfur dioxide:

(i) annual arithmetic mean : maximum allowable increase is 20 micrograms per cubic meter.

(ii) twenty-four hour maximum: maximum allowable increase is 91 micrograms per cubic meter.

(iii) three-hour maximum: maximum allowable increase is 512 micrograms per cubic meter.

(C) Nitrogen dioxide (effective May 11, 1991), annual arithmetic mean: maximum allowable increase is 25 micrograms per cubic meter.

(3) Class III Areas:

(A) Particulate matter:

(i) PM-10, annual arithmetic mean: maximum allowable increase is 34 micrograms per cubic meter.

(ii) PM-10, twenty-four hour maximum: maximum allowable increase is 60 micrograms per cubic meter.

(B) Sulfur dioxide:

(i) annual arithmetic mean : maximum allowable increase is 40 micrograms per cubic meter.

(ii) twenty-four hour maximum: maximum allowable increase is 182 micrograms per cubic meter.

(iii) three-hour maximum: maximum allowable increase is 700 micrograms per cubic meter.

(C) Nitrogen dioxide (effective May 11, 1991), annual arithmetic mean: maximum allowable increase is 50 micrograms per cubic meter.

[OAR Docket #05-683; filed 4-20-05]

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

[OAR Docket #05-684]

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PERMANENT final adoption
RULES:
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Part 1. General Provisions
252:100-7-2. [AMENDED]

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The Department proposes to add language to subparagraphs 7-2(b)(1)(B) and (C) of OAC 252:100-7-2 that will make clear that de minimis cotton gins that comply with the requirements of Subchapter 23 Control of Emissions from Cotton Gins and de minimis grain, feed or seed facilities that comply with the requirements of Subchapter 24 Particulate Matter Emissions from Grain, Feed or Seed Operations will not be required to comply with the requirements of Subchapter 25 Visible Emissions and Particulates and Subchapter 29 Control of Fugitive Dust. Subchapters 23 and 24 set visible emissions standards and fugitive dust standards for cotton gins and grain, feed or seed facilities respectively. It is not the Department's intention that de minimis facilities be held to more stringent standards than facilities with emissions large enough to require permits. The added language corrects this inequity.
CONTACT PERSON:
Joyce D. Sheedy, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 794-6800

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

PART 1. GENERAL PROVISIONS

252:100-7-2. Requirement for permits for minor facilities

(a) **Permit required.** Except as provided in OAC 252:100-7-2, no person may commence construction or modification of any minor facility, may operate any new minor facility, or may relocate any minor portable source without obtaining a permit from the DEQ. For additional application

and permitting procedures, see OAC 252:4, Subchapter 7 Environmental Permit Process.

(b) **Exceptions.**

(1) **De minimis facilities.** De minimis facilities are exempted from the permitting requirements of OAC 252:100-7. De minimis facilities remain subject only to the following air quality control rules~~:~~

(A) De minimis facilities must comply with OAC 252:100-13 Open Burning.

(B) With the exception of those de minimis cotton gin facilities or grain, feed or seed facilities that comply with the requirements of Subchapter 23 Control of Emissions from Cotton Gins or Subchapter 24 Particulate Matter Emissions from Grain, Feed or Seed Operations, de minimis facilities remain subject to OAC 252:100-25 Visible Emissions and Particulates.

(C) With the exception of those de minimis cotton gin facilities or grain, feed or seed facilities that comply with the requirements of Subchapter 23 Control of Emissions from Cotton Gins or Subchapter 24 Particulate Matter Emissions from Grain, Feed or Seed Operations, de minimis facilities remain subject to OAC 252:100-29 Control of Fugitive Dust.

(D) De minimis facilities must comply with OAC 252:100-41 Control of Emission of Hazardous and Toxic Air Contaminants.

(2) **Permit exempt facilities.** Permit exempt facilities are exempted from the permitting requirements of OAC 252:100-7, the requirement to submit an annual emission inventory as required by OAC 252:100-5-2.1, and the requirement to pay annual operating fees as required by OAC 252:100-5-2.2(b). Permit exempt facilities remain subject to all other applicable State and Federal air quality control rules and standards.

(c) **Permit application.**

(1) All applications shall be signed by the applicant.

(2) The signature on an application for a permit shall constitute an implied agreement that the applicant shall be responsible for assuring construction or operation, as applicable, in accordance with the application and OAC 252:100.

(3) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information within 30 days unless the applicant's request for more time has been approved by the DEQ. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of the draft permit.

(d) **Applicability determination.** Upon written request along with the required fee and any relevant information needed, the DEQ will make a determination of whether a permit is required.

(e) **Change in permit status.** The owner or operator of a permitted facility may at any time notify the DEQ that the facility:

(1) Is de minimis, requesting termination of the permit, or

(2) Qualifies for either a permit by rule or a general permit, submitting the appropriate application for such permit, or

(3) Is permit exempt, requesting termination of the permit.

(f) **Transfer of permit.** The transfer of ownership of a stationary source or a facility shall subject the new owner or operator to existing permit conditions and/or compliance schedules. A new permit is not required. The transferor shall notify the AQD in writing no later than 10 days following the change in ownership.

(g) **Emission calculation methods.**

(1) Except as allowed by OAC 252:100-7-2(g)(2) of this subsection, the methods in OAC 252:100-5-2.1(d) shall be used when calculating regulated air pollutant emission rates for purposes of determining if an Air Quality Division permit is required or what type of permit is required.

(2) In lieu of calculating regulated air pollutant emission rates to determine if emissions from a facility meet the emission limits in the definition of permit exempt facility, the owner or operator of an oil and gas exploration and production facility or a natural gas compressor facility may assume the facility is permit exempt without calculation if the equipment and throughput at the facility meet the following criteria.

(A) **Engines.** The facility's total maximum manufacturer's designed rated horsepower for all reciprocating internal combustion engines in compressor service equals 240 or less.

(B) **Other equipment.**

(i) For an oil and gas exploration and production facility operating a liquid hydrocarbon storage vessel with the potential for flash emissions and/or a glycol dehydrator, the facility-wide actual annual average natural gas throughput is less than 0.650 MMSCFD (650,000 standard cubic feet per day) and the actual annual average hydrocarbon liquid throughput is less than 250 barrels per day.

(ii) For a compressor facility that is a natural gas transmission and storage facility operating a glycol dehydrator that is the only HAP emission source at the facility other than reciprocating internal combustion engines, the facility-wide actual annual average natural gas throughput is less than 1.0 MMSCFD (1 million standard cubic feet per day).

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

[OAR Docket #05-686]

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ANALYSIS:
The proposed amendments will make minor textual corrections for clarity and correct references to Chapter 252:4.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 5. PERMITS FOR PART 70 SOURCES

252:100-8-2. Definitions

The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this Section, terms used in this Part retain the meaning accorded them under the applicable requirements of the Act.

"Administratively complete" means an application that provides:

(A) All information required under OAC 252:100-8-5(c), (d), or (e);

(B) A landowner affidavit as required by OAC 252:2-15-20(b)(3);

(C) The appropriate application fees as required by OAC 252:100-8-1.7; and

(D) Certification by the responsible official as required by OAC 252:100-8-5(f).

"Affected source" means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

"Affected states" means:

(A) all states:

(i) That are one of the following contiguous states: Arkansas, Colorado, Kansas, Missouri, New Mexico and Texas, and

(ii) That in the judgment of the DEQ may be directly affected by emissions from the facility seeking the permit, permit modification, or permit renewal being proposed; or

(B) all states that are within 50 miles of the permitted source.

"Affected unit" means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source subject to this Chapter (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future effective compliance dates):

(A) Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52;

(B) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act;

(C) Any standard or other requirement under section 111 of the Act, including section 111(d);

(D) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act, but not including the contents of any risk management plan required under 112(r) of the Act;

(E) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;

(F) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

(G) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(H) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(I) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(J) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit; and

(K) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

"Designated representative" means with respect to affected units, a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

"Draft permit" means the version of a permit for which the DEQ offers public participation under 27A O.S. §§ 2-14-101 through 2-14-401 and OAC ~~252:100-2-15~~ 252:4-7 or affected State review under OAC 252:100-8-8.

"Emergency" means, when used in OAC 252:100-8-6(a)(3)(C)(iii)(I) and (e), any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

"Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. Fugitive emissions from valves, flanges, etc. associated with a specific unit process shall be identified with that specific emission unit. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act.

"Final permit" means the version of a part 70 permit issued by the DEQ that has completed all review procedures required by OAC 252:100-8-7 through 252:100-8-7.5 and OAC 252:100-8-8.

"Fugitive emissions" means those emissions of regulated air pollutants which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

"General permit" means a part 70 permit that meets the requirements of OAC 252:100-8-6.1.

"Insignificant activities" means individual emissions units that are either on the list approved by the Administrator and contained in Appendix I, or whose actual calendar year emissions do not exceed any of the limits in (A) through (C) of this definition. Any activity to which a State or federal applicable requirement applies is not insignificant even if it meets the criteria below or is included on the insignificant activities list.

(A) 5 tons per year of any one criteria pollutant.

(B) 2 tons per year for any one hazardous air pollutant (HAP) or 5 tons per year for an aggregate of two or more HAP's, or 20 percent of any threshold less than 10 tons per year for single HAP that the EPA may establish by rule.

(C) 0.6 tons per year for any one category A substance, 1.2 tons per year for any one category B substance or 6 tons per year for any one category C substance as defined in OAC 252:100-41-40.

"MACT" means maximum achievable control technology.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that is described in subparagraph (A), (B), or (C) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit primary SIC code) as described in the Standard Industrial Classification Manual, 1987.

(A) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year ("tpy") or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under

common control, to determine whether such units or stations are major sources; or.

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any regulated air pollutant (except that fraction of particulate matter that exhibits an average aerodynamic particle diameter of more than 10 micrometers) (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) All other stationary source categories which, as of August 7, 1980, are being regulated by a standard promulgated under section 111 or 112 of the Act.

(C) A major stationary source as defined in part D of Title I of the Act, including:

(i) For ozone non-attainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide non-attainment areas:

(I) that are classified as "serious"; and

(II) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM-10) non-attainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM-10.

"Maximum capacity" means the quantity of air contaminants that theoretically could be emitted by a stationary source without control devices based on the design capacity or maximum production capacity of the source and 8,760 hours of operation per year. In determining the maximum theoretical emissions of VOCs for a source, the design capacity or maximum production capacity shall include the use of raw materials, coatings and inks with the highest VOC content used in practice by the source.

"Permit" means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

"Permit modification" means a revision to a Part 70 construction or operating permit that meets the requirements of OAC 252:100-8-7.2(b).

"Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in OAC 252:100-5-2.2 (whether such costs are incurred by the DEQ or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

"Permit revision" means any permit modification or administrative permit amendment.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes

under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder.

"Proposed permit" means the version of a permit that the DEQ proposes to issue and forwards to the Administrator for review in compliance with OAC 252:100-8-8.

"Regulated air pollutant" means the following:

(A) Nitrogen oxides or any volatile organic compound (VOC), including those substances defined in OAC 252:100-1-3, 252:100-37-2, and 252:100-39-2, except those specifically excluded in the EPA definition of VOC in 40 CFR 51.100(s);

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II ozone-depleting substance subject to a standard promulgated under or established by Title VI of the Act;

(E) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act (Hazardous Air Pollutants), including sections 112(g) (Modifications), (j) (Equivalent Emission Limitation by Permit, and (r) (Prevention of Accidental Releases), including the following:

(i) any pollutant subject to the requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act (Schedule for Standards and Review), any pollutant for which a subject source would be major shall be considered to be regulated as to that source on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and,

(ii) any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the section 112(g)(2) requirement; or

(F) Any other substance for which an air emission limitation or equipment standard is set by an existing permit or regulation.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the DEQ;

(B) For the partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this Subchapter, a principal executive officer or installation commander of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this Subchapter.

"Section 502(b)(10) changes" means changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

"Small unit" means a fossil fuel fired combustion device which serves a generator with a name plate capacity of 25 MWe or less.

"State-only requirement" means any standard or requirement pursuant to Oklahoma Clean Air Act (27A O.S. §§ 2-5-101 through 2-5-118, as amended) that is not contained in the State Implementation Plan (SIP).

"State program" means a program approved by the Administrator under 40 CFR Part 70.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act.

"Trivial activities" means any individual or combination of air emissions units that are considered inconsequential and are on a list approved by the Administrator and contained in Appendix J.

"Unit" means, for purposes of Title IV, a fossil fuel-fired combustion device.

252:100-8-4. Requirements for construction and operating permits

(a) **Construction permits.**

(1) **Construction permit required.** No person shall begin actual construction or installation of any new source that will require a Part 70 operating permit without first obtaining a DEQ-issued air quality construction permit. A construction permit is also required prior to reconstruction of a major affected source under 40 CFR Part 63, reconstruction of a major source if it would then become a major affected source under 40 CFR 63, or for any physical change that would be a significant modification under OAC 252:100-8-7.2(b)(2). In addition to the requirements of this Part, sources subject to Part 7 or Part 9 of this

Subchapter must also meet the applicable requirements contained therein.

(2) **Requirement for case-by-case MACT determinations.**

(A) **Applicability.** The requirement for case-by-case MACT determinations apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after June 29, 1998, unless the source has been specifically regulated or exempted from regulation under a subpart of 40 CFR Part 63, or the owner or operator has received all necessary air quality permits for such construction or reconstruction before June 29, 1998.

(B) **Exclusions.** The following sources are not subject to this subsection.

(i) Electric utility steam generating units unless and until these units are added to the source category list.

(ii) Stationary sources that are within a source category that has been deleted from the source category list.

(iii) Research and development activities as defined in 40 CFR § 63.41.

(C) **MACT determinations.** If subject to this subsection, an owner or operator may not begin actual construction or reconstruction of a major source of HAP until obtaining from the DEQ an approved MACT determination in accordance with the following regulations: 40 CFR 63.41, 40 CFR 63.43 and 40 CFR 63.44, which are hereby incorporated by reference as they exist on July 1, 2000.

(b) **Operating permits.**

(1) **Operating permits required.** Except as provided in subparagraphs (A) and (B) of this section, no Part 70 source subject to this Chapter may operate after the time that it is required to file a timely application with the DEQ, except in compliance with a DEQ-issued permit.

(A) If the owner or operator of a source subject to the requirement to obtain a Part 70 permit submits a timely application for Part 70 permit issuance or renewal, that source's failure to have a Part 70 permit shall not be a violation of the requirement to have such a permit until the DEQ takes final action on the application. This protection shall cease to apply if the applicant fails to submit, by the deadline specified in writing by the DEQ or OAC 252:100-8-4, any additional information identified as being reasonably required to process the application.

(B) If the owner or operator of a source subject to this Subchapter files a timely application that the DEQ determines to be administratively incomplete due to the applicant's failure to timely provide additional information requested by the DEQ, the applicant loses the protection granted under paragraph (A) of this Section. The source's failure to have a Part 70 permit shall be deemed a violation of this Subchapter.

(C) Filing an operating permit application shall not affect the requirement, if any, that a source have a construction permit.

(2) **Duty to apply.** For each Part 70 source, the owner or operator shall submit a timely and complete permit application on forms supplied by the DEQ in accordance with this section.

(3) **Timely application.** Sources that are subject to the operating permit program established by this Chapter as of March 6, 1996, shall file applications on the following schedules outlined in OAC 252:100-8-4(b)(4). A timely application is one that is postmarked on or before the relevant date listed below. In the event a major source consists of operations under multiple SIC codes, the primary activity shall form the basis for the initial permit application.

(4) **Application submittal schedule.** The following sources are subject to the operating permit program and shall submit initial permit applications according to the following schedule.

(A) No later than September 5, 1996:

(i) Affected sources under the acid rain provisions of the Act shall submit a permit application for at least the affected units at the site. Regardless of the effective date of the program and the requirement to file an application defined in this section, applications for initial Phase II acid rain permits shall be submitted to the DEQ no later than January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides, pursuant to the Act, §407.

(ii) Any owner or operator shall submit no less than one-third of their total applications for Part 70 sources located at sources classified by the following Source Standard Industrial Classification Codes and which belong to a single major industrial grouping other than 28 (Chemicals and allied products) or 29 (Petroleum refining and related industries):

(I) Petroleum and Natural Gas, 1311;

(II) Natural Gas Liquids, 1321;

(III) Electric Services, 4911, 4961;

(IV) Natural Gas Transmission, 4922;

(V) Natural Gas Transmission and Distribution, 4923; and

(VI) Petroleum Bulk Stations and Terminals, 5171.

(B) All remaining Part 70 sources identified in (b)(4)(A)(ii) of this Subsection shall be subject to the operating permit program and shall submit initial permit applications no later than March 5, 1997.

(C) No later than March 5, 1997, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:

(i) Metals, 3312, 3315, 3321, 3341, 3351, 3411, 3412, 3432, 3466,

(ii) Brick Plants, 3251, 3297,

(iii) Commercial Printing, 2752, 2761.

(D) No later than July 5, 1998, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:

(i) Refineries, 2911;

(ii) Cement Plants, 3241;

(iii) Chemical/Carbon, 2819, 2821, 2851, 2861, 2869, 2891, 2895, 2899, 2999, 3053, 3086, 3089;

(iv) Petroleum Transportation/Terminals/Storage, 4612, 4613;

(v) Food Products, 2013, 2074, 2095.

(E) All remaining Part 70 sources shall be subject to the operating permit program and shall submit initial permit applications no later than March 6, 1999.

(5) **Newly regulated sources.** A source that becomes subject to the operating permit program established by this Chapter at any time following the effective date shall file an administratively complete operating permit application within 180 days of commencement of operation.

(6) **Application acceptability.** Notwithstanding the deadlines established in paragraph (4) of this subsection, an application filed prior to the above deadlines following submission of the state program to EPA for approval shall be accepted for processing.

(7) **112(g) applications.** A source that is required to meet the requirements under section 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of such Act, shall file an application to obtain an operating permit or permit amendment or modification within twelve months of commencing operation. Where an existing Part 70 operating permit would prohibit such construction or change in operation, the source must obtain a construction permit before commencing construction.

(8) **Application for renewal.** Sources subject to this Chapter shall file an application for renewal of an operating permit at least six months before the date of permit expiration, unless a longer period (not to exceed 18 months) is specified in the permit. Renewal periods greater than six months are subject to negotiation on a case-by-case basis.

(9) **Phase II acid rain permits.** Sources required to submit applications under the Acid Rain Program shall submit these applications as required by 40 CFR 72.30(b)(2)(i) through (viii).

(10) **Application completeness.** See ~~Uniform Permitting Rules, OAC 252:2-15-70~~ Environmental Permit Process, OAC 252:4-7-7 and the definition of "administratively complete" in OAC 252:100-8-2.

252:100-8-6. Permit content

(a) **Standard permit requirements.** Part 70 permits issued under this Chapter shall include all applicable requirements and state-only requirements (as defined in OAC 252:100-8-2) that apply to the permitted source at the time of issuance. Each permit shall include the ~~following~~ elements~~:~~ in paragraphs (1) through (4) of subsection (a) of this Section.

(1) **Emission limitations and standards.** The permit shall specify emissions limitations and standards that constitute applicable requirements and state-only requirements and shall include those operational conditions and limitations necessary to assure compliance with all such requirements.

(A) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement or state-only requirement upon which the term or condition is based.

(B) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by EPA.

(C) If the State implementation plan or an applicable requirement allows a source to comply through an alternative emission limit or means of compliance, a source may request that such an alternative limit or means of compliance be specified in its permit. Such an alternative emission limit or means of compliance shall be included in a source's permit upon a showing that it is quantifiable, accountable, enforceable, and based on replicable procedures. The source shall propose permit terms and conditions to satisfy these requirements in its application.

(2) **Permit duration.**

(A) **Operating permits.** The permit shall specify a fixed term. The DEQ shall issue permits for any fixed period requested in the permit application, not to exceed five years, except as ~~provided in subparagraphs (i) and (ii) of this paragraph~~ follows:

(i) Permits issued to affected sources shall in all cases have a fixed term of five years.

(ii) Permits issued to solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act shall have a term not to exceed 12 years. Such permits shall be reviewed every five years.

(B) **Construction permits.** See OAC 252:100-8-1.4.

(3) **Monitoring and related recordkeeping and reporting requirements.**

(A) **Monitoring requirements.**

(i) ~~All~~ The permit shall specify all emissions monitoring and analysis procedures or test methods required under applicable requirements and state-only requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act~~;~~.

(ii) ~~Where an applicable requirement or state-only requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring),~~ The permit

shall specify periodic monitoring during the relevant time period sufficient to yield reliable data that are representative of the source's compliance with the permit, as reported pursuant to (a)(3)(C) of this section when an applicable requirement or state-only requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring). Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement or state-only requirement. Recordkeeping provisions may be sufficient to meet the requirements of this subparagraph.

(iii) ~~As~~ The permit shall specify as necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(iv) ~~Provisions~~ The permit shall contain provisions for the permittee to request the use of alternative test methods or analysis procedures, and provisions for the DEQ to approve or disapprove the request within 60 days.

(B) **Recordkeeping requirements.** The permit shall incorporate all applicable recordkeeping requirements ~~and require, where applicable, the following:~~.

(i) ~~Records~~ When applicable the permit shall require records of required monitoring information that include ~~the following~~:

(I) ~~The~~ the date, place as defined in the permit, and time of sampling or measurements;

(II) ~~The~~ the date(s) analyses were performed;

(III) ~~The~~ the company or entity that performed the analyses;

(IV) ~~The~~ the analytical techniques or methods used;

(V) ~~The~~ the results of such analyses; and

(VI) ~~The~~ the operating conditions existing at the time of sampling or measurement.

(ii) ~~Retention~~ When applicable, the permit shall require retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original stripchart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. Where appropriate, the permit may specify that records may be maintained in computerized form.

(C) **Reporting requirements.** The permit shall incorporate all applicable reporting requirements and ~~require~~ contain the following requirements~~:~~.

(i) A permit issued under this Part shall require the permittee to submit a report of any required monitoring at least every six months. To the extent possible, the schedule for submission of such reports shall be timed to coincide with other periodic reports required by the permit, including the permittee's annual compliance certification. However, the reports may be submitted at any time within the reporting period, as stipulated in the permit.

(ii) Each report submitted under (C)(I) of this paragraph shall identify any exceedances from permit requirements since the previous report that have been monitored by the monitoring systems required under the permit, and any exceedances from the monitoring, recordkeeping and reporting requirements under the permit.

(iii) In addition to semiannual monitoring reports, each permittee shall be required to submit the following supplemental reports ~~as follows:~~.

(I) Any exceedance resulting from an emergency as defined in OAC 252:100-8-2 or upset conditions as defined in the permit shall be reported promptly but no later than 4:30 p.m. on the next working day after the permittee first becomes aware of the exceedance. The initial report must contain a description of the emergency or upset conditions, any steps taken to mitigate emissions, and corrective actions taken. Quantification of exceedances attributable to emergencies or upset conditions shall be made by the best available method. If the permittee wishes to assert the affirmative defense authorized under subsection (e) of this Section for emergencies, the permittee shall submit a followup written report within 10 working days of first becoming aware of the exceedance.

(II) Any exceedance that poses an imminent and substantial danger to public health, safety, or the environment shall be reported as soon as is practicable; but under no circumstance shall notification be more than 24 hours after exceedance.

(III) Any other exceedances that are identified in the permit as requiring more frequent reporting than the permittee's semiannual report shall be reported on the schedule specified in the permit.

(IV) All reports of exceedances shall identify the probable cause of the exceedances and any corrective actions or preventive measures taken.

(iv) Every report submitted under this subsection shall be certified by a responsible official, except that if a report of an exceedance required under (C)(iii) of this paragraph must be submitted within ten days of the exceedance, the report may be submitted in the first instance without a

certification if an appropriate certification is provided within ten days thereafter, together with any corrected or supplemental information required concerning the exceedance. Reports submitted shall be consistent with the requirements of OAC 252:100-9.

(4) **Risk management plans.** If the source is required to develop and register a risk management plan pursuant to section 112(r) of the Act, the permit need only specify that the permittee will comply with the requirement to register such a plan. Although the requirement to have a risk management plan may be a term of the permit, the risk management plan contents are not part of the permit.

(5) **Title IV allowances.**

(A) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(B) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(C) The permit shall prohibit emissions exceeding any allowance that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder. Compliance with this paragraph will be determined on January 31st of any given year and be based on actual emissions and the number of allowances held for the previous calendar year.

(6) **Severability clause.** The permit shall include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(7) **General requirements.** The permit shall include the following provisions ~~stating the following:~~.

(A) The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Oklahoma Clean Air Act and is grounds for:

(i) enforcement action;

(ii) permit termination, revocation and reissuance, or modification; or

(iii) denial of a permit renewal application.

(B) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. However, nothing in this subsection shall be construed as precluding consideration of a need to halt or reduce activity as a mitigating factor in assessing penalties for noncompliance if the health, safety, or environmental impacts of halting or reducing operations would be more serious than the impacts of continuing operations.

(C) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. Except as provided under OAC 252:100-8-7.2(b)(1) for minor permit modifications, the filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(D) The permit does not convey any property rights of any sort or any exclusive privilege.

(E) The permittee shall furnish to the DEQ, upon receipt of a written request and within a reasonable time, any information that the DEQ may request to determine whether cause exists for modifying, reopening, or revoking and reissuing or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the DEQ copies of records required to be kept by the permit. The permittee may make a claim of confidentiality pursuant to 27A O.S. § 2-5-105.18 for any information or records submitted under this paragraph.

(8) **Fees.** The permit shall provide that the permittee will pay fees to the DEQ consistent with the fee schedule established under OAC 252:100-5-2.2.

(9) **Emissions trading.** The permit shall provide that no permit revision shall be required under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(10) **Operating scenarios.** The permit shall include terms and conditions applicable to all operating scenarios described in the permit application and eligible for approval under applicable requirements and state-only requirements. The permit shall authorize the permittee to make changes among operating scenarios authorized in the permit without notice, but shall require the permittee contemporaneously with making a change from one operating scenario to another to record in a log at the permitted facility the scenario under which it is operating.

(11) **Emissions averaging.** The permit shall include terms and conditions, if the permit applicant requests them, for the trading or averaging of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading or averaging such increases and decreases. Such terms and conditions shall include terms under subsections (a) and (c) of this Section to determine compliance and shall satisfy all requirements of the applicable requirements authorizing such trading or averaging.

(b) **Federally enforceable requirements.**

(1) Except as provided in paragraph (b)(2) of this Section, all terms and conditions in a permit issued under this Section, including any provisions designed to limit a source's potential to emit, are enforceable by the DEQ, by EPA, and by citizens under section 304 of the Act.

(2) Notwithstanding paragraph (b)(1) of this Section, the DEQ shall designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or any of its

applicable requirements, and such terms and conditions shall not be enforceable by EPA and citizens under section 304 of the Act.

(c) **Compliance requirements.** All permits issued under this Part shall contain the following elements with respect to compliance~~:~~.

(1) Consistent with paragraph (a)(3) of this Section, the permit shall contain compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a permit under this Part shall contain a certification by a responsible official as to the results of the required monitoring.

(2) ~~Inspection~~ The permit shall contain inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized officials of the DEQ to ~~perform the following~~:

(A) ~~Enter~~ enter upon the permittee's premises during reasonable/normal working hours where a source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(B) ~~Have~~ have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(C) ~~Inspect~~ inspect at reasonable times and using reasonable safety practices any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(D) ~~As~~ as authorized by the Oklahoma Clean Air Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit.

(3) ~~A~~ The permit shall contain a schedule of compliance if required under OAC 252:100-8-5(e)(8)(B).

(4) To the extent required under an applicable schedule of compliance and OAC 252:100-8-5(e)(8), the permit shall contain the requirement for progress reports~~,~~ to be submitted semiannually or more frequently if specified in the applicable requirement or by the DEQ. Such progress reports shall contain ~~the following~~:

(A) ~~Dates~~ dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(B) ~~An~~ an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) ~~Requirements~~ The permit shall contain requirements for compliance certification with terms and conditions contained in the permit that are federally enforceable, including emission limitations, standards, or work practices. Each permit shall ~~specify:~~ contain all of the following specifications and requirements.

(A) ~~The~~ Each permit shall specify the frequency (which shall be annually unless the applicable requirement or state-only requirement specifies submission more frequently) of submissions of compliance certifications~~;~~.

(B) ~~In~~ Each permit shall specify in accordance with paragraph (a)(3) of this Section, a means for monitoring the compliance of the source with emissions limitations, standards, and work practices~~;~~.

(C) ~~A~~ Each permit shall include a requirement that the compliance certification include ~~the following~~:

(i) ~~The~~ the identification of each term or condition of the permit that is the basis of the certification;

(ii) ~~The~~ the permittee's current compliance status, as shown by monitoring data and other information available to the permittee;

(iii) ~~Whether~~ whether compliance was continuous or intermittent;

(iv) ~~The~~ the method(s) used for determining the compliance status of the source, currently and over the reporting period as required by paragraph (a)(3) of this Section; and

(v) ~~Such~~ such other facts as the DEQ may require to determine the compliance status of the source~~;~~.

(D) ~~A~~ Each permit shall contain a requirement that all compliance certifications be submitted to EPA as well as to the DEQ~~;~~.

(E) ~~Such~~ Each permit shall contain such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act~~; and~~.

(6) ~~Such~~ Each permit shall contain such other provisions as the DEQ may require.

(d) **Permit shield.**

(1) Each operating permit issued under this Part shall include a "permit shield" provision, which shall state that compliance with the terms and conditions of the permit (including terms and conditions established for alternate operating scenarios, emissions trading, and emissions averaging, but excluding terms and conditions for which the permit shield is expressly prohibited under this Subchapter) shall be deemed compliance with the applicable requirements identified and included in the permit.

(2) Upon request, the DEQ shall include in the permit or in a separate written finding issued with the permit a determination identifying specific requirements that do not apply to the source. The source shall specify in its application for such a determination the requirements for which the determination is requested. If the determination is issued in a separate finding, that finding shall be summarized in the permit. The permit shall state that the permit shield applies to any requirements so identified. A request for a determination to extend the shield to requirements deemed inapplicable to the source may be made either in the original permit application or in a subsequent application for a permit modification.

(3) A Part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(4) Nothing in this Section or in the permit shall alter or affect ~~the following~~:

(A) the provisions of section 303 of the Act, including the authority of the Administrator under that section;

(B) the liability of an owner or operator of a source for any violation of applicable requirements or state-only requirements prior to or at the time of permit issuance;

(C) the applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(D) the ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(e) **Emergencies.**

(1) An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (e)(3) of this Section and the reporting requirements of OAC 252:100-8-6(a)(3)(C)(iii)(I) are met.

(2) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs or other relevant evidence that:

(A) ~~An~~ an emergency occurred and that the permittee can identify the cause(s) of the emergency;

(B) ~~The~~ the permitted facility was at the time being properly operated;

(C) ~~During~~ during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit.

(3) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(4) The provision in this subsection is in addition to any emergency or upset provision contained in any applicable requirement or OAC 252:100-9.

(f) **Operational flexibility.**

(1) **Applicant's duty to apply for alternative scenarios.** A facility may implement any operating scenario allowed for in its Part 70 permit without the need for any permit revision or any notification to the permitting authority. It is incumbent upon the Part 70 permit applicant to apply for any reasonably anticipated alternative facility operating scenarios at the time of initial or renewal permit application.

(2) **Changes resulting in no emissions increases.** A permitted Part 70 source may make the following changes within the facility ~~that:~~.

(A) ~~Are~~ Such a source may make changes that are not modifications under any provision of Title I of the Act~~;~~.

(B) ~~Do~~ Such a source may make changes that do not cause any hourly or annual permitted emission rate of any existing emissions unit to be exceeded~~; and~~.

(C) ~~Result~~ Such a source may make changes that result in a net change in emissions of zero, provided that the facility notifies the DEQ and EPA in writing at least 7 days in advance of the proposed changes. The source, DEQ, and EPA shall attach each such notice to their copy of the relevant permit. For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield described in OAC 252:100-8-6(d) does not apply to any change made pursuant to this subsection.

252:100-8-6.1. General permits

(a) **Applicability.**

(1) The DEQ may, after notice and opportunity for public participation, issue a general permit for any source category if it concludes that the category is appropriate for permitting on a generic basis. Any general permit shall comply with all requirements applicable to other Part 70 permits. No general permit may be issued for affected sources under the acid rain program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) A general permit may be issued for a source category based upon an application from a source within the source category or upon the DEQ's own initiative. The DEQ shall, following receipt of an application for a general permit, or upon a determination that issuance of a general permit for a category of sources may be appropriate, follow the same procedures for issuance of a general permit as for any other permit issued under this part.

(3) A general permit may be issued to establish:

(A) Terms and conditions to implement applicable requirements and state-only requirements for a source category.

(B) Terms and conditions to implement applicable requirements and state-only requirements for specified categories of changes to permitted sources.

(C) Terms and conditions for new requirements that apply to sources with existing permits.

(D) Federally-enforceable caps on emissions from sources in a specified category.

(4) The DEQ may issue a general permit if it finds that:

(A) There are several permittees, permit applicants, or potential permit applicants who:

(i) Have the same or substantially similar operations, emissions, activities, or facilities.

(ii) Emit the same types of regulated air pollutants.

(B) The operations, emissions, activities, or facilities are subject to the same or similar:

(i) Standards, limitations, and operating requirements.

(ii) Monitoring requirements.

(5) If some, but not all, of a source's operations, activities, and emissions are eligible for coverage under one or more general permits, the source must apply for an individual Part 70 permit for all of its covered sources.

(6) Facilities located in areas that are federally designated as non-attainment are not eligible for coverage under a general permit.

(7) Sites that are not in compliance with all applicable State and Federal air regulations are eligible for a general operating permit only if:

(A) They submit to DEQ an approvable compliance plan, and

(B) The facility submits to Tier II public review.

(8) Facilities with existing state operating permits are eligible for coverage under a general operating permit.

(9) Facilities existing prior to the effective date of any applicable standard that would have created specific quantifiable and enforceable emission rates are eligible for coverage under a general operating permit.

(b) **Authorization.**

(1) A general permit issued under this section shall identify criteria by which sources may qualify for the general permit. After a general permit has been issued, any source may submit a request to be covered under the permit in the form of an application for authorization to operate under the general permit. Such application shall identify the source and provide information sufficient to demonstrate that it falls within the source category covered by the general permit, together with any additional information that may be specified in the general permit.

(2) See ~~252:2-15~~ OAC 252:4-7 for Tier I permitting ~~procedures~~ processes and timelines for individual authorizations under general permits. The DEQ shall act to approve or deny the application within 90 days of filing.

(3) A final action approving an authorization to operate under a general permit shall not be subject to public comment or judicial review.

(4) The DEQ will publish, at least monthly, an updated list of sources approved for inclusion under the general permit and any aggrieved person may petition the DEQ to review the approval of any stationary source for inclusion under a general permit within 30 days after publication of the list.

(5) A copy of the general permit, together with a list of sources approved for coverage under it, shall be kept on file for public review at the offices of the DEQ.

(c) **Permit shield.** A general permit issued under this section shall provide that any source approved for coverage under a general permit shall be entitled to the protection of the permit shield for all operations, activities, and emissions addressed by the general permit, unless and to the extent that it is subsequently determined that the source does not qualify for the conditions and terms of the general permit.

(d) **Revisions.**

(1) If an owner or operator of a source(s) makes a change to a source covered by a general permit that affects any applicability information supplied in the general permit application, but the source is still eligible for coverage under a general permit, the owner or operator must revise the general permit application and submit it to the DEQ within 60 days.

(2) After coverage is granted to a source under the general permit, physical changes to the facility which result in the addition of equipment new to the facility, either as a replacement (except like-kind replacements) or net addition, will require a construction permit or a new authorization. Any significant modification to a stationary source included under a general permit shall subject the source to a Tier II review.

(3) If equipment new to the facility is newly purchased or is relocated from another facility where a permit was issued with enforceable emissions limits on that equipment, then authorization under the general permit shall be modified or amended to include an emissions limit for the newly purchased or relocated equipment. "Grandfathered" emissions sources at the facility will retain only the equipment descriptions as permit conditions. "Grandfathered" means a unit that was in existence prior to the effective date of any applicable regulation that would have created specific quantifiable and enforceable emissions rate limits.

(4) For a general operating permit, if emissions change for any reason that subjects the facility to PSD permitting requirements, then the facility no longer qualifies for a general operating permit. However, the existing general operating permit will remain valid during the time period covered by the PSD construction permit until the facility receives a Part 70 site specific operating permit for the entire facility.

(e) **Permit content.** Specific terms and conditions that will make the applicable rules and requirements enforceable shall be stipulated in the general permit.

(f) **Renewal of general operating permits.**

(1) The DEQ will initiate the renewal process for a general operating permit at least 180 days prior to the permit's expiration date and will follow the requirements in 252:100-8-7(a).

(2) Owners or operators shall apply to renew an authorization at least 60 days prior to expiration of the existing authorization. Upon submittal of a timely and administratively complete application, the applicant may continue to operate until such time as the DEQ grants or denies coverage under the general operating permit.

252:100-8-6.3. Special provisions for affected (acid rain) sources

(a) **Application binding until permit issuance or denial.** A complete acid rain permit application is binding on the applicant and enforceable as a permit until an acid rain permit is issued or denied. For applicable permitting ~~procedures~~ processes, see ~~252:2-15~~ OAC 252:4-7.

(b) **Exemption petitions.** Applicants with small units that burn low sulfur fuel or sources that retire a unit can petition to have such units exempted from certain permitting and monitoring requirements under the acid rain regulations.

(c) **Permit shield.** The acid rain portion of every operating permit is covered by a permit shield. This shield assures that an applicant operating in accordance with a permit issued in accordance with Title IV of the Act, will be deemed to be operating in compliance with the Acid Rain Program.
(d) **Modifications.** See 40 CFR 72.82.
(e) **Duration.** Acid rain permits will have a term of five years commencing on the permits effective date. The DEQ may issue a permit with a future effective date.
(f) **Right of intervention.** The Administrator may intervene as a matter of right in any administrative appeal involving an Acid Rain permit or denial of an Acid Rain permit.
(g) **Administrative appeal.** The administrative appeal period shall be no more than 90 days following the issuance of the Acid Rain permit and the judicial appeal period shall be no more than 90 days following a final agency action.
(h) **Adoption of 40 CFR Part 72 by reference.** DEQ hereby adopts and incorporates by reference the provisions of 40 CFR Part 72, as published in the Federal Register on January 11, 1993, on March 23, 1993, and on October 24, 1997, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Act. The term "permitting authority" shall mean the Oklahoma Department of Environmental Quality and the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 72 conflict with or are not included in 252:100-8, the Part 72 provisions and requirements shall apply and take precedence.

252:100-8-7. Permit issuance
(a) **Criteria for issuance.** A permit, permit modification, or renewal may be issued only if the applicable requirements of 27A O.S. §§ 2-14-101 through 2-14-401; OAC ~~252:2-15~~ 252:4-7; and this Chapter have been met and the DEQ has determined that the conditions of the permit provide for compliance with all applicable requirements and, for applications subject to OAC 252:100-8-8, that the requirements of that Section have been satisfied.
(b) **Draft permits and notice thereof.** See OAC ~~252:2-15~~ 252:4-7. A statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions) shall accompany the draft permit.
(c) **EPA review.** See OAC 252:100-8-8.
(d) **DEQ final action.** See OAC ~~252:2-15~~ 252:4-7 and 252:100-8-8 when applicable.
(e) **Timeline for technical review and issuance.** The DEQ shall take final action on each application for a permit within 18 months after beginning its technical review in accordance with OAC ~~252:2-15-70 through 252:2-15-72~~ 252:4-7-4 through 252:4-7-12 and OAC 252:4-7-31; and OAC 252:100-8-4(b)(7).

[OAR Docket #05-686; filed 4-20-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 110. LEAD-BASED PAINT MANAGEMENT

[OAR Docket #05-685]

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PERMANENT final adoption
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Subchapter 1. General Provisions
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Subchapter 3. Definitions
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Subchapter 5. Incorporation By Reference
252:110-5-1. [AMENDED]
Subchapter 9. Additional Accreditation Requirements
252:110-9-1.1. [NEW]
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252:110-9-4. [AMENDED]
252:110-9-6. [AMENDED]
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252:110-13-5. [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., §§ 2-2-101, 2-2-201 and the Lead-Based Paint Management Act, §§ 2-12-101, *et seq.*
DATES:
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None
INCORPORATIONS BY REFERENCE:
Incorporated standards:
40 CFR 745 Subpart L, Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities
Incorporating rules:
OAC 252:110-5-1
Availability:
From the contact person listed below
ANALYSIS:
The Department proposes to incorporate by reference recent amendments to 40 CFR 745, Subpart L, that became effective May 10, 2004. These amendments will be adopted in their entirety with the exception of the means for submitting abatement projects and lead-based paint course update notifications.
The Department also proposes to add and amend language to clarify requirements of accredited lead-based paint (LBP) training providers and instructors. Training providers would be required to include a hands-on

component for each initial or refresher course taught. Course curriculum would be required to include a review of OAC 252:110, Oklahoma Lead-Based Paint Management Rules, and related Department updates. Proposed rule amendments would limit the time a guest speaker would be allowed to instruct a class to two (2) hours per eight (8) hours of instruction. Accredited training instructors would be required to take and pass a certification exam every three (3) years for each discipline they desire to teach. Accredited lead-based paint instructors would not be allowed to submit LBP training certificates for him/herself from those training courses that they have conducted as instructors or guest speakers.

The Department proposes to revoke OAC 252:110-13-3, Notice of lead-based paint projects, and OAC 252:110-9-3(b) and (c), Notice of course offerings and course cancellations, because these requirements will now be included in OAC 252:110-5-1(4). Also, references to the Department's Radiation Management rules will be updated.

CONTACT PERSON:

Cheryl E. Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

252:110-1-7. Reference to 40 CFR

When reference is made to Title 40 of the Code of Federal Regulations (40 CFR), it shall mean (unless otherwise specified) the Lead-based Paint Activities Regulations, 40 CFR Part 745, originally published in the *Federal Register*, Volume 61, Number 169 on August 29, 1996, and as amended and published in the *Federal Register,* Volume 66, Number 4 on January 5, 2001 and Volume 69, Number 68, on April 8, 2004.

(1) **Inclusion of CFR citations and definitions.** When a provision of the Code of Federal Regulations is incorporated by reference, all citations contained therein are also incorporated by reference, unless specifically excluded.

(2) **Inconsistencies or duplications.** In the event that there are inconsistencies or duplications in the requirements of those provisions incorporated by reference in OAC 252:110-5-1 and the regulations in this Chapter, the provisions incorporated by reference shall prevail, except where the regulations in this Chapter are more stringent.

SUBCHAPTER 3. DEFINITIONS

252:110-3-1. Definitions

In addition to the definitions contained in OAC 252:110-5-1(1) and the Oklahoma Lead-based Paint Management Act, 27A O.S., Sec. 2-12-101 *et seq*., the following words and terms, when used in this Chapter shall have the following meaning, unless otherwise indicated.

"Act" means the Oklahoma Lead-based Paint Management Act, 27A O.S., § 2-12-101 *et seq.,* and subsequent amendments.

"Authorization" means a certification, accreditation or approval granted by the Department.

"Business day" means Monday through Friday with the exception of State holidays.

"Exam" means a third party test, administered by the Department when required for LBP certification.

"Hazard evaluator" [See ***"Lead-based Paint hazard evaluator"***, 27A O.S. § 2-12-102(17).] For the purposes of this chapter, the term "hazard evaluator" is synonymous with the term "risk assessor."

"HUD procedures" means the Housing and Urban Development's *Guidelines for the Evaluation and Control of Lead-based Paint Hazards in Housing (June 1995 and revised in October 1997).*

"Instructor" means any person who receives compensation from an accredited LBP training program for teaching all or a portion of a LBP training course.

"LBP" means Lead-based Paint.

"LBP Contractor" means an individual or firm certified by the Department as an inspector, risk assessor, abatement worker, project designer, supervisor, or firm.

"OAC" means the Oklahoma Administrative Code.

"Quality assurance plan" means a written description of quality assurance activities that will ensure the generation of data that are scientifically valid, defensible and of known and acceptable limits of precision and accuracy.

"Training provider" means any organization or entity accredited under OAC 252:110, Lead-based Paint Management.

"XRF instrument" or **"x-ray fluorescence spectroscopy instrument"** means an instrument using radiation from a source to stimulate radiation emission which can be analyzed to determine the presence of certain substances, including lead.

SUBCHAPTER 5. INCORPORATION BY REFERENCE

252:110-5-1. Incorporation by reference

The following Sections of 40 CFR Part 745, as they exist on July 1, 2004, are, unless otherwise specified, incorporated by reference in their entirety ~~(as published in the *Federal Register*, Volume 61, Number 169 on August 29, 1996 and amended in the Federal Register, Volume 66, Number 4 on January 5, 2001)~~:

(1) Section 745.223. Definitions, except the ~~definition~~ definitions of "Interim certification", "Business day" and "Training provider".

(2) Section 745.225. Accreditation of training programs: target housing and child-occupied facilities, except:

(A) Section 745.225(a)(2) which refers to application dates.

(B) Section 745.225(a)(3) which refers to accreditation deadlines.

(C) Section 745.225(b)(3) which refers to accredited training courses.

(D) Section 745.225(c)(14)(iii) which refers to course notification means of submittal.

(~~D~~ E) Section 745.225(e)(5) which refers to training programs offering only refresher training courses.

(~~E~~ F) Section 745.225(f)(1) which refers to timelines for renewal accreditation of training programs.

(~~F~~ G) Section 745.225(f)(2) which refers to renewal accreditation deadlines.

(3) Section 745.226. Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities, except:

(A) Section 745.226(a)(2) which refers to application dates.

(B) Section 745.226(a)(5) which refers to enforcement dates.

(C) Section 745.226(b)(4) which refers to interim certification.

(D) Section 745.226(c)(3) which refers to interim certification.

(E) Section 745.226(d) which refers to certification based on prior training.

(F) Section 745.226(e) which refers to re-certification.

(G) Section 745.226(f) which refers to certification of firms.

(4) Section 745.227. Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities, except:

(A) Section 745.227(a)(1) which refers to performance dates.

(B) Section 745.227(e)(4)(vii) which refers to abatement notification means of submittal.

(5) Section 745.233. Lead-based paint activities requirements.

(6) Section 745.61. Scope and applicability.

(7) Section 745.63. Definitions

(8) Section 745.65. Lead-based paint hazards.

SUBCHAPTER 9. ADDITIONAL ACCREDITATION REQUIREMENTS

252:110-9-1.1. Course Content

In addition to the training requirements contained in OAC 252:110-5-1, all training courses and the corresponding refreshers must contain hands-on training activities and review of OAC 252:110, Oklahoma Lead-Based Paint Management.

252:110-9-3. Records and notices

(a) **Notice of significant changed conditions.** An accredited program shall give written notice to the Department of any prospective or current course or program changes which may adversely affect any Department-administered exam.

~~(b) **Notice of course offerings.** At least five (5) days prior to teaching a course, a training program shall notify the Department in writing of the course name, date and location(s).~~

~~(c) **Notice of course cancellations.** Within twenty four (24) hours of course cancellation, a training program shall notify the Department in writing of the cancellation of a scheduled course and provide notice to the students enrolled therein.~~

(~~d~~ b) **Notice of accreditation status.** The Department may require a training program to give written notice to its present or prospective students of the suspension or revocation of any part of its accreditation.

(~~e~~ c) **Personnel changes.** An accredited program shall submit to the Department the information required in ~~Subchapter 11~~ OAC 252:110-11-4. Certification Exam, as applicable, for each training manager or instructor proposed to be added to the program after it is accredited and request approval of the new personnel. If the Department does not deny the request within two (2) weeks of receipt, the request shall be deemed approved. A program shall also give the Department written notice of the name of any instructor no longer teaching in the program, and the title of the affected course(s), within two (2) weeks of the change.

252:110-9-4. Applications

In addition to the requirements of OAC 252:110-5-1(2), 252:110-7-4 and 252:110-7-5, an accreditation application shall contain:

(1) **General information.**

(A) The name and address of any owner, stockholder, officer or training manager of the training program who was or is affiliated with another LBP training program whose accreditation has been previously suspended or revoked in part or in whole within the preceding 12 months or who has been a party in enforcement proceedings by the Department for a significant violation or violations of the Code or rules promulgated by the Board.

(B) A copy of an EPA or state approval letter for each course previously approved by the EPA or another state.

(C) Documentation of accreditation as a LBP training program issued by another state or entity.

(2) **Course information.**

(A) A copy of all course materials, including handouts.

(B) Details of the hands-on skills assessment.

(C) Minimum competency and proficiency requirements.

(D) If a training program does not use EPA-developed model training materials, its application for accreditation shall include:

(i) A copy of the student and instructor manuals to be used for each course; and,

(ii) A copy of the course agenda for each course, including the time allotted to each curriculum element.

(3) **Program information.**

(A) Copies or samples of advertising materials currently or proposed to be published by the training

provider to promote its program and/or specific training courses.

(B) A plan for tracking student attendance to ensure requisite hours of class participation.

(C) A copy of proposed course completion certificate.

(4) **Instructor information.**

(A) A completed instructor application for each instructor associated with the training program, including identification of all disciplines the instructor is seeking approval to teach.

(B) Evidence, including test scores, that each instructor has passed the certification exam within the last three years for each discipline the instructor is seeking approval to teach.

252:110-9-6. Basis for issuance, denial, revocation or suspension

(a) **General.** In addition to the provisions of OAC 252:110-7-7, accreditation may not be issued to any applicant who has an owner, stockholder, officer or training manager who was or is currently affiliated with another training program whose accreditation was suspended or revoked by an accrediting entity within the 12 months prior to application or who has been subject to the Department enforcement proceedings.

(b) **Specific.** An accredited program shall not:

(1) Fail to follow Department-approved curricular course content~~except for the implementation of required updates;~~.

(2) Fail to implement Department required course updates and changes.

(~~2~~ 3) Falsify the results of student performance~~;~~.

(~~3~~ 4) Misrepresent the contents of a training course to the Department ~~and/or the student population;~~ or to students.

(~~4~~ 5) Fail to submit required information or notifications in a timely manner, comply with a compliance schedule, or take other action required by this Chapter~~;~~.

(~~5~~ 6) Fail to maintain required records~~;~~.

(~~6~~ 7) Falsify accreditation records, instructor qualifications, or other accreditation information~~; or~~.

(~~7~~ 8) Permit any person other than an approved instructor to act as a principal instructor or have the responsibility thereof, including but not limited to assessing students' hands-on skills or grading students' exams.

(9) Permit guest speakers to instruct more than two (2) hours for every eight (8) hours of class instruction.

SUBCHAPTER 11. ADDITIONAL LBP CERTIFICATION REQUIREMENTS

252:110-11-1. Certification requirements

(a) **Certifications available.** Certification is available and required for all individuals and firms who perform or offer to perform LBP services in target housing and child-occupied facilities.

(b) **Failure to become certified.** No person or firm shall advertise or otherwise present himself as a certified LBP contractor or perform or offer to perform LBP services in target housing and child-occupied facilities prior to becoming certified as such by the Department.

(c) **Certification for approved instructors.** Department will not issue initial or renewal LBP certifications to applicants who submit LBP training certificates from those training courses that they have conducted as an instructor or participated in as a guest speaker.

252:110-11-4. Certification exam

(a) **Purpose.** The certification exam is required of all initial applicants for LBP inspector, risk assessor, or supervisor certification ~~and is required at least every third year for all renewal LBP inspector, risk assessor or supervisor certification applicants and is~~. The certification exam is designed to test an applicant's skills and knowledge~~ of~~, as well as competency in interpreting~~;~~ and ~~application of~~ applying the rules for ~~the~~ performance of LBP services.

(b) **Registration.** In his certification application, an applicant shall register for the date, time and type of the Department-administered LBP certification exam he intends to take. Unless specifically arranged otherwise by the Department on a group basis, an applicant must register for an exam to be held two (2) or more weeks after his date of filing the application. A missed examination shall be counted as a failed examination.

(c) **Scheduling.** Dates, times and places of Department-administered LBP certification exams shall be published in advance. The exam shall be offered by the Department at such frequencies, times and places as is determined by the Department.

(d) **Proof of identity.** Applicants shall provide a valid driver's license or other photo identification card at the certification exam.

(e) **Confidentiality.** Exams, answer sheets and test scores are confidential and shall not be subject to disclosure, except an individual may obtain his own test score.

(f) **Cheating.** Any applicant found cheating on an exam shall be deemed to have failed the exam, shall have his application denied, and may not apply for certification for one (1) year.

252:110-11-6. Renewal of certification

(a) **Renewal notice.** As a service, the Department will mail certification renewal notices on or before January 15 of each year to persons and firms certified of record.

(b) **Renewal criteria.** In addition to the requirements of OAC 252:110-7-5, an applicant must show ~~he~~ he/she has~~:~~

~~(1) Passed the appropriate Department certification exam within the last three years, if applicable.~~

~~(2) Successfully~~ successfully completed eight (8) hours of required refresher training in the preceding 12 months from a Department-accredited training program.

(c) **Failure to renew.** Any certification for which a renewal application has not been received by the Department by 4:30 p.m., April 30 (or postmarked on or before that date) shall expire at 4:30 p.m., April 30.

(d) **Reactivation or reinstatement.** Holders of expired certificates may submit an application for reactivation or reinstatement of the certification within one year of the March 31 expiration date if the applicant meets the education, experience and other requirements of this Chapter. Fees for the reactivation or reinstatement of certification shall be the same as initial certification fees.

SUBCHAPTER 13. ADDITIONAL WORK PRACTICE STANDARDS

252:110-13-3. Notice of lead-based paint projects [REVOKED]

~~(a) **Initial notice.** A certified contractor shall give at least 10 days written notice to the Department before starting an abatement project at a designated facility. Upon written request, a shorter time may be granted by the Department only for emergency situations. For soil abatements, 15 days written notice shall be required. The notices shall at a minimum provide:~~

~~(1) The name, address and telephone number of the contractor;~~

~~(2) The name, address and telephone and pager numbers of the supervisor in charge;~~

~~(3) The name, location and address of the facility and the name and telephone number of the facility owner or manager;~~

~~(4) A brief description of services to be performed;~~

~~(5) The estimated dates of commencement and completion; and~~

~~(6) A copy of the pre-abatement plan/project design;~~

~~(b) **Subsequent notice.** A certified contractor shall give written notice to the Department of any significant changes enlarging the scope of the project or affecting the projected completion date.~~

252:110-13-5. Testing methodologies

(a) **Quality control.** Testing for the presence of LBP shall be conducted by documented methodologies using quality control procedures. Procedures for sample collection, transfer, and testing shall be performed according to applicable HUD and EPA procedures and guidelines.

(b) **Types of detection/testing methods.** Acceptable methodologies include, but are not limited to:

(1) **Laboratory analysis.** Only laboratories recognized by the United States Environmental Protection Agency may conduct laboratory analyses on soil, dust and paint film required by this Chapter. Each sample must be accompanied by a chain of custody document.

(2) **X-ray fluorescence spectroscopy (XRF).** XRF instruments may be used for on-site lead detection. If inconclusive or questionable results are obtained from XRF testing, testing of paint chip samples by a qualified laboratory shall be conducted. This paragraph shall not be construed as to relieve the user of any duty to comply with other applicable requirements, including but not limited to the licensing requirements of ~~252:400-17 "Radiation Management Rules"~~ OAC 252:410-19, X-ray Fluorescence Instruments Used for Lead-based Paint Detection.

[OAR Docket #05-685; filed 4-20-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 300. LABORATORY ACCREDITATION

[OAR Docket #05-687]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 21. Categories
252:300-21-1. [AMENDED]
Appendix A. Analytes for Drinking Water Laboratory Categories [REVOKED]
Appendix A. Analytes for Drinking Water Laboratory Categories [NEW]
AUTHORITY:
Environmental Quality Board 27A O.S. §§ 2-2-101, 2-2-201 and Article IV, Laboratory Services and Certification, §§ 2-4-101 *et seq.*
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Subchapter 21. Categories
252:300-21-1. [AMENDED]
Appendix A. Analytes for Drinking Water Laboratory Categories [REVOKED]
Appendix A. Analytes for Drinking Water Laboratory Categories [NEW]
Gubernatorial approval:
August 5, 2004
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22 Ok Reg 12
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04-1260
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
When the Laboratory Accreditation rules were first adopted, the Radionuclide Category for Drinking Water Laboratory accreditation was omitted. Recent changes to monitoring requirements for public water supplies under the Safe Drinking Water Act have expanded the scope of monitoring for radionuclides in drinking water and several private laboratories have requested this accreditation. The proposed rules have been revised to add a Radionuclide Category for Drinking Water Laboratory accreditation. Businesses that participate in the laboratory accreditation program will be able to choose to become accredited in the Radionuclide Category. Radionuclide testing

is a very specialized service that few laboratories are qualified to perform. Businesses that are qualified to perform radionuclide analysis will have the opportunity to offer that service to public water supplies in the state.

CONTACT PERSON:

David Caldwell, Department of Environmental Quality, State Environmental Laboratory, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677. Phone (405) 702-1000. Fax (405) 702-1001. E-mail David.Caldwell@deq.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2005:

SUBCHAPTER 21. CATEGORIES

252:300-21-1. Categories for drinking water certification

A laboratory may be accredited in a drinking water classification for metals, general chemistry, microbiology, asbestos, non-volatile synthetic organic chemicals (SOCs)~~ and/or ~~, volatile organic compounds (VOCs) and/or radionuclides. Analytes for each category are specified in Appendix A.

APPENDIX A. ANALYTES FOR DRINKING WATER LABORATORY CATEGORIES [REVOKED]

APPENDIX A. ANALYTES FOR DRINKING WATER LABORATORY CATEGORIES [NEW]

Analytes considered for drinking water laboratory accreditation include the following:

Category I - Metals.

(A) Antimony
(B) Arsenic
(C) Barium
(D) Beryllium
(E) Cadmium
(F) Calcium
(G) Chromium
(H) Copper
(I) Lead
(J) Mercury
(K) Nickel
(L) Selenium
(M) Silica, filtered
(N) Sodium
(O) Thallium

Category II - General Chemistry.

(A) Alkalinity
(B) Conductivity
(C) Cyanide
(D) Fluoride
(E) pH
(F) Residual Disinfectant - Chlorine
(G) Residual Disinfectant - Ozone
(H) Residual Disinfectant - Chlorine Dioxide
(I) Temperature
(J) Turbidity
(K) Nitrate-N
(L) Nitrite-N
(M) O-Phosphate
(N) Total organic carbon (TOC)
(O) Bromate
(P) Clorite

Category III - Microbiology.

(A) Total coliform bacteria
(B) Fecal coliform bacteria

Category IV - Asbestos.

Category V - Non-Volatile Synthetic Organic Chemicals (SOCs).

(A) Adipates
(B) Alachlor
(C) Aldicarb
(D) Aldicarb Sulfoxide
(E) Aldicarb sulfone
(F) Atrazine
(G) Carbofuran
(H) Chlordane
(I) Dalapon
(J) Dibromochloropropane (DBCP)
(K) 2,4-D
(L) Dinoseb
(M) Diquat
(N) Endothall
(O) Endrin
(P) Ethylene dibromide (EDB)
(Q) Glyphosate
(R) Heptachlor
(S) Heptachlor epoxide
(T) Hexachlorobenzene
(U) Hexachlorocyclopentadiene
(V) Lindane
(W) Methoxychlor
(X) Oxamyl (Vydate)
(Y) PAHs
(Z) Pentachlorophenol
(AA) Phthalates
(BB) Picloram
(CC) Polychlorinated biphenyls (PCBs)- Screen
(DD) Simazine
(EE) 2,3,7,8 TCDD (Dioxin)
(FF) 2,4,5-TP (Silvex)
(GG) Total Trihalomethanes (TTHM)
(HH) Maximum Trihalomethane Potential (MTP)
(II) Haloacetic acids

Category VI - Volatile Organic Contaminants (VOC).

(A) Benzene
(B) Carbon Tetrachloride
(C) Chlorobenzene
(D) p-Dichlorobenzene
(E) o-Dichlorobenzene
(F) 1,2-Dichloroethane
(G) 1,1-Dichloroethylene
(H) c-1,2-Dichloroethylene
(I) t-1,2-Dichloroethylene
(J) Dichloromethane (Methylene chloride)
(K) 1,2-Dichloropropane

(L) Ethylbenzene
(M) Styrene
(N) Tetrachloroethylene
(O) Toluene
(P) 1,2,4-Trichlorobenzene
(Q) 1,1,1-Trichloroethane
(R) 1,1,2-Trichloroethane
(S) Trichloroethylene
(T) Vinyl chloride
(U) Xylene - Total

Category VII - Radionuclides

(A) Gross alpha
(B) Radium 226/228
(C) Uranium
(D) Gross beta
(E) Tritium
(F) Strontium 90

[OAR Docket #05-687; filed 4-20-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 315. PUBLIC BATHING PLACE FACILITY STANDARDS

[OAR Docket #05-712]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Construction and Operation
310:315-7-2. [AMENDED]
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Oklahoma State Board of Health; 63 O.S. 2001, Section 1-1013 et seq.
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22 Ok Reg 231
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04-1411
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposal amends Subchapter 7, Section 7-2 Pool layout, of the present Public Bathing Place Facility Standards in order to complete and clarify the existing regulations. The changes involve clarification of language and modification to regulations, which were impractical or unenforceable. Without this rule revision small children will not be sufficiently protected because there is no minimum height, enclosure standard regarding outdoor pools, which are not open to the general public. This proposed rule would prevent small-unattended children access to the pool and possible drowning.
CONTACT PERSON:
Ted Evans, Chief, Consumer Health Services, Protective Health Services, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone: (405) 271-9444, ext. 57944; facsimile: (405) 271-5243 electronic mail: Tede@health.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 7. CONSTRUCTION AND OPERATION

310:315-7-2. Pool layout

(a) **Location.** In selecting the site for a proposed public bathing place, the water supply, sanitary sewer, and other drainage facilities shall be given due consideration. Outside pools should not be located near unpaved highways where road dust and dirt would be carried into the pool by prevailing winds. The site of outdoor pools shall be elevated or otherwise protected by drainage ditches, curbs or retaining walls so that surface water will not flow into and contaminate the pool water.

(b) **Trees, shrubbery.** Trees and shrubbery overhanging or adjacent to the pool or walkway, or in the immediate vicinity on the windward side, are objectionable in that they are the source of dirt, leaves, and other contaminants which may fall into the water.

(c) **Exclusion of unauthorized persons.**

(1) Provision must be made to exclude unauthorized persons from the bathing facilities area. All bathing facilities must be surrounded by an effective barrier for this purpose.

(A) Outdoor pools open to general public such as municipal pools and pools used by organizations (YWCA, YMCA, etc.), shall be enclosed by a suitable barrier equal to a six (6) foot high woven wire fence. Within this pool area may then be established a semi-barrier which shall serve to separate the swimmers from the spectators. Enforcement of this section shall then be based on the observance of rules which shall be adopted so as to prevent the mingling of swimmers and spectators on the pool walk area.

(B) Indoor pools ~~open to the general public~~ must be located in a room with doors that can be locked at all times when the pool is not in use (regardless of whether a fee is charged) <u>or as in 7-2(c)(1)(C)</u>.

(C) ~~Indoor~~<u>Outdoor</u> pools not open to the general public shall be enclosed with a suitable effective barrier to prevent unattended small children from entering the pool. The barrier may be any fence, wall or structure which prevents entry except through self-closing, self-latching gates and does not prevent visual observation of the pool and is not less than four (4) feet in height. Decorative type barriers shall not have open spaces greater than four (4) inches. See also 310:315-7-7. Where existing construction prohibits compliance with this rule, the owner shall file with the county or state health department, an operation procedure which will serve to ensure the exclusion of animals and unattended small children from the pool area.

(2) A suitable effective barrier shall be accomplished in one of the following manners:

(A) **Wood.**

(i) Wood posts shall be at least four (4) inches in diameter or four (4) inches x four (4) inches, shall be of pressure-treated wood and shall be spaced not more than ten (10) feet apart. Posts

shall be embedded at least eighteen (18) inches into the ground.

(ii) Wood railings, when used, shall be at least two (2) inches x four (4) inches in nominal dimension. There shall be at least two (2) railings. Railings shall provide no horizontal projections or recessions unless at four (4) feet. Railings shall not be used in such a way as to form a ladder.

(B) **Wire.**

(i) Wire posts shall be galvanized pipe at least two (2) inches in diameter and shall be spaced not more than ten (10) feet apart. Such posts shall be embedded to a depth of twelve (12) inches in a concrete jacket at least eighteen (18) inches deep and six (6) inches in diameter.

(ii) Chain link shall be at least eleven (11) gauge galvanized metal.

(iii) Wire supports shall be galvanized metal at least one and one-quarter (1-1/4) inches thick and shall provide no footholds.

(C) **Wrought iron.**

(i) Wrough iron posts shall consist of at least one-half (1/2) inch thick steel bars spaced not more than four (4) inches apart.

(ii) Wrought iron fence sections shall consist of at least one-half (1/2) inch thick steel bars spaced not more than four (4) inches apart.

(iii) Wrought iron horizontal rails shall not form a ladder.

(D) **Masonry.** Walls of brick, concrete or stone shall be constructed so as to provide no projections or recessions within four (4) feet of the ground's surface. Such walls shall meet the visual observation requirement of 310:315-7-2. Construction shall not be such as to form a ladder. There shall not be more than four (4) inches of space between the bottom of the enclosure and the ground's surface or the pool deck. Indoor bathing facilities not open to general public shall be enclosed so that access is only through self-closing, self-latching gates or doors, to control access by unattended small children. Enclosures shall have maximum openings of four (4) inches, and the enclosure design shall not form a ladder.

(E) **Alternate enclosure materials.** The Department may approve alternative enclosure materials and methods where the Department finds such materials and methods equivalent to those described.

(d) **Sand or grass plots.** The area within the pool enclosure of outdoor municipal and other pools open to the general public, and school pools, shall be free of all sand or grass plots used for sun-bathing or play areas. Sand and grass areas provided for sun-tanning or sun-bathing purposes in connection with swimming pools open to the general public shall be separated from the pool and walk area by a fence or other barrier. The exits from the sand or grass sun-bathing area to the pool area shall be provided with continuous or automatic showers, with volume and pressure of water sufficient to remove gross particles of sand, grass, etc., from the bathers. In lieu of the above shower arrangement, sun-bathers may be routed from the sand or grass sun-bathing areas through the regular shower rooms.

(e) **Layout of filter plant and chemical storage facilities.**

(1) The filter plant and chemical storage areas shall be enclosed or shall otherwise limit access by the general public.

(2) The filter area shall be large enough to provide easy access to all equipment and appurtenances with sufficient room for adequate pipe run for the flow meter and for system maintenance.

(3) There must be at least eighteen (18) inches clearance about freestanding equipment.

(f) **Hose connections.** Ample hose connections shall be provided and suitably arranged in interior shower rooms, toilet rooms, and exterior walks, so that all floors, walks and drains may be flushed with water, using a fifty (50) foot section of flexible hose. Approved vacuum breakers shall be included at all hose connections (including any in equipment rooms).

(g) **Wall, floor, and ceiling material.** Walls, floors, and ceilings of new pool rooms and new filter rooms shall be of non-sorbent, smooth, cleanable material.

[OAR Docket #05-712; filed 4-22-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 535. IMMUNIZATIONS

[OAR Docket #05-713]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Childhood Immunizations
310:535-1-2. [AMENDED]
310:535-1-3. [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; 70 O.S.2001, §§ 1210.191 et seq.; 10 O.S.2001, § 412; 63 O.S.2001, § 1-104; 63 O.S.2001, § 1-502
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INCORPORATION BY REFERENCE:
n/a

ANALYSIS:

This rule change incorporates a change to immunization recommendations made by the U.S. Public Health Service changing the minimum age for hepatitis B vaccine dose #3 from 6 calendar months of age to 24 weeks of age.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 1. CHILDHOOD IMMUNIZATIONS

310:535-1-2. Criteria for immunizations required

(a) Each child shall present certification that he or she has received or is receiving the immunizations as specified below before he or she is admitted to any public, private, or parochial school.

(b) Certification shall include the following:

(1) Diphtheria, Tetanus and Pertussis (DTP/DTaP) vaccine in five doses unless the fourth dose is received on or after the fourth birthday in which case only four doses are required.

(2) Poliomyelitis vaccine in four doses unless the last dose is on or after the fourth birthday in which case only three doses are required.

(3) Measles, Mumps and Rubella (MMR) vaccine with the first dose on or after the first birthday and the second dose at least twenty-eight days thereafter for children in grades kindergarten through eighth grade in the school year beginning in 1998. In the school year beginning in 1999, this requirement shall apply to the children through the ninth grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2002, children in all grades shall be required to have the second dose of vaccine.

(4) Hepatitis B vaccine in three doses for students of any age or two doses for students eleven through fifteen years of age who complete the alternative dosage schedule providing that the alternative schedule is fully documented. Such documentation must include the name of the vaccine and the dosage received for each dose of that vaccine:

(A) before entering seventh and eighth grades in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering the seventh through ninth grades. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2002, children in grades seven through twelve shall be required to have the three doses of the vaccine.

(B) before entering kindergarten in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering kindergarten and first grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2004, all children entering school shall be required to have the three doses of the vaccine.

(5) Hepatitis A vaccine in two doses with the first dose on or after the second birthday and the second dose six to eighteen calendar months later:

(A) before entering kindergarten in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering kindergarten and first grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2004, all children entering school shall be required to have the two doses of the vaccine.

(B) before entering grade seven in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering the seventh and eighth grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2003, children in grades seven through twelve shall be required to have the two doses of the vaccine.

(6) Varicella (chickenpox) vaccine in one dose on or after the first birthday before entering kindergarten in 1998. In lieu of vaccination, a parent's statement of a history of the disease chickenpox will be accepted. In the school year beginning in 1999, this requirement shall apply to the children entering kindergarten and first grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2010, all children entering school shall be required to have the vaccine or a parent's statement of a history of the disease chickenpox.

(c) The minimum intervals between doses and minimum ages for doses shall be as follows:

(1) DTP/DTaP:

(A) First and second dose - 4 weeks

(B) Second and third dose - 4 weeks

(C) Third and fourth dose - 4 months

(D) Fourth and fifth dose - 6 months

(E) For all fifth doses given after January 1, 2003 the minimum age for the fifth dose is 4 years of age

(2) Polio:

(A) First and second dose - 4 weeks

(B) Second and third dose - 4 weeks

(C) Third and fourth dose - 4 weeks

(3) MMR: First and second dose - 4 weeks

(4) Hepatitis B 3-dose series:

(A) First and second dose - 1 month (4 weeks)

(B) Second and third dose - 2 months (8 weeks), and the third dose at least 4 months (16 weeks) after first dose, and ~~for all doses administered on or after February 13, 1998,~~ the third dose not before ~~6 calendar months~~24 weeks of age

(5) Hepatitis B 2-dose series: First and second dose - 4 months

(6) Hepatitis A: First and second dose - 6 months and for all doses given on or after January 1, 2003, 6 months will be defined as 6 calendar months

(7) Four day grace period: Vaccine doses administered 4 days or less before the minimum intervals or ages listed in the preceding sections will be counted as valid.

(d) A child, through his parent or guardian, may apply for an exemption from this requirement by submitting a form to the school. The school shall maintain a copy of the application in the child's records and send a copy to the Department for approval.

(1) A request for exemption for medical reasons shall contain a certificate signed by a physician stating that the physical condition of the child is such that the immunization would endanger the life or health of the child and that the child should be exempt for immunization.

(2) A request for exemption for religious or other personal reasons shall contain a signed written statement from the parent or guardian stating a summary of the objections. Lost or unobtainable immunization records are not a ground for personal exemption.

(e) A child participating in a pre-kindergarten school program shall have received or be in the process of receiving the appropriate immunization for the listed diseases based on the child's age.

(f) The Department may grant exemptions or substitutions in the immunization schedule based on a medical history of a physical condition such that the immunization would endanger the life or health of the child or a medical history stating the child is likely to be immune as a result of having had a vaccine-preventable disease if the following are met:

(1) A history of having had diphtheria and/or tetanus is not acceptable as proof of immunity since infection with diphtheria or tetanus may not render an individual immune to either of these diseases,

(2) A history of having had polio, pertussis, rubella, mumps, hepatitis B, or hepatitis A must be supported by laboratory evidence to be acceptable as proof of immunity to these diseases,

(3) A history of having had measles must be accompanied by a statement from a physician, public health authority, or laboratory evidence to be acceptable as proof of immunity to measles,

(4) A parental history of having had varicella is acceptable evidence of immunity to varicella,

(g) Haemophilus influenzae type B (Hib) vaccine is not a requirement for children attending pre-kindergarten, kindergarten, or school.

(h) In some circumstances, the United States Food and Drug Administration may approve the use of an alternative dosage schedule for an existing vaccine. These alternative schedules may be used to meet the requirements only when the alternative schedule is fully documented. Such documentation must include the name of the vaccine and dosage received for each dose of that vaccine.

310:535-1-3. Criteria for immunizations required for day care

(a) Each child two months of age or older shall present certification that he or she has received or is receiving the immunizations as specified below before he or she is admitted to, and while enrolled in, a day care center or day care home.

(b) Certification shall include the following:

(1) 5 DTaP/DTP doses at 2, 4, 6, and 12 to 18 months and 4 to 6 years or beginning at 6 weeks of age with minimum intervals of 4 weeks between doses 1 and 2 and doses 2 and 3 and 4 months between doses 3 and 4 and 6 months between doses 4 and 5, with all fifth doses given on or after January 1, 2003 given on or after the fourth birthday; The fifth DTaP/DTP is not required if the fourth DTaP/DTP is administered on or after the fourth birthday;

(2) 4 Polio doses at 2, 4 and 6 to 18 months and 4 to 6 years or beginning at 6 weeks of age with minimum intervals of 4 weeks between all doses; The fourth Polio is not required if the third dose is given on or after the fourth birthday;

(3) 1 to 4 Haemophilus influenzae type B (Hib) doses at 2, 4, 6, and 12 to 15 months of age or older depending upon age at first Hib immunization and type of vaccine used or beginning at 6 weeks of age with minimum intervals of 1 month between doses 1, 2, and 3, if a third dose is part of the primary series, and the booster dose no earlier than 12 months of age and at least 2 months after the previous dose;

(4) 2 Measles, Mumps, Rubella doses with the first dose on or after the first birthday and the second dose at 4 to 6 years or at anytime after the first dose provided at least 4 weeks have elapsed since the receipt of the first dose;

(5) 1 Varicella dose on or after the first birthday;

(6) 2 Hepatitis A doses with the first dose on or after the second birthday and the second dose six to eighteen months later and for all doses given on or after January 1, 2003, 6 months will be defined as 6 calendar months;

(7) 3 Hepatitis B doses with minimum intervals as follows: 1 month (4 weeks) between doses 1 and 2, two months (8 weeks) between doses 2 and 3, four months (16 weeks) between doses 1 and 3, and ~~for all doses administered on or after February 13, 1998,~~ dose 3 no earlier than ~~6 calendar months~~24 weeks of age;

(8) Vaccine doses administered 4 days or less before the minimum intervals or ages listed in the preceding sections will be counted as valid.

(c) In the event that the parent, guardian, or responsible adult presenting a child for admission to a child care facility certifies in writing that a family emergency exists, the immunization requirements shall be waived for a period not to exceed thirty days. No such waiver shall be knowingly permitted more than once for any child.

(d) Immunization records for children attending school-age programs are not required if those records are maintained by the school and are readily available.

(e) A child, through his parent or guardian, may apply for an exemption from this requirement by submitting a form to the day care center or day care home. The day care center or day

care home shall maintain a copy of the application in the child's records and send a copy to the Department for approval.

(1) A request for exemption for medical reasons shall contain a certificate signed by a physician stating that the physical condition of the child is such that the immunization would endanger the life or health of the child and that the child should be exempt for immunization.

(2) A request for exemption for religious or other personal reasons shall contain a signed written statement from the parent or guardian stating a summary of the objections. Lost or unobtainable immunization records are not a ground for personal exemption.

(f) The Department may grant exemptions or substitutions in the immunization schedule based on a medical history of a physical condition such that the immunization would endanger the life or health of the child or a medical history stating the child is likely to be immune as a result of having had a vaccine-preventable disease if the following are met:

(1) A history of having had diphtheria and/or tetanus is not acceptable as proof of immunity since infection with diphtheria or tetanus may not render an individual immune to either of these diseases;

(2) A history of having had polio, pertussis, rubella, mumps, or hepatitis A must be supported by laboratory evidence to be acceptable as proof of immunity to these diseases;

(3) A history of having had measles must be accompanied by a statement from a physician, public health authority, or laboratory evidence to be acceptable as proof of immunity to measles;

(4) A parental history of having had varicella is acceptable evidence of immunity to varicella;

(5) A history of having had Hib before age two years is not acceptable as proof of immunity since infection with Hib prior to age two years may not render an individual immune.

[OAR Docket #05-713; filed 4-22-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 655. HEALTH MAINTENANCE ORGANIZATIONS AND PREPAID HEALTH PLANS [REVOKED]

[OAR Docket #05-714]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 655. Health Maintenance Organizations and Prepaid Health Plans [REVOKED]
AUTHORITY:
State Board of Health, 63 O.S. 2001 Section 1-104; and State Department of Health, 63 O.S. 2001 Section 2501 et seq., repealed by Laws 2003, chapter 197, section 58, effective November 1, 2003.
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SUPERSEDED EMERGENCY ACTIONS:
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ANALYSIS:
The purpose of the proposed rulemaking action is to revoke rules that implemented provisions in Title 63 that were repealed effective November 1, 2003. The State Board of Health promulgated a new chapter OAC 310:659, effective July 12, 2004, to implement the Health Maintenance Organization Act of 2003, (Title 36 O.S. Supp. 2003, Section 6091 et seq.) HMOs that previously were licensed by the State Department of Health now operate under certificates of authority issued by the Oklahoma Insurance Commissioner. Chapter 655 has no application to activities currently performed by the State Health Department under Title 310.
CONTACT PERSON:
Randy Wray, Director, Managed Care Division, Health Resources Development Service, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6868, x57265; facsimile: 405-271-7360.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

310:655-1-1. Purpose [REVOKED]

~~This Chapter provides for the licensure of health maintenance organizations (HMOs) and prepaid health plans under the authority of the following laws: 63 O.S. Sections 2501 et seq., (Health Maintenance Organizations); and 75 O.S. Sections 250.1 through 323, (Administrative Procedures Act). Unless specifically exempted in this Chapter, any provision addressed to HMOs shall apply also to prepaid health plans.~~

310:655-1-2. Definitions [REVOKED]

~~When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:~~

~~**"Act"** means Title 63, Sections 2501 et seq. of the Oklahoma Statutes.~~

~~**"Affiliation period"** means a period that must expire before the coverage becomes effective.~~

~~**"Bona fide association"** means an association which:~~

~~(A) Has been actively in existence for at least 5 years;~~

~~(B) Has been formed and maintained in good faith for purposes other than obtaining insurance;~~

~~(C) Does not condition membership in the association on any health status related factor that relates to an individual, including an employee of an employer or a dependent of an employee;~~

~~(D) Makes health coverage offered through the association available to all members regardless of any health status related factor that relates to such members or individuals eligible for coverage through a member; and~~

~~(E) Does not make health coverage offered through the association available other than in connection with a member of the association.~~

~~**"Child"** means natural children, stepchildren, adopted children, children placed for adoption, and children under legal guardianship.~~

~~**"Claim reimbursement"** means repayment from an HMO or prepaid health plan to a subscriber for services rendered by a noncontracting provider, or direct payment from an HMO or prepaid health plan to a noncontracting provider.~~

~~**"Commissioner"** means the Commissioner of Health.~~

~~**"Co-payment"** means the amount an enrollee must pay in order to receive a specific service that is not fully prepaid.~~

~~**"Deductible"** means the amount an enrollee is responsible to pay out of pocket before the HMO begins to pay the costs associated with treatment.~~

~~**"Department"** means the Oklahoma State Department of Health.~~

~~**"Dependent"** means a spouse, an unmarried child under the age of eighteen (18) years, an unmarried child under the age of twenty-three (23) who is a full-time student and who is financially dependent upon the subscriber, and an unmarried child of any age who is medically certified as disabled and dependent upon the subscriber.~~

~~**"Evidence of coverage"** means a statement of the essential features and services of the HMO coverage that is given to the subscriber by the HMO or by the group contract holder.~~

~~**"Grievance"** means a written statement filed by or on behalf of a member expressing dissatisfaction or disagreement with an activity of an HMO. A grievance shall bear the signature of the member or the person who filed the grievance on behalf of the member.~~

~~**"Group"** means an employee group or another aggregation of individuals who wish to purchase or who have purchased HMO membership. The group shall be composed of at least two (2) individuals, and shall not be established on the basis of race. Unless specifically exempted in this Chapter, any provision addressed to groups shall apply to small and large groups.~~

~~**"Group contract"** means a contract for health care services that by its terms limits eligibility to members of a specified group. The group contract may include coverage for dependents.~~

~~**"Health professionals"** means professionals, including physicians, engaged in the delivery of health services who are licensed, certified, or practice under other authority consistent with State law.~~

~~**"Individual contract"** means a contract for health care services issued to and covering a person who is not part of a group membership contract. The individual contract may include dependents of the subscriber.~~

~~**"Inquiry"** means an oral or written statement from a member or other resident of this state expressing misunderstanding, dissatisfaction or disagreement with an activity of an HMO, or reporting a possible violation of this Chapter or the laws of this state by an HMO. Anonymous statements shall be considered as inquiries.~~

~~**"Insolvent"** means the failure to maintain the minimum net worth required in Subchapter 25 of this Chapter, or the inability to meet the needs of enrollees, or both.~~

~~**"Large group"** means a group of at least 51 employees.~~

~~**"Late enrollee"** means, with respect to coverage under a group contract, a subscriber or dependent who enrolls under the contract other than during the first effective date in which the subscriber or dependent is eligible to enroll under the contract, or a special enrollment period, as provided under OAC 310:655-15-10.~~

~~**"Net worth"** means the excess of assets over liabilities, plus any fully subordinated debt.~~

~~**"Noncontracting provider"** means a health service provider not having an HMO contract that includes financial hold harmless language as described in OAC 310:655-25-7.~~

~~**"Person"** includes but is not limited to individuals, partnerships, associations, corporations, or other public or private legal entities.~~

~~**"Physician"** means any person holding a valid license to practice medicine and surgery, osteopathy, chiropractic, podiatry, optometry, or dentistry, pursuant to the state licensing provisions of Title 59 of the Oklahoma Statutes.~~

~~**"Plan of correction"** means a plan developed by the HMO and approved by the Department that describes the actions the HMO will take to correct deficiencies and specifies the date by which those deficiencies will be corrected.~~

~~**"Provider"** means any physician, hospital, agency, or other person that is licensed or otherwise authorized in this state to furnish health care services.~~

~~**"Service area"** means the geographic area as defined through zip codes, census tracts, or other geographic subdivisions, found by the Department to be the area within which the HMO provides or arranges for comprehensive and supplemental health services that are available and accessible to its enrollees as required by the Act and this Chapter.~~

~~**"Small group"** means a group composed of not less than two and not more than 50 employees.~~

~~**"Subscriber"** refers to that class of enrollees whose employment or other status without regard to health status related factors, except family dependency, is the basis for eligibility for~~

~~enrollment in the HMO, or in the case of an individual contract, the person in whose name the contract is issued.~~

~~**"Supplemental health services"** means health services as specified in OAC 310:655-5.~~

~~**"Uncovered expense"** means the costs to the HMO for health care services that are the obligation of the HMO, for which an enrollee may also be liable in the event of the HMO's insolvency and for which no alternative arrangements have been made that are acceptable to the Department.~~

SUBCHAPTER 3. RATING SYSTEM [REVOKED]

310:655-3-1. Definitions [REVOKED]

~~When used in this Subchapter, the following word shall have the following meaning:~~

~~**"Rating System"** means the method or combination of methods which the HMO uses to calculate enrollee premiums, and is limited to community rating, community rating by class, adjusted community rating or a combination of all. An HMO may fix rates of payment under either a system of community rating, community rating by class, adjusted community rating or under all three systems. However, the HMO may use only one such system for setting rates for any group at any one time.~~

310:655-3-2. Community rating [REVOKED]

~~Under community rating, rates of payments may be determined on a per person or per family basis and may vary with the number of persons in a family, but except as otherwise authorized in this paragraph, such rates must be equivalent for all individuals and for all families of similar composition. This does not preclude changes in the rates of payments for health services based on a community rating system which are established for new enrollments or re-enrollments and which changes do not apply to existing contracts until the renewal of such contracts. Only the following differentials in rates of payments may be established under such system:~~

~~(1) Nominal differentials in such rates may be established to reflect differences in marketing costs and the different administrative costs of collecting payments from the following categories of subscribers:~~

~~(A) Individual (non-group) subscribers (including their families).~~

~~(B) Small groups of subscribers.~~

~~(C) Large groups of subscribers.~~

~~(2) Nominal differentials in such rates may be established to reflect the compositing of the rates of payment in a systematic manner to accommodate group purchasing practices of the various employers.~~

~~(3) Differentials in such rates may be established for subscribers enrolled under any governmental authority or program authorized by United States Code, or under any health benefits program for employees of States, political subdivisions of States, and other public entities.~~

~~(4) An HMO may establish a separate community rate for separate regional components of the organization upon satisfactory demonstration of the following:~~

~~(A) Each such regional component is geographically distinct and separate from any other regional component.~~

~~(B) Enrollment is established with respect to the individual regional component, rather than with respect to the parent HMO.~~

~~(C) Each such regional component provides substantially the full range of comprehensive health services to its enrollees without extensive referral between components of the organization for such services, and without substantial utilization by any two such components of the same health care facilities. The separate community rate for each such regional component of the HMO must be based on the different costs of providing health services in such regions.~~

310:655-3-3. Community rating by class [REVOKED]

~~Under "community rating by class," rates are fixed by groups for individuals and families, and must be equivalent for all individuals or for all families in the same group. A class is actuarially derived or developed based on factors which reasonably predict differences in the use of HMO services. Age, sex, family size and marital status factors need not be justified.~~

310:655-3-4. Adjusted community rating [REVOKED]

~~Under "adjusted community rating" rates are fixed on the basis of revenue requirements for providing services to the group, except that rates for a group of less than 100 persons may not be fixed at rates greater than 110 percent of the rate that would be fixed under community rating or community rating by class.~~

310:655-3-5. Rates to reflect risk-sharing arrangements [REVOKED]

~~An HMO may establish differentials based on financial risk-sharing arrangements with organizations or entities which have contracted with the HMO to provide selected comprehensive health services to members of said organizations or entities, as permitted in OAC 310:655-15-2.~~

310:655-3-6. Filing requirements for rating information [REVOKED]

~~(a) No premium rate shall be used until either a schedule of premium rates or method for determining premium rates has been filed with and approved by the Department. This applies to both individual and group premium rates.~~

~~(b) The HMO shall establish either a specific schedule of premium rates, or a method for determining premium rates, in accordance with actuarial principles for various categories of enrollees. The premium applicable to an enrollee shall not be individually determined based on the status of his/her health. The premium rates shall not be excessive, inadequate or unfairly discriminatory. A certification by a qualified actuary or other qualified person as to the appropriateness of the use~~

~~of the method, based on reasonable assumptions, shall accompany the filing along with adequate supporting information.~~

~~(c) The Department shall approve the schedule of premium rates or method for determining premium rates if the requirements of (b) of this Section are met. If the Department takes no action on such schedule or method within thirty (30) days of the filing of such schedule or method, it shall be deemed approved.~~

~~(d) If the Department disapproves such filing, the HMO shall be notified in writing. In the notice, the Department shall specify the reasons for disapproval. The HMO may request reconsideration of the Department's decision within thirty (30) days after the date the HMO receives notice. The request shall be in writing, and shall demonstrate the existence of at least one (1) of the grounds for reconsideration set out in Section 317 of the Administrative Procedures Act.~~

~~(e) For any proposed change in a premium rate schedule or rating method that is not part of an application for license or license renewal, the Department shall forward copies of the proposed change to the State Insurance Commissioner. The Department shall request recommendations from the State Insurance Commissioner on the adequacy of the filing prior to making a final decision.~~

SUBCHAPTER 5. COMPREHENSIVE AND SUPPLEMENTAL HEALTH SERVICES [REVOKED]

310:655-5-1. Comprehensive services [REVOKED]

~~Comprehensive services shall include:~~

~~(1) Physician services including consultant and referral services by a physician, and other health professional services as necessary to provide allopathic, osteopathic, chiropractic, podiatric, optometric, and psychological services. If a service of a physician may also be provided under applicable State law by another type of health professional, an HMO may provide the service through these other health professionals.~~

~~(2) Outpatient services including diagnostic services, treatment services and x-ray services, for patients who are ambulatory and may be provided in a non-hospital based health care facility or at a hospital.~~

~~(3) Inpatient hospital services including room and board, general nursing care, meals and special diets when medically necessary, use of operating room and related facilities, use of intensive care unit and services, x-ray services, laboratory, and other diagnostic tests, drugs, medications, biologicals, anesthesia and oxygen services, special duty nursing when medically necessary, radiation therapy, inhalation therapy, perfusion, and administration of whole blood and blood plasma.~~

~~(4) Outpatient services and inpatient hospital services including short-term rehabilitation services and physical therapy which the HMO expects can result in the significant improvement of an enrollee's condition within two months,~~

~~(5) Medically necessary emergency health services, which shall include instructions to enrollees on how to get medically necessary emergency health services both in and out of the service area.~~

~~(6) Twenty outpatient visits per enrollee per year, as may be necessary and appropriate for short-term evaluative or crisis intervention mental health services, or both.~~

~~(7) Diagnosis, medical treatment and referral services (including referral services to appropriate ancillary services) for the abuse of or addiction to alcohol and drugs, including~~

~~(A) Diagnosis and medical treatment for the abuse of or addiction to alcohol and drugs including detoxification for alcoholism or drug abuse on either an outpatient or inpatient basis, whichever is medically determined to be appropriate, in addition to the other required comprehensive health services for the treatment of other medical conditions.~~

~~(B) Referral services for either medical or for nonmedical ancillary services. Medical services shall be a part of comprehensive health maintenance services; nonmedical ancillary services (such as vocational rehabilitation and employment counseling) and prolonged rehabilitation services in a specialized inpatient or residential facility need not be a part of comprehensive health services.~~

~~(8) Diagnostic laboratory and diagnostic and therapeutic radiological services in support of comprehensive health services.~~

~~(9) Home health services provided at an enrollee's home by health care personnel, as prescribed or directed by the responsible physician or their authority designated by the HMO.~~

~~(10) Preventive health services, which shall be made available to enrollees and shall include at least the following:~~

~~(A) Services for children from birth to age 21 as determined by the American Academy of Pediatrics in "Guidelines for Health Supervision";~~

~~(B) Immunizations for adults and children as recommended by the Advisory Committee on Immunization Practices (ACIP) Centers for Disease Control and Prevention, except those required for foreign travel and employment;~~

~~(C) Periodic health evaluations for adults to include voluntary family planning services; and~~

~~(D) Preventive services identified through the HMO quality assurance program designed to contribute to achieving the U.S. Department of Health and Human Services "Healthy People 2010" objectives.~~

~~(11) Medically necessary eye care services for detection and treatment of diseases or injury to the eye.~~

~~(12) Inpatient and outpatient care for treatment of the birth defect known as cleft lip or cleft palate or both including medically necessary oral surgery, orthodontics, and otologic, audiological, and speech/language treatment.~~

310:655-5-2. Supplemental services [REVOKED]

~~Supplemental services of an HMO may include the following:~~

~~(1) Corrective appliances and artificial aids.~~

~~(2) Eyeglasses and hearing care not included as a comprehensive health service.~~

~~(3) Dental services.~~

~~(4) Mental health services not included as a comprehensive health service.~~

~~(5) Long term physical therapy and rehabilitative services.~~

~~(6) Cosmetic surgery, unless medically necessary.~~

~~(7) Prescribed drugs and medicines incidental to outpatient care. Supplemental *coverage for prescription drugs shall also provide coverage of off label uses of prescription drugs used in the treatment of cancer or the study of oncology*. [63 O.S. Section 1-2605]~~

~~(8) Ambulance services, unless medically necessary.~~

~~(9) Care for military service connected disabilities for which the enrollee is legally entitled to services and for which facilities are reasonably available to this enrollee.~~

~~(10 Care for conditions that State or local law requires be treated in a public facility.~~

~~(11) Custodial or domiciliary care.~~

~~(12) Experimental medical, surgical, or other experimental health care procedures, unless approved as a comprehensive health service by the policy making body of the HMO.~~

~~(13) Personal or comfort items and private rooms, unless necessary during inpatient hospitalization.~~

~~(14) Whole blood and blood plasma.~~

~~(15) Durable medical equipment for home use (such as wheel chairs, surgical beds, respirators, dialysis and machines).~~

~~(16) Health services which are unusual or infrequently provided and not necessary for the protection of individual health, as approved by the Department upon application by the HMO. "Unusual or infrequently used health services" means those health services which are projected to involve fewer that 1 percent (1%) of the encounters per year for the entire HMO enrollment, or, those health services the provision of which, given the enrollment projection of the HMO and generally accepted staffing patterns, is projected will require less than 0.25 full time equivalent health professionals.~~

SUBCHAPTER 7. POINT OF SERVICE OPTION [REVOKED]

310:655-7-1. Definitions [REVOKED]

~~When used in this Subchapter, the following word shall have the following meaning unless the context clearly indicates otherwise:~~

~~**"Point of service option"** means a benefit that allows a member to submit claims for payment or reimbursement of non emergency health services obtained from noncontracting providers. It also may mean a benefit for non emergency services obtained from a contracting provider without a referral or authorization.~~

310:655-7-2. Purpose/scope [REVOKED]

~~(a) The provisions of this Subchapter do not apply to emergency care.~~

~~(b) Each HMO shall submit this benefit for the Department's approval before offering the benefit to members.~~

~~(c) This benefit is optional, and the HMO has the following flexibility:~~

~~(1) The HMO is not required to offer this benefit;~~

~~(2) The HMO may decide which services will be offered or excluded;~~

~~(3) The HMO may limit the groups to whom this benefit is offered, but the benefit must be offered to all persons within the group;~~

~~(4) If individual contracts are offered, the HMO may limit the individuals to whom this benefit is offered;~~

~~(5) The HMO may set annual dollar limits on services provided through this benefit;~~

~~(6) The HMO may use enrollee cost sharing for this benefit. This cost sharing may be accomplished through premium, copayment or deductible; and,~~

~~(7) The HMO may require precertification of services provided through this benefit.~~

~~(d) Under no circumstances shall the member be required to pay for any portion of these services, other than as provided in the member's contract.~~

~~(e) The marketing materials of any HMO offering this benefit must be written in a manner so that the enrollee will easily understand the services included, the procedures to be followed, and the costs.~~

~~(f) This benefit may be supplemented by a reasonable deductible. The deductible should be set to discourage excessive use but must not be prohibitively high. Co payments cannot exceed 50% of the HMO's allowable charge for any single service.~~

~~(g) The offering of this benefit does not relieve the HMO of the duty to ensure that all comprehensive health services are available and accessible.~~

~~(h) The requirements of Subchapter 47 shall apply to any claims for payment or reimbursement submitted under this benefit.~~

310:655-7-3. Responsibilities of the HMO [REVOKED]

~~(a) Each HMO that offers a point of service option shall collect and report to the Department the number of enrollees who access the benefit, the types and volumes of services received, and the costs to enrollees and the HMO.~~

~~(b) Each HMO shall inform enrollees about the following:~~

~~(1) Any premium and cost sharing charges;~~

~~(2) Annual out of pocket limits;~~

~~(3) Annual and maximum benefit limits for out of plan services; and,~~

~~(4) Potential financial liability for services for which payment could be denied because the service is not a covered benefit, or the dollar limit is exceeded.~~

~~(c) Each HMO shall file with the Department all marketing and educational material for the point of service option prior to use of that material.~~

SUBCHAPTER 9. LICENSE APPLICATIONS [REVOKED]

310:655-9-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to describe the application for an initial license or a license renewal for an HMO or prepaid health plan. The application shall be submitted on a form available from the Department. The legal owner and operator must make application.~~

310:655-9-2. Description [REVOKED]

~~Each application submitted for a license or a license renewal shall be accompanied by a $5,000 non-refundable filing fee in the form of a check payable to the Oklahoma State Department of Health.~~

~~(1) The initial license application shall include responses for all questions and items on the form.~~

~~(2) The application for initial license to operate an HMO requests the following:~~

~~(A) A general description of the HMO, its operations, the manner in which comprehensive health care services shall be regularly available, the location of the facilities at which comprehensive health care services shall be regularly available to enrollees, the type of health professionals engaged to provide the comprehensive health care services and the adequacy of each type of health professional along with an estimate of the amount of their practice dedicated to the HMO's enrollees.~~

~~(B) A copy of the basic organizational document of the applicant, if any, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable document, and all amendments thereto.~~

~~(C) A copy of the bylaws, rules and regulations, or similar form of document, if any, regulating the conduct of the affairs of the applicant.~~

~~(D) A list of the names, addresses, and official capacities with the organization of the persons who are to be responsible for the conduct of the affairs of the HMO, including all enrollees of the governing body, the officers and directors in the case of a corporation, and the partners or associates in the case of a partnership or association. Such persons shall fully disclose to the Department and the governing body of the HMO the extent and nature of any contracts or arrangements between them and the HMO, including any possible conflicts of interest.~~

~~(E) The name, Oklahoma license number, resume, and address of the medical director of the HMO.~~

~~(F) The name, resume, and address of the executive director or chief administrative officer of the HMO.~~

~~(G) A statement describing with reasonable certainty the geographic area or areas to be served by the HMO.~~

~~(H) A general description of any facilities to be used.~~

~~(I) The names of all health professionals and facilities with whom the HMO has agreements.~~

~~(J) The standards and procedures the HMO has developed for the selection of providers.~~

~~(K) Projections, by the HMO, for a three (3) year period including projected enrollment levels, primary physician to enrollee ratios, and plans for providing specialty care, laboratory, X-ray and hospital services, and a projection of revenues and expenses through the first year in which revenues exceed expenses.~~

~~(L) A financial statement prepared on the basis of generally accepted accounting principles.~~

~~(M) Copies of sample contracts with providers from whom enrollees are to receive health care or other services.~~

~~(N) Forms of all health contracts the applicant proposes to offer the enrollees, showing the benefits to which they are entitled, together with a table of the rates charged, or proposed to be charged, for each form of such contract. These contracts would include the group master contract, evidence of coverage and individual contract.~~

~~(O) Copies of all solicitation documents.~~

~~(P) A description of the utilization review, peer review and quality assurance arrangements adopted by the HMO.~~

~~(Q) A description of the ambulatory medical record system of the HMO or HMO providers.~~

~~(R) Detailed procedures that the HMO has established to develop, compile, evaluate, and report statistics.~~

~~(S) A description of the procedures to be used for enrollees to file grievances.~~

~~(T) A plan for the implementation of an enrollee education program as required in OAC 310:655-17-5.~~

~~(U) A description of the HMO's rating system.~~

~~(V) HMO board resolutions and pledges to the Department for funds used to satisfy security deposit and minimum net worth requirements.~~

~~(W) Such other information as may be prescribed by the Department in the application for a license.~~

~~(3) The renewal application to operate an HMO requests the following:~~

~~(A) Any changes in the information requested in OAC 310:655-9-2(2); and~~

~~(B) Data on the year's experience relating to revenues and expenses, changes in financial position, ambulatory encounters per enrollee, encounters by~~

~~type of health professional, and numbers of grievance claims processed, and results of peer review, quality assurance and utilization review activities, including any medical audits in process or completed.~~

SUBCHAPTER 11. REVIEW OF APPLICATIONS [REVOKED]

310:655-11-1. Description [REVOKED]

~~Any person may apply for a license to operate an HMO in Oklahoma. No person shall operate an HMO in this state without a license issued under the Act and this Chapter. Following the issuance of an initial license to operate an HMO, the HMO shall annually apply for relicensure.~~

310:655-11-2. Filings [REVOKED]

~~The procedures that shall be observed in receiving and reviewing an application for an initial license and to annually renew the license to organize and operate an HMO shall be as follows:~~

~~(1) The application shall consist of an original and one (1) copy.~~

~~(2) Within thirty (30) calendar days following receipt of the application, the Department shall determine whether or not the application is complete for review purposes. The Department shall promptly notify the applicant, in writing, of such determination. Notification that the application is incomplete shall include a request for the specific information required to make the application complete.~~

~~(3) The applicant shall provide the information in the form specified by the Department. An applicant for an initial license shall file all information requested within ninety (90) days after receipt of the notice required in (2) of this Section. An applicant for a license renewal shall file all information requested within thirty (30) days after receipt of the notice. The Department shall summarily dismiss the incomplete application if the requested information is not filed on time.~~

~~(4) The applicant shall file an original and one (1) copy of the requested information. The Department shall distribute (1) one copy to the State Insurance Commissioner.~~

~~(5) Within thirty (30) calendar days after receipt of the additional information, the Department shall determine whether or not the information provided is sufficient for review purposes. The Department shall notify the applicant, in writing, of the determination. If the application remains incomplete, it shall be summarily dismissed. If the information is complete, but raises new issues not previously anticipated, then the Department may request clarification of the information. The notice shall include a specific statement of the information that needs clarification.~~

~~(6) An applicant for an initial license shall file the requested clarification within ninety (90) days after receipt of the notice required in (5) of this Section. An applicant for a license renewal shall file clarifying information within thirty (30) days after receipt of the notice required in (5) of this Section. Failure to file the requested clarification on time results in the dismissal of the application.~~

~~(7) Within forty-five (45) days of the determination notice required in (5) of this Section, the Department shall issue or deny an initial license or license renewal. In making its determination, the Department shall review the completed application, the results of the Department's investigation, and any additional information.~~

~~(8) Copies of all applications reviewed or under review by the Department, along with any other written materials pertinent to an application, shall be available for public inspection in the Department offices during normal working hours. Applications are a matter of public record.~~

~~(9) An application for annual renewal of the license shall be filed at least thirty (30) days, but not more than sixty (60) days prior to the termination date of the most recent annual license.~~

~~(10) When an HMO has made a timely and complete application for renewal of a license, the existing license shall not expire until the application has been finally determined by the Department, and, if the application is denied or the terms of the new license limited, until the last day for seeking judicial review of the Department's order.~~

310:655-11-3. Initial license review [REVOKED]

~~(a) When the application is determined complete, the Department shall mail a notice to the applicant that the application is ready for review. The Department shall mail a notice to all other licensed HMOs. The Department also shall provide notice in the form of a newsletter, dated the first working day of the month, to all persons on the Department's mailing list. The Department shall cause a paid public notice to be published in a newspaper of general circulation in the proposed service area, and in a newspaper of general circulation in the area where the hearing will be held. These notices shall include the name and location of the HMO, a brief description of the application, information on where the full application can be viewed, and an explanation of how parties may participate in the review.~~

~~(b) Any person or agency may file an entry of appearance (a written notice of intent to participate), thereby becoming a party to the review. The written entry of appearance must be received by the Department not later than thirty (30) days after publication of the public notice. The State Insurance Commissioner shall be a party to the review of any application and is not required to file a written notice.~~

~~(c) If a party timely files a notice of intent to participate, the Department may convene a preliminary conference up to fifteen (15) days after the deadline for filing notices of intent. The purpose of the conference is to formulate and simplify the issues, identify additional information and evidence needed for the hearing, and to dispose of pending motions. The results of the preliminary conference shall be reduced to a written order.~~

~~(1) The Commissioner may appoint a hearing officer to conduct the conference. Absent exceptional circumstances, the same hearing officer who conducts the preliminary conference shall conduct the hearing.~~

~~(2) The conference may be conducted by telephone at the convenience of the applicant, other participants, or the Department. Telephone conferences must be recorded on audio tape.~~

~~(3) During or before the preliminary conference, participants shall file any requests for subpoenas or motions for discovery. The requirements for issuance of subpoenas are containted in Chapter 4 of this Title. The hearing officer shall act upon the motions or requests at the time of the conference.~~

~~(4) Any additional information requested by the hearing officer, and any information or evidence to be gathered through discovery or subpoena, shall be filed with the Department no less than two (2) days prior to the hearing scheduled on the application.~~

~~(5) The hearing officer may accept stipulations of the parties. Any agreements by the parties shall be included in the written order.~~

~~(d) For review of an initial license, the Department shall convene a public hearing within twenty (20) days after the conclusion of the preliminary conference. The process for conduct of public hearings is set out in 310:655-13. The public hearing process shall conform to the laws governing individual proceedings as set forth in Sections 309 et seq. of the Administrative Procedures Act.~~

~~(e) Within forty-five (45) days after conclusion of the hearing, the Commissioner shall issue or deny a license for the proposed HMO. The order and the license, if issued, will be sent to the applicant, and copies will be sent to all parties.~~

310:655-11-4. License renewal review [REVOKED]

~~(a) When the application is determined to be complete, the Department shall notify, by mail, the applicant and HMOs in the service area. The Department also shall provide notice in the form of a newsletter, dated the first working day of the month, to all persons on the Department's mailing list. The Department shall cause a paid public notice to be published in a newspaper of general circulation in the proposed service area, and in a newspaper of general circulation in the proposed service area, and in a newspaper of general circulation in the area where the hearing will be held. These notices shall include the name and location of the HMO, a brief description of the application, information on where the full application can be viewed. Any person or agency desiring to participate in the review process shall file an entry of appearance (a written notice of their intent to participate), thereby becoming a party to the review. This entry of appearance must be filed within fifteen (15) days after the date of publication of the paid public notice. Parties also may file written evidence or argument within fifteen (15) days after the date of publication of the paid public notice. The State Insurance Commissioner shall be a party to the review and has 30 days from the date of publication to submit its findings and recommendations. If requested, a public hearing may be conducted in accordance with 310:655-11-3(c) and 310:630-13.~~

~~(b) Within forty-five (45) days after publication of the public notice, except in the case of a request for a public hearing, the Department shall issue or deny a license renewal for the HMO. In making its determination, the Department shall review the completed application, the results of the Department's investigation, and any additional information timely filed by parties. If the determination is to deny the license renewal, the determination must be made by the Commissioner subsequent to giving the applicant an opportunity to refute the Department's investigatory report, the findings and recommendations of the State Insurance Commissioner and any additional information timely filed by other parties. The order and the license, if issued, will be sent to the applicant, and copies will be sent to all parties.~~

310:655-11-5. Appeals [REVOKED]

~~Any party who disagrees with the Department's decision may request a reconsideration hearing, or may appeal directly to district court. The process for reconsideration hearings is explained in Section 317 of the Administrative Procedures Act. Appeals to court are discussed in Section 318 of the Administrative Procedures Act.~~

SUBCHAPTER 13. PUBLIC HEARINGS ON INITIAL LICENSE APPLICATIONS [REVOKED]

310:655-13-1. Procedures [REVOKED]

~~(a) The Commissioner may appoint a hearing officer to conduct the public hearing. The hearing officer may be an employee of the Department.~~

~~(b) The hearing officer shall call the cause for the hearing, and may state the purpose and scope of the hearing, or the issues upon which evidence will be heard. Every party appearing shall enter their appearance by stating name and address. The hearing officer shall take up preliminary matters appropriate for disposition prior to offers of evidence.~~

~~(c) Each party shall have the opportunity to present their case, make opening statements, call and examine witnesses, offer documentary evidence into the record, and make closing statements. Every party shall also have the opportunity to cross-examine opposing witnesses on matters covered in direct examination, and, at the discretion of the hearing officer, upon matters relevant to the issues even though not covered in direct examination. Parties may represent themselves, or be represented by legal counsel licensed to practice in the State of Oklahoma.~~

~~(1) The presentation will normally be confined to the issues identified at the preliminary conference. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. The hearing officer may question any party or witness.~~

~~(2) The hearing officer is not bound by the rules of evidence applied in the District Courts of Oklahoma, and may allow hearsay evidence when it is relevant to the issues.~~

~~(3) The applicant shall be allowed to open and close the presentation of evidence and arguments. The hearing officer may designate the order of presentations, but the applicant is entitled to make the first and last presentations.~~

~~(4) Witnesses may appear through deposition or in person. Witnesses shall be examined under oath or affirmation. If a hearing will be expedited and the interest of the parties will not be prejudiced substantially, and the party receives prior permission from the hearing officer, any part or all of the evidence may be received in written form. Written testimony of a witness in forms of questions and answers, or a narrative statement, may be received in lieu of direct examination, provided that the witness authenticates the document under oath. The witness shall then be subject to cross-examination.~~

~~(5) A written or oral statement from any party, or a statement or resolution of a political subdivision, trade association, civic organization or other organization may be received without cross-examination, but will be considered only as argument, and not as proof of any recitation of facts.~~

~~(6) The hearing officer may accept documentary evidence in the form of copies or excerpts if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original.~~

~~(7) A document may not be incorporated in the record by reference, except by permission of the hearing officer. Any referenced document must be precisely identified.~~

~~(8) The hearing officer may take notice of judicially cognizable facts. Also, the hearing officer may take notice of generally known technical or scientific facts within the specialized area of health planning; however, parties shall be notified either before or during the hearing of the facts to be noticed, and shall be afforded an opportunity to contest the noticed facts.~~

~~(9) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs on issues as part of the record within a designated time, not to exceed ten days after conclusion of the hearing. During this additional period, the hearing record shall remain open, and the conclusion of the hearing will occur when the additional material is filed.~~

~~(d) Within ten (10) days after conclusion of the hearing, the hearing officer shall forward to the Commissioner the proposed findings of fact and conclusions of law.~~

SUBCHAPTER 15. REQUIREMENTS FOR A LICENSE [REVOKED]

310:655-15-1. License required [REVOKED]

~~(a) An HMO shall provide or arrange comprehensive health services for its members as needed and without limitations as to time and cost other than those prescribed in the Act and this Chapter.~~

~~(b) A person may operate under a single license:~~

~~(1) One (1) or more HMOs with one (1) or more specialized benefits options; and~~

~~(2) One (1) or more prepaid health plans with one (1) or more specialized benefits options.~~

~~(c) The application for license shall clearly identify and provide an evidence of coverage for each HMO, prepaid health plan, and specialized benefit option to be offered under the license.~~

310:655-15-2. Description [REVOKED]

~~(a) An HMO or prepaid health plan shall provide or arrange the comprehensive health services set forth in OAC 310:655-5. Comprehensive health services shall not be limited as to time and cost except in a manner prescribed by the Act, OAC 310:655-7 and OAC 310:655-15. Except, OAC 310:655-7 shall not restrict a prepaid health plan from providing covered services rendered through noncontracting providers. Prior to entering into an agreement to provide selected services for an organization or corporation, the HMO or prepaid health plan shall provide to the Department the following:~~

~~(1) copy of the proposed agreement between the HMO or prepaid health plan and the organization or corporation;~~

~~(2) name and address of the alternative health plan, and a detail of the benefits to be provided through such plan; and~~

~~(3) disclosure of any financial risk sharing arrangements between the HMO or prepaid health plan and the organization or corporation.~~

~~(b) If a natural disaster, war, riot, civil insurrection, epidemic or any other emergency or similar event not within the control of an HMO or a prepaid health plan results in the facilities, personnel, or financial resources of an HMO or a prepaid health plan being unavailable to provide or arrange a comprehensive or supplemental health service, the HMO or prepaid health plan is required only to make a good faith effort to provide or arrange the service, taking into account the impact of the event.~~

~~(c) An HMO or a prepaid health plan may cover a supplemental health service under the comprehensive health services payment.~~

~~(d) This Section shall not be construed to prevent an HMO or a prepaid health plan from participating in duly authorized state or federal health care programs or in other health programs receiving state or federal funds.~~

310:655-15-3. Services to members [REVOKED]

~~Within the HMO's service area, comprehensive health services and those supplemental health services for which enrollees have contracted to be provided by the HMO shall be:~~

~~(1) Provided or arranged by the HMO, except as described in OAC 310:655-7, OAC 310:655-15, and OAC 310:655-45.~~

~~(2) Available and accessible to each of the HMO's enrollees with reasonable promptness with respect to:~~

~~(A) Geographic location, hours of operation, and provisions for after hours services (medically necessary emergency services shall be available and accessible twenty-four (24) hours a day, seven (7) days a week). An HMO that has a service area located in a non-metropolitan area may make a comprehensive health service available outside its service area if that comprehensive health service is not a primary care or~~

~~emergency care service and if there is an insufficient number of providers of that comprehensive health service within the service area who will provide that service to enrollees of the HMO.~~

~~(B) Staffing patterns within generally accepted norms for meeting the projected enrollment needs.~~

~~(C) The type of health professional so that availability of health professionals is adequate to meet the enrollees' needs.~~

~~(3) Provided in a manner that assures continuity, except as described in OAC 310:655-7, including but not limited to:~~

~~(A) Provision of a health professional who is primarily responsible for coordinating the enrollee's overall health care.~~

~~(B) Development of a health (including medical) record keeping system through which pertinent information relating to the health care of the patient is accumulated and is readily available to appropriate professionals.~~

~~(C) Coordination of the enrollee's participation in the selection of an alternative type of health care professional.~~

310:655-15-4. Membership [REVOKED]

~~(a) An HMO shall not expel or refuse to re-enroll any enrollee, nor refuse to enroll individual members of a group, or establish rules for eligibility that are based on health status factors, health care needs, or age of the enrollee or individual.~~

~~(b) An HMO shall not require an individual within a group to pay a higher premium or contribution than would a similarly situated individual, based on a health status factor.~~

~~(c) Nothing in OAC 310:655-15-4 prohibits an HMO from requiring that, as a condition of continued eligibility for enrollment, dependents of a subscriber, upon reaching a specified age, convert to non-group enrollment.~~

310:655-15-5. Individual conversion contracts [REVOKED]

~~(a) Each HMO shall offer an individual conversion contract to a subscriber (and his or her enrolled dependents) if coverage under a group contract would otherwise terminate for any of the following:~~

~~(1) A subscriber who terminates his or her employment.~~

~~(2) Each enrollee who would otherwise cease to be eligible for HMO enrollment because of his or her age or the death or divorce from a subscriber.~~

~~(3) Any circumstances beyond the subscriber's control which leave the subscriber without alternative coverage.~~

~~(b) An HMO shall not be required to issue an individual conversion contract if any of the following occur:~~

~~(1) The enrollee becomes eligible for or covered by other comparable coverage.~~

~~(2) The group contract is terminated or is not renewed, except as specified in 310:655-27.~~

~~(3) The enrollee's coverage is terminated for cause.~~

~~(4) The enrollee does not enroll for individual conversion coverage within 31 days.~~

~~(c) Nothing in OAC 310:655-15 requires an HMO offering benefit plans only to group health plans or through an association to offer coverage in the individual market.~~

310:655-15-6. Premiums/co-payments [REVOKED]

~~(a) Each HMO shall provide or arrange comprehensive health services for a comprehensive health services payment which:~~

~~(1) Is paid on a periodic basis without regard to the dates these services are provided;~~

~~(2) Is fixed without regard to the frequency, extent, or kind of comprehensive health services furnished;~~

~~(3) Is fixed under a rating system which generates funds sufficient to meet the HMO's financial plan, and under which the rates are reasonable for the health services provided; and~~

~~(4) May be supplemented by nominal co-payments for specific comprehensive health services. Each HMO may establish one or more co-payment options calculated on the basis of a rating system.~~

~~(A) An HMO may not impose co-payment charges that exceed fifty (50) percent of the total cost of providing any single service to its enrollees, or in the aggregate more than twenty (20) percent of the total cost of providing all comprehensive health services.~~

~~(B) An HMO shall not impose on any subscriber or enrollee, in any calendar year, co-payment charges of more than two hundred (200) percent of the annual premium charged for an option with no co-payments.~~

~~(C) Co-payments applied to a service must be equal for all providers unless the unequal co-payments are based on differences in the cost to the HMO for the service.~~

~~(b) Comprehensive health services shall be provided for an illness or injury covered under a workers' compensation law or an insurance policy. The HMO may charge or authorize the provider to charge:~~

~~(1) The insurance carrier, employer, or other entity which is required to pay for the services; and~~

~~(2) The enrollee, to the extent that the enrollee has been paid under the law or policy for the services.~~

~~(c) An HMO may require payments for supplemental health services in addition to the payments for comprehensive health services. Or, an HMO may include supplemental health services in the comprehensive health services for a basic health service payment.~~

~~(1) Supplemental health services payments may be made in any agreed upon manner, such as prepayment or fee for service.~~

~~(2) Supplemental health services may be limited as to time and cost.~~

310:655-15-7. Grievance system [REVOKED]

~~A grievance system shall be established and maintained by an HMO to provide reasonable procedures for the prompt and effective resolution of written grievances.~~

~~(1) An HMO shall provide grievance forms to be given to enrollees who wish to register written grievances. Such forms shall include the address and telephone number to which grievances must be directed and shall also specify required time limits imposed by the HMO.~~

~~(2) The grievance system shall provide for written acknowledgement of any grievance within seven (7) days from the date the grievance is registered with the HMO. Each grievance shall be resolved or finally determined within one hundred twenty (120) days after the grievance is registered. This period may be extended in the event of a delay in obtaining the documents or records from a non-contracting provider necessary for the resolution of the grievance, or by the mutual written agreement of the HMO and the enrollee.~~

~~(3) If enrollee grievances may be resolved through a specified arbitration agreement, the enrollee shall be advised in writing of his or her rights and duties under the agreement at the time the grievance is registered. Any such agreement must be accompanied by a statement setting forth in writing the terms and conditions of binding arbitration. Any HMO that makes such binding arbitration a condition of enrollment must fully disclose this requirement to its enrollees in the contract and evidence of coverage.~~

~~(4) When an HMO notifies an enrollee of a final determination on a grievance, the HMO shall advise the enrollee that a request for assistance may be filed with the Department.~~

310:655-15-8. Guaranteed renewal [REVOKED]

~~(a) Except as otherwise provided in OAC 310:655-15-8, an HMO that issues a group contract must renew or continue in force such coverage at the option of the contractholder.~~

~~(b) An HMO may nonrenew or discontinue a group contract based only on one or more of the following conditions:~~

~~(1) The contractholder has failed to pay premiums or contributions in accordance with the terms of the contract or the HMO has not received timely premium payments.~~

~~(2) The contractholder has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the contract.~~

~~(3) The contractholder has failed to comply with a material provision of the HMO, which relates to rules for employer contributions or group participation.~~

~~(4) The HMO is ceasing to offer a particular type of coverage in a market.~~

~~(5) There are no longer enrollees who live or work in the service area.~~

~~(6) In the case of group health coverage that is made available only through a bona fide association, the membership of an employer in the association, on the basis of which the coverage is provided, ceases, but only if such coverage is terminated uniformly without regard to any health status-related factors that relate to any covered individuals.~~

~~(c) An HMO shall not impose pre-existing condition limitations.~~

~~(d) An HMO may apply an affiliation period not to exceed two (2) months (or three (3) months for late enrollees). Affiliation periods shall be applied uniformly without regard to any health status-related factors. No premium shall be charged for the affiliation period. The HMO is not required to provide health care services or benefits during such period.~~

310:655-15-9. Small group offering [REVOKED]

~~An HMO shall accept every small group employer and every eligible individual of that employer that applies for coverage.~~

310:655-15-10. Special enrollment periods [REVOKED]

~~(a) An HMO that issues a group contract shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the contract, or a dependent of such an employee if the dependent is eligible but not enrolled for coverage under such contract, to enroll for coverage under the terms of the contract if each of the following conditions is met:~~

~~(1) The employee or dependent was covered under a group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent. For the purpose of this section, the terms "group health plan" and "health insurance coverage" have the same meaning ascribed in section 2791 of the Public Health Service Act;~~

~~(2) The employee stated in writing at such time that coverage under a group health plan or health insurance coverage was the reason for declining enrollment, but only if the plan sponsor or HMO, if applicable, required such a statement at such time and provided the employee with notice of such requirement and the consequences of such requirement at such time;~~

~~(3) The employee's or dependent's coverage described in paragraph (1) above:~~

~~(A) Was under a COBRA continuation provision or other continuation and the coverage under such provision was exhausted; or~~

~~(B) Was not under such a provision and the coverage was terminated as a result of loss of eligibility for the coverage, including legal separation, divorce, death, termination of employment, or reduction in the number of hours of employment, or the coverage was terminated as a result of the termination of employer contributions toward such coverage; and~~

~~(4) Under the terms of the plan, the employee requests such enrollment not later than thirty (30) days after the date in OAC 310:655-15-10(a)(3)(A) or OAC 310:655-15-10(a)(3)(B) occurred.~~

~~(b) For dependent beneficiaries, the HMO shall provide for a dependent special enrollment period described in 310:655-15-10(c) during which the person, or, if not otherwise enrolled, the employee may be enrolled under the contract as a dependent of~~

~~the employee, and in the case of the birth or adoption of a child, the spouse of the employee may be enrolled as a dependent of the employee if such spouse is otherwise eligible for coverage, if:~~

~~(1) A group contract makes coverage available with respect to a dependent of an employee;~~

~~(2) The employee is a participant under the contract, or has met any waiting period applicable to becoming a participant under the contract, and is eligible to be enrolled under the contract except for a failure to enroll during a previous enrollment period; and~~

~~(3) A person becomes such a dependent of the employee through marriage, birth, or adoption or placement for adoption, the HMO shall provide for a dependent special enrollment period described in OAC 310:655-15-10(c) during which the person, or, if not otherwise enrolled, the employee, may be enrolled under the contract as a dependent of the employee, and in the case of the birth or adoption of a child, the spouse of the employee may be enrolled as a dependent of the employee if such spouse is otherwise eligible for coverage.~~

~~(c) A dependent special enrollment period under OAC 310:655-15-10(b) shall be a period of not less than thirty (30) days and shall begin on the later of:~~

~~(1) The date that dependent coverage is made available; or~~

~~(2) The date of the marriage, birth, adoption or placement for adoption.~~

~~(d) If an employee seeks to enroll a dependent during the first thirty (30) days of such a dependent special enrollment period, the coverage of the dependent shall become effective:~~

~~(1) In the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;~~

~~(2) In the case of a dependent's birth, as of the date of such birth; or~~

~~(3) In the case of dependent's adoption or placement for adoption, the date of such adoption or placement for adoption.~~

SUBCHAPTER 17. UTILIZATION AND QUALITY REVIEW SYSTEMS [REVOKED]

310:655-17-1. Requirement [REVOKED]

~~HMO plans with 3,000 or less enrollees may develop a quality assurance and utilization review system which will meet minimum needs as determined by the Department. HMO plans with 3,001 or more enrollees will develop the quality assurance and utilization review system which is defined in 310:655-17-4 through 310:655-17-7.~~

310:655-17-2. Quality review system [REVOKED]

~~(a) Each HMO shall have a defined set of standards and procedures for selecting providers, including specialists, to serve enrollees. The standards and procedures shall be drafted in such a manner that they are applicable to all categories of providers and shall be utilized by the HMO in a manner that is without bias for or discrimination against a particular category or categories of providers.~~

~~(b) Each HMO shall appoint, prior to commencing operation, a qualified medical director who is licensed to practice medicine in Oklahoma and who shall be responsible for final review when questions of medical practice arise in order to assure the quality of health care services provided. His or her credentials shall be presented to the Department for informational review.~~

~~(c) Each HMO shall maintain or assure an ambulatory medical record system that shall be accessible to providers and that is adequate to provide information on the medical condition of every enrollee, in accordance with accepted professional standards and practices. Such medical record system shall provide protection from disclosure of confidential medical information on enrollees.~~

~~(d) Each HMO, either directly or through contract, shall maintain a quality assessment and improvement system. The system shall have at least these features:~~

~~(1) Systematic collection and analysis of data, including measures of provider performance;~~

~~(2) Activities to foster continuous improvement of services provided to enrollees, including:~~

~~(A) Identifying practices that result in positive health outcomes; and~~

~~(B) Integrating information sources such as service management, claims processing, enrollee satisfaction and grievances;~~

~~(3) Organizational support for the system with input from the medical director;~~

~~(4) Opportunity for participation by all providers contracting with or employed by the HMO; and~~

~~(5) Methods of evaluating performance improvement activities.~~

~~(e) The quality assessment and improvement system shall include the following functions, done at least annually:~~

~~(1) An analysis of care patterns in the following priority areas:~~

~~(A) Services likely to affect many enrollees;~~

~~(B) Procedures that could place the health of enrollees at risk;~~

~~(C) Variations in practice patterns; and~~

~~(D) Underuse and overuse of medical and health services;~~

~~(2) An evaluation of access to medical and health services; and~~

~~(3) Monitoring of allopathic, osteopathic, chiropractic, podiatric, optometric and psychological services to ensure that services are being provided in a non-discriminatory manner.~~

310:655-17-3. Utilization review [REVOKED]

~~(a) The HMO shall implement a formal utilization review program that describes all delegated and non-delegated review activities for covered services. The program shall include:~~

~~(1) Data sources and review criteria used to determine the need for, and appropriateness of, medical and health services;~~

~~(2) Processes for resolving disputes on medical or health services;~~

~~(3) Consistent application of criteria and decisions;~~

~~(4) Data collection and analytical methods that may be used to assess use of health care services;~~

~~(5) Reports to the governing body or its designee; and~~

~~(6) Day-to-day program management.~~

~~(b) The HMO shall report in the license application annually on utilization review activities. The data shall preserve the confidentiality of information about individual enrollees.~~

~~(c) The utilization review program shall have criteria that are based on evidence and are regularly evaluated.~~

~~(1) Practicing health professionals, including at least one (1) physician from each of the six (6) categories of physicians specified in OAC 310:655-1-2, shall be involved in developing the review criteria.~~

~~(2) After refusing to authorize coverage for a service, the HMO shall provide the review criteria for that service upon request to affected providers, the enrollee, and the Commissioner. Such criteria shall be provided within thirty (30) days of the request.~~

~~(d) Qualified health professionals shall supervise the utilization review program and assess the clinical information used to support utilization decisions. A licensed physician shall review any denial that is based on medical appropriateness and shall render a decision as to such. Contested denials of services by the attending physician in cases where there are not medically agreed upon guidelines shall be evaluated in consultation with physicians of the same or similar specialty or training as the attending physician who is contesting the denial. The results of such reviews shall be provided to the member upon request.~~

~~(e) Decisions on whether or not to authorize coverage for services shall be issued following the requirements of OAC 310:655-17.~~

~~(1) Decisions shall be made using pertinent information and after consulting with the treating health professional.~~

~~(2) The HMO shall ensure that reviewers consistently apply criteria.~~

~~(3) A decision to authorize or deny coverage for an emergency service shall be based on the patient's presenting symptoms arising from any injury, illness or condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a reasonable and prudent layperson could expect the absence of medical attention to result in:~~

~~(A) serious jeopardy to the patient's health;~~

~~(B) serious impairment to bodily function; or~~

~~(C) serious dysfunction of any bodily organ or part.~~

~~(4) An HMO shall not deny an otherwise covered emergency service based solely upon lack of notification to the HMO.~~

~~(5) An HMO shall compensate the provider for patient screening, evaluating, and examining services that are reasonably calculated to assist the provider in determining whether the patient's condition requires emergency service. If the provider determines that the patient does not require emergency service, coverage for services rendered subsequent to that determination shall be governed by the HMO subscriber contract.~~

~~(f) The HMO shall routinely assess the effectiveness of the utilization review program.~~

~~(g) Data systems shall be sufficient to support utilization review activities.~~

~~(h) If the HMO delegates any activities to a utilization review organization, adequate oversight shall be maintained that includes:~~

~~(1) Clear definition of utilization review organization activities, including reporting requirements;~~

~~(2) Formal approval of the utilization review organization's program by the HMO; and~~

~~(3) Periodic evaluations of the utilization review organization.~~

~~(i) Utilization review shall be coordinated with other medical management activities.~~

~~(j) Each HMO shall ensure that its utilization review program conforms to the following:~~

~~(1) Prior authorization shall not be required for coverage of emergency service; and~~

~~(2) Each prior authorization request by an enrollee or physician for non-emergency service shall be responded to within five (5) business days. The final determination on the prior authorization request may extend beyond five (5) days if all of the following apply:~~

~~(A) The additional review time is necessitated by the nature or complexity of the request;~~

~~(B) The HMO or its delegated reviewer timely responds to the requestor and advises them of the need for the additional time; and~~

~~(C) The additional review time does not delay treatment to the detriment of the member's health.~~

~~(k) Qualified personnel shall be available for same business day telephone response to an inquiry about medical necessity including a request for certification of continued length of stay.~~

~~(l) The HMO shall not require an enrollee to obtain documents or information from a participating or contracting provider in order for the HMO to make a utilization determination if the HMO is entitled under the provider agreement or applicable law or rule to obtain such documents or information directly from the provider.~~

~~(m) Written notice of a decision to deny coverage for a service shall identify by name and title the person or persons who made the decision to deny the service and shall describe the HMO's complaint and appeal procedures.~~

~~(n) Each HMO shall offer an expedited appeal process for situations in which the normal time frame could jeopardize a patient's life or health. Decisions under the expedited process shall be rendered as rapidly as warranted by the member's condition and coverage at issue.~~

310:655-17-4.1. Peer review [REVOKED]

~~In the first and subsequent years of operation, the HMO shall have a program of peer review that shall include:~~

~~(1) A peer review or medical affairs committee to organize and conduct reviews on the following matters:~~

~~(A) Quality of care or efficacy problems; and~~

~~(B) Provider grievances;~~

~~(2) Input from providers of the same or similar specialty as the provider involved in the matter under review, as deemed necessary by the committee;~~

~~(3) A regular schedule for meetings of the peer review or medical affairs committee;~~

~~(4) Written records maintained by the committee and kept available for review by the Department; and~~

~~(5) A program of correction to include education and follow-up.~~

310:655-17-8. Disclosure requirements [REVOKED]

~~(a) The HMO shall clearly disclose enrollee rights and responsibilities relating to quality assurance and utilization review.~~

~~(b) The HMO shall list in its member handbook a toll-free telephone number for information about the HMO's utilization review program.~~

~~(c) The HMO shall make information available to regulatory agencies, providers and the public about its quality assurance and utilization review activities and progress.~~

~~(d) The HMO shall inform enrollees and prospective enrollees in written format of coverage provisions, benefits, and any exclusions by category of service, provider or physician, and if applicable, by specific service.~~

~~(e) The HMO shall inform the enrollees and prospective enrollees in written format of any and all prior authorization and any other procedures that may lead the patient to be denied coverage for or not be provided a particular service.~~

~~(f) The HMO shall inform the enrollees and prospective enrollees in written format how plan limitations affect enrollees, including information on enrollee financial responsibility for payment for coinsurance or other noncovered or out-of-plan services.~~

310:655-17-9. Governing body oversight [REVOKED]

~~The HMO's governing body or its designee shall be responsible for quality assurance, quality improvement, and utilization review actions. The governing body or designee shall approve and regularly evaluate these programs. If the HMO contracts with other entities to operate these programs, then the governing body or designee may consider reports from those entities instead of conducting its own evaluations. The governing body or designee shall receive reports of quality assurance, quality improvement and utilization review actions at least once every six (6) months.~~

310:655-17-10. Independent medical judgment [REVOKED]

~~Utilization review and quality assurance programs shall not be construed to interfere with a physician's obligation under professional licensure and certification standards to exercise independent judgment. The HMO's procedures for utilization review and quality assurance programs shall not include the following:~~

~~(1) Any requirement that a physician shall receive permission from the HMO prior to discussing with a patient the possible need for emergency or urgent care; or~~

~~(2) Any limitation on a physician advising a patient about service or treatment options not provided, arranged or reimbursed by the HMO.~~

310:655-17-11. Quality of care examinations [REVOKED]

~~(a) The Department shall examine the quality of an HMO's health care services at least once every three (3) years and more often if necessary for the protection and in the interest of the people of Oklahoma and enrollees of the HMO. Such examinations shall cover the services offered directly by the HMO and services arranged through contracts with providers.~~

~~(b) The Department may conduct the examination or the Department may require the HMO to contract for the examination. If the Department requires the HMO to contract for the examination, the HMO shall select an approved independent quality examiner from a list maintained by the Department.~~

~~(c) The Department shall maintain a list of approved independent quality examiners who have demonstrated conformity to the following requirements:~~

~~(1) The examiner has written criteria and standards for assessing the quality of clinical care and the availability, accessibility and continuity of care;~~

~~(2) The examiner limits clinical judgements to physicians with experience in the delivery of health care in an HMO setting, and all final conclusions, opinions and recommendations shall be made or endorsed by physicians;~~

~~(3) The examiner has a training program for review team members to ensure uniform application of standards;~~

~~(4) The examiner ensures the confidentiality of medical and health care information; and~~

~~(5) The examiner institutes reasonable measures to ensure that review team members and their families have no financial interest in the HMO being examined or in any HMO operating in the geographic service area covered by the HMO being examined.~~

~~(d) Any person may file a request to be included on the Department's list of approved independent quality examiners. The request shall be in writing and shall demonstrate conformity to the requirements in (c) of this Section. The Department shall respond in writing within thirty (30) days after receiving the request. The Department at any time may remove approval status from an examiner for failure to maintain compliance with (c) of this Section, or for providing to or accepting from an HMO any gift or favor other than a reasonable and usual charge for the performance of a quality examination.~~

~~(e) The quality examination shall include assessments of the following:~~

~~(1) The adequacy of involvement of the HMO's governing body and medical director in quality assurance activities;~~

~~(2) The scope and content of the HMO's quality assurance program;~~

~~(3) The adequacy of the HMO's medical records; and~~

~~(4) The adequacy of the HMO's utilization review program.~~

~~(f) The examination process shall include:~~

~~(1) Preliminary reviews to familiarize the examiner with the requirements of OAC 310:655-17 and the HMO;~~

~~(2) A site visit to review records and to interview HMO officers, the medical director, a member of the governing body, members of the quality assurance committee, the patient care coordinator, a customer service representative, and other providers, governing body members, and HMO personnel;~~

~~(3) An on-site summation; and~~

~~(4) Written preliminary and final reports.~~

~~(g) The HMO and the quality examiner shall provide the Department access to observe record reviews, interviews, and the on-site summation.~~

~~(h) The quality examiner shall prepare a report based upon the assessment team's findings. One (1) copy of each report shall be submitted to the Department. The report shall contain, at a minimum, the following information:~~

~~(1) An overview of the HMO's quality assurance program, an evaluation of recent quality assurance studies undertaken by the HMO, and the degree of implementation of the written quality assurance plan;~~

~~(2) A description of the HMO's quality assurance program;~~

~~(3) A description of the types and numbers of medical records reviewed, selection criteria, and review methods;~~

~~(4) A summary of charts that met and did not meet the established review criteria;~~

~~(5) Recommendations for follow-up, when indicated; and~~

~~(6) A listing of the names and titles of individuals that conducted and analyzed the review.~~

~~(i) The HMO shall forward to the Department a complete and unaltered copy of the final report within five (5) working days after the HMO receives the report from the quality examiner.~~

SUBCHAPTER 19. OWNERSHIP/CONTROL OF HMO [REVOKED]

310:655-19-1. Ownership [REVOKED]

~~(a) The ownership, control, or management of the HMO entity shall be competent and trustworthy and possess managerial experience that would make the proposed HMO operation beneficial to the enrollees. The Department shall not grant or renew a license to transact the business of an HMO in Oklahoma at any time during which it has good reason to believe that the ownership, control, or management of the HMO is under the control of any person whose business operations are or have been marked by business practices, or conduct that is to the detriment of the public, stockholders, investors, or creditors; by the improper manipulation of assets or of accounts; or by bad faith.~~

~~(b) For any proposed change in ownership that is not part of an application for license or license renewal, the Department shall forward copies of the proposed change to the State Insurance Commissioner. The Department shall request recommendations from the State Insurance Commissioner on the proposed owner prior to making a final decision.~~

310:655-19-2. Removal or transfer of property [REVOKED]

~~(a) No HMO that is domiciled in Oklahoma shall remove from Oklahoma its entire property or business, or substantially all of its property or business, without the written approval of the Department.~~

~~(b) No HMO shall transfer or attempt to transfer substantially its entire property, or enter into any transaction the effect of which is to merge substantially its entire property or business in the property or business of any other company without having first obtained the written approval of the Department.~~

310:655-19-3. Accounts, books and records [REVOKED]

~~Each HMO shall maintain proper accounting controls and shall keep adequate, correct and complete books and records of accounts. Such books and records shall be made available to the Department or to the State Insurance Commissioner during normal business hours. Written notification from the Department shall specify the accounts, books and records to be reviewed.~~

SUBCHAPTER 21. ISSUANCE OF A LICENSE [REVOKED]

310:655-21-1. Description [REVOKED]

~~(a) The Department shall deem the HMO in compliance with the Act and these rules, and may issue or reissue a license to operate the HMO, when the Department finds that the HMO meets the following conditions:~~

~~(1) Comprehensive and supplemental health services as outlined in OAC 310:655-5 and 310:655-15 will be provided by the HMO as guaranteed in the group contract, individual contract and evidence of coverage. These services shall be provided without bias or discrimination in favor of or against a health professional providing allopathic, osteopathic, chiropractic, podiatric, optometric or psychological services. The Department will review the availability of health services as guaranteed by the HMO taking into consideration such issues as enrollment size and characteristics, the availability of providers, and hours of operation.~~

~~(2) All providers of service will practice in accordance with licensing or credentialing requirements of the State of Oklahoma as well as in accordance with acceptable professional practices and will reasonably meet anticipated enrollee needs.~~

~~(3) The service area of the HMO is reasonable and comprehensive health services are available and accessible within the service area, taking into consideration the geographic location of the HMO and HMO providers, the hours of operation, and the population density in the service area.~~

~~(4) The HMO has appointed a qualified medical director.~~

~~(5) The HMO has developed plans for or maintains an acceptable ambulatory medical records, peer review, utilization review, and grievance procedures systems.~~

~~(6) The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy and possess good reputations.~~

~~(7) The HMO is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the Department shall consider the recommendation of the State Insurance Commissioner, the resources of the organization which owns or controls the HMO and may also consider the following:~~

~~(A) The financial soundness of the arrangements for health care services and the schedule of charges to be used.~~

~~(B) The adequacy of working capital.~~

~~(C) Any agreement with an insurer, a hospital or medical service corporation, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the HMO.~~

~~(D) Any agreement with providers for the provision of health care services.~~

~~(8) The HMO has complied with 36 O.S., Section 624 regarding the filing and payment of premium tax returns.~~

~~(b) The Department shall take into consideration any recommendation from the State Insurance Commissioner prior to making a final decision. The Department will advise the State Insurance Commissioner of any action taken as a result of any recommendation, and if no action is taken, or if not all of the recommendation is acted upon, the Department shall advise the State Insurance Commissioner of the reason(s) for no or partial action.~~

310:655-21-2. Duration of license [REVOKED]

~~The Department may issue a license with an effective operational period of one (1) year in duration. In issuing a license, the Department may specify an organizational period during which time the applicant shall attempt to satisfy such specific conditions as the Department may require for the license to operate.~~

SUBCHAPTER 23. WITHDRAWAL OF A LICENSE [REVOKED]

310:655-23-1. Conditions for revocation/suspension [REVOKED]

~~(a) The Department may revoke or suspend any license issued to an HMO, impose administrative penalties, or take such other steps as it may deem appropriate, if it finds or has reason to believe that any of the following conditions exist:~~

~~(1) The HMO is not operating in compliance with the Act or these rules.~~

~~(2) The HMO is in substantial violation of its health service contracts.~~

~~(3) The HMO is unable to fulfill its obligations under outstanding health service contracts entered into with its enrollees.~~

~~(4) The HMO has advertised, merchandised, or attempted to merchandise its services in such a manner as to misrepresent its services or capacity for service or has engaged in deceptive, misleading, or unfair practices with respect to advertising and merchandising.~~

~~(5) The HMO is insolvent.~~

~~(6) The HMO knowingly utilizes or has knowingly utilized a provider that is furnishing or has furnished health care services who does not have a license or other authority to practice or furnish health care services in this state.~~

~~(7) The HMO has failed or neglected to pay premium taxes or penalties.~~

~~(8) The HMO has failed or neglected to exercise adequate oversight with entities contracted or authorized to perform utilization review as indicated in OAC 310:655-17-3(h) and reimbursement of claims as indicated in OAC 310:655-47 and 63 O.S. Section 2514.~~

~~(b) A license shall be suspended or revoked or administrative penalties imposed only after compliance with the requirements of Sections 309 et seq. of the Administrative Procedures Act.~~

~~(c) For any proposed action against a license, the Department shall request recommendations from the State Insurance Commissioner.~~

310:655-23-2. Suspension [REVOKED]

~~When the license of an HMO is suspended, the HMO shall not, during the period of such suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.~~

310:655-23-3. Revocation [REVOKED]

~~When the license of an HMO is revoked, such HMO shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such HMO. The Department may, by written order, permit such further operation of the HMO as it may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.~~

SUBCHAPTER 25. PROTECTION AGAINST INSOLVENCY [REVOKED]

310:655-25-1. Net worth requirement [REVOKED]

~~The minimum net worth requirement for an HMO or a prepaid health plan is as follows:~~

~~(1) An HMO or a prepaid health plan shall maintain a net worth of at least one million five hundred thousand (1,500,000) dollars. An HMO or prepaid health plan may meet one or more of the exceptions in (2) of this subsection.~~

~~(2) An HMO or prepaid health plan may have a net worth less than one million five hundred thousand (1,500,000) dollars if the plan demonstrates that it:~~

~~(A) Is a branch of a governmental entity that ensures the plan's financial obligations shall be met;~~

~~(B) Has been a health service provider of long standing in the community and has resources adequate to meet the plan's level of risk; or~~

~~(C) Provides services under a governmental contract that ensures payment of financial obligations and continuity of services in the event of insolvency.~~

~~(3) Before the Department authorizes an HMO or prepaid health plan to operate with a net worth less than one million five hundred thousand (1,500,000) dollars, the HMO or prepaid health plan shall agree to raise its net worth to one million five hundred thousand (1,500,000) dollars if the conditions that originally allowed for a reduction of net worth cease to exist.~~

~~(4) The Department shall take into consideration any recommendation from the State Insurance Commissioner prior to making a final decision on a request for reduction of the minimum net worth requirement. The Department will advise the State Insurance Commissioner of any action taken as a result of any recommendation, and if no action is taken or if not all of the recommendation is acted upon, the Department shall advise the State Insurance Commissioner of the reason(s) for no or partial action.~~

~~(5) The net worth requirement of this Subchapter is phased in as follows:~~

~~(A) As of December 31, 2003, each HMO shall have a net worth of one million (1,000,000) dollars;~~

~~(B) As of December 31, 2004, each HMO shall have a net worth of one million two hundred fifty thousand (1,250,000) dollars; and~~

~~(C) As of December 31, 2005, and thereafter each HMO shall have a net worth of one million five hundred thousand (1,500,000) dollars.~~

~~(6) In no case shall this be construed to require an HMO to maintain a net worth that is greater than the net worth otherwise required by this Chapter.~~

310:655-25-2. Minimum deposit requirements [REVOKED]

~~(a) Each HMO shall maintain a deposit of five hundred thousand dollars ($500,000). Each new applicant for an HMO license shall make such deposit prior to operation. This deposit shall be accomplished by cash, acceptable securities, certificates of deposit, letters of credit or a combination of these. The total of the deposits shall not be less than five hundred thousand dollars ($500,000) at any time, unless the Department first approves a reduction under OAC 310:655-25-4.~~

~~(b) Proof of deposits of cash, securities or certificates of deposit shall be filed with the Department in one (1) or more of the following forms:~~

~~(1) Original certificate of deposit in, or original letter of credit from, a federally insured bank, savings and loan association or similar institution, located in Oklahoma, with provisions for automatic renewal and sixty (60) days advance notice to the Department prior to nonrenewal;~~

~~(2) United States, state, county or municipal government obligation; or~~

~~(3) Original security issued to the Department and the HMO, or original receipt in the name of the Department and the HMO for a security held for safekeeping in Oklahoma in a federally insured bank, savings and loan association, or similar institution having trust powers, with a provision requiring Department approval prior to release of the security.~~

~~(c) The Department shall increase the minimum deposit requirement whenever it determines that the financial condition of an HMO is such that it is hazardous to enrollees, creditors, or the public.~~

~~(d) HMOs that were licensed prior to the effective date of this regulation and that were not in compliance with the minimum deposit requirement on that date shall have six (6) months from that date to comply with the provisions of this Section.~~

~~(e) When securities are deposited with the Department, the value of such deposit shall be the lower of cost or market value of the securities. An HMO within ten (10) days of written notice, shall make good any deficit resulting from a decrease in market value.~~

~~(f) When certificates of deposit are deposited with the Department, and subsequently applied, the amount applied shall be the full face amount of the certificate of deposit. An HMO shall make good any premature withdrawal penalty.~~

~~(g) The deposit required by this Section shall be reduced where the Department determines that the full deposit is not necessary for the protection of enrollees. In considering whether the full deposit is necessary for the protection of enrollees, the Department shall give due consideration to the factors governing consideration of petitions for reduction of deposits as set forth in OAC 310:655-25-4.~~

~~(h) An HMO that has shown an operating profit on its two (2) most recent annual statements filed with the Department may petition the Department for a reduction of the deposit required by this Section. Any such petition shall be made in accordance with OAC 310:655-25-4.~~

~~(i) An HMO that has made deposits with the Department that are in excess of the total requirements of this Section may~~

~~petition the Department for the reduction of such excess deposit. Any such petition shall be made in accordance with OAC 310:655-25-4. The Department shall permit the reduction of any excess deposit when the Department is satisfied that the amount in question is in excess of that required by this Section.~~

~~(j) The deposit shall be an admitted asset of the HMO in the determination of net worth.~~

~~(k) All income from deposits shall be an asset of the organization. An HMO that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities shall be approved by the Department before being withdrawn, deposited or substituted.~~

310:655-25-3. Purpose of deposits [REVOKED]

~~(a) Any deposit held by the Department shall be for the exclusive benefit of the HMO's enrollees. The enrollees, without preference, shall have a lien on the deposits for the amounts due or which may become due as a result of any failure of the HMO to meet its obligations. If the deposits are not sufficient to discharge all obligations to enrollees, the obligations to the enrollees shall be satisfied ratably out of the proceeds of such deposits. Whenever any HMO becomes insolvent, bankrupt, dissolved, discontinued or makes an assignment for the benefit of its creditors, any person given a lien by this section may file a bill in a court of competent jurisdiction or with the Department for the benefit of himself or herself and all others given a lien by this section to subject such deposits to the payment of the liens thereon. The Department shall be made a party to any such suit, and a copy of such bill shall be served upon the Department as if it were a party to such suit. The funds shall be distributed by the Department.~~

~~(b) If any HMO fails to fulfill any of its obligations to enrollees after such obligations have been ascertained by any agreement of the parties binding on the HMO, or by judgment, order or decree of a court of competent jurisdiction against the HMO, not appealed from, superseded or stayed, or by the Department, the Department shall, upon the application of the enrollee to whom the debt or money is due, but subject to the approval of the Department and after giving notice as herein provided, proceed to sell at auction such amount of the securities and the interest thereon on deposit in the Department's hands, will pay the sums due and the expenses of the sale, and out of the proceeds of sale shall pay such sums and expenses.~~

~~(1) The Department shall give the HMO ten days notice, of the time and place of the sale, and the sale shall be advertised daily for ten days in a newspaper of general circulation published in the cities of Oklahoma City or Tulsa.~~

~~(2) The HMO shall make good any deficit in its deposit resulting from a sale of securities within ten days of receipt of written notice. In lieu of selling securities, the Department may use any deposit of cash or certificates of deposit made by the HMO to satisfy the HMO's liabilities to enrollees. The Department shall give the HMO ten days notice prior to the use of any such cash or certificates of deposit. The HMO shall make good any deficit in the required deposit within ten days of receipt of written notice.~~

~~(c) When the license of an HMO is revoked, a claim by a health care provider for an uncovered expenditure has the same priority as an enrollee, provided such provider of services agrees not to assert such claim against any enrollee of the HMO.~~

310:655-25-4. Reduction of deposit [REVOKED]

~~(a) An HMO may, in writing, petition the Department for the reduction of any deposit held by the Department. Any such petition shall state the HMO's justification for requesting the reduction of deposit. No deposit held by the Department shall be reduced without the Department's prior approval. Such approval will not be unreasonably withheld.~~

~~(b) In considering a petition for reduction of deposit the Department shall give due consideration to each of the following:~~

~~(1) The HMO's net worth.~~

~~(2) Historic and anticipated operating profits,~~

~~(3) Risk sharing arrangements.~~

~~(4) Financial guarantees with affiliates.~~

~~(5) Managerial expertise.~~

~~(6) Level of covered and uncovered health care expenses.~~

~~(7) Any other relevant factors it deems appropriate.~~

~~(c) The Department shall take into consideration any recommendation from the State Insurance Commissioner prior to making a final decision on reduction of deposit. The Department will advise the State Insurance Commissioner of any action taken as a result of any recommendation, and if no action is taken or if not all of the recommendation is acted upon, the Department shall advise the State Insurance Commissioner of the reason(s) for no or partial action.~~

310:655-25-5. Liability insurance [REVOKED]

~~(a) Each HMO shall maintain adequate liability insurance coverage to protect the interests of all subscribers and enrollees. Such insurance may include, but is not limited to, excess or stop loss, insolvency, medical malpractice, errors and omissions, and general liability coverage.~~

~~(b) The Department shall take into consideration any recommendation from the State Insurance Commissioner prior to making a final decision on the adequacy of liability insurance. The Department will advise the State Insurance Commissioner of any action taken as a result of any recommendation, and if no action is taken or if not all of the recommendation is acted upon, the Department shall advise the State Insurance Commissioner of the reason(s) for no or partial action.~~

310:655-25-6. Provider contracts [REVOKED]

~~(a) Every contract between an HMO and a participating provider of health care services shall be in writing and shall set forth that in the event the HMO fails to pay for health care services as set forth in the contract, the subscriber or enrollee shall not be liable to the provider for any sums owed by the HMO.~~

~~(b) The contract shall further set forth penalties or sanctions against providers who bill or attempt to collect from the subscriber or enrollee any sums owed by the HMO.~~

~~(c) In the event that the participating provider contract has not been reduced to writing as required by this Section or that the contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the subscriber or enrollee sums owed by the HMO.~~

~~(d) No participating provider, agent, trustee or assignee thereof, shall maintain any action at law against a subscriber or enrollee to collect sums owed by the HMO.~~

~~(e) Providers shall not be subject either directly or indirectly to the following provisions:~~

~~(1) Any payment for withholding medically necessary health care services from an enrollee;~~

~~(2) Any penalty for requesting reconsideration or assisting an enrollee in seeking reconsideration of the HMO's decision to deny or limit coverage;~~

~~(3) Any penalty for advocating before the HMO on behalf of an enrollee;~~

~~(4) Any penalty for advising an enrollee about medical care or medically appropriate treatment options whether or not provided, arranged or reimbursed by the HMO; or~~

~~(5) Any prohibition against making factual nonproprietary statements regarding the HMO.~~

~~(f) An HMO shall have a network of contracting providers, including each category of physicians specified in OAC 310:655-1-2, to provide comprehensive health services in a manner that complies with the Act and this Chapter. The network may be developed through any or all of the following arrangements:~~

~~(1) Staff providers;~~

~~(2) Medical group(s);~~

~~(3) Individual practice association(s); or~~

~~(4) Direct contracts between providers and the HMO.~~

~~(g) A provider contract with a medical group or individual practice association shall not include a provision requiring or allowing the medical group or individual practice association to provide or arrange any physician services that are a statutory component of comprehensive health services unless the medical group or individual practice association contracts with, or has members who are, professionals duly licensed to perform such physician services.~~

~~(h) Each provider contract shall include the termination provision language specified in OAC 310:655-27.~~

310:655-25-7. Covered and uncovered expenses [REVOKED]

~~(a) Any expense of an HMO that is owed or paid to a health care provider that is under contract with an HMO shall be considered a covered health care expense by that HMO if:~~

~~(1) The contract between the HMO and health care provider contains the hold harmless clause set forth below; and~~

~~(2) Such expense falls within the scope of the hold harmless clause.~~

~~(b) The hold harmless clause shall be substantially the same as the following:~~

~~(1) "(Provider) hereby agrees that in no event, including, but not limited to non-payment by the HMO, HMO's insolvency or breach of this agreement, shall (Provider) bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against subscribers or persons other than the health maintenance organization for services provided pursuant to this Agreement. This provision shall not prohibit collection of any applicable co-payments billed in accordance with the terms of the HMO's subscriber agreement."~~

~~(2) "(Provider) further agrees that this provision shall survive the termination of this Agreement regardless of the cause giving rise to such termination and shall be construed to be for the benefit of the health maintenance organization's subscribers; and that this provision supersedes any oral or written agreement to the contrary now existing or hereafter entered into between (Provider) and the subscriber or persons acting on the subscriber's behalf."~~

~~(c) Any modifications, additions, or deletions to the provisions of the hold harmless clause shall become effective on a date no earlier than fifteen (15) days after the Department has received written notice of such proposed changes.~~

~~(d) If there is an intermediary organization between the HMO and the health care providers, the hold harmless clause shall be amended to include non-payment by either the HMO or the intermediary organization and shall be included in any contract between the intermediary organization and health care providers and in any contract between the HMO and the intermediary organization before health care expenses owed or paid to the intermediary organization shall be considered covered expenses.~~

~~(e) HMOs that have substantially similar hold harmless agreements in effect prior to the effective date of this regulation shall consider the expenses within the scope of such agreements to be covered health care expenses.~~

~~(f) Any fully subordinated debt and the interest expenses relating to the repayment of any fully subordinated debt shall be considered covered expenses.~~

~~(g) No debt shall be considered fully subordinated unless the subordination clause set forth below is executed by the HMO and the~~

~~lender and the subordination agreement is otherwise acceptable to the Department.~~

~~(h) The subordination clause shall be substantially the same as the following: "The rights of (lender) to the principal sum and/or accrued interest thereon are and shall remain subject to and subordinate to all other liabilities of (HMO), and upon the dissolution or liquidation of (HMO), no payment upon this instrument shall be made until all other liabilities of the plan shall have been paid. It is further agreed to by and between the parties hereto that written approval from the Oklahoma State Department of Health shall be obtained prior to any repayment of principal or payment of interest."~~

~~(i) The Department shall take into consideration any recommendation from the State Insurance Commissioner prior to making a final decision on subordinated debt. The Department will advise the State Insurance Commissioner of any action~~

~~taken as a result of any recommendation, and if no action is taken or if not all of the recommendation is acted upon, the Department shall advise the State Insurance Commissioner of the reason(s) for no or partial action.~~

310:655-25-8. Projections [REVOKED]

~~(a) The Department may require any HMO to submit periodic updates of the projection of operating results required by OAC 310:655-9-2(2)(K). Each update shall include a complete explanation of any significant variance between actual operating results and the operating results that were forecasted under the projection last submitted to the Department.~~

~~(b) The Department shall request a revision of any financial projection that it deems to be unreasonable relative to the HMO's historic performance.~~

~~(c) The Department shall accept recommendations from the State Insurance Commissioner regarding periodic projection updates.~~

310:655-25-9. Impairment [REVOKED]

~~(a) Any HMO that is found to have less than the minimum required net worth shall be deemed to be impaired and there shall be a presumption that an impaired HMO is not financially responsible and may not reasonably be expected to meet its obligations to enrollees and prospective enrollees.~~

~~(b) Whenever the Department finds from a financial statement made by any HMO, or from a report of examination of any HMO, or from a recommendation from the State Insurance Commissioner that the HMO is impaired, it shall determine the amount of such impairment and issue an order requiring the HMO to eliminate the impairment within such period of not more than ninety (90) days as it shall designate. If at the expiration of the designated period the HMO has not satisfied the Department that the impairment has been eliminated, an order for the revocation of the HMO's license may be entered as provided in 310:655-23. Examinations shall be conducted as set forth in 310:655-41-1.~~

310:655-25-10. Deposit of funds [REVOKED]

~~The Department shall deposit any cash, securities, or Certificates of Deposit received under this subchapter in a clearing account, or other account as appropriate under applicable state laws.~~

310:655-25-12. Claims against deposit [REVOKED]

~~(a) Upon rehabilitation or liquidation of an HMO, the rehabilitator shall develop procedures for accepting claims against the deposit.~~

~~(b) Such procedures shall include steps for accomplishing financial, legal and administrative functions related to the disbursement of the deposit.~~

~~(c) Such procedures are subject to approval by the Commissioner.~~

SUBCHAPTER 27. TERMINATION OF MEMBERS, PROVIDERS AND CONTINUATION OF BENEFITS [REVOKED]

310:655-27-1. Termination of group or individual contracts [REVOKED]

~~(a) An HMO desiring to either terminate or not renew a group or individual contract shall provide at least sixty (60) days advance notice of termination. Except, an HMO may terminate or not renew a contract with less than sixty (60) days notice for cause such as failure to pay premiums or fraud.~~

~~(b) A group contract or individual contract shall not be terminated except as described in OAC 310:655-27 and OAC 310:655-15-8.~~

310:655-27-2. Termination of providers [REVOKED]

~~An HMO shall implement a policy governing termination of providers. The policy shall include at least:~~

~~(1) Provisions for at least ninety (90) days advance notice of contract termination by either the HMO or the provider, with additional provisions for contract termination by the HMO with less than ninety (90) days notice for cause;~~

~~(2) Methods by which the termination policy shall be made known to providers and members at the time of enrollment and on a periodic basis;~~

~~(3) Written notification to each member at least thirty (30) days prior to the termination or withdrawal of a member's primary physician from the HMO's provider network and of any other physician or provider currently treating the member. The Department may waive the 30-day prior notice requirement if the HMO demonstrates that immediate termination is necessary for the protection of health, safety and welfare of members, or if the HMO demonstrates that the provider has not complied with the termination requirements under the contract; and~~

~~(4) Assurance of continued coverage of services, under certain conditions, consistent with 63 O.S. Section 2550.3.~~

310:655-27-3. Continuation of benefits [REVOKED]

~~(a) If group or individual contracts are terminated by the HMO, provision shall be made for continuation of benefits to enrollees who, on the date of termination, are confined in an inpatient facility until their discharge or expiration of benefits according to the group or individual contract, and provision shall be made for pregnant enrollees through delivery and discharge. An HMO is not required to continue further benefits for an enrollee or group terminated for cause.~~

~~(b) Each HMO shall have a plan for handling insolvency that allows for continuation of benefits for the duration of the contract period for which premiums have been paid, continuation of benefits for enrollees who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits, and continuation of benefits for pregnant enrollees through delivery and discharge. The Department shall require the plan to include one or more of the following:~~

~~(1) Insurance to cover the expenses to be paid for continued benefits after the HMO's insolvency;~~

~~(2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the HMO's insolvency for which premium payment has been made and until the enrollees' discharge from inpatient facilities;~~

~~(3) Insolvency reserves;~~

~~(4) Acceptable letters of credit; and~~

~~(5) Any other arrangements to assure that benefits are continued as specified above.~~

~~(c) The Department shall take into consideration any recommendation from the State Insurance Commissioner prior to making a final decision on the adequacy of plans for handling insolvency. The Department will advise the State Insurance Commissioner of any action taken as a result of any recommendation, and if no action is taken or if not all of the recommendation is acted upon, the Department shall advise the State Insurance Commissioner of the reason(s) for no or partial action.~~

310:655-27-4. Disenrollment for cause [REVOKED]

~~An HMO may disenroll an individual member of a group for cause such as failure to pay premiums or copayments, fraud, or misuse of identification card or if the enrollee's behavior is abusive, disruptive, threatening, or uncooperative to the extent that continued membership in the HMO seriously impairs the HMO's ability to furnish services to either the enrollee or other enrollees. Before disenrolling the enrollee, the HMO shall:~~

~~(1) Make a serious effort to resolve the problem presented by the enrollee, including the use or attempted use of the HMO's grievance procedures;~~

~~(2) Ascertain that the enrollee's behavior does not directly result from an existing medical condition; and~~

~~(3) Document the problems, efforts, and medical conditions that demonstrate the HMO's conformity to OAC 310:655-27-4.~~

310:655-27-5. Certification of creditable coverage [REVOKED]

~~(a) For the purpose of OAC 310:655-27-5, "creditable coverage" shall have the same meaning as described in section 2701(c) of the Public Health Service Act.~~

~~(b) An HMO shall issue to individuals and members of a group a certificate of creditable coverage when individual or group coverage terminates. Said certificates shall be issued in accordance with the requirements and specifications of sections 2701 (c), (d), and (e) of the Public Health Service Act.~~

SUBCHAPTER 29. DISCONTINUATION OF HMO [REVOKED]

310:655-29-1. Notice [REVOKED]

~~An HMO shall give the Department at least one hundred eighty (180) days written notice of any decision to cease doing business. The HMO must submit for the Department's approval all notices, press releases, conversion agreements, memorandums of understanding, or other marketing or informational materials prior to their release and effective dates.~~

310:655-29-2. Replacement coverage [REVOKED]

~~(a) Whenever any HMO becomes insolvent, bankrupt, dissolved, discontinued or otherwise ceases doing business, all other HMOs that participated in the enrollment process with the ceasing HMO at a group's last regular enrollment period shall offer such group's enrollees of the ceasing HMO a thirty day enrollment period commencing at least thirty (30) days prior to the date of cessation of business. Each HMO shall offer such enrollees of the ceasing HMO the same coverage and rates that it had offered to the enrollees of the group at its last regular enrollment period.~~

~~(b) Any HMO entering into a separate agreement with the ceasing HMO for the conversion of enrollees, shall offer conversion to all enrollees of the ceasing HMO.~~

310:655-29-3. Individual market [REVOKED]

~~(a) If an HMO elects to discontinue offering a particular policy form for health coverage offered in the individual market, coverage under such form shall be discontinued only if:~~

~~(1) The HMO provides notice to the Department and to each covered individual provided coverage under this policy form of such discontinuation at least ninety (90) days prior to the date of the discontinuation of such coverage;~~

~~(2) The HMO offers to each individual provided coverage under this policy form the option to purchase any other individual health coverage currently being offered by the HMO for individuals in such market in the state; and~~

~~(3) In exercising the option to discontinue coverage of this policy form and in offering the option of coverage under subparagraph (b)(2), the HMO acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for such coverage.~~

~~(b) If an HMO elects to discontinue offering all health coverage in the individual market in this state, health coverage shall be discontinued only if:~~

~~(1) The HMO provides notice to the Department and to each individual of such discontinuation at least one hundred eighty (180) days prior to the date of the expiration of such coverage; and~~

~~(2) All health coverage issued or delivered for issuance in the state in the individual market is discontinued and coverage under such health coverage in such market is not renewed.~~

310:655-29-4. Group market [REVOKED]

~~(a) An HMO may discontinue offering a particular policy form of group health coverage offered in the small group market or large group market only if:~~

~~(1) The HMO provides notice to the Department and to each contractholder provided coverage under this form in such market, and to participants and beneficiaries covered under such coverage, of such discontinuation at least ninety (90) days prior to the date of the discontinuation of such coverage;~~

~~(2) The HMO offers to each contractholder provided coverage under this form in such market the option to purchase any other health coverage currently being offered by the HMO in such market; and~~

~~(3) In exercising the option to discontinue coverage of this form and in offering the option of coverage under subparagraph (a)(2) above, the HMO acts uniformly without regard to the claims experience of those contractholders or any health status related factor that relates to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for such coverage.~~

~~(b) In any case in which an HMO elects to discontinue offering all health coverage in the small group market or the large group market, or both, in this state, health coverage shall be discontinued only if:~~

~~(1) The HMO provides notice to the Department and to each contractholder, and participants and beneficiaries covered under such coverage, of such discontinuation at least one hundred eighty (180) days prior to the date of the discontinuation of such coverage; and~~

~~(2) All health coverage issued or delivered for issuance in this state in such markets is discontinued and coverage under such health coverage in such market is not renewed.~~

310:655-29-5. Market reentry [REVOKED]

~~In the case of a discontinuation in the group or individual markets, the HMO may not provide for the issuance of any group or individual health coverage in this state during the 5 year period beginning on the date of the discontinuation of the last health coverage not renewed.~~

SUBCHAPTER 31. FAILURE TO OBTAIN LICENSE [REVOKED]

310:655-31-1. Restrictions [REVOKED]

~~HMOs in the State of Oklahoma are subject to the following restrictions:~~

~~(1) The Department shall grant licenses only for those proposed HMOs which are found by the Department to be in conformity with the Act and these rules.~~

~~(2) Only those HMOs which are granted licenses to operate by the Department shall be operated within the State of Oklahoma.~~

~~(3) An HMO which has been granted a license to operate shall enroll only those persons who either work in the service area, reside in the service area, or work and reside in the service area, except as provided in OAC 310:655-45. No part of this subsection shall require an HMO to offer an HMO plan to members who reside outside that HMO's approved service area.~~

310:655-31-2. Prohibitions [REVOKED]

~~No person may proceed to operate an HMO, or use in its name, logo, contracts, or literature the phrase "health maintenance organization" or the initials "HMO", nor imply, directly or indirectly, that it is a health maintenance organization, nor hold itself out to be a health maintenance organization, unless that person first seeks and obtains an HMO license.~~

310:655-31-3. Enforcement [REVOKED]

~~If a person violates the provisions of 310:655-31-2, the Department shall notify in writing the person who has unlawfully commenced the operation of an HMO to cease and desist. If any person continues the violation, the Department shall seek an injunction to prohibit the continued offering or development of the service.~~

SUBCHAPTER 33. REPORTS AND PERIODIC FILINGS [REVOKED]

310:665-33-2. Application changes [REVOKED]

~~Material changes in or additions to the license application shall be submitted to the Department.~~

~~(1) All substantive changes in the approved geographic service area of the HMO shall be submitted to the Department for approval in accordance with the provisions of 310:665-11.~~

~~(2) Each HMO shall advise the Department prior to any change in its ownership. If the change affects the information previously relied upon by the Department in granting a license to the HMO, the acquiring party shall submit a new license application.~~

~~(3) Other changes in the license application shall be submitted to the Department for administrative approval.~~

~~(A) Changes in the quality assurance program or in medical group, hospital skilled nursing home, or other medically related agreements which may affect the availability of services to enrollees shall be submitted to the Department at least thirty (30) days prior to the execution of such changes.~~

~~(B) Changes in the Chief Administrative Officer or in the Medical Director of the HMO shall be reported upon terminating or starting employment.~~

~~(4) The Department shall take into consideration any recommendation from the State Insurance Commissioner prior to making a final decision on proposed material changes in or additions to the license application. The Department will advise the State Insurance Commissioner of any action taken as a result of any recommendation, and if no action is taken or if not all of the recommendation is acted upon, the Department shall advise the State Insurance Commissioner of the reason(s) for no or partial action.~~

310:655-33-3. Periodic filings [REVOKED]

~~Filings required as a condition of the effectiveness of a license to operate include but are not limited to the following:~~

~~(1) An HMO shall file with the Department and the State Insurance Commissioner on or before the last day of February of each year, a statement that shall exhibit the HMO's financial condition on the thirty-first day of December of the previous year and its business of that year. Further, each HMO shall file with the Department and the State Insurance Commissioner within forty-five (45) days following the close of any calendar quarter, except the fourth quarter, a statement that shall exhibit the financial condition of the company as of the last day of the calendar quarter's last month. These statements shall be in such general form and context as approved by the Department. The statements shall be supplemented with information requested by the Department as necessary to determine the HMO's conformity to the Act and this Chapter. The accounting practices utilized shall be in accordance with Generally Accepted Accounting Principles unless otherwise proscribed by the Department. Such statements shall be subscribed and sworn to by the president and secretary of the HMO and other proper officers as indicated by original signatures.~~

~~(2) An HMO shall file with the Department all proposed changes in marketing materials, enrollee contracts, provider contracts, and risk sharing arrangements in advance of issuance if their essential content has not previously been approved.~~

~~(3) An HMO shall report any reduction of ten percent (10%) or more in physicians.~~

310:655-33-4. Department review [REVOKED]

~~The Department shall have thirty (30) days after receipt of the proposed change or required filing to make a determination on its acceptability.~~

SUBCHAPTER 35. REQUIREMENTS FOR GROUP CONTRACT, INDIVIDUAL CONTRACT AND EVIDENCE OF COVERAGE [REVOKED]

310:655-35-1. Purpose [REVOKED]

~~The purpose of this subchapter is to assure that every group and individual contract holder is entitled to a copy of the group or individual contract. The contract shall not contain provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, or which encourage misrepresentation.~~

310:655-35-2. Contents of contract [REVOKED]

~~Each contract shall contain a clear statement of the following:~~

~~(1) Name and address of the HMO.~~
~~(2) Eligibility requirements.~~
~~(3) Benefits and services within the service area.~~
~~(4) Emergency care benefits and services.~~
~~(5) Out of area benefits and services (if any).~~
~~(6) Co-payments, deductibles or other out-of-pocket expenses.~~
~~(7) Limitations and exclusions.~~
~~(8) Enrollee termination.~~
~~(9) Enrollee reinstatement (if any).~~
~~(10) Claims procedures.~~
~~(11) Enrollee grievance procedures.~~
~~(12) Continuation of coverage.~~
~~(13) Conversion.~~
~~(14) Extension of benefits (if any).~~
~~(15) Coordination of benefits (if applicable).~~
~~(16) Subrogation (if any).~~
~~(17) Description of the service area.~~
~~(18) Entire contract provision.~~
~~(19) Term of coverage.~~
~~(20) Renewal.~~
~~(21) Cancellation of group or individual contract holder.~~
~~(22) Reinstatement of group or individual contract holder (if any).~~
~~(23) Grace period.~~
~~(24) Conformity with state law.~~
~~(25) Late or special enrollment.~~

310:655-35-3. Evidence of coverage [REVOKED]

~~(a) An evidence of coverage may be filed as part of the group contract to describe the provisions required in 310:655-35-2.~~

~~(b) Every subscriber shall receive an evidence of coverage from the group contract holder or the HMO.~~

~~(c) The evidence of coverage shall not contain provisions or statements which are unfair, unjust, inequitable, misleading, deceptive, or which encourage misrepresentation.~~

~~(d) The evidence of coverage shall contain a clear and understandable statement of the requirements in 310:655-35-2.~~

310:655-35-4. Examination period [REVOKED]

~~In addition to those provisions required in 310:655-35-2, an individual contract shall provide for a ten-day period to examine and return the contract and have the premium refunded. If services were received during the ten-day period, and the person returns the contact to receive a refund of the premium paid, he or she must pay for such services.~~

310:655-35-5. Department review [REVOKED]

~~(a) No group or individual contract, evidence of coverage or amendment thereto, shall be delivered or issued for delivery in this state, unless its form has been filed with and approved by the Department.~~

~~(b) Every contract form shall be filed with the Department not less than thirty (30) days prior to delivery or issue for delivery in this state. At any time during the initial thirty (30) day period, the Department may extend the period for review for an additional thirty (30) days. Notice of an extension shall be in writing. At the end of the review period, the form is deemed approved if the Department has taken no action. The HMO must notify the Department, in writing, prior to using a form that is deemed approved.~~

~~(c) At any time, after thirty (30) days notice and for cause shown, the Department may withdraw approval of any form, or any portion thereof, effective at the end of the thirty (30) days.~~

~~(d) When a filing is disapproved or approval of a form is withdraw, the Department shall give the HMO written notice of the reasons for disapproval and the notice shall inform the HMO that within thirty (30) days of receipt of the notice the HMO may request a hearing. A hearing will be conducted in accordance with the Administrative Procedures Act.~~

~~(e) The Department may require the submission of whatever relevant information it deems necessary in determining whether to approve or disapprove a filing made pursuant to this section.~~

310:655-35-6. Benefit changes [REVOKED]

~~Each HMO shall provide to each group and individual enrollee a written statement of benefit changes for the upcoming benefit year. The statement shall identify clearly and concisely those aspects of the proposed benefits plan which differ from the current benefits plan. Such notice should be provided as soon as available, but at least thirty (30) days prior to the date by which the group or individual enrollees must choose coverage.~~

310:655-35-7. Identification cards [REVOKED]

~~The subscriber and enrollee identification card issued by an HMO shall clearly indicate the name, mailing address, and phone number for submission of requests for payment or reimbursement of claims. If the HMO requires claims to be submitted to an entity other than the licensed HMO, then the identification card shall disclose that requirement. The HMO shall not distribute a subscriber and enrollee identification card until its form has been approved by the Department.~~

SUBCHAPTER 37. CONFIDENTIALITY OF MEDICAL INFORMATION AND LIABILITY [REVOKED]

310:655-37-1. Responsibility of HMO [REVOKED]

~~(a) The HMO shall protect the confidentiality of its enrollees from public disclosure of confidential and medical information, however, this shall not be construed to prevent the Department or other legally constituted agencies of the State or Federal Government or peer review organizations from completing medical record reviews or obtaining information as required under these rules.~~

~~(b) The HMO shall have access to treatment records and other information pertaining to the diagnosis, treatment or health status of any enrollee.~~

310:655-37-2. Responsibility of the Department [REVOKED]

~~(a) Any data or information obtained by the Department pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any provider by any HMO shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this Chapter; or upon the express consent of the enrollee or applicant; or pursuant to statute or court order for the production of evidence or the discovery thereof; or in the event of claim or litigation between such person and the HMO wherein such data or information is pertinent.~~

~~(b) Information considered by a health care review committee and the records of its actions and proceedings which are used by the Department shall be kept confidential.~~

SUBCHAPTER 39. POWERS OF HEALTH MAINTENANCE ORGANIZATIONS [REVOKED]

310:655-39-1. Powers of an HMO [REVOKED]

~~The powers of an HMO include, but are not limited to, the following:~~

~~(1) The purchase, lease, construction, renovation, operation or maintenance of hospitals, medical facilities, or both, and their ancillary equipment, and such property as may reasonably be required for its principal office or for such purposes as may be necessary in the transaction of the business of the HMO.~~

~~(2) Transactions between affiliated entities, including loans and the transfer of responsibility under all contracts (provider, subscriber, etc.) between affiliates or between the HMO and its parent.~~

~~(3) The furnishing of health care services through providers, provider associations or agents for providers which are under contract with or employed by the HMO.~~

~~(4) he contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment and administration.~~

~~(5) The contracting with an insurance company licensed in this state, or with a hospital or medical service corporation authorized to do business in this state, for the provision of insurance, indemnity or reimbursement against the cost of health care services provided by the HMO.~~

~~(6) The offering of other health care services, in addition to comprehensive health care services. Selected services may be offered by an HMO on a prepaid basis to groups which provide comprehensive health services to employees through alternative health care plans.~~

~~(7) The joint marketing of products with an insurance company licensed in this state or with a hospital or medical service corporation authorized to do business in this state as long as the company that is offering each product is clearly identified.~~

~~(8) The offering of an option which allows the enrollee to choose and receive services from a non participating provider, as specified in OAC 310:655-7. The HMO must provide adequate assurances to the Department that offering this option will not impair the financial condition of the HMO.~~

~~(9) An HMO shall file notice, with adequate supporting information, with the Department and the State Insurance Commissioner prior to the exercise of any power granted in OAC 310:655-39-1(1),(2) and (4) which may affect the~~

~~financial soundness of the HMO. The Department shall disapprove such exercise of power, upon the recommendation of the State Insurance Commissioner, if it would substantially and adversely affect the financial soundness of the HMO and endanger its ability to meet its obligations. The Department shall have 30 days from the date of receipt to make a determination on acceptability.~~

310:655-39-2. Transactions between affiliates [REVOKED]

~~Notices filed under OAC 310:655-39-1(2) shall include:~~

~~(1) A description of the transaction;~~

~~(2) The reason(s) for the transaction;~~

~~(3) The value of the transaction;~~

~~(4) The source of funds, if a loan or loan repayment;~~

~~(5) A statement from the financial institution as to the availability of funds;~~

~~(6) A copy of the written agreement between the affiliates detailing the terms and conditions of the transaction; and~~

~~(7) A copy of the Board of Directors action approving the transaction.~~

SUBCHAPTER 41. MISCELLANEOUS PROVISIONS [REVOKED]

310:655-41-1. Examinations [REVOKED]

~~All HMOs and contracted providers shall make available such books, records and other pertinent data or information necessary to facilitate the periodic examinations required under OAC 310:655-17-11 and OAC 310:655-25-11.~~

310:655-41-2. Request for assistance [REVOKED]

~~(a) The Department shall expeditiously advise an HMO of each inquiry the Department receives regarding that HMO. Such inquiries need not be handled through the HMO's written grievance system established pursuant to OAC 310:655-15-7.~~

~~(b) The Department shall provide a form that an enrollee may use to request assistance on a grievance after an HMO has made a final determination in accordance with its established written grievance procedures. The Department shall review such requests and consider whether or not the request for assistance raises issues of compliance with the HMO Act or the rules. If the Department has no reason to believe that an HMO is in violation of the HMO Act or this Chapter, then the final determination of the HMO shall be upheld. If the Department has reason to believe that a violation exists, then the matter shall be considered by the Department under OAC 310:655-23.~~

~~(c) The Department shall not refer an inquiry or complaint to an HMO prior to investigating the matter if the Department has reason to believe that referring the inquiry or complaint may compromise the Department's ability to enforce the Act or this Chapter.~~

310:655-41-3. Coordination of benefits [REVOKED]

~~(a) HMOs are permitted, but not required, to adopt coordination of benefits provisions to avoid over insurance and to provide for the orderly payment of claims when a person is covered by two or more group health plans.~~

~~(b) If an HMO adopts coordination of benefits provisions, the provisions must be consistent with the coordination of benefits provisions that are in general use in Oklahoma for coordinating coverage between two or more group health insurance or health care plans.~~

310:655-41-4. Other requirements [REVOKED]

~~(a) Notwithstanding the results of any quality review completed by the Department or its designee, no solicitation of enrollees by the HMO may be made which advertises, identifies or makes a qualitative judgment concerning any health professional who provides services for an HMO.~~

~~(b) HMOs shall maintain data, records or information used to prepare required reports for a period of three years.~~

~~(c) All applications, filings and reports required under these rules shall be treated as public documents, except those which are trade secrets or privileged or confidential quality assurance, commercial or financial information, other than any annual financial statement that may be required.~~

~~(d) The HMO shall educate its providers to ensure that they know the regulations and practices of the HMO.~~

SUBCHAPTER 43. EX PARTE CONTACTS [REVOKED]

310:655-43-1. Purpose [REVOKED]

~~(a) Contacts concerning license applications before the Commissioner or the Department should be directed to the Department's application review staff. Applicants and other parties shall not attempt to discuss the merits of a particular application with the Commissioner or the hearing officer except during the preliminary conference or public hearing.~~

~~(b) If the Commissioner or hearing officer is a party to a discussion of a particular case, then they shall document the contact by reducing to writing the names of the parties and the essence of the conversation. The summary of the contact shall be included in the record of the case.~~

~~(c) Any party who attempts to make an improper ex parte communication with the Commissioner or the hearing officer may be disqualified from further participation in the review of the case.~~

SUBCHAPTER 45. GEOGRAPHIC SERVICE AREA VARIATIONS [REVOKED]

310:655-45-1. Accessibility of providers [REVOKED]

~~(a) The Department shall presume a proposed service area to be reasonable if the mean travel time is 30 (thirty) minutes or less from six equidistant points on the area boundary to the~~

~~nearest primary and emergency care delivery sites within that area.~~

~~(b) The Department shall consider approving service areas with distances of greater than 30 minutes to primary and emergency care providers, based on the following.~~

~~(1) Primary or emergency care providers are not available in the area;~~

~~(2) Primary or emergency care providers are available but do not meet the HMO's reasonable credentialing requirements;~~

~~(3) Primary or emergency care providers are unwilling or unable to enter a reasonable health services contract with the HMO; or~~

~~(4) Residents of the area customarily travel longer than 30 minutes to reach primary or emergency care providers.~~

310:655-45-2. Marketing and enrolling [REVOKED]

~~(a) All marketing, enrollment, or informational materials produced by the HMO shall specify the approved geographic service area within which contracting providers are reasonably available and accessible.~~

~~(b) The Department recognizes that under some circumstances, persons who neither live nor work in the service area desire to enroll in an HMO. Those may include, but are not limited to the following persons.~~

~~(1) Retirees;~~

~~(2) Persons living or working at or near the service area boundary, and whose neighbors are eligible for enrollment;~~

~~(3) Employees who have been relocated;~~

~~(4) Persons whose best or only health coverage option is an HMO, despite the additional travel time required;~~

~~(5) Persons who customarily choose to travel to the service area for their health services; or~~

~~(6) Family members living apart from one another, as a result of circumstances such as legal separation or divorce.~~

~~(c) The HMO must ensure that each subscriber living and working outside the service area, upon enrolling, signs a form showing understanding that his or her residence falls outside the service area and agreeing to seek all services, except emergency services as defined in the HMO contract, within the approved service area.~~

~~(d) Nothing in this section, or in the Department's approval of an HMO, shall be construed as authorization for the plan to enroll, solicit, or market to, any person who resides outside this state.~~

310:655-45-3. Required filings [REVOKED]

~~(a) Each HMO shall describe its proposed service area in terms of political boundaries, zip codes, or geographic boundaries.~~

~~(b) Each HMO shall provide to the Department a map of the complete service area clearly showing the service area boundaries, main traffic arteries, and any physical barriers such as mountains and rivers. The HMO shall show on the map the location of ambulatory and hospital providers. The HMO must mark six equidistant points along the boundary, and calculate mean travel time from those six points to the nearest primary and emergency services sites.~~

~~(c) The HMO shall provide the information required in this Section in its initial license application. Prior to any modification of the service area, the HMO must file the changed information in a license renewal application or in an application for amendment of the license.~~

SUBCHAPTER 47. REIMBURSEMENT OF CLAIMS [REVOKED]

310:655-47-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to ensure that claims for payment or reimbursement shall be processed timely and that settlements shall be paid in full.~~

310:655-47-2. Requirement to reimburse claims for point of service [REVOKED]

~~No HMO shall be required to reimburse claims for services other than emergency services unless the HMO offers a point of service option pursuant to OAC 310:655-7.~~

310:655-47-3. Responsibilities [REVOKED]

~~An HMO, prepaid health plan, or its employees and agents shall not:~~

~~(1) Pay claims reviewers based on reductions, unless the reductions are based on uniformly applied protocols designed to detect billing errors and duplicate charges;~~

~~(2) Compel a subscriber or provider to:~~

~~(A) Accept less than the full settlement of a claim; or~~

~~(B) File suit to obtain full settlement; or~~

~~(3) Knowingly misrepresent reimbursement criteria or time limits to a subscriber, provider, or their representatives.~~

310:655-47-4. Reimbursement criteria [REVOKED]

~~(a) An HMO or prepaid health plan which pays or reimburses claims shall disclose the criteria which establish how and whether a claim for services delivered by a participating or non-participating provider shall be paid. The disclosed criteria shall specify any documents required to be filed with a claim.~~

~~(b) If an HMO or prepaid health plan requires providers to use a uniform claim or billing form, the forms shall be either:~~

~~(1) The HCFA 1500, or its successor, for outpatient billing and claim submission; or~~

~~(2) The UB-92, or its successor, for hospital billing and claim submission.~~

~~(c) An HMO or prepaid health plan shall furnish to providers the following information with the uniform claim or billing form:~~

~~(1) The amount the HMO or prepaid health plan shall pay the provider for the services rendered; and~~

~~(2) Notice that the provider shall bill the HMO or prepaid health plan directly for its portion of the charges if the subscriber has paid the applicable copayment or deductible.~~

~~(d) If an HMO or prepaid health plan requires the use of a claim transmittal form, the evidence of coverage shall include a convenient method for the subscriber to request the form. The form shall be sent to the subscriber within five (5) days after request.~~

~~(e) If an HMO or prepaid health plan uses reasonable and customary charge determinations to authorize settlements, it shall:~~

~~(1) Base such determinations on prevailing charges for health services and supplies common to a geographic area; and~~

~~(2) Furnish or arrange to furnish the rationale and data sources for a determination, within ten (10) days after receipt of a provider's request for this information and for no more than a nominal copying fee.~~

~~(f) A claim shall be reimbursed identically in amount whether a subscriber or provider submits the claim.~~

~~(g) The Department shall take into consideration any recommendation from the State Insurance Commissioner prior to making a final decision on the adequacy of the reimbursement criteria. The Department will advise the State Insurance Commissioner of any action taken as a result of any recommendation, and if no action is taken or if not all of the recommendation is acted upon, the Department shall advise the State Insurance Commissioner of the reason(s) for no or partial action.~~

310:655-47-5. Deadline for claim payment [REVOKED]

~~(a) Each HMO or prepaid health plan shall ensure that all claim payments comply with the requirements of 63 O.S. Section 2514.~~

~~(b) Each HMO or prepaid health plan shall establish and maintain an auditable system for recording of all claims clearly indicating the date on which a claim is received and the date(s) any action(s) on the claim occur. This system shall also include an identifier of the entity handling the claim on behalf of the HMO.~~

~~(c) Each HMO or prepaid health plan shall file with the Department and the State Insurance Commissioner within forty-five (45) days following the close of the first three calendar quarters, and on or before the last day of February of each year for the previous year a periodic claims report. The report shall include the following schedules from the 1999 National Association of Insurance Commissioners (NAIC) statement:~~

~~(1) Schedule H, Section I, Aging of Unpaid Claims;~~

~~(2) Schedule H, Section II, Analysis of Unpaid Claims - Current Year; and,~~

~~(3) Schedule H, Section III, Analysis of Unpaid Claims - Prior Year.~~

~~(d) The Department may require an HMO or prepaid health plan to submit the report required in OAC 310:655-47-5(c) more frequently if deemed necessary.~~

~~(e) An HMO that contracts with, or delegates to, an entity to perform one or more of the HMO's claims handling functions shall in no way mitigate an HMO's responsibility to comply with the requirements of the Act or OAC 310:655-47.~~

~~(f) The Department may request the State Insurance Commissioner to conduct examinations to ensure that claims are reimbursed within the time period specified in 63 O.S. Section 2514. The reasonable cost of such examination shall be borne by the HMO.~~

310:655-47-6. Claims payment report [REVOKED]

~~(a) Each HMO or prepaid health plan shall file with the Department and the State Insurance Commissioner within forty-five (45) days following the close of the first three calendar quarters, and on or before the last day of February of each year for the previous year a periodic report on compliance with provisions in Titles 36 and 63 of the Oklahoma Statutes regarding reimbursement of claims within certain time periods.~~

~~(b) Each report shall be accompanied by a statement signed by a member of the Board of Directors or executive management attesting to the accuracy of the report.~~

~~(c) Any HMO or prepaid health plan that delegates any claim payment functions shall require the delegated entity(ies) to prepare the required report for claims the entity processes, to include the required attestation.~~

~~(d) Each HMO or prepaid health plan shall collect and submit all required report(s) as a complete package.~~

~~(e) These reports shall be in such form and context as directed by the Department.~~

310:655-47-7. Elements of a clean claim [REVOKED]

~~(a) Required clean claim elements. A provider submits a clean claim by providing the required data elements specified in OAC 310:655-47-4 to an HMO along with any attachments and additional elements, of which the provider has been properly notified pursuant to OAC 310:655-47-7.~~

~~(b) Attachments. The Center for Medicare and Medicaid Services has developed a variety of manuals that identify various attachments required of different providers for specific services. An HMO may use the appropriate Medicare standards for attachments in order to properly process claims for certain types of services. An HMO shall only require as attachments information that is either contained in or in the process of being incorporated into a patient's medical or billing record maintained by the provider. Before any attachments may be required, the HMO shall satisfy the notification procedures set forth in OAC 310:655-47-7.~~

~~(c) Additional clean claim elements. Additional elements beyond the required data elements and attachments may be required. Before any additional clean claim elements may be required, the HMO shall satisfy the notification procedures set forth in OAC 310:655-47-7. An HMO shall only require as additional clean claim elements information that is either contained in or in the process of being incorporated into a patient's medical or billing record maintained by the provider.~~

310:655-47-8. Disclosure requirements [REVOKED]

~~(a) An HMO shall not require an attachment or an additional element unless it has given the provider the disclosure mandated by this Section at least sixty (60) calendar days before requiring the attachment or additional element as an element of the clean claim.~~

~~(b) An HMO shall not revise its requirements for data elements, attachments or additional elements unless it has given the provider the disclosure mandated by this Section at least sixty (60) calendar days before requiring the data element, attachment or additional element.~~

~~(c) The HMO shall not require claims filed during the sixty (60) day period after receipt of the disclosure to include the required attachment or additional element identified in the disclosure.~~

~~(d) Methods of disclosure may include one or more of the following:~~

~~(1) A written notice to all affected providers.~~

~~(2) Updated revisions to the provider manual or other document that sets forth the claims filing procedures; or~~

~~(3) Amendments to provider contracts that specify clean claim elements.~~

~~(e) If the provider contract requires mutual agreement of the parties as the sole mechanism for requiring attachments or additional elements, then the written notice specified in this Section shall not supersede the requirement for mutual agreement.~~

~~(f) All notices shall identify with specificity the attachment(s) or additional elements(s) required for a clean claim.~~

~~(g) The disclosure required by this Section shall be presumed received by the provider in the manner provided in OAC 310:655-47-11(e).~~

310:655-47-9. Disclosure of processing procedures [REVOKED]

~~(a) In contracts with providers, or in the provider manual or other document that sets forth the procedure for filing claims as required by OAC 310:655-47-4, or by any other method mutually agreed upon by the contracting parties, an HMO shall disclose to its providers:~~

~~(1) The mailing address, including a physical address, where claims are to be sent for processing whether it be the address of the HMO, a delegated claims processor, or any other entity, including a clearing house or a repricing company designated by the HMO to receive claims;~~

~~(2) The telephone number to which providers' questions and concerns regarding claims may be directed; and~~

~~(3) The mailing address, including physical address, of any separate claims processing centers for specific types of services, if applicable.~~

~~(b) An HMO shall provide no less than sixty (60) calendar days prior written notice of any changes of address for submission of claims, and of any changes of delegation of claims payment functions, to all affected providers with whom the HMO has contracts. Except an HMO may provide less than sixty (60) days notice in situations beyond the control of the HMO.~~

~~(c) After a change of claims payment address or a change in delegation of claims payment functions, an HMO shall not premise the denial of a clean claim upon a provider's failure to file a clean claim within any contracted time period for claim filing, unless timely written notice has been given to the provider.~~

~~(d) If an HMO has delegated its claims processing functions to a third party, the delegation agreement must provide that the claims processing entity shall comply with the requirements of this Subchapter and applicable law. Any delegation agreement or provision may not be construed to limit the HMO's authority or responsibility to comply with all applicable statutory and regulatory requirements.~~

310:655-47-10. Failure to promptly pay [REVOKED]

~~(a) An HMO that fails to comply with the requirements in Titles 36 and 63 of the Oklahoma Statutes regarding reimbursement of claims and with this Subchapter shall pay the greater of:~~

~~(1) The penalty amount for late payment referred to in applicable provisions in Titles 36 and 63 of the Oklahoma Statutes; or~~

~~(2) The contracted penalty rate for late payment set forth in the contract between the provider and the HMO.~~

~~(b) Failure to pay the correct amount on a clean claim in accordance with the contract or denial of a clean claim for which payment should have been made that results in a failure to comply with the requirements of applicable provisions in Titles 36 and 63 of the Oklahoma Statutes and this Subchapter is considered a violation and may be subject to administrative penalties as set forth in OAC 310:655-49.~~

~~(c) Any amount previously paid or any charge for a non-covered service shall be deducted from the payment.~~

310:655-47-11. Date of claim receipt [REVOKED]

~~(a) A provider and an HMO may agree by contract to establish a procedure to create a rebuttable presumption regarding the date of claim receipt.~~

~~(b) If a provider and HMO do not by contract agree to a method for the establishment of a rebuttable presumption, then the procedures set forth in subsections (c) through (e) of this Section shall be used to establish a rebuttable presumption to demonstrate the date of claim receipt.~~

~~(c) The provider shall maintain a claims summary report to identify each claim and identify the batch to which multiple claims were a part. The claims summary report shall be used as a means of confirming the number of claims submitted.~~

~~(d) The summary report shall accompany each batched filing, except for electronic submissions.~~

~~(e) The provider shall submit a claim or a multiple claim batch by one of the following methods, as appropriate:~~

~~(1) United States mail first class. Claim(s) submitted by United States mail first class will be considered received on the seventh business day after the date the claim(s) was placed in the mail;~~

~~(2) Certified mail. Claim(s) submitted by certified mail will be considered received on the date the delivery receipt is signed;~~

~~(3) Overnight delivery. Claim(s) submitted by overnight delivery will be considered received on the date the delivery receipt is signed;~~

~~(4) Electronically. Claim(s) submitted electronically will be considered received on the date of verification of receipt by the HMO or the HMO's clearinghouse. Claims are to be accompanied by any system generated proof of transmission. If the HMO or its clearinghouse do not confirm receipt or reject the transmission within 24 hours of submission, the provider or the provider's clearinghouse shall provide the confirmation date conditional upon the provider or the provider's clearinghouse verifying the claim(s) contained the correct payor identification;~~

~~(5) Facsimile. Claim(s) submitted by facsimile will be considered received on the date of the facsimile confirmation, or if the transmission occurs after the HMO's working hours, on the HMO's next working day; or~~

~~(6) Hand delivery. Claim(s) submitted by hand delivery will be considered received on the date the delivery receipt is signed.~~

310:655-47-12. Terms of contracts [REVOKED]

~~Contracts between HMOs and providers shall not include terms that:~~

~~(1) Exceed the maximum number of days established for reimbursement of claims pursuant to applicable provisions in Titles 36 and 63 of the Oklahoma Statutes;~~

~~(2) Requires the provider to contact the HMO to inquire about the status of a claim; or~~

~~(3) Waive the provider's right to recover reasonable attorney fees, if such provider is the prevailing party in litigation, pursuant to applicable provisions in Titles 36 and 63 of the Oklahoma Statutes.~~

SUBCHAPTER 49. ADMINISTRATIVE PENALTIES [REVOKED]

310:655-49-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to establish penalty categories for violations of the Act, OAC 310:655 or other applicable laws.~~

310:655-49-2. Determining seriousness of violation [REVOKED]

~~(a) To determine the seriousness of the violation, the Department shall consider whether the violation constitutes:~~

~~(1) No actual harm, which has the potential for causing no more than a minor negative impact.~~

~~(2) Potential harm, which results in minimal physical, mental and/or psychosocial discomfort and/or has the potential not yet realized to compromise physical, mental and/or psychosocial well being.~~

~~(3) Minimal harm, which results in a negative outcome that has compromised physical, mental and/or psychosocial well being.~~

~~(4) Actual harm, which has caused, or is likely to cause, serious injury, impairment, or death.~~

~~(b) The Department shall also consider whether the violations:~~

~~(1) Are isolated, which is when one or a very limited number of members are affected and/or the situation has occurred only occasionally.~~

~~(2) Constitute a pattern, which is when more than a very limited number of members are affected and/or there have been repeated occurrences of the same situation.~~

~~(3) Are widespread, which is when the problem(s) are pervasive and/or present systemic failure that affected or has the potential to affect a large portion or all of the members.~~

~~(c) Other factors that may be considered are:~~

~~(1) The financial benefit to the HMO as a result of the violation;~~

~~(2) The financial harm to any member, claimant, or other person or entity caused by the violation;~~

~~(3) The number of occurrences of a violation;~~

~~(4) The prior record of the HMO in complying or failing to comply with laws, rules, or orders; and~~

~~(5) The prior record of the HMO in responding to or cooperating with the Department in reporting or providing information.~~

310:655-49-3. Available remedies [REVOKED]

~~The Department may impose one or more of the following remedies:~~

~~(1) Plan of correction;~~

~~(2) Department monitoring;~~

~~(3) Monetary penalties;~~

~~(4) Suspension of license; or~~

~~(5) Revocation of license.~~

310:655-49-4. Categories of remedies [REVOKED]

~~(a) Remedies specified in OAC 310:655-49-3 are grouped into categories according to the seriousness of the violation.~~

~~(b) Category 1 indicates potential harm. Remedies include the following:~~

~~(1) Plan of correction, and~~

~~(2) Department monitoring.~~

~~(c) Category 2 indicates minimal harm. Remedies include the following:~~

~~(1) Monetary penalties of $100.00 per day, and~~

~~(2) Department monitoring.~~

~~(d) Category 3 indicates actual harm. Remedies include the following:~~

~~(1) Monetary penalties of $100.00 per day;~~

~~(2) Suspension of license; and~~

~~(3) Revocation of license.~~

310:655-49-5. Notice of penalty or other remedy [REVOKED]

~~(a) Administrative penalties shall be not more than One Hundred Dollars ($100.00) per day for each day the violation continues. The maximum penalty shall not exceed Twenty~~

~~Thousand Dollars ($20,000.00) for any related series of violations.~~

~~(b) The notice of penalty or other remedy shall include the following, as they apply:~~

~~(1) The nature of the violation;~~

~~(2) The statutory basis for the penalty;~~

~~(3) The amount of penalty per day of violation;~~

~~(4) Any factors specified in OAC 310:655-49-2 that were considered;~~

~~(5) The date on which the penalty begins to accrue;~~

~~(6) When the penalty stops accruing;~~

~~(7) When the penalty is collected; and~~

~~(8) Instructions for responding to the notice.~~

~~(c) The Department may consider whether corrective activities were initiated and implemented by the HMO before the violation was noted by or brought to the attention of the Department and before the HMO was made aware that the Department was investigating the alleged violation.~~

310:655-49-6. Effective date and duration of penalty or other remedy [REVOKED]

~~(a) A penalty or other remedy is effective ten (10) days after the date the HMO is notified of the decision to impose the penalty or other remedy.~~

~~(b) The penalty or other remedy remains in effect until the Department notifies the HMO that the Department is satisfied that the basis for imposing the penalty or other remedy has been corrected and is not likely to recur.~~

~~(c) If the Department determines that the HMO's conduct poses a serious threat to an enrollee's health and safety, the Department may make the penalty or other remedy effective immediately.~~

~~(d) Prior to imposing penalties or other remedies:~~

~~(1) The HMO will be advised, in writing, that the Department has reason to believe that a violation exists or has occurred;~~

~~(2) The HMO will be allowed the opportunity to provide documentation to show that the HMO is not in violation; and~~

~~(3) The Department will then determine whether to take additional action against the HMO's license, impose monetary penalties or impose other remedies.~~

SUBCHAPTER 51. COORDINATION WITH STATE INSURANCE COMMISSIONER [REVOKED]

310:655-51-1. Purpose [REVOKED]

~~Subchapter 51 establishes procedures to ensure an effective working relationship between the Health and Insurance Departments.~~

310:655-51-2. Exchange of information [REVOKED]

~~(a) The Department shall forward to the State Insurance Commissioner for review:~~

~~(1) Copies of all HMO license applications including initial, renewal and amended applications.~~

~~(2) Copies of all requests pertaining to minimum net worth or security deposit.~~

~~(3) Copies of all filings relating to liability coverage, insolvency protections, projections or other financial or monetary matters.~~

~~(4) Copies of all filings relating to a proposed change in a premium rate schedule or rating method.~~

~~(b) The Department shall forward to the HMO all requests for supplemental information resulting from the State Insurance Commissioner's review of information.~~

~~(c) The Department shall advise the State Insurance Commissioner of any information filed by an HMO in response to a request from the Insurance Commissioner.~~

~~(d) The Department shall take into consideration any recommendation from the State Insurance Commissioner. The Department will advise the State Insurance Commissioner of any action taken as a result of any recommendation, and if no action is taken, or if not all of the recommendation is acted upon, the Department shall advise the State Insurance Commissioner of the reason(s) for no or partial action.~~

310:655-51-3. Complaints [REVOKED]

~~(a) The Department shall receive from the State Insurance Commissioner each complaint or other information it receives and forwards relating to the operation of an HMO.~~

~~(b) The Department shall process each complaint as if it had been filed with the Department.~~

~~(c) The Department shall advise the State Insurance Commissioner of the results of the investigation on any complaint forwarded from the State Insurance Commissioner.~~

~~(d) The Department shall advise the State Insurance Commissioner of each complaint or other information the Department receives relating to the operation of an insurer.~~

310:655-51-4. Recommendations [REVOKED]

~~(a) The Department shall take into consideration any recommendation from the State Insurance Commissioner.~~

~~(b) The Department shall advise the State Insurance Commissioner of any action taken as a result of any recommendation.~~

~~(c) If no action is taken, or if not all of the recommendation is acted upon, the Department shall advise the State Insurance Commissioner of the reason(s) for no or partial action.~~

~~(d) When a change in recommendation is received, the Department will coordinate activities with the State Insurance Commissioner to address the recommendation, if such coordination is determined to be appropriate.~~

~~(e) The Department shall request recommendations from the Insurance Commissioner on the adequacy of any information filed with or forwarded to the State Insurance Commissioner.~~

310:655-51-5. Review and analysis functions [REVOKED]

~~(a) The Department shall advise the State Insurance Commissioner of each action to approve, deny or modify a license,~~

~~and of any enforcement or administrative action initiated against an HMO.~~

~~(b) When the Department determines that a negative action is needed against an HMO, the Department shall advise the State Insurance Commissioner to plan coordinated activities, if such coordination is determined to be appropriate.~~

~~(c) The Department shall ensure that recommendations from the State Insurance Commissioner concerning possible changes in policies or procedures adopted by the State Board of Health are communicated to the Board for consideration of rule amendments.~~

~~(d) The Department shall ensure that recommendations from the State Insurance Commissioner concerning additional policies or procedures of the State Board of Health are communicated to the Board for consideration of rule amendments.~~

~~(e) The Department may request the State Insurance Commissioner to perform examinations of certain HMOs to ensure compliance with laws or rules governing reimbursement of claims.~~

SUBCHAPTER 53. EXAMINATIONS [REVOKED]

310:655-53-1. Definitions [REVOKED]

~~When used in this Subchapter, the following word shall have the following meaning unless the context clearly indicates otherwise:~~

~~**"Examiner"** means any individual or firm having been authorized by the Department to conduct an examination.~~

310:655-53-2. Nature and frequency of examinations [REVOKED]

~~(a) The Department or an examiner may conduct an examination of any HMO as often as the Department deems appropriate but shall at a minimum, conduct an examination not less frequently than once every three (3) years. In scheduling and determining the nature, scope and frequency of the examinations, the Department shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, or reports of public accountants.~~

~~(b) For purposes of completing an examination of any HMO under this Subchapter, the Department may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the Department, necessary or material to the examination of the HMO.~~

~~(c) The Commissioner may authorize any employee of the Department to exercise the Department's authority under this Subchapter.~~

310:655-53-3. Appointment of examiner [REVOKED]

~~(a) Upon determining that an examination should be conducted, the Department shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners as supplemented by rules of the Department. The Department may also employ such other guidelines or procedures, as the Department may deem appropriate.~~

~~(b) Every HMO or person from whom information is sought, including all of its officers, directors, employees and agents, shall provide to the Department and examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business and affairs of the HMO being examined. The officers, directors, employees and agents of the HMO or person shall facilitate such examination and aid in such examination so far as it is in their power to do so. The refusal of any HMO, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension, revocation or nonrenewal of any license or authority held by the HMO to engage business subject to the Department's jurisdiction.~~

~~(c) When making an examination under this Subchapter, the Department may retain attorneys, appraisers, independent actuaries, independent certified public accountants or an accounting firm or individual holding a permit to practice public accounting, certified financial examiners or other professionals and specialists as examiners, the cost of which shall be borne by the HMO which is the subject of the examination.~~

~~(d) Nothing contained in this Subchapter shall be construed to limit the Department's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or HMO work papers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the Department may deem appropriate.~~

~~(e) The Department shall forward of copy of the final report to the State Insurance Commissioner. The Department shall take into consideration any recommendation from the State Insurance Commissioner prior to making a final determination. The Department will advise the State Insurance Commissioner of any action taken as a result of any recommendation, and if no action is taken or if not all of the recommendation is acted upon, the Department shall advise the State Insurance Commissioner of the reason(s) for no or partial action.~~

310:655-53-4. Payment of charges [REVOKED]

~~Any HMO or person examined under the provisions of this Subchapter shall pay the proper charges incurred in such examination, including the actual expense of the Department or the expenses and compensation of an authorized representative and the expense and compensation of assistants and examiners employed therein.~~

310:655-53-5. Report of examination [REVOKED]

~~(a) The examiner shall prepare a report based upon the findings of the examination. This report shall include recommendations for follow-up actions and corrective actions.~~

~~(b) Two (2) copies of the report shall be submitted to the Department within fifteen (15) days after the conclusion of the examination unless otherwise approved by the Department.~~

SUBCHAPTER 55. [REVOKED]

SUBCHAPTER 57. RISK BASED CAPITAL [REVOKED]

310:655-57-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to require a minimum level of capital appropriate to the underwriting, financial, investment risks and other business and relevant risks assumed by an HMO.~~

310:655-57-2. Phase in of risk-based capital [REVOKED]

~~For risk-based capital reports required to be filed in 2003, the phase in provisions of the model act referenced in OAC 310:655-57-3 shall apply.~~

310:655-57-3. Adoption by reference [REVOKED]

~~The Department adopts by reference the 1999 National Association of Insurance Commissioners (NAIC)Risk-Based Capital (RBC) for Health Organizations Model Act and the Managed Care Organizations Risk Based Capital Report including Overview and Instructions for companies which includes the RBC formula and the required diskettes. All HMOs subject to this Section are required to file the diskettes with the Department and NAIC in accordance with and by the due date specified in the RBC instructions.~~

310:655-57-5. Actions of department [REVOKED]

~~The Department, subject to the phase in provisions in OAC 310:655-57-2, may take the following actions against an HMO that fails to maintain the authorized control level risk-based capital in the RBC Report as calculated in accordance with the RBC instructions:~~

~~(1) order the HMO to cease writing new business;~~

~~(2) place the HMO in supervision or conservation;~~

~~(3) find the HMO to be impaired as provided by OAC 310:655-25-9;~~

~~(4) apply any sanctions provided by law or rule.~~

310:655-57-6. Limitations [REVOKED]

~~In no event shall the requirements of this Subchapter reduce the amount of net worth, capital and/or surplus otherwise required by law, rule or order of the Commissioner.~~

[OAR Docket #05-714; filed 4-22-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 656. MANAGED CARE AND UTILIZATION REVIEW [REVOKED]

[OAR Docket #05-715]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 656. Managed Care and Utilization Review [REVOKED]
AUTHORITY:
State Board of Health, 63 O.S. 2001 Section 1-104, and 63 O.S. Supp. 2002 Section 2525.2 et seq. repealed effective November 1, 2003.
DATES:
Comment Period:
January 3, 2005 through February 10, 2005
Public Hearing:
February 10, 2005
Adoption:
February 10, 2005
Submitted to Governor:
February 18, 2005
Submitted to House:
February 18, 2005
Submitted to Senate:
February 18, 2005
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March 31, 2005
Legislative approval:
Failure of the legislature to disapprove the rules resulted in approval on April 14, 2005
Final adoption:
April 14, 2005
Effective:
May 26, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The purpose of the proposed rulemaking action is to revoke rules that implemented provisions in Title 63 that were repealed effective November 1, 2003. The State Board of Health promulgated a new chapter OAC 310:659, effective July 12, 2004, to implement the Health Maintenance Organization Act of 2003, (Title 36 O.S. Supp. 2003, Section 6091 et seq.) Managed Care and Utilization Review programs that previously were approved by the State Department of Health now operate under certificates of authority or licenses issued by the Oklahoma Insurance Commissioner. Chapter 656 has no application to activities currently performed by the State Health Department under Title 310.
CONTACT PERSON:
Randy Wray, Director, Managed Care Division, Health Resources Development Service, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6868, x57265; facsimile: 405-271-7360.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

310:656-1-1. Purpose [REVOKED]

~~This Chapter provides for *licensing of managed care entities that are not currently licensed by the State Department of Health as a health maintenance organization or pre paid health plan or as an insurer by the Insurance Commissioner* [63:2525.7]. This Chapter provides requirements and procedures for review of managed care plans that are operated by licensed managed care entities. Additionally, this Chapter provides requirements and review procedures for qualified utilization review programs. This Chapter is adopted under authority of the following laws: 63 O.S. Supp. 1999, Section 2525.2 et seq., (the Oklahoma Managed Care Act); and 75 O.S. Supp. 1999, Section 250.1 through 323, (Administrative Procedures Act).~~

310:656-1-2. Definitions [REVOKED]

~~In addition to terms defined in 63 O.S. Supp. 1999, Section 2525.3, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:~~

~~**"Act"** means the Oklahoma Managed Care Act, Title 63 O.S. Supp. 1999, Section 2525.2 et seq.~~

~~**"Claim reimbursement"** means repayment to a subscriber for services rendered by a noncontracting provider, or direct payment to a noncontracting provider.~~

~~**"Department"** means the Oklahoma State Department of Health.~~

~~**"Noncontracting provider"** means a health service provider who does not have financial hold harmless language meeting the requirements of OAC 310:655-25-7 in a contract with a managed care plan or managed care entity.~~

~~**"Qualified utilization review program"** means a utilization review program that the Department has determined meets the requirements of the Act and OAC 310:656.~~

~~**"Service area"** means the geographic area as defined through zip codes, census tracts, or other geographic subdivisions found by the Department to be the area within which the managed care plan or managed care entity provides or arranges for health care services that are available and accessible to its enrollees as required by the Act and OAC 310:656.~~

~~**"Utilization review program"** means a system for review of the services given a patient.~~

SUBCHAPTER 3. MANAGED CARE PLANS [REVOKED]

310:656-3-1. Applicability to plans [REVOKED]

~~The requirements of OAC 310:656-3 establish standards for the operation of managed care plans by managed care entities. Additionally, the standards in this Chapter apply to all health maintenance organizations.~~

310:656-3-2. Exception for accredited plan [REVOKED]

~~(a) Accreditation of a managed care plan by a national private accreditation body shall not be construed as exempting a managed care entity from filing an application. Application shall be made pursuant to OAC 310:656-9 and shall demonstrate conformity to the Act and OAC 310:656.~~

~~(b) The Department shall, to the extent appropriate, treat a managed care plan as meeting one or more standards in OAC 310:656-3 if the following apply:~~

~~(1) The managed care plan is accredited by a national private accreditation body recognized by the Department pursuant to OAC 310:656-7-2; and~~

~~(2) The Department finds, to the extent appropriate, that the standards in OAC 310:656-3 are at least as restrictive as requirements used by the recognized national private accreditation body in accrediting the managed care plan.~~

310:656-3-3. Plan description [REVOKED]

~~The managed care plan's written description that is provided to enrollees and prospective enrollees shall include the specific items required in Title 63 O.S. Supp. 1999, Section 2525.5.A.1.~~

310:656-3-4. Access to providers [REVOKED]

~~Each managed care entity shall include access to providers that is at least equivalent to the requirements of OAC 310:657-9.~~

310:656-3-5. Financial requirements [REVOKED]

~~Each managed care entity shall comply with financial requirements that are at least equivalent to the requirements of OAC 310:655-25.~~

310:656-3-6. Quality assurance and utilization review systems [REVOKED]

~~Each managed care entity shall establish and maintain quality assurance and utilization review systems that are at least equivalent to OAC 310:655-17.~~

310:656-3-7. Claim reimbursement [REVOKED]

~~For each managed care entity that reimburses claims for services rendered by noncontracting providers the managed care entity shall establish procedures that are at least equivalent to the requirements of OAC 310:655-47.~~

310:656-3-8. Grievance system [REVOKED]

~~Each managed care plan include an enrollee grievance system that is at least equivalent to the requirements of OAC 310:655-15-7.~~

310:656-3-9. Discontinuation of managed care plan [REVOKED]

~~Each managed care entity that discontinues operating a managed care plan shall ensure that the procedures for ceasing business comply with the requirements of OAC 310:655-29.~~

310:656-3-10. Administrative penalty [REVOKED]

~~Any managed care plan that has been determined by the Department to have violated any provisions of 63 O.S. '2525.5.A may be liable for an administrative penalty of not more than one hundred dollars ($100.00) per occurrence for each day that said violation continues. The maximum administrative penalty shall not exceed twenty thousand dollars ($20,000.00) per occurrence.~~

SUBCHAPTER 5. QUALIFIED UTILIZATION REVIEW PROGRAMS [REVOKED]

310:656-5-1. Exception for accredited program [REVOKED]

~~(a) Accreditation by a national private accreditation body shall not be construed as an exemption from applying for qualification. An accredited utilization review program that intends to obtain qualification from the Department shall make application pursuant to OAC 310:656-9 and demonstrate conformity to the Act and OAC 310:656.~~

~~(b) The Department shall, to the extent appropriate, treat a utilization review program as meeting the requirements in OAC 310:656-5 if the following apply:~~

~~(1) The utilization review program is accredited by a national private accreditation body recognized by the Department pursuant to OAC 310:656-7-2; and~~

~~(2) The Department finds, to the extent appropriate, that the standards in OAC 310:656-5 are equivalent to requirements used by the recognized national private accreditation body in accrediting the utilization review program.~~

310:656-5-2. Utilization review systems [REVOKED]

~~Each qualified utilization review program shall establish and maintain a utilization review system that is at least as restrictive as OAC 310:655-17-3, OAC 310:655-17-9, and OAC 310:655-17-10.~~

310:656-5-3. Financial requirements [REVOKED]

~~Each qualified utilization review program that assumes fiduciary responsibilities or enters risk sharing agreements for the coverage of medical or health services shall meet financial requirements that are at least equivalent to the requirements of OAC 310:657-15.~~

310:656-5-4. Claim reimbursement [REVOKED]

~~Each qualified utilization review organization shall establish claim reimbursement procedures that are at least equivalent to the requirements of OAC 310:655-47.~~

310:656-5-5. Grievance system [REVOKED]

~~Each qualified utilization review program shall establish and maintain an enrollee grievance system that is at least equivalent to the requirements of OAC 310:655-15-7.~~

SUBCHAPTER 7. NATIONAL PRIVATE ACCREDITATION PROGRAMS [REVOKED]

310:656-7-1. Applicability of accreditation reviews [REVOKED]

~~The Department shall, as appropriate, treat approval from a national private accreditation program as demonstration of a managed care plan's or utilization review program's conformity to the requirements of OAC 310:656-3 or OAC 310:656-5.~~

310:656-7-2. Accepted accreditation programs [REVOKED]

~~The Department shall maintain a list of recognized national private accreditation programs that have demonstrated qualifications that are at least equivalent to OAC 310:655-17-11. The Department's list shall include a statement of the specific standards under OAC 310:656-3 and OAC 310:656-5 to which each accreditation program's requirements are at least equivalent.~~

SUBCHAPTER 9. APPLICATIONS [REVOKED]

310:656-9-1. Application required [REVOKED]

~~(a) Each prospective managed care entity and utilization review program shall apply on forms provided by the Department. A health maintenance organization licensed under 63 O.S. Supp. 1999 Section 2501 et seq. is not required to obtain a separate license under the Managed Care Act and OAC 310:656.~~

~~(b) The person responsible for providing or arranging all required services shall be the applicant.~~

~~(c) A managed care entity may operate one or more managed care plans with one or more specialized benefits options under a single license. The managed care entity shall demonstrate that each managed care plan it operates meets the requirements of OAC 310:656-3.~~

310:656-9-2. Deadlines for filing [REVOKED]

~~(a) The application for managed care entity licensure or utilization review program qualification shall be filed with the Department at least thirty (30) days before:~~

~~(1) Commencement of operations;~~

~~(2) Expiration of the current license or qualification; and~~

~~(3) Transfer of ownership of an existing licensed managed care entity or qualified utilization review program.~~

~~(b) The Department shall notify the applicant of incomplete items within thirty (30) days after receipt of the application. The applicant shall provide additional information within ninety (90) days after receipt of the notice. Failure to submit the requested information shall result in dismissal of the application. The Department and the applicant may mutually agree to extend the deadline up to an additional ninety (90) days.~~

~~(c) The effective date of filing shall be the date the application or additional information is received by the Department.~~

310:656-9-3. Description of application form [REVOKED]

~~(a) Each application for a managed care entity license or an annual license renewal shall be accompanied by a $2,000 nonrefundable fee in the form of a check payable to the Oklahoma State Department of Health.~~

~~(b) The application requests information as appropriate to assess the conformity of a managed care plan to OAC 310:656-3 or the conformity of a utilization review program to OAC 310:656-5, as follows:~~

~~(1) A general description of the managed care plan's or utilization review program's operations, including the locations, types, and hours of providers;~~

~~(2) A copy of the managed care plan's or utilization review program's basic organizational document, such as the articles of incorporation or association, partnership or trust agreement, and all amendments;~~

~~(3) A copy of bylaws or similar document, regulating the managed care plan's or utilization review program's conduct;~~

~~(4) A list of names, addresses, and official capacities of all persons responsible for the managed care plan or utilization review program, including:~~

~~(A) All members of the governing body, the officers and directors of a corporation, and the partners or associates of a partnership or association; and~~

~~(B) Disclosure of any contracts or arrangements between them and the managed care plan, managed care entity or utilization review program, including any appearance of a conflict of interest;~~

~~(5) The medical director's name, Oklahoma license number and biographical information;~~

~~(6) The chief executive officer's name and biographical information;~~

~~(7) A description of the service area, if a managed care plan;~~

~~(8) A description of any health facilities to be used by a managed care plan;~~

~~(9) The categories and names of all participating health professionals and facilities;~~

~~(10) The policies for credentialing health professionals and for selection of providers;~~

~~(11) Projections for five (5) years which include enrollment levels, primary physician to enrollee ratios, specialty care, laboratory, diagnostic and hospital services, and revenues and expenses;~~

~~(12) A financial statement based on generally accepted accounting principles, and related documents showing the managed care entity's or utilization review program's financial capabilities;~~

~~(13) Forms of all provider and service contracts;~~

~~(14) Forms of all contracts with insurers, enrollees and groups, showing the services to which enrollees are entitled;~~

~~(15) Proposed marketing or advertising materials;~~

~~(16) Descriptions of utilization review and quality assurance processes, including any adopted treatment protocols;~~

~~(17) A description of the medical record system;~~

~~(18) Policies for developing and reporting data;~~

~~(19) Policies for dispute resolution and grievance reviews;~~

~~(20) A plan for an enrollee education program;~~

~~(21) The enrollee handbook;~~

~~(22) A report of accreditation by a recognized national private accreditation body, if applicable; and~~

~~(23) Contact person's name, address and telephone number.~~

310:656-9-4. Renewal application [REVOKED]

~~(a) The application to renew a managed care entity license requires the following:~~

~~(1) Any changes in the information provided in OAC 310:656-9-3(a); and~~

~~(2) Data on the year's experience, including revenues and expenses, changes in financial position, ambulatory encounters, encounters by type of health professional, disputes and grievances processed, quality assurance and utilization review activities.~~

~~(b) The application to renew a utilization review program qualification requires the same information filed in OAC 310:656-9-3.~~

SUBCHAPTER 11. APPROVAL OR DENIAL OF APPLICATION [REVOKED]

310:656-11-1. Conditions for approval [REVOKED]

~~(a) The Department shall issue or renew a managed care entity license when the Department finds that the managed care entity meets the requirements of the Act, OAC 310:656 and 63 O.S. Supp. 1999, Section 2550.1 et seq. (Managed Care Referral).~~

~~(b) The Department shall issue or renew a qualification when the Department finds that the utilization review program meets the requirements of the Act and OAC 310:656.~~

310:656-11-2. Duration of license or qualification [REVOKED]

~~(a) The Department may issue a license to a managed care entity with an effective operational period of one (1) year in duration.~~

~~(b) The Department may issue a qualification to a utilization review program with an effective operational period of five (5) years in duration.~~

~~(c) The Department may specify conditions that shall be satisfied before the managed care entity or qualified utilization review program accepts enrollment or offers medical and health services.~~

310:656-11-3. License or qualification transfer [REVOKED]

~~No license or qualification shall be issued to any person other than the person making application. A license or qualification shall not be transferred in whole or part to another person.~~

310:656-11-4. Denial of application [REVOKED]

~~(a) An application for license or qualification may be denied for one (1) or more of the following:~~

~~(1) Failure to meet any of the standards in the Act or OAC 310:656; or~~

~~(2) Failure to provide timely additional information required under OAC 310:656-9-2.~~

~~(b) Within ten (10) days after denial, the Department shall send written notice to the applicant. The notice of denial shall include a statement of the deficiencies on which denial was based and notice of the opportunity for hearing.~~

SUBCHAPTER 13. TERMINATION OF LICENSE OR QUALIFICATION [REVOKED]

310:656-13-1. Conditions to terminate certification [REVOKED]

~~The Department may terminate a license issued to a managed care entity or a qualification issued to a utilization review program, or take such other steps as appropriate, if the managed care entity or utilization review program:~~

~~(1) Is not in compliance with the Act or OAC 310:656;~~

~~(2) Violated its medical or health service contracts;~~

~~(3) Is unable to fulfill its obligations under outstanding contracts for the benefit of enrollees;~~

~~(4) Attempted to merchandise its services in such a manner as to misrepresent its services or capacity for service or has engaged in deceptive, misleading, or unfair practices in advertising, merchandising or promoting towards providers, enrollees, insurers or insureds;~~

~~(5) Did not correct a financial impairment as ordered by the Department; or~~

~~(6) Knowingly uses or knowingly used a provider who does not have a license, certificate or other authority to practice or furnish medical or health services.~~

310:656-13-2. Request for assistance [REVOKED]

~~(a) The Department shall expeditiously advise a managed care entity or utilization review program of each verbal inquiry or complaint the Department receives regarding a managed care plan or utilization review program.~~

~~(b) The Department shall forward to a managed care entity or utilization review program each written inquiry or complaint the Department receives regarding the managed care entity or any of its managed care plans, or the utilization review program. Such inquiries shall be handled through the managed care entity's or utilization review program's written grievance system established pursuant to OAC 310:656-3-8 and OAC 310:656-5-5.~~

~~(c) The Department shall provide a form that any person may use to register dissatisfaction with a managed care entity, a managed care plan or a qualified utilization review program. The Department shall review such filings and consider whether or not the managed care entity, managed care plan or qualified utilization review program complies with the Act and OAC 310:656. If the Department has no reason to believe that a managed care entity, managed care plan or qualified utilization review program violated the Act or OAC 310:656, the managed care entity's, managed care plan's or qualified utilization review program's action shall be upheld. If the Department has reason to believe that a violation exists, then the Department shall consider the matter under OAC 310:656-13-1.~~

~~(d) The Department shall not refer an inquiry or complaint to a managed care entity or utilization review program prior to investigating the matter if the Department has reason to believe that referring the inquiry or complaint may compromise the Department's ability to enforce the Act or OAC 310:656.~~

310:656-13-3. Application after termination [REVOKED]

~~A managed care entity or utilization review program that has had its license or qualification terminated shall follow the procedures for an application specified at OAC 310:656-9. With the application for license or qualification, the applicant shall submit evidence that the conditions causing the termination have been corrected.~~

SUBCHAPTER 15. QUALITY EXAMINATIONS [REVOKED]

310:656-15-1. Periodic examinations [REVOKED]

~~The Department shall examine the quality of services of each managed care entity and qualified utilization review program at least once every three (3) years and more often if necessary for the protection and in the interest of the people of Oklahoma and enrollees of each managed care plan and qualified utilization review program. Such examinations shall cover the services offered directly by the managed care plan or qualified utilization review program and services arranged through contracts with providers.~~

310:656-15-2. Examinations by accreditation programs [REVOKED]

~~The Department may conduct the examination or the Department may require the managed care plan or qualified utilization review program to contract for the examination. If the Department requires the certified managed care plan or qualified utilization review program to contract for the examination, the managed care plan or qualified utilization review program shall select a recognized program from a list maintained by the Department pursuant to OAC 310:656-7-2.~~

SUBCHAPTER 17. RESTRICTED ACTS, PROHIBITED ACTS AND ENFORCEMENT [REVOKED]

310:656-17-1. Restricted acts [REVOKED]

~~Managed care entities are subject to the following restrictions:~~

~~(1) The Department shall grant licenses only to those proposed managed care entities whose managed care plans are found by the Department to be in conformity with the Act and OAC 310:656.~~

~~(2) Only those managed care entities that are granted licenses by the Department shall operate managed care plans within the State of Oklahoma.~~

~~(3) A managed care plan shall enroll only those persons who either work in the service area, reside in the service area, or work and reside in the service area. No part of this subsection shall require a managed care entity to offer a managed care plan to members who reside outside the approved service area.~~

310:656-17-2. Prohibited acts [REVOKED]

~~(a) No person may proceed to operate a managed care plan, or use in its name, logo, contracts or literature the phrase "managed care plan" nor imply directly or indirectly that it is a managed care plan nor hold itself out to be a managed care plan, unless that person first seeks and obtains a managed care entity license.~~

~~(b) No person may use the phrase "qualified utilization review program" nor imply that it is a qualified utilization review program unless that person first obtains qualification.~~

~~(c) No managed care plan, managed care entity or utilization review program shall imply that licensure or qualification authorizes the managed care plan, managed care entity or qualified utilization review program to provide services except as authorized under the Act and OAC 310:656.~~

310:656-17-3. Enforcement [REVOKED]

~~If a person violates the provisions of 310:656-17-1 or 17-2, the Department shall notify in writing the person who has unlawfully commenced the operation of a managed care plan to cease and desist. If any person continues the violation, the Department shall seek an injunction to prohibit the continued offering or development of the service.~~

SUBCHAPTER 19. REPORTS, PERIODIC FILINGS AND RECORDS [REVOKED]

310:656-19-1. Application changes [REVOKED]

~~(a) Material changes in or additions to the license or qualification application shall be submitted to the Department.~~

~~(1) All substantive changes in the approved geographic service area of a managed care plan shall be submitted to the Department for approval in accordance with the provisions of OAC 310:656-9.~~

~~(2) All changes in the approved ownership of the managed care entity or qualified utilization review program shall be submitted to the Department for approval in accordance with the provisions of OAC 310:656-9.~~

~~(b) Other changes in the license or qualification application shall be submitted for administrative approval.~~

~~(1) Changes in the quality assurance program or in medically related agreements that affect the availability of services to enrollees shall be submitted at least thirty (30) days prior to the execution of such changes.~~

~~(2) Changes in the Chief Administrative Officer or in the Medical Director shall be reported upon terminating or starting employment.~~

310:656-19-2. Periodic filings [REVOKED]

~~As a condition of the effectiveness of a license to operate a managed care plan, a managed care entity shall file with the Department statements that shall exhibit the managed care plan's financial condition. These statements shall be due:~~

~~(1) On or before the last day of February of each year for the previous calendar year;~~

~~(2) Within forty-five (45) days following the close of any calendar quarter for that quarter.~~

310:656-19-3. Changes in contracts and marketing materials [REVOKED]

~~(a) A managed care entity or utilization review program shall file with the Department all changes in marketing materials, enrollee contracts, and provider contracts at least thirty (30) days in advance of issuance if their essential content has not previously been approved by the Department.~~

~~(b) A managed care plan shall report any reduction of ten percent (10%) or more in the number of contracting physicians.~~

310:656-19-4. Department review [REVOKED]

~~The Department shall have thirty (30) days after receipt of a proposed change or required filing to make a determination on its acceptability.~~

310:656-19-5. Books and records [REVOKED]

~~Each managed care entity and contracted provider shall make available such books, records and other pertinent data or~~

~~information necessary to facilitate the periodic examinations required under OAC 310:656-15 and OAC 310:655-25-11.~~

[OAR Docket #05-715; filed 4-22-05]

TITLE 318. HIGHWAY CONSTRUCTION MATERIALS TECHNICIAN CERTIFICATION BOARD CHAPTER 10. EXAMINATION AND CERTIFICATION

[OAR Docket #05-617]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
318:10-1-3. Areas of certification [AMENDED]
318:10-1-7. Temporary ~~Certification~~and apprentice certifications [AMENDED]
318:10-1-10. Grounds for discipline [AMENDED]
318:10-1-11. Fees [AMENDED]
AUTHORITY:
Oklahoma Highway Construction Materials Technician Registration Act; 69 O.S. Supp 2001 § 1954
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Oklahoma Highway Construction Materials Technician Registration Act (69 O.S. Section 1953) effective on July 1, 1999 created a new board for the purpose of administering a training and certification program for technicians involved in sampling and/or testing highway construction materials. Rules covering these efforts were finally adopted on May 5, 2000 and revised three times prior to this Rulemaking action. This new revision supplements formal training with an apprentice program. Under this program, an uncertified technician can develop his or her skills by conducting sampling and/or testing under the direct guidance of a certified technician. Subject to the approval of the owner, the results of such sampling and testing can be used for material acceptance purposes. Apprenticeships are limited to one year in each area of sampling and/or testing. The $100 fee charged for each apprenticeship is applied to the fee for full certification.
CONTACT PERSON:
Reynolds Toney or Scott Seiter, Materials Division, Oklahoma Department of Transportation, 200 N.E. 21st Street, Oklahoma City, Oklahoma 73105-3204, Phone 405-521-2677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A) WITH AN EFFECTIVE DATE OF MAY 26, 2005:

318:10-1-3. Areas of certification

(a) Applicants may apply for certification in various areas of construction material sampling and testing. Applicants may seek certification in one or more areas.
(b) The Board may offer training to applicants in the areas of certification. Applicants may attend the training in preparation for the certification examination(s).
(c) Applicants also may prepare for certification by sampling and/or testing construction materials under the direct guidance of certified construction materials technicians, through a temporary apprentice certification program.
(~~c~~d) Prior to obtaining certification in concrete, soil, or asphalt, applicants shall achieve a passing score on a written and practical examination in aggregates as prescribed by the Board.

318:10-1-7. Temporary ~~Certification~~ and apprentice certifications

(a) The Program Director may grant temporary certification to construction materials technicians failing to complete all applicable re-certification requirements prior to certification expiration.
(b) In order to receive a temporary certification, an applicant must (1) furnish adequate documented evidence of qualifying experience and/or education, (2) achieve a passing score on a written examination, and (3) enroll in and make full payment for the next available certification module.
(c) Temporary certifications shall expire on the date of the next available certification module.
(d) The Program Director may grant apprentice certification to apprentices sampling and/or testing construction materials under the direct guidance of certified construction materials technicians. Such apprenticeships shall be used for the sole purpose of developing knowledge and skills by the apprentice and are not prerequisite for certification.
(e) In order to receive an apprentice certification, an applicant must (1) agree to conduct, under the direct guidance of a certified construction materials technician, all sampling and/or testing which he or she performs and (2) make payment of $100.00 for certification in each area of interest.
(f) Apprentice certifications shall expire when the apprentice obtains full certification in the area of interest or one year from the beginning of the apprenticeship, whichever is earlier. Apprenticeships in more than one area of interest are acceptable; however, only one apprenticeship in any given area is allowed. (No apprenticeship may be repeated.)

318:10-1-10. Grounds for discipline

(a) The Board may revoke, suspend, reprimand, or otherwise sanction a construction materials technician upon clear and convincing evidence of the following:

(1) "Gross negligence" which shall mean a construction materials technician's willful, intentional, or bad faith failure to use due diligence in the performance of the duties of a construction materials technician; or

(2) "Misconduct" which shall include a construction materials technician's following acts or omissions:

(A) Making false or misleading statements or claims contained in laboratory samplings or testing results;

(B) Making false or misleading statements or claims concerning professional qualifications or areas of certification;

(C) Conviction of or pleading guilty or nolo contendere to a felony or drug-related offense;

(D) Attempting to bribe or improperly influence an existing or prospective client;

(E) Failure to comply with recognized professional codes or governmental regulations;

(F) Acting in a negligent or incompetent manner in the performance of duties of a construction materials technician;

(G) Practice or other behavior that demonstrates a manifest incapacity or incompetence to hold certification;

(H) Aiding or abetting an uncertified person to act as a certified construction materials technician (Providing direct guidance to an apprentice technician shall not be considered misconduct.);

(I) Accepting an assignment when it is contingent upon reporting a predetermined analysis, opinion, or conclusion or where employment or the fee paid is contingent upon the analysis, opinion, or conclusion of the construction materials technician;

(J) Failure to disclose a professional conflict of interest;

(K) Use or abuse of alcohol or of a habit-forming drug or chemical which impairs the ability of the construction materials technician to act in that capacity in a diligent and competent manner;

(L) Failure to furnish the Board, its staff, or authorized agents information legally requested or failure to cooperate with a lawful investigation conducted by or on behalf of the Board; or

(M) Continued practice as a certified construction materials technician after expiration of certification.

(b) The Board may apply to the district court for any relief not otherwise provided for by the Administrative Procedures Act.

318:10-1-11. Fees

(a) Applicants shall pay the following training fees (when applicable):

(1) Five-Day Training in Soils, Aggregates, Asphalt Materials, Concrete Materials, Asphalt Construction, or Concrete Construction: $400.00 each

(2) Three-Day Training in Statistics: $450.00 each

(3) Fees for new or modified training modules will be based on a rate of $80.00 per day.

(b) Applicants shall pay the following certification fees (when applicable):

(1) Three-Day Certification Examinations in Sampling and Testing of Asphalt: $975.00 each

(2) Two-Day Certification Examinations in Sampling and Testing of Soils: $650.00

(3) One-Day Certification Examinations in Sampling and Testing of Concrete: $325.00

(4) One-Day Certification Examinations in Sampling and Testing of Aggregates: $325.00

(5) One-Day Certification Examinations in Profilograph Operation: $375.00

(6) One-Day Certification Examinations to Supplement American Concrete Institute Certification: $325.00

(7) Three-Day Certification Examination in Field Testing of Concrete and Sampling of Soils, Aggregates, Asphalt, and Concrete: $975.00

(8) One-Day Certification Examinations in Sampling Only of Asphalt: $325.00

(9) Re-Certification Examination: Same as the Applicable Certification Fee

(10) Temporary Certification: Same as applicable certification fee (to be applied toward full certification fee if applicant is certified at the next available certification module.)

(11) Apprentice Certification: $100.00 in each area (to be applied toward full certification fee(s) if applicant is certified within one year after beginning each apprenticeship).

(~~11~~12) Fees for applicants seeking certification through reciprocity shall be one-half ($\frac{1}{2}$) the applicable certification examination fee(s).

(~~12~~13) Fees for new or modified certifications will be based on a rate of $325.00 per day.

(c) Administrative Fee for returned checks: $25.00

(d) Duplicate certificate fee: $15.00

[OAR Docket #05-617; filed 4-12-05]

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

[OAR Docket #05-677]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Human Resources Management Division (HRMD)
Part 1. General Provisions
340:2-1-7. through 340:2-1-8. [NEW]
Part 3. Internal Human Resources
340:2-1-25. through 340:2-1-27. [AMENDED]
340:2-1-29. [AMENDED]
340:2-1-34. [AMENDED]
Part 7. Recruitment, Selection, and Placement
340:2-1-78. through 340:2-1-79. [AMENDED]
340:2-1-81. through 340:2-1-82. [AMENDED]
340:2-1-84. [AMENDED]
(Reference APA WF# 04-37)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Chapter 62 of Title 74 of the Oklahoma Statutes; and Section 274a.2 of Title 8 of the Code of Federal Regulations.
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ANALYSIS:
Human Resources Management Division (HRMD) rule revisions: (1) bring rules in line with federal rules regarding time frames regarding Form I-9, Employment Eligibility Verification; (2) remove unnecessary language; (3) improve wording; and (4) place all rules pertaining to employee ethics and financial disclosures into two new sections.
CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2005:

SUBCHAPTER 1. HUMAN RESOURCES MANAGEMENT DIVISION (HRMD)

PART 1. GENERAL PROVISIONS

340:2-1-7. Financial Disclosures filed with the Ethics Commission (EC) required and designated

Financial disclosure statement. Chapter 62 of Title 74 of the Oklahoma Statutes requires the members of the Oklahoma Commission for Human Services and the Oklahoma Department of Human Services (OKDHS) Director to file financial disclosure statements with the Ethics Commission (EC). In addition, OKDHS has determined that the duties of senior administrators and division directors require each of them to file. Other employees who must file statements are those who have been designated by the Director, a senior administrator, or division director as having responsibility for taking or recommending official action regarding contracting or procurement.

(1) Financial disclosure statements must be filed upon initial employment in a position requiring the statement and no later than April 30 each year as long as the employee continues in the position.

(2) Failure to file the financial disclosure statement by the deadline may result in the employee being charged a late filing fee of up to $100 per day for each day it is late to a maximum of $1,000. Any person who fails to file a financial disclosure statement, knowingly gives false information in the financial disclosure statement, or knowingly omits required information is considered guilty of a misdemeanor.

340:2-1-8. Employee ethics and other employment

(a) **Other employment, prohibition against use of position for personal gain, and avoidance of conflicts of interest.** Employees are subject to appropriate corrective or disciplinary action if they fail to comply with the Rules of the Ethics Commission. [74 O. S. Ch. 62]

(1) Under these provisions, every employee must, during office hours, devote full time and attention, to Oklahoma Department of Human Services (OKDHS) business. An employee may not use:

(A) office hours for private gain, including activities involved in a business enterprise, such as livestock or crop farming, sale of real estate, or other business which involves self-employment; nor

(B) paid time, state offices, telephones, supplies, and equipment to further the programs or activities of private, non-profit organizations, even when the objectives of the private organization are compatible with those of OKDHS. Exceptions may occur as authorized by the division director and only for activities in which OKDHS can legitimately expend agency dollars, for example, when OKDHS is a member of an organization or in situations where OKDHS has responsibility as a member of a board or commission by law or by appointment of the executive or legislative branch of government.

(2) An employee may accept other employment outside of the employee's OKDHS regular office hours provided such employment is approved in advance and does not interfere with or is not in conflict with the employee's work within OKDHS.

(3) It is vitally important that OKDHS employees avoid both actual conflicts of interest in activities that have a strong likelihood of appearing to the general public to be conflicts of interest, such as employment with a provider who contracts with OKDHS. The employment or other activities of a spouse or other close family member may create the appearance of a conflict of interest and cause members of the general public to question the objectivity of OKDHS decision-making.

(4) An OKDHS employee may not be employed by another state agency or any provider contracting with

OKDHS without the prior written approval of the employee's division director.

(b) **Related employees.** Placement in a position that results in relatives occupying positions within a division, office, facility, or area where one relative occupies a senior administrative position must be approved in writing by the OKDHS Director or designee. OKDHS reserves the right to make placements and work assignments of personnel as necessary to eliminate or prevent situations of this nature. OKDHS policy prohibits, unless waived by the OKDHS Director or designee, the employment of any person in a position that results in:

(1) immediate supervision by a relative. Relative is defined as spouse, children, parents, stepparents, parents-in-law, grandchildren, grandparents, brothers, sisters, stepchildren, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, aunts, uncles, nieces, nephews, first cousins, or foster relationships;

(2) placement in a position within a relative's line of authority or chain of command; or

(3) two or more relatives reporting to the same immediate supervisor.

(c) **Processing applications for OKDHS benefits or services on behalf of an employee's relative or for persons living in the employee's home.** In performing their official duties, employees are impartial and perform their duties in a manner that maintains impartiality. Employees who engage in improper client relationships, as referenced in this Section, are subject to appropriate corrective or disciplinary action.

(1) An employee may not:

(A) process, certify, or approve an application for benefits, payments, or services for any relative as defined in subsection (b) of this Section, or for any unrelated person living in the employee's household. This includes a relationship to a relative that has been terminated by death, divorce, or other reasons; nor

(B) act as authorized representatives for clients receiving OKDHS program benefits without the specific written approval of the local administrator after a determination has been made that no one else is available to serve.

(2) In those offices with limited staff, it may be necessary for an employee to take an application for a person(s) listed in subsection (b) of this Section. The employee cannot certify the person(s) for benefits, payments, or services.

(d) **Client relationships.** In keeping with the mission of OKDHS to serve and protect clients, OKDHS employees assist clients in developing independence and self-sufficiency while recognizing their rights. A client is defined as a program applicant, recipient, patient, resident of an OKDHS facility, and any other person receiving or making application for OKDHS services. Rights of clients include, but are not limited to:

(1) privacy and the expectation that information obtained by OKDHS employees in the course of their duties is held confidential;

(2) treatment that conveys dignity, respect, courtesy, fairness, and good faith;

(3) expectation of high standards of personal conduct from OKDHS employees;

(4) freedom from discrimination on the basis of race, gender, age, color, creed, national origin, religion, or disability;

(5) freedom from sexual harassment;

(6) freedom from coercion to give gifts or services of value; and

(7) freedom from interference by OKDHS employees with regard to matters of individual belief or faith.

PART 3. INTERNAL HUMAN RESOURCES

340:2-1-25. Application

(a) **Classified service.** Any person interested in securing initial employment in the classified service may take the open competitive examination through the Office of Personnel Management (OPM). The individual must meet the minimum education and experience qualifications for the job family for which he or she is applying. Application to take an examination is made to OPM on Form OPM-4, State of Oklahoma Employment Application.

(1) Applications for non-competitive positions in the classified service are submitted directly to Oklahoma Department of Human Services (OKDHS) work locations using such jobs. These are primarily used in residential facilities and group homes.

(2) Form P-1, Application for Employment, is provided to the applicant ~~either during~~ prior to the initial interview or at the time of contact when his or her name appears within the hiring rule on an OPM certificate of eligibles. The applicant returns Form P-1 to the local OKDHS office.

(3) The interviewing official or local administrator is responsible for preparing Form P-6, Form Letter to Employment Reference, or Form P-7, Form Letter to Personal Reference. The applicant has a right to review the information obtained from these inquiries.

(4) The interviewing official is responsible for explaining ~~OKDHS'~~ benefits and conditions of employment.

(5) Applications of persons recommended for employment are ~~submitted~~ sent by the selecting official to the appropriate local office or the designated Human Resources Management Division (HRMD) office with the completed Form P-S-76, Applicant List.

(b) **Unclassified service.** OKDHS may post positions in the unclassified service. [OAC 340:2-1-76(13) and (14)] Persons interested in applying for unclassified positions submit any of the documents listed in (1) through (3) of this subsection and any additional, requested documentation to HRMD. An acceptable application document is:

(1) a resume with a cover letter or a transmittal document that identifies the announcement number;

(2) Form P-1 with a cover letter or a transmittal document that identifies the announcement number; or

(3) Form P-12, ~~Personal~~ Application Data ~~Summary~~ Sheet~~, and Form P-12A, Application Cover Memo~~.

340:2-1-26. Employment and assignment

(a) **Selection from Office of Personnel Management (OPM) certificate of eligibles (certificate) also known as the merit register.** The process to fill a position is initiated by use of Form P-31-A, Announcement Requisition, which is forwarded to the Human Resources Management Division (HRMD), Oklahoma Department of Human Services (OKDHS). When HRMD is notified of vacancies, and these are not filled by promotion, demotion, transfer, or reinstatement in accordance with ~~OKDHS'~~ OKDHS recruitment, selection, and placement policy and procedures, HRMD may request an OPM certificate. OPM supplies names of eligible individuals. The hiring rule is the top ten available eligibles, or anyone whose name is tied with the lowest ranked eligible within the hiring rule. [OAC 530:10-9-92 and 74 O. S. § 840-4.13] OKDHS makes its selection from the OPM certificate within the hiring rule. OKDHS may request OPM to supply a certificate consisting only of names of those persons who are residents of a local area that has been established by OKDHS for the local office. OKDHS may then select a candidate from this OPM certificate. In selecting new personnel from the OPM certificate, OKDHS may consider any information legally available concerning each applicant, including data recorded on the application, reports of interviews with applicants and references, performance evaluations, letters of reference, and background checks. OKDHS does not discriminate in any of its employment policies and is an equal opportunity employer.

(b) **Determination of availability.** Upon receipt of the OPM certificate, HRMD submits the OPM certificate to the requesting official. This official contacts applicants within the hiring rule on the list to determine if the applicants are available for an interview.

(1) If an applicant declines an offer of appointment, fails to report for a personal interview, or fails to report for duty, the circumstances are documented for the record. An eligible candidate may be considered to have declined and may be removed from consideration if he or she fails to reply to a written inquiry within seven calendar days, exclusive of the date of mailing, or if the applicant verbally declines an offer, or an opportunity for an interview with a representative of OKDHS.

(2) Information regarding an applicant's availability for appointment is transmitted to HRMD with any other pertinent information obtained regarding the applicant at the time. Form P-S-76, Applicant List, an OPM certificate, or both, are returned to HRMD.

(3) Appointment to certain positions within OKDHS requires the completion of a background check. [OAC 340:2-1-56]

(c) **Notice of appointment.** Since OKDHS administers a statewide program, staff are assigned in accordance with the particular needs of OKDHS. Form OPM-14, Request for Personnel Action, showing the OPM position identification number, job family ~~descriptor~~ with level and job code, place of assignment, pay band and salary, is provided to the new employee as notice of his or her appointment.

~~(d) **Financial disclosure statement.** State law requires all state officials and certain state employees to file the appropriate financial disclosure statement with the Ethics Commission (EC). The law requires the members of the Oklahoma Commission for Human Services and the OKDHS Director to file. In addition, OKDHS has determined that the duties of all senior administrators and all division directors require each of them to file. Other employees who must file statements are those who have been designated by the Director, any senior administrator, or any division director as having responsibility for taking or recommending official action regarding contracting or procurement.~~

~~(1) Financial disclosure statements must be filed upon initial employment in a position requiring the statement and no later than April 30 each year as long as the employee continues in the position.~~

~~(2) Failure to file the financial disclosure statement by the deadline may result in the employee being charged a late filing fee of up to $100 per day for each day it is late to a maximum of $1,000. Any person who fails to file a financial disclosure statement, knowingly gives false information in the financial disclosure statement, or knowingly omits required information is considered guilty of a misdemeanor.~~

340:2-1-27. Report of entrance on duty

(a) **Required documents.** On the day a new employee enters on duty, the supervisor of the unit of assignment completes Form ADM-68, Report of Accession, and forwards it to the Human Resources Management Division (HRMD). Documents attached to Form ADM-68 include:

(1) a copy of the employee's Social Security card. The employee's name on all personnel and payroll records is shown exactly as it appears on the Social Security card;

(2) Secretary of State (SOS) Form 100, Loyalty Oath. A signed, written loyalty oath is required for each new employee. A new SOS Form 100 is submitted with each appointment following a consecutive 30-day break in service;

(3) Form W-4, Employees Withholding Allowance Certificate, or Form W-5, Earned Income Advance Payment Certificate;

(4) Form 515-01-97R, Enrollment Application in State Retirement, except for temporary appointments. It is mandatory that each employee enrolls in the Oklahoma Public Employee's Retirement System, except for temporary appointments;

(5) Notice of Employee's Right to Continue Group Health Coverage, Consolidated Omnibus Budget Reconciliation Act (COBRA), except for temporary appointments;

(6) Form P-1-D, Application Supplement;

(7) Form F-23, Employee Longevity Service Worksheet, except for temporary appointments;

(8) United States Citizenship and Immigration Services, Form I-9, Employment Eligibility Verification~~, Immigration and Naturalization Service, United States Department of Justice~~. Pursuant to the Immigration

Reform and Control Act of 1986, Form I-9 is completed by the employing unit on the first day of employment. If the employee is unable to provide the required, original document(s), the employee must present a receipt for the application for the document(s) within three business days of entering on duty or the employee will be immediately separated from duty. However, an employee working three days or less must produce the required original documents for the completion of Form I-9 on the first day of duty. An employee who presented a receipt for the application of a document ~~The required document(s)~~ must ~~be presented~~ present the required original document within ~~21~~ 90 calendar days of entering on duty or he or she will be immediately separated from duty~~. Failure to comply with the employment verification eligibility requirements will result in the employee's immediate separation from duty~~;

(9) verification of tribal affiliation, if the employee wishes designation as Native American;

(10) insurance benefits enrollment forms, except for temporary appointments;

(11) Form ADM-133, Employee Acknowledgment of Confidentiality of Computer Accessible Case Records and Computer and Internet Usage Restrictions; and

(12) a written employee acknowledgement that the employee is serving a probationary period when entering the classified service as a direct hire, with no prior state service, reinstatement, or any other hire that does not utilize the Office of Personnel Management (OPM) certificate.

(b) **Missing documents.** If all documents are not available on the date of entry on duty, all available documents are submitted. Missing documents are submitted as soon as possible, but no later than required by law. All of the documents listed in (a)(1) through (12) of this Section are required in accordance with state and federal laws.

340:2-1-29. Appointments

(a) **Types of appointments.** All appointments are made either to the classified service or to specific positions in the unclassified service. Appointments are made in accordance with applicable Oklahoma Administrative Code (OAC) Rules, Merit System of Personnel Administration Rules (Merit Rules), and Oklahoma Department of Human Services (OKDHS) policy.

(1) **Classified service.** Classified service refers to employees and positions under the jurisdiction of the Oklahoma Merit System of Personnel Administration (Merit System) by constitutional amendment or state statute.

(2) **Unclassified service.** Unclassified service refers to employees and positions excluded from coverage of the Merit System, by constitutional amendment, state statute, or executive order and approved by the OKDHS Director. Employment in the unclassified service is considered employment-at-will.

(b) **Reinstatement.** A former employee, who had permanent status in the classified service, is eligible to be considered for reinstatement in accordance with OKDHS policy. The Human Resources Management Division (HRMD) obtains verification from the Office of Personnel Management (OPM) of the applicant's eligibility for reinstatement.

(1) Reinstatement eligibility may equal up to the period of service in probationary and subsequent permanent classified status.

(2) If a permanent, classified employee leaves a permanent, classified position for an unclassified position with no break in service, [OAC 530:10-15-10(c)(1)(G)] the period of time during which the person is eligible for reinstatement begins on the date of separation from the unclassified position rather than the date of separation from the classified position.

(3) The unclassified service does not add to the period of time eligible for reinstatement.

(4) Reinstatements to the classified service are probationary under the terms outlined in OAC 340:2-1-28 for new employees, provided the former employee has been notified, and has acknowledged in writing an understanding that probation is a condition of the job offer.

(5) An applicant whose eligibility date expires within 21 calendar days of the closing date of an individual announcement ~~will be~~ is notified that:

(A) there is insufficient time for the selection process to be completed prior to the end of his or her eligibility~~. Notification will also advise the applicant that~~; and

(B) he or she may compete for appointment in the classified service by submission of an application to the Office of Personnel Management. [Merit Rule OAC 530:10-9-10]

(c) **Temporary appointments.** When OKDHS requires the service of persons on a temporary basis, a person may be appointed into the unclassified service without regard to other provisions governing appointments. No person is appointed under this provision for more than a total of 999 hours in a 12-month period from the date of initial hire with any or all state agencies. Temporary appointments do not confer any privileges, rights of appeal, or rights of position, transfer, reinstatement, nor any other rights to any classified position under the Merit System, nor is any temporary employee entitled to any employee benefits. Local administrators and supervisors are responsible for ensuring that temporary employees do not work more than 999 hours within a 12-month period from the date of initial hire. [74 O.S. § 840-5.5(A)(8)]

~~(d) **Related employees.** Placement in a position that results in relatives occupying positions within a division, office, facility, or area where one relative occupies a senior administrative position must be approved in writing by the OKDHS Director or designee. OKDHS reserves the right to make placements and work assignments of personnel as necessary to eliminate or prevent situations of this nature. OKDHS policy prohibits, unless waived by the OKDHS Director or designee, the employment of any person in a position that results in:~~

~~(1) immediate supervision by a relative. Relative is defined as spouse, children, parents, stepparents, parents-in-law, grandchildren, grandparents, brothers, sisters, stepchildren, brothers-in-law, sisters-in-law, sons-in-law,~~

~~daughters-in-law, aunts, uncles, nieces, nephews, first cousins, or foster relationships;~~

~~(2) placement in a position within a relative's line of authority or chain of command; or~~

~~(3) two or more relatives reporting to the same immediate supervisor.~~

~~(e) **Other employment, prohibition against use of position for personal gain, and avoidance of conflicts of interest.** Employees are subject to appropriate corrective or disciplinary action if they fail to comply with the Rules of the Ethics Commission. [74 O. S. Ch. 62]~~

~~(1) Under these provisions, each employee must, during office hours, devote full time, attention, and effort to OKDHS business. He or she does not use office hours for private gain, including activities involved in a business enterprise, such as livestock or crop farming, sale of real estate, or other business which involves self-employment. Likewise, OKDHS employees do not use paid time, state offices, telephones, or supplies and equipment to further the programs or activities of private, non-profit organizations, even when the objectives of the private organization are compatible with those of OKDHS. Exceptions may occur as authorized by the division director and only for activities in which OKDHS can legitimately expend Agency dollars, for example, when OKDHS is a member of an organization or in situations where OKDHS has responsibility as a member of a board or commission by law or by appointment of the executive or legislative branch of government.~~

~~(2) An employee may accept other employment outside OKDHS regular office hours provided such employment is approved in advance and does not interfere with or is not in conflict with the employee's work within OKDHS.~~

~~(3) It is vitally important that OKDHS employees avoid both actual conflicts of interest and activities that have a strong likelihood of appearing to the general public to be conflicts of interest, such as employment with a provider who contracts with OKDHS. The employment or other activities of a spouse or other close family member may create the appearance of a conflict of interest and cause members of the general public to question the objectivity of OKDHS decision making.~~

~~(4) No OKDHS employee may be employed by another state agency or any provider contracting with OKDHS without the prior written approval of his or her division director.~~

~~(f) **Client relationships.** In keeping with its mission to serve and protect its clients, OKDHS employees assist them in developing independence and self-sufficiency and recognize their rights. A client is defined as a program applicant, recipient, patient, resident of OKDHS facilities, and any other person receiving or making application for OKDHS services. Rights of clients include, but are not limited to:~~

~~(1) privacy and the expectation that information obtained by OKDHS employees in the course of their duties is held confidential;~~

~~(2) treatment that conveys dignity, respect, courtesy, fairness, and good faith;~~

~~(3) expectation of high standards of personal conduct from OKDHS employees;~~

~~(4) freedom from discrimination on the basis of race, sex, age, color, creed, national origin, religion, or disability;~~

~~(5) freedom from sexual harassment;~~

~~(6) freedom from coercion to give gifts or services of value; and~~

~~(7) freedom from interference by OKDHS employees with regard to matters of individual belief or faith.~~

~~(g) **Processing applications for OKDHS benefits or services on behalf of an employee's relative or for persons living in the employee's home.** In performing their official duties, employees are impartial and perform their duties so as to neither endanger their impartiality nor provide occasion for distrust of their impartiality. Employees who engage in improper client relationships, as referenced in this Section, are subject to appropriate corrective or disciplinary action.~~

~~(1) No employee may process, certify, or approve an application for benefits, payments, or services for any relative as defined in subsection (d) of this Section, or for any unrelated person living in the employee's household. This includes a relationship to a relative that has been terminated by death, divorce, or other reasons. In addition, employees may not act as authorized representatives for clients receiving OKDHS program benefits without the specific written approval of the local administrator after a determination has been made that no one else is available to serve.~~

~~(2) In those offices with limited staff, it may be necessary for an employee to take an application for a person(s) listed in subsection (d) of this Section. The employee does not certify the person(s) for benefits, payments, or services.~~

340:2-1-34. Employment verifications and references

(a) **Responses to employment verification inquiries.** Oklahoma Department of Human Services (OKDHS) responses to employment verification inquiries, such as credit references, work status inquiries, and employment references on employees or former employees are made either by the OKDHS Finance Division or the Human Resources Management Division (HRMD) except as noted in (b) of this Section.

(1) Finance Division or HRMD provides only the employee's or former employee's correct name, dates of employment, and the current or last job family descriptor (JFD) and level held.

(2) An employee's or former employee's address, Social Security number, or other information is not provided.

(3) Only salary confirmation information is provided.

(4) Additional information may be released only upon ~~Finance Division's or HRMD's~~ receipt of a ~~notarized~~ written authorization from the employee or former employee.

(b) ~~**Professional references**~~ **References.** ~~Supervisors and managers must respond to reference requests initiated within OKDHS.~~ Professional references must be void of opinion,

defamation, retaliation, and information that is discriminatory in nature and must not violate confidentiality.

(1) **Internal requests.** Supervisors and managers must respond to reference requests initiated within OKDHS. The response is in writing either by memo or e-mail.

(2) **External requests.** Managers and supervisors do not respond to verbal requests for references. Form P-15, Professional Reference Release, is used to provide references.

(c) **Individual or personal references.** Employees or former employees frequently ask administrators, managers, supervisors, or co-workers for personal references. Such references do not express OKDHS official position. Individuals providing references are cautioned that they may be liable and subject to discipline for providing incorrect, inappropriate, or exaggerated references or information that could place OKDHS at risk.

PART 7. RECRUITMENT, SELECTION, AND PLACEMENT

340:2-1-78. Method of application

(a) To be eligible to compete for a position, applicants must ~~submit two copies of~~ ensure that a properly ~~a~~ completed Form P-12, ~~Personal~~ Application ~~Memo and~~ Data ~~Summary~~ Sheet ~~to~~ is received at the designated location ~~before~~ by 5:00 p.m. on the closing date ~~and time~~ as specified on the vacancy posting. Alternate methods of submission include:

(1) faxing the application to the designated location in the job announcement. Fax telephone numbers are located on Form P-12;

(2) ~~submission of~~ sending the application as an attachment to an e-mail for announcements that allow e-mail ~~submissions~~ applications. E-mail ~~submission is~~ applications are sent to the Web site address specified in the job announcement. If invited to interview, the applicant is required to sign the application attesting to the authenticity of the information before a hiring decision is made. Failure to sign the application when requested results in withdrawal of the application from further consideration.

(b) OKDHS employees interested in ~~intraagency~~ intra-agency transfer or demotion for a specific position must submit a written request, which may be an e-mail message to the local administrator of the position.

(c) Illegible applications, as determined by the Human Resources Management Division (HRMD), are not accepted. ~~These applicants are~~ The applicant is notified.

340:2-1-79. Eligibility to compete for positions in the classified service

(a) Eligible applicants must possess the required minimum education and experience for the job family descriptor (JFD) and level and any announced selective qualifications within 30 days of the closing date of an announcement.

(b) If the vacancy posting indicates Oklahoma Department of Human Services (OKDHS) employees only, then applicants must be a:

(1) current permanent, classified OKDHS employee;

(2) former permanent, classified OKDHS employee with current permanent, classified status with another state agency;

(3) current unclassified, OKDHS employee with reinstatement eligibility to the classified service; or

(4) former permanent, classified OKDHS employee with reinstatement eligibility to the classified service.

(c) If the vacancy posting indicates all sources, then applicants must:

(1) meet any of the criteria listed in subsection (b) of this Section;

(2) be a current permanent, classified employee with another state agency; or

(3) be a former permanent, classified employee with another state agency with reinstatement eligibility to the classified service.

(d) If the vacancy posting indicates all sources, the selecting official may consider:

(1) candidates from an Office of Personnel Management (OPM) certificate of eligibles (certificate);

(2) candidates whose names are added to an OPM certificate for a noncompetitive class in accordance with Merit System of Personnel Administration Rules; or

(3) candidates entitled to benefits under the Special Disabled Veterans Employment Act, exempt from OPM examination requirement ~~and minimum qualification requirements;~~. [72 O.S. § 403] ~~or~~

~~(4) persons with severe disabilities, exempt from OPM examination requirement. [74 O.S. § 840-4.12]~~

(e) If the vacancy posting indicates all sources permitted by Merit Rules or OKDHS only, the selecting official may consider candidates with severe disabilities pursuant to Section 840-4.12G of Title 74 of the Oklahoma Statutes certified as severely disabled through the Department of Rehabilitation Services, and exempt from OPM examination requirements.

(1) Minimum qualifications for the JFD and level must be met by the applicant.

(A) The applicant possesses a letter issued by OPM to the applicant stating the JFD and level for which the applicant is qualified.

(B) The OPM eligibility letter expires after six months, if not renewed.

(2) The selecting official may:

(A) accept the applicant's letter and application directly up to the closing date of the announced position; or

(B) refer the applicant to apply on internal OKDHS announced positions.

(3) Section 840-4.12G of Title 74 of the Oklahoma Statutes does not apply to permanent classified employees seeking promotion, demotion, or an intra-agency transfers.

340:2-1-81. Issuing OKDHS Form P-S-76, Applicant List, and Office of Personnel Management (OPM) certificate of eligibles (certificate)

(a) The Human Resources Management Division (HRMD) prepares Form P-S-76, Applicant List, for the announced position. Applicants are screened to determine eligibility.

(b) If the position is in the classified service and announced as such, ~~and~~ applicants ~~are~~ may be considered from all sources~~,~~. ~~the~~ The local administrator may request that HRMD issue an Office of Personnel Management (OPM) certificate for the announced job family descriptor and level and authorized announced alternate hiring level, as applicable. For positions that have been identified as underutilized in the current fiscal year in the Oklahoma Department of Human Services (OKDHS) Affirmative Action Plan, a special OPM certificate is requested by the local administrator under the provisions of the Fair Employment Practices Act (FEPA) for which a goal has been established. The selecting official:

(1) must work Form P-S-76; and

(2) ~~and has the option of working~~ may work the regular OPM ~~certificate, working only~~ certificate(s) which includes the:

(A) FEPA ~~list, or working both~~ certificate; and

(B) Priority Reemployment Certificate.

340:2-1-82. Job-related selection criteria ~~and other selection procedures~~

(a) At the time a decision is made to fill a position, the supervisor of the position is responsible for reviewing and determining job-related selection criteria based on the duties of the position. These job-related selection criteria are used to develop interview questions and any other selection procedures, such as skill assessments, simulations, or case studies. The Human Resources Management Division (HRMD) is available to assist with development of interview questions.

(b) The selecting official is ~~an administrator~~ normally in the program's upper organizational structure ~~or the reviewing supervisor~~ for the position being filled. The selecting official is identified on Form P-S-76, Applicant List, when it is returned to HRMD.

(c) The selecting official considers local affirmative action goals and reviews the job-related information in paragraphs (1) through (2) of this subsection when selecting applicants for interview and making the selection decision. Job-related information is:

(1) Form P-1, Application for Employment, Form P-12, ~~Personal~~ Application ~~Memo and~~ Data ~~Summary~~ Sheet, or resume; and

(2) the employee's most recent Form OPM-111, Performance Management Process (PMP), which must be considered. Selection advisory committees may also review earlier Forms OPM-111 only when done consistently for all applicants.

(d) Work histories, if available, job-related references, and other job-related documents may be considered if done consistently for all candidates.

(e) The selecting official is responsible for validation of work experience and education required for the position. For example, if the minimum requirement for a position is a bachelor's degree, a copy of the transcript or signed registrar's letter affirming the degree has been awarded, must be reviewed.

340:2-1-84. Interviews for positions in the classified service

(a) When a position is announced as open to applicants from all sources, interviews may be conducted at the discretion of the selecting official from the Office of Personnel Management (OPM) certificate of eligibles, Fair Employment Practices Act (FEPA) certificate, and Form P-S-76, Applicant List.

(~~a~~b) ~~At~~ The selecting official ensures at least five candidates from Form P-S-76, Applicant List, are contacted for an interview. The minimum interview requirement applies only to current Oklahoma Department of Human Services (OKDHS) employees. Once a decision is made on the five candidates to be interviewed, if one or more applicants declines an interview, they do not need to be replaced. ~~The minimum interview requirement applies only to current Oklahoma Department of Human Services (OKDHS) employees.~~ If five or fewer candidates are on Form P-S-76, all are offered an interview. ~~However, candidates~~ Candidates interviewed within the last six months for the same job family descriptor and level by the same selecting official or identical selection advisory committee need not be interviewed again. Such prior interviews are considered toward meeting the minimum interview requirement.

(~~b~~c) The selecting official at his or her discretion may fill the position, cancel, or reannounce the position ~~at his or her discretion~~.

(~~c~~d) The selecting official ensures that the interview time, date, and location are conveyed to candidates selected for interviews.

(e) A permanent classified employee of OKDHS or any other agency is responsible for submitting the most recent finalized Form OPM-111, Performance Management Process (PMP), at the time the interview is held, unless required to provide it prior to the interview.

(~~d~~f) An OKDHS employee interviewed through these procedures is considered on duty when prior supervisory notification is given and he or she is currently a permanent status employee. Travel expenses are the responsibility of the employee.

[OAR Docket #05-677; filed 4-19-05]

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

[OAR Docket #05-679]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Office of Client Advocacy

Part 1. Administration
340:2-3-2 [AMENDED]
340:2-3-26 [NEW]
Part 3. Investigations
340:2-3-32 [AMENDED]
340:2-3-34 through 340:2-3-38 [AMENDED]
Part 5. Grievances
340:2-3-45 through 340:2-3-46 [AMENDED]
340:2-3-50 [AMENDED]
Part 7. Grievance and Abuse Review Committee
340:2-3-62 through 340:2-3-63 [AMENDED]
Part 9. Ombudsman Programs
340:2-3-71 through 340:2-3-72 [AMENDED]
(Reference APA WF # 04-33)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Sections 10-101 through 10-111 of Title 43A of the Oklahoma Statutes; Section 175.20 of Title 10 of the Oklahoma Statutes.

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n/a

ANALYSIS:
Office of Client Advocacy (OCA) rules are revised to: (1) amend existing definitions to conform to the Vulnerable Adults Act, Section 10-101 of Title 10 of the Oklahoma; (2) eliminate unnecessary language; (3) correct and update contact information; (4) correct spelling and grammar errors; (5) designate time frames in terms of business days rather than working days; (6) add references to Oklahoma Department of Human Services (OKDHS) forms; (7) clarify time frames for certain activities; (8) clarify responsibilities of the local grievance coordinator (LGC); (9) clarify permissible information disclosures to certain individuals; (10) include provisions referring to the Health Insurance Portability and Accountability Act (HIPAA), where applicable; (11) clarify the requirements and criteria of the investigative processes; and (12) provide information about the OCA customer complaint process.

CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY

PART 1. ADMINISTRATION

340:2-3-2. Definitions

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

"Abuse" means, with regard to:

(A) minors and youth, the causing or permitting ~~of~~ harm or threatened harm to the health, safety, or welfare of the minor or youth by a caretaker responsible for the minor's or youth's health, safety, or welfare, including but not limited to sexual abuse, sexual exploitation, and the intentional use of excessive or unauthorized force aimed at hurting or injuring the minor or youth; or

(B) vulnerable adults, abuse as defined by Section 10-103(8) of Title 43A of the Oklahoma Statutes.

"Administrator", including the person designated by an administrator to act on the administrator's behalf, means, with regard to:

(A) minors in Oklahoma Department of Human Services (OKDHS) custody ~~who live~~ living in a private residential facility, the chief administrative officer of the facility;

(B) minors in OKDHS custody in an OKDHS operated shelter or group home, the director of the shelter or group home;

(C) minors in OKDHS custody and youth in voluntary care of OKDHS who live in any other setting, including any type of out-of-home placement, the applicable OKDHS county director;

(D) foster parents, the applicable OKDHS county director or area director, ~~whichever is~~ as appropriate;

(E) minors and youth in residential care facilities operated by Office of Juvenile Affairs (OJA) or Department of Rehabilitation Services (DRS), facilities which contract with or are licensed by OJA, Department of Mental Health and Substance Abuse Services (DMHSAS), the J.D. McCarty Center, or OKDHS, and other residential care facilities, the superintendent, director, chief administrative officer, or head of the facility regardless of the person's working title;

(F) day treatment programs, the person charged with responsibility for administering the program;

(G) adults and minors who are in Developmental Disabilities Services Division (DDSD) specialized foster care and DDSD specialized foster parents, the applicable DDSD area manager;

(H) residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the facility director;

(I) providers of residential services, vocational services, or in-home paraprofessional supports to individuals with developmental disabilities living in the community, the chief executive officer of the provider; and

(J) residents of group homes for persons with developmental disabilities, the director of the group home.

"Adult Protective Services" or **"APS"** means the Adult Protective Services Unit of OKDHS.

"Advocate", also known as "ombudsman" or "ombuds," means an Office of Client Advocacy (OCA) employee who provides assistance to OCA clients in exercising their rights, listening to their concerns, encouraging them to speak for themselves, seeking to resolve problems, helping protect their rights, and seeking to improve the quality of their life and care.

"Advocate general" means the chief administrative officer of the OCA designated in Section 7004-3.4(B)(1) of Title 10 of the Oklahoma Statutes. The e-mail address for the advocate general is *OCA.advocategeneral@okdhs.org.

"Authorized use of physical force" by a caretaker ~~with regard to~~ of minors and youths residing outside their homes, other than minors and youth in foster care:

(A) means the use of physical contact to control or contain a person when the caretaker reasonably considers that person to:

(i) pose a risk of inflicting harm to self or others; or

(ii) be in the process of leaving a facility without authorization.

(B) When the use of physical force is authorized, the least force necessary under the circumstances is employed. In determining whether excessive force has been used, all of the circumstances surrounding the incident are taken into consideration, including:

(i) the grounds for belief that force was necessary;

(ii) the age, gender, and strength of the parties involved;

(iii) the nature of the force employed;

(iv) the availability of alternative means of force or control; and

(v) the extent of the harm inflicted.

"Caretaker" means, with regard to:

(A) minors and youth, an agent or employee of:

(i) a public or private residential home, institution, or facility above the level of foster family care; or

(ii) a day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes; and

(B) vulnerable adults, caretaker as defined in Section 10-103(6) of Title 43A of the Oklahoma Statutes.

"Caretaker misconduct":

(A) means an act or omission that:

(i) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;

(ii) is not found to be abuse or neglect; and

(iii) results in or creates the risk of ~~injury~~ harm to a minor or vulnerable adult.

(B) includes, but is not limited to:

(i) acts or omissions that contribute to the delinquency of a minor;

(ii) unintentional excessive or unauthorized use of force not rising to abuse or neglect;

(iii) unintentionally causing mental anguish;

(iv) other acts exposing a client to harm or threatened harm to the health, safety or welfare of the client; and

(v) use of abusive or professionally inappropriate language not rising to the level of verbal abuse.

"Case manager" means the person assigned by DDSD who has the responsibility for ensuring that services to an individual are planned and provided in a coordinated fashion.

"Child placing agency" means an agency that provides social services to children and their families that supplement, support, or substitute parental care and supervision for the purpose of safeguarding and promoting the welfare of children. The agency may provide full time placement services for children away from their own homes, such as adoptive homes, foster family homes, group homes, and transitional or independent living programs.

"Client" means, with regard to:

(A) OCA's investigation services, those individuals listed in OAC 340:2-3-32(a)(2);

(B) OCA's grievance services, those individuals listed in OAC 340:2-3-45(a)(2); and

(C) OCA's ombudsman program, those individuals listed in OAC 340:2-3-71(b).

"Community services worker" or **"CSW"** means any person not a licensed health professional who is employed by or under contract with a community services provider to provide, for compensation or as a volunteer, health-related services, training, or supportive assistance as those terms are defined in Section 1025.1 of Title 56 of the Oklahoma Statutes.

"Community Services Worker Registry" or **"CSW Registry"** means the Community Services Worker Registry established by OKDHS in accordance with Section 1025.3 of Title 56 of the Oklahoma Statutes.

"Day treatment program" means a non-residential, partial hospitalization program, day treatment program, or day hospital program in which minors are provided intensive services, psychiatric, or psychological treatment.

"DDSD" means the Developmental Disabilities Services Division of OKDHS.

"DHS" or **"Department"** or **"OKDHS"** means the Oklahoma Department of Human Services.

"Disposition," with regard to OCA's intake processes, means the action taken by OCA intake in response to a referral received, pursuant to OAC 340:2-3-35.

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

"DRS" means the Oklahoma Department of Rehabilitation Services.

"E-mail" means:

(A) with regard to the advocate general, an e-mail sent to *oca.advocategeneral@okdhs.org;

(B) with regard to OCA grievance matters, an e-mail sent to *oca.grievances@okdhs.org;

(C) with regard to OCA investigation matters, an e-mail sent to *oca.investigations@okdhs.org; and

(D) with regard to OCA intake matters, *oca.intake@okdhs.org.

"Emergency" means a situation in which a person is likely to suffer death or serious physical harm without immediate intervention.

"Excessive use of force" by a caretaker, with regard to minors and youths residing outside their homes, other than minors and youth in foster care, means the failure to employ the least amount of physical force necessary under the circumstances, taking into consideration all of the circumstances surrounding the incident, including:

(A) the grounds for belief that force was necessary;

(B) the age, gender, and strength of the parties involved;

(C) the nature of the force employed;

(D) the availability of alternative means of force or control;

(E) the extent of the harm inflicted; and

(F) the method(s) of restraint and intervention approved for use with the person against whom the force was used.

"Exploitation" or **"exploit"** with regard to vulnerable adults, means exploitation or exploit as defined in Section 10-103(9) of Title 43A of the Oklahoma Statutes.

"Facility" means:

(A) a public or private agency, corporation, partnership, or other entity which:

(i) operates a residential child care center; or

(ii) contracts with or is licensed or funded by OKDHS, OJA, or DMHSAS for the physical custody, detention, or treatment of minors;

(B) an OKDHS operated shelter;

(C) an OKDHS, OJA, DMHSAS, or DRS operated residential child care center;

(D) a community-based youth services shelter or community intervention center;

(E) the J.D. McCarty Center;

(F) a day treatment program;

(G) a private psychiatric facility for minors;

(H) sanctions programs certified by OJA to provide programming for minors who are court ordered to participate in that program; or

(I) SORC, NORCE, and Greer.

"Foster care" or **"foster care services"** means continuous 24-hour care and supportive services provided for a child in a foster placement, including but not limited to the care, supervision, guidance, and rearing of a foster child by the foster parent.

"Foster child" means a child placed in a foster family placement.

"Foster parent" means an individual maintaining a foster family home who is responsible for the care, supervision, guidance, rearing, and other foster care services provided to a foster child.

"GARC" means the Grievance and Abuse Review Committee described in OAC 340:2-3-61.

"Guardian" means a person appointed by a court to ensure that the essential requirements for the health and safety of an incapacitated or partially incapacitated person, the ward, are met, to manage the estate or financial resources of the ward, or both. As used in this Subchapter, guardian includes: a general or limited guardian of the person; a general or limited guardian of the estate; a special guardian; and a temporary guardian. The term does not include a person appointed as guardian ad litem.

"Guardian ad litem" or **"GAL"** means a person appointed by a court, pursuant to Section 1415 of Title 10 of the Oklahoma Statutes, to represent the interests of an individual as specified in the court order.

"Harm or threatened harm to the health, safety, or welfare" includes but is not limited to:

(A) non-accidental physical injury or mental anguish;

(B) sexual abuse;

(C) sexual exploitation;

(D) failure to provide protection from harm or threatened harm;

(E) the unauthorized use of force; or

(F) the use of excessive force.

"Hissom class member" means an individual certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in Homeward Bound, et al. vs. The Hissom Memorial Center, et al., Case No. 85-C-437-E.

"Hotline" means the statewide, toll free hotline, 1-800-522-3511, maintained by OKDHS for the purpose of receiving reports of abuse, neglect, or exploitation of children and adults. The hotline is in operation 24 hours a day, 7 days a week.

"ICF/MR" or **"Intermediate Care Facility for the Mentally Retarded"**, also known as a "specialized facility for the mentally retarded," means a private or public residential facility, licensed in accordance with state law and certified by the federal government as a provider of Medicaid services, for mentally retarded persons as that term is defined in Title XIX rules and regulations of the Social Security Act.

"Incapacitated person" means:

(A) any person 18 years of age or older who is impaired by reason of mental or physical illness or disability, dementia, or related disease, mental retardation, developmental disability, or other cause, and whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person lacks the capacity to manage financial resources or to meet essential requirements for mental or physical health or safety without assistance from others; or

(B) a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act, Title 30 of the Oklahoma Statutes.

"Indecent exposure" means indecent exposure as defined by Section 10-103(12) of Title 43A of the Oklahoma Statutes.

"In-home supports" and **"IHS"** means services funded through Medicaid Home and Community-Based Waivers (HCBW) as defined in Section 1915(c) of the Social Security Act and administered by OKDHS DDSD, which are provided in the service recipient's home and are not residential services as defined in OAC 340:100-5-22.1 or group home services as defined in Title 10, Section 1430 of the Oklahoma Statutes.

"Injury" means any hurt, harm, appreciable physical pain, or mental anguish.

"Maltreatment" is used collectively in this Subchapter to refer to abuse, neglect, verbal abuse, exploitation, caretaker misconduct, sexual abuse, and sexual exploitation as defined in this Section.

"Medicaid personal care assistant" or **"MPCA"** means a person who provides Medicaid services funded under Oklahoma's personal care program who is not a certified nurse aide or a licensed professional.

"Mental anguish" means mental damage evidenced by distress, depression, withdrawal, severe anxiety, or unusually aggressive behavior toward self or others.

"Minor" means any person under the age of 18 years except any person convicted of a crime specified in Section 7306-1.1 of Title 10 of the Oklahoma Statutes or any person certified as an adult pursuant to Section 7303-4.3 of Title 10 and convicted of a felony.

"Minor physical injury" means a demonstrable injury reasonably expected to be treated with the administration of first aid, over the counter remedies, or both. A demonstrable injury includes damage to bodily tissue caused by non-therapeutic conduct, illness, new or an increased impairment of physical or cognitive functioning, evidence of a physical injury (for example, a laceration, bruise, burn, or fracture), and an injury which is confirmed by a physician, dentist, nurse, or other health care professional.

"Neglect" means, with regard to:

(A) minors and youth, the failure of a caretaker to provide:

(i) adequate food, clothing, shelter, medical care, or supervision which includes, but is not limited to, lack of appropriate supervision which results in sexual activity between minors; or

(ii) special care made necessary by the physical or mental condition of the minor or youth; or

(B) vulnerable adults, neglect as defined in Section 10-103(10) of Title 43A of the Oklahoma Statutes.

"OCA" means the Office of Client Advocacy of OKDHS.

"OCA intake" means the centralized intake system maintained by OCA in its Oklahoma City office that receives referrals of alleged abuse, neglect, verbal abuse, and financial exploitation.

"OJA" means the Oklahoma Office of Juvenile Affairs.

"Ombudsman" ~~and~~ or **"ombuds"**, means "advocate" as defined in this subsection.

"Personal support team" or **"team"**, formerly known as the "interdisciplinary team," means the decision-making body for service planning, implementation, and monitoring of the individual plan, as more fully described in OAC 340:100-5-52.

"Preponderance of the evidence" means information or evidence that is of a greater weight or more convincing than the information or evidence offered in opposition. It is that degree of proof which is more probable than not.

"Problem resolution" means verbal or written communications which seek to resolve concerns, complaints, service inadequacies, or issues identified by the client or members of the client's team, including the client's guardian, the OCA advocate for the client, a volunteer advocate for the client, or other persons interested in the welfare of the client.

"Provider" means a program, corporation, partnership, association, individual, or other entity that contracts with, or is licensed or funded by, OKDHS to provide community-based residential or vocational services to persons with mental retardation or developmental disabilities, or which contracts with the Oklahoma Health Care Authority to provide residential or vocational services or in-home supports to individuals with mental retardation through the Home and Community-Based Waiver.

"Residential child care center" means a 24-hour-a-day residential group care facility at which a specified number of minors, normally unrelated, reside with adults other than their parents.

"Self-neglect" means self-neglect as defined in Section 10-103(13) of Title 43A of the Oklahoma Statutes.

"Serious physical injury" means a physical injury to a person's body determined to be serious by a physician, dentist, or nurse. It includes, but is not limited to, death, fracture, dislocation of any major joint, internal injury, concussion, head injury with loss of consciousness, ingestion of foreign substances and objects that are harmful; near drowning, lacerations involving injuries to tendons or organs and those for which complications are present, lacerations requiring four or more stitches or staples to close, heat exhaustion or heatstroke, injury to an eyeball, irreversible loss of mobility, permanent damage to or loss of a tooth, skin deterioration, and a second or third degree burn and other burns for which complications are present. It also includes multiple abrasions, bruises, and minor physical injuries on the body of a person, identified around the same time or over a period of several weeks, that are unlikely to be the result of normal daily living activities.

"Sexual abuse" means, with regard to:

(A) minors and youth, rape, incest, and lewd or indecent acts or proposals, as defined by state law, by a caretaker responsible for the health, safety, or welfare of the minor or youth; or

(B) vulnerable adults, sexual abuse as defined by Section 10-103(11) of Title 43A of the Oklahoma Statutes.

"Sexual exploitation" means, with regard to:

(A) minors and youth:

(i) allowing, permitting, or encouraging a minor or youth to engage in sexual acts with others or prostitution, as defined by state law, by a caretaker responsible for the minor's or youth's health, safety, or welfare; or

(ii) allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic

photographing, filming, or depicting of a minor or youth in those acts as defined by the state law, by a caretaker responsible for the minor's health, safety, or welfare; or

(B) vulnerable adults, sexual exploitation as defined by Section 10-103(14) of Title 43A of the Oklahoma Statutes.

"Specialized foster care" means foster care provided to a minor or adult in a specialized foster home or agency-contracted home which has been certified by DDSD, is monitored by DDSD, and is funded through the Home and Community-Based Waiver Services Program administered by DDSD.

"State office" means the administrative offices of OKDHS in Oklahoma City.

"State office administrator", including the person designated by a state office administrator to act on the state office administrator's behalf, means, with regard to:

(A) grievances of minors, youths, and foster parents regarding the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS or an OKDHS operated shelter or residential facility, or of an agent or contractor of OKDHS, or a child placement agency, the director of OKDHS Children and Family Services Division (CFSD);

(B) grievances regarding a decision, behavior, or action by an OKDHS employee, agent, contractor, foster parent, or by any person residing in the same placement setting, the director of the OKDHS Field Operations Division;

(C) DDSD clients, the director of DDSD; and

(D) other OKDHS clients, the appropriate chief officer or division director.

"Subpoena" means a command to appear at a certain time and place to give testimony. A "subpoena duces tecum" is a command requiring the person subpoenaed to bring records with them.

"Suspicious injury" means an injury for which there is no credible explanation that makes it unlikely to be the result of client maltreatment.

(A) It includes but is not limited to an injury that:

(i) appears inconsistent with the offered explanation(s) for the injury;

(ii) is unusual;

(iii) cannot be explained as the result of an accident, self-injurious behavior or normal activities of daily living;

(iv) is a minor injury located on or near a private part of the body or on a part of the body that makes it unlikely to have been the result of self-injury or an accident during the course of daily living activities; and

(v) involves multiple abrasions, bruises, and minor injuries on the body of a person, identified around the same time or over a period of several weeks, which are unlikely to be the result of normal daily living activities.

(B) The determination whether an injury is suspicious is made from the point of view of an independent skeptical reviewer. An injury is suspicious if there is no credible explanation for it consistent with the injury not being the result of maltreatment.

"Unauthorized use of force" means, with regard to minors and youths residing outside their homes, other than minors and youth in foster care, a use of force that is not an authorized use of physical force as defined in this subsection. It includes unacceptable physical handling of and contact with clients including, but not limited to, slapping, kicking, punching, poking, pulling hair or an ear, pinching, using a choke hold, smothering, spitting, head butting, and tugging.

"Unexplained injury" means an injury for which there is no known credible origin or cause, even though a possible explanation for the injury may be offered.

"Verbal abuse" means verbal abuse as defined in Section 10-103(15) of Title 43A of the Oklahoma Statutes.

"Vulnerable adult" means vulnerable adult as defined by Section 10-103(5) of Title 43A of the Oklahoma Statutes.

"Ward" means a person over whom a guardianship has been given by the court.

"Youth" means, with regard to:

(A) OCA's investigation programs, a person over the age of 18 in OJA custody and residing in an OJA operated facility or a facility which contracts with OJA; or

(B) OCA's grievance programs, a person over the age of 18 in OJA custody or voluntary care of OKDHS.

340:2-3-26. Customer complaint process

(a) **Purpose and scope.** This customer complaint process provides Office of Client Advocacy (OCA) customers an opportunity to raise concerns about the services they receive from OCA and to request a review from the advocate general or designee. This process is available to OCA customers and clients, client relatives and associates, employees of other Oklahoma Department of Human Services (OKDHS) divisions, providers, and any other customer of OCA.

(b) **Procedure.**

(1) Any customer who is dissatisfied with or has a concern about OCA services, practices or procedures, or who considers the action or inaction of an OCA employee to be improper or discourteous, submits to the advocate general a written complaint detailing their concerns. The complaint is sent either electronically to OCA.advocategeneral@okdhs.org or by regular mail to Office of Client Advocacy, P.O. Box 25352, Oklahoma City, OK. 73125.

(2) The advocate general or designee reviews the complaint and informs the complainant of the results of the review within 20 business days after receipt of the complaint.

PART 3. INVESTIGATIONS

340:2-3-32. Office of Client Advocacy (OCA) investigation protocols

(a) **Legal authority, scope, and purpose.**

(1) **Legal authority.**

(A) Section 7004-3.4(A)(2)(d) of Title 10 of the Oklahoma Statutes gives OCA the responsibility to investigate allegations of caretaker abuse and neglect of minors in the State of Oklahoma:

(i) residing outside their own homes regardless of custody, other than minors in foster care;

(ii) minors who are Developmental Disabilities Services Division (DDSD) service recipients receiving in-home supports, as defined in OAC 340:2-3-2; and

(iii) in a day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes.

(B) Section 7306-2.11 of Title 10 of the Oklahoma Statutes accords youthful offenders in the Office of Juvenile Affairs (OJA) custody the same rights and services available to minors in OJA custody. This includes maltreatment investigations conducted by OCA in facilities operated by or contracting with OJA. OCA also conducts maltreatment investigations involving youths in those facilities when the juvenile court has extended its jurisdiction and OJA custody until the youth reaches age 19.

(C) Section 10-105 of Title 43A of the Oklahoma Statutes gives the Oklahoma Department of Human Services (OKDHS) responsibility to investigate allegations of caretaker abuse, neglect, verbal abuse, and exploitation of vulnerable adults. OKDHS confers on OCA the responsibility to conduct those investigations that involve Hissom class members and residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer), OKDHS operated facilities for persons with developmental disabilities.

(D) OCA investigates, pursuant to OAC 340:75-3-8.3(3), reports alleging denial of medically beneficial treatment by a medical provider to a handicapped infant.

(2) **Scope.** OCA conducts administrative investigations of allegations of caretaker maltreatment listed in this subsection. All of the individuals listed, who are clients of the facilities and providers which provide them residential care, vocational services, or day treatment, are referred to as the "client" throughout this Section and OAC 340:2-3-33 through 340:2-3-37. OCA investigates allegations of:

(A) abuse and neglect of minors, and caretaker misconduct with regard to minors, in residential care above the level of foster care regardless of custody, including but not limited to:

(i) minors in OKDHS operated or licensed shelters and group homes;

(ii) minors and youth in facilities operated by, licensed by, or contracting with OJA;

(iii) minors in community-based youth services shelters and community intervention centers which contract with OJA pursuant to Section 7302-3.5 of Title 10 of the Oklahoma Statutes;

(iv) minors in facilities operated by or contracting with Department of Mental Health and Substance Abuse Services (DMHSAS);

(v) minors in facilities operated by the J.D. McCarty Center of Oklahoma;

(vi) minors residing in facilities operated by the Department of Rehabilitation Services (DRS): the Oklahoma School for the Blind and the Oklahoma School for the Deaf; and

(vii) minors receiving services from a community services worker as that term is defined in Section 1025.1 of Title 56 of the Oklahoma Statutes;

(B) abuse and neglect of, and caretaker misconduct with regard to, minors in day treatment programs as defined in Section 175.20 of Title 10 of the Oklahoma Statutes, including sanctions programs certified by OJA to provide programming for minors who are court ordered to participate in that program;

(C) abuse, neglect, and verbal abuse of, and caretaker misconduct with regard to, residents of SORC, NORCE, and Greer;

(D) abuse, neglect, verbal abuse, and exploitation of Hissom class members who live in Oklahoma and who do not reside in a private intermediate care facility for the mentally retarded (ICF/MR); and

(E) abuse, neglect, verbal abuse, and exploitation of vulnerable adults receiving services from a community services worker or a Medicaid personal care assistant, as those terms are defined in Section 1025.1 of Title 56 of the Oklahoma Statutes, on request of the Adult Protective Services Unit of OKDHS.

(3) **Purpose.** OCA conducts independent and objective administrative investigations of suspected maltreatment of clients by caretakers in order to:

(A) protect clients from further maltreatment;

(B) deter and prevent maltreatment;

(C) provide relevant evidence in administrative and judicial proceedings;

(D) rule out unfounded allegations; and

(E) hold violators accountable.

(b) **Confidentiality.** State and federal statutes and regulations, including but not limited to, Section 7005-1.1 et seq. of Title 10 of the Oklahoma Statutes, Section 183 of Title 56 of the Oklahoma Statutes, and OAC 340:65-1-2, require confidentiality for many OKDHS records. Information about clients is confidential and is protected from unauthorized use. Only authorized individuals are given access to case records or provided information from those records.

(1) **OCA investigations involving minors and youth.** Statutes and policies regarding the confidentiality of OCA's files, records, and reports relating to investigations

involving minors and youth include, but are not limited to, the confidentiality provisions of the statutes and policies listed in (A) through (C) of this paragraph.

(A) Sections 7307-1.2 through 1.5 of Title 10 of the Oklahoma Statutes apply to OCA investigations involving minors and youth in OJA custody and in facilities that contract with OJA.

(B) Sections 7005-1.2 et seq., 7107, 7108, and 7109 of Title 10 of the Oklahoma Statutes apply to investigations involving minors, regardless of custody, residing outside their own homes.

(C) OAC 340:75-1-42 through 46 apply to OCA investigations involving minors in OKDHS custody, including information regarding placement.

(2) **OCA investigations involving vulnerable adults.** Statutes and policies regarding the confidentiality of OCA's files, records, and reports relating to investigations involving vulnerable adults, include but are not limited to (A) through (C) of this paragraph.

(A) When consulting persons knowledgeable of the circumstances of an alleged victim of abuse, neglect, or exploitation, or when making other contacts as part of the investigation or service planning process, OCA staff may disclose information necessary to ensure that the client is protected and the client's needs are met. Information may be disclosed for this purpose without a court order to specific persons acting in an official capacity with regard to the investigation, including:

(i) a district attorney or employees of the district attorney's office;

(ii) the attorney representing an alleged victim in the matter under investigation;

(iii) staff of an Oklahoma law enforcement agency or a law enforcement agency of another state;

(iv) physical or mental health care professionals involved in the evaluation or treatment of the vulnerable adult;

(v) the guardian of the vulnerable adult, in the form of a summary of the allegations in the referral;

(vi) the provider for a vulnerable adult; and

(vii) other public or private agencies or persons authorized by OKDHS to diagnose, or provide care, treatment, supervision, or other services to a person who is the subject of an OCA investigation.

(B) District attorneys, their staff, the attorney representing the alleged victim, and law enforcement agencies may receive information from or review the entire case record. All other disclosures are limited to summaries of information provided for a specific purpose. Case information from OCA records is not released for research purposes without the prior approval of the advocate general.

(C) In other situations, OCA investigative information is considered confidential under Section 10-110(A) of Title 43A of the Oklahoma Statutes and may be disclosed only by court order. Confidentiality applies to members of the news media as well as the general public. News media representatives requesting information on a specific case are referred to the advocate general, the OCA programs manager for investigations, or the OKDHS Office of Communications for a detailed explanation of OKDHS confidentiality rules.

340:2-3-34. Administrator's responsibilities regarding allegations reportable to Office of Client Advocacy (OCA)

(a) **Immediate protection for safety, health, and welfare.** If OCA intake receives an allegation of caretaker maltreatment involving an OCA client from anyone other than the administrator, or the administrator's designee, of the facility or provider responsible for the client, OCA intake promptly notifies the applicable administrator of the allegation.

(1) Upon becoming aware of an allegation of caretaker maltreatment involving an OCA client, an administrator ensures the safety, protection, and needed medical attention of any client named in the allegation and other clients receiving services from the facility or provider.

(2) When criminal activity is alleged, other than caretaker abuse or neglect unless it involves a serious physical injury, the administrator immediately notifies the appropriate local law enforcement authority. The types of criminal activity which are reported to law enforcement include, but are not limited to, the use or possession of illegal drugs, domestic abuse, illegal sexual activity, illegal use of alcohol, theft of money, ~~or~~ property, or medicine that is a controlled substance, and when someone other than a caretaker is believed to have committed the allegation.

(3) The administrator takes necessary personnel actions to ensure the protection and safety of the alleged victim(s) and other clients. OCA does not determine or approve personnel actions taken by an administrator in response to allegations reported to OCA.

(4) In the event of alleged abuse or neglect of a Hissom class member by a provider's employee or subcontractor, the administrator ensures the protection and medical attention for any class member named in an allegation or other individual served. In the event of alleged abuse or neglect by an individual serving as a provider, it is the responsibility of the class member's case manager to ensure protection, medical attention, or both for the class member. OCA intake notifies the applicable Developmental Disabilities Services Division (DDSD) area manager by e-mail within one working day of receipt of a referral of abuse or neglect by an individual serving as provider for the class member.

(b) **Preliminary assessment.** Upon learning of an incident reportable to OCA, the administrator:

(1) immediately ensures the safety of any client named in the referral and of other clients;

(2) secures any physical evidence and gathers documents within the possession of the facility or provider, custody, or control that may be relevant to the allegation;

(3) immediately takes photographs of any injuries. Photographs are taken by someone who was not involved in the incident that is the subject of the allegation relating to the injuries; and

(4) coordinates activities with OCA and any other agency or law enforcement authority involved in investigating the referral.

(c) **Collecting pertinent reports and documents.** The administrator determines which employees were present when the alleged incident occurred and requires each employee to submit a written account of the alleged incident. The administrator collects medical records, other documents and reports which pertain to the alleged incident, written statements, and other documentary evidence within the possession of the facility or provider, custody, or control and places them in a holding file for investigative use by OCA and any other investigative authority. The administrator securely maintains any documents collected during the preliminary assessment.

(d) **OCA access to documents and evidence.** Upon request, an OCA investigator is provided a copy of and access to the original of written statements, incident reports, relevant documents and records, and other reports, photos, and other evidence collected during the preliminary assessment.

(e) **Prohibition from interviewing during preliminary assessment.** Employees of the facility or provider do not conduct an investigation of an alleged incident pending OCA's decision to accept the referral for investigation or during a pending OCA investigation. To avoid the consequences of over-interviewing parties involved in an alleged incident, the preliminary assessment is limited to inquiries about who was involved, obtaining written statements, and clarifying information needed to take appropriate action to ensure client safety. Determining if a staff member engaged in maltreatment is not the goal of a preliminary assessment and is avoided until the OCA disposition is determined. This prohibition does not extend to interviews and investigations conducted by law enforcement when responding to a report of criminal activity. OCA coordinates activities with local, state, and federal law enforcement entities to seek the most appropriate investigative response to the referral.

(f) **Facility and provider contact person.** Each administrator of a facility or provider responsible for the care of any of the individuals listed in OAC 340:2-3-32(a)(2) designates a contact person to receive the notice described in subsection (a) of this Section. The administrator informs the advocate general of the name, phone number, and e-mail address of the designated contact person, and immediately notifies the advocate general in writing, by mail or e-mail, of any changes in this information. The designated contact person is reasonably available by telephone, pager, or e-mail between 8:00 a.m. and 5:00 p.m. weekdays, except holidays. Form OCA-INV-2, Designation of Contact Person for Client Maltreatment Investigations, may be used for this purpose.

(g) **Documentation provided by SORC, NORCE, and Greer.** Within one business day of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer) submitting to the Oklahoma State Department of Health (OSDH) an incident report, a five-day report or a final report regarding an allegation reported to OCA intake, the facility sends to OCA intake a copy by fax or e-mail attachment.

(h) **Ensuring confidentiality.** Administrators maintain information, files, and documents regarding referrals made to OCA intake, including OCA investigation reports distributed pursuant to OAC 340:2-3-36, in a manner that protects the confidentiality of information contained in them.

340:2-3-35. Processing referrals received by the Office of Client Advocacy (OCA)

(a) **Disposition options.** OCA intake records on Form OCA-1, Office of Client Advocacy Intake Referral, or its electronic equivalent, the specifics of each referral received and makes an appropriate disposition regarding how the referral is to be handled. Consideration is given to all known information to determine an appropriate disposition and course of action. The disposition options and criteria include, but are not limited to, the options described in (1) through (7) of this subsection.

(1) **OCA investigation.** This disposition means OCA opens an investigation of an allegation of caretaker maltreatment.

(2) **Assign for caretaker conduct review.** This disposition means the facility named in the referral is given responsibility to conduct an internal caretaker conduct review in accordance with OAC 340:2-3-37. Within one working day of receiving a referral given this disposition, OCA intake notifies the administrator or designated contact person. OCA intake documents the notification on Form OCA-1, or its electronic equivalent. This disposition does not apply to allegations involving Developmental Disabilities Services Division (DDSD) clients other than residents of Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer).

(3) **Refer to advocate.** This disposition is made when the referral involves a Hissom class member or a resident of SORC, NORCE or Greer, and involves a concern which, based on the information provided, does not rise to the level of abuse, neglect, verbal abuse, caretaker misconduct, or exploitation. Within one working day of receipt of the reported incident, the applicable OCA advocate and his or her supervisor are notified of the matter by e-mail or telephone for appropriate follow-up inquiry. If the advocate knows or learns of facts which indicate a more appropriate disposition, the advocate immediately notifies OCA intake.

(4) **Refer to another administrative entity for handling.** This disposition means OCA intake forwards the information to another state agency or OKDHS division or office for handling. This disposition is appropriate when information provided by the reporting party does not include an allegation of caretaker maltreatment within the purview of OCA, but rather involves complaints about employee performance or allegations within the scope of

another administrative entity. When this disposition is made, OCA intake makes the referral within one working day of receipt of the reported incident. These referrals are not assigned to OCA investigators for handling or intervention.

(5) **Refer to law enforcement.** This disposition is used when the referral involves possible criminal activity and it is not within OCA's investigative authority as described in OAC 340:2-3-32(a). This disposition is not used when OCA opens an investigation on a referral even though a law enforcement agency also is investigating the matter.

(6) **Refer for grievance.** When a referral to a grievance system is made, OCA intake notes the specifics of that referral on Form OCA-1, or its electronic equivalent. The referral is directed to the appropriate entity for handling as a grievance when the content of the referral is not caretaker maltreatment, but a complaint or concern that can be addressed by a grievance. If the complaint can be addressed as a grievance and is referred for grievance by OCA, the entity promptly notifies its local grievance coordinator. Indicators that a referral is appropriate for handling as a grievance include complaints about:

(A) conditions which do not endanger residents;

(B) staff improprieties which do not constitute abuse, neglect, verbal abuse, caretaker misconduct, or exploitation; and

(C) privileges and restrictions not involving the use of isolation, force, or restraints.

(7) **No action required.** This disposition is made when OCA takes no action in response to the referral because the information provided is for notification purposes only and does not include an allegation, complaint, or concern appropriate for another disposition.

(8) **Refer to administration.** This disposition means the matter is not within the purview of OCA, another OKDHS unit, or another state agency but is relevant to the operations of a facility or provider. When this disposition is used, OCA intake contacts the administrator of the facility or provider to inform the administrator of relevant information relating to the referral.

(b) **Notifying law enforcement.** If a referral opened as an OCA investigation involves possible criminal activity on the part of a caretaker, OCA intake determines from the reporting party or the designated contact person for the facility or provider whether law enforcement was notified. If law enforcement has already been notified, OCA intake documents that information on Form OCA-1, or its electronic equivalent. If law enforcement has not been called or it is unclear if the matter has been reported to law enforcement, OCA intake requests the contact person at the facility or provider to notify law enforcement immediately. If acceptable assurances are not given that law enforcement has been or will be notified by the end of the business day, OCA intake notifies the appropriate law enforcement authority and notes the specifics on Form OCA-1, or its electronic equivalent.

(c) **Assignment process for referrals opened for investigation.** A referral accepted for investigation is assigned to a specific OCA investigator. Investigations involving Hissom class members are assigned within one working day of making a disposition to investigate the allegation. When urgent circumstances exist in a case opened for investigation, an assignment is made and the investigation commenced immediately.

340:2-3-36. Investigation procedures

(a) **Initiation of Office of Client Advocacy (OCA) investigation.** The assigned OCA investigator conducts a prompt investigation of the referral. The investigator contacts the applicable administrator to arrange for document production, site visits, and interviews.

(1) The administrator for the facility or provider who employed an accused caretaker at the time of the alleged incident informs that employee of:

(A) the name and telephone number of the OCA investigator;

(B) the investigative process described in this Section;

(C) except as stated in paragraph (2) of this subsection, the employee's rights and responsibilities relating to the investigation described in subsection (d) of this Section, using Form OCA-4, Rights and Responsibilities of Accused OKDHS Employees, Form OCA-4-A, Rights and Responsibilities of Accused Caretakers, or a substantially similar form, a copy of which is provided to the OCA investigator except as stated in paragraph (2) of this subsection; and

(D) the allegation made against the accused caretaker without divulging the identity of the reporting party or the substance of the evidence.

(2) In cases involving caretakers subject to the Community Services Worker (CSW) Registry, the rights and responsibilities of accused community services workers are found in OAC 340:100-3-39. The administrator or designee promptly completes Form DDS-59, Rights and Responsibilities of Accused Community Services Worker in an Investigation of Abuse, Neglect, or Exploitation, in accordance with OAC 340:100-3-39(d)(2)(C). The administrator or designee mails Form DDS-59 to the worker when it is not possible to personally give it to a worker who is no longer employed by the provider.

(3) On request and for good cause shown, OCA expedites the time frames contained in this subsection for conducting an investigation.

(b) **Access.** The applicable administrator arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a client of the facility or provider. During an OCA investigation, Oklahoma Department of Human Services (OKDHS), Office of Juvenile Affairs (OJA), Department of Rehabilitation Services (DRS), Department of Mental Health and Substance Abuse Services (DMHSAS), the J.D. McCarty Center, providers, and facilities, and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation. Denial of

access may be grounds for termination of a contract between OKDHS and a contractor.

(c) **Interference prohibition.**

(1) Section 7103 of Title 10 of the Oklahoma Statutes prohibits discrimination or retaliation against a person who in good faith provides information about a reportable incident or testifies in a proceeding, provided the person did not perpetrate or inflict the abuse or neglect at issue.

(2) Section 455 of Title 21 of the Oklahoma Statutes makes it a felony to interfere with a child abuse investigation or a vulnerable adult investigation under Title 43A. An OKDHS employee who interferes with an OCA investigation also may be subject to administrative action. Interference includes but is not limited to:

(A) intimidating, harassing, or threatening a party to the investigation;

(B) retaliation against an employee for reporting an allegation; or

(C) denial of access to clients, employees, facilities, witnesses, records, or evidence.

(3) Section 10-104(G) of Title 43A of the Oklahoma Statutes states that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Vulnerable Adults Act, Section 10-101 et seq. of Title 43A of the Oklahoma Statutes.

(d) **Rights and responsibilities of accused caretakers.** The rights and responsibilities of an accused caretaker during an OCA investigation are outlined in this subsection. The rights and responsibilities of a community services worker are found at OAC 340:100-3-39.

(1) **Rights.** During the investigation process, an accused caretaker has the right to:

(A) be advised by the administrator of the nature of the allegation(s) made against him or her in the referral;

(B) be advised by OCA of the investigative process involving caretaker maltreatment;

(C) be interviewed by the investigator and allowed to give his or her position regarding the referral;

(D) be advised by the investigator of the substance of the evidence against him or her, but not the identity of the person reporting the allegation;

(E) submit or supplement a written statement relating to the allegations;

(F) seek advice from other parties concerning a caretaker's rights and responsibilities in OCA investigations;

(G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and

(H) be notified in writing by his or her employer of the outcome of the investigation.

(2) **Responsibilities.** During the investigative process, an accused caretaker has the responsibility to:

(A) prepare written statements and reports relevant to the investigation upon request;

(B) be available for interviews and accommodate the investigator in scheduling of interviews;

(C) refrain from any action that interferes with the investigation, including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and

(D) provide pertinent information and respond fully and truthfully to questions asked.

(e) **Educational employees.** This subsection applies to an employee of a school district providing contract educational services on-site at a facility, as defined in OAC 340:2-3-2, who is either a witness or an accused caretaker in an investigation opened by OCA.

(1) The administrator of the facility where the incident took place notifies the principal of the school of the nature of the allegation and the name of the assigned OCA investigator.

(2) The principal of the school is responsible for notifying the school employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process and does not extend to ensuring the protection of the alleged victim(s) or other clients at the facility where the educational services are provided. The administrator of the facility where the alleged incident took place is responsible for protection of clients.

(3) OCA investigates educational employees who meet the definition of a caretaker in OAC 340:2-3-2.

(f) **Contractor's employees.** This subsection applies to an employee of a contractor of a provider or facility when the employee is an accused caretaker in an investigation opened by OCA.

(1) The administrator of the provider agency or facility where the incident took place notifies the chief administrative officer of the contractor of the nature of the allegation against the contractor's employee and the name of the assigned OCA investigator.

(2) The chief administrative officer of the contractor is responsible for notifying the contract employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process. The administrator of the provider agency or facility where the alleged incident took place is responsible for protection of clients.

(g) **Document collection and review.**

(1) The investigator gathers and reviews relevant documents including, but not limited to:

(A) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;

(B) medical records;

(C) photos; and

(D) facility or provider logs, activity and tracking documents.

(2) If the OCA investigator is denied access to records, documentation, or other information relevant to an investigation involving a vulnerable adult, OKDHS Adult Protective Services is contacted for assistance in petitioning the court for an order allowing access.

(h) **Investigative interviews.** The investigator interviews or attempts to interview persons known or identified to have information about the referral. If an injury is alleged, the investigator or other appropriate person observes, notes, and documents apparent injuries, and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person other than the investigator and the person being interviewed is allowed to attend an interview except a person necessary to facilitate communication. An attorney or other representative of the person being interviewed attends an interview only as a silent observer with prior permission of the advocate general.

(i) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who allegedly were directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each caretaker accused of the maltreatment. When possible, all other witnesses are interviewed prior to interviewing the accused caretaker(s).

(1) **Tape recording of interviews.** OCA investigators tape record every interview. To maintain confidentiality of the information provided in an interview, no tape recording by the person being interviewed or by anyone else in attendance is permitted. Tape recordings of interviews remain with the OCA investigative file. OCA files and tape recordings are not public documents.

(2) **Explanation of the process.** The investigator informs persons interviewed of the investigative process.

(3) **Presentation of the allegation.** The OCA investigator verbally informs each accused caretaker of the substance of the allegation(s) and evidence learned during the investigative process. In general, the investigator discloses only the nature and substance of information learned during the investigation and does not identify the persons who provided information. The identity of the reporter of the allegation is never disclosed during the investigation. If during the course of an investigation a witness is identified as a potential accused caretaker, the investigator interviews the witness again to inform the witness that he or she is a potential accused caretaker. At that time, the witness is informed of the substance of the evidence and relevant information learned during the investigation and provided an opportunity to respond.

(4) **Opportunity for accused caretakers to respond.** During the interview with an accused caretaker, the OCA investigator provides the caretaker an opportunity to respond to the allegation(s) and to supplement any information previously provided in written statements. Following the initial interview of the accused caretaker, if the investigator obtains information to which the accused caretaker did not have an opportunity to respond, the investigator conducts another interview with the caretaker. The investigator advises the accused caretaker of the substance of the new information and provides an opportunity to present a response.

(5) **Interpreter services for persons who are deaf or hard of hearing.** When the investigator needs to interview a person who is deaf or hard of hearing, the facility or provider agency who employed the person at the time of the alleged incident provides, at no cost to OCA, oral or sign language interpreter services by an independent and qualified interpreter. Interpreter services for OKDHS employees and clients are provided in accordance with OAC 340:1-11-10.

(6) **Scheduling interviews.** To schedule an interview with an accused caretaker, the investigator contacts by phone or regular mail the administrator of the facility or provider that employs the caretaker. If a reasonable time has passed without being able to schedule an interview, the investigator contacts the administrator of the facility or provider to request the administrator to compel the employee to participate. If unsuccessful, the investigator sends both a certified letter and a letter by regular mail to the caretaker's last known address notifying the caretaker of the investigation and offering an opportunity to be interviewed, setting a date and time for a response. The letter informs the caretaker that the consequence of failure to participate is for the OCA investigative report to be completed without the caretaker's statement and a finding is made based on available information. For other persons needing to be interviewed, the investigator follows the same sequence as for an accused caretaker, but the certified letter only requests their participation in an interview.

(7) **Failure to appear.** If a person fails to appear for a scheduled interview without good cause, as determined by the advocate general, the investigator completes the investigative report without interviewing that person. The investigative report includes an explanation of why the interview was not conducted, including documentation of efforts to interview the person.

(j) **Exit ~~conference~~ notice.** Within 30 calendar days of disposition of a referral to be investigated, the assigned OCA investigator contacts in person, by e-mail, or by telephone, the applicable administrator, or the administrator's designee, when the information gathering portion of the investigative process is completed.

(1) Except in cases involving Hissom class members or caretakers subject to the Community Services Worker (CSW) Registry, the investigator informs the administrator of ~~the preliminary investigative finding and~~ any areas of concern identified~~,~~ and that a written report will be prepared with the final finding. Preliminary findings are not required.

(2) In cases involving Hissom class members or caretakers subject to the CSW Registry, the investigator informs the administrator or the OKDHS long-term

care nurse, whichever is applicable, that the investigation process has concluded in accordance with OAC 340:2-3-36. When the investigation report has been approved in accordance with subsection (k) of this Section, the investigator notifies in writing the administrator or the OKDHS long-term care nurse, whichever is applicable, of areas of concern identified during the investigation.

(k) **The written investigative report.** After completing the information gathering portion of the investigative process the investigator prepares a written investigative report containing:

(1) the allegation(s) contained in the referral investigated including the date, time, and location of the alleged incident(s), the date the allegation was reported to OCA, and the assigned OCA case number;

(2) a statement of any physical injuries sustained by the alleged victim(s);

(3) information regarding any involved law enforcement entities;

(4) a recommendation for the district attorney whether to consider further investigation;

(5) the applicable definition(s) of the type of maltreatment at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;

(6) the finding(s) in accordance with subsection (l) of this Section;

(7) a list of the involved parties, their titles and role in the matter, if they were interviewed and, if so, when, and whether interviewed face-to-face or by telephone;

(8) the name, address, and telephone numbers of any interpreter used during the investigation;

(9) an explanation of the basis for the finding(s);

(10) in cases involving a confirmed finding, a summary of relevant information obtained during each interview conducted during the investigation;

(11) any areas of concern relating to the referral identified during the investigation regarding facility, provider, or OKDHS practices or procedures which have implications for the safety, health, or welfare of clients but which do not rise to the level of abuse or neglect;

(12) a list of relevant documents and records reviewed during the investigation;

(13) a list of attachments to the report; and

(14) an explanation for any delays in meeting the time frames for completing the investigation report contained in this Section.

(l) **Investigative findings.** The OCA investigator determines the appropriate finding for each allegation contained in the referral investigated. Findings are made based on a preponderance of the evidence. The finding options are:

(1) **"confirmed"** means that the available evidence establishes that it is more likely than not that the alleged maltreatment occurred;

(2) **"not confirmed"** means there was insufficient evidence to find that it is more likely than not that the alleged maltreatment occurred; or

(3) **"not confirmed/ruled out"** means the available evidence established that it is unlikely that the alleged maltreatment occurred.

(m) **Identification of the responsible caretaker.** When a confirmed finding is made, the investigator determines the caretaker(s) responsible for the maltreatment. The administration can be named as responsible when the policies, procedures, or practices adopted by the administration of a facility, provider, or day treatment program are the primary factor resulting in the maltreatment of individual clients.

(n) **Dissemination of the OCA investigative reports involving caretakers not subject to the Community Services Worker Registry.** Within 60 calendar days from the disposition of a referral to be investigated, the OCA written investigative report is completed.

(1) Except as provided in subsection (o) of this Section, a copy of the final OCA investigation report is sent to the administrator of an affected facility or provider agency. The administrator is responsible for notifying the client or the client's legal representative of the OCA finding.

(2) If the referral alleged abuse, verbal abuse, neglect, or exploitation, a copy also is sent to the applicable district attorney.

(3) A copy also is sent to the appropriate OKDHS state office administrator, executive director of OJA, the director of DRS, the director of DMHSAS, or the director of the J.D. McCarty Center, whichever is applicable.

(4) When an administrator is named as an accused caretaker in the allegation, OCA forwards the investigative report to the chair of the board of directors of the facility or provider agency, or to the director of the state agency operating the facility, whichever is applicable.

(5) A copy of OCA's report is sent to the Oklahoma State Department of Health (OSDH) if the investigation involved a day treatment program.

(6) The administrator of an OKDHS operated facility provides accused OKDHS employees who work at the facility a letter which summarizes the allegation and states the OCA finding. <u>If an accused caretaker is an OKDHS employee, the applicable OKDHS Division Director or designee is responsible for providing the employee with a letter which summarizes the allegation and states the OCA finding.</u>

(7) If client maltreatment by a licensed nurse is confirmed, a copy of OCA's report is submitted to the Oklahoma State Board of Nursing.

(8) When appropriate in cases involving a vulnerable adult, a copy of OCA's report is sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation, including but not limited to OSDH and any appropriate state licensure or certification board, agency, or registry. This includes sending OSDH a copy of any report in which at least one of the accused caretakers is a certified nurse aide (CNA).

(9) OCA distributes its investigation reports by United States mail, fax, or e-mail, whichever is appropriate.

(o) **Dissemination of reports involving Hissom class members and caretakers subject to the Community Services Worker (CSW) Registry.**

(1) Section 1025.2 of Title 56 of the Oklahoma Statutes requires OKDHS to establish a community services

workers registry notating the final OKDHS investigative finding of abuse, neglect, verbal abuse, or exploitation, as defined in Section 10-103 of Title 43A of the Oklahoma Statutes, by a community services worker or a Medicaid personal care assistant. All OCA investigations involving a confirmed finding against a community services worker, or a Medicaid personal care assistant employed by a Medicaid Personal Care Services Provider are processed in accordance with OAC 340:100-3-39 and OAC 317:35-15.

(2) After the OCA investigation report has been finalized, an e-mail notice of the areas of concern in the report is sent to the administrator, the Developmental Disabilities Services Division (DDSD) director, the applicable DDSD area manager, and the OKDHS long-term care nurse, whichever are applicable.

(3) When the OCA finding does not confirm an allegation, OCA sends a copy of the report pursuant to Section 10-110(B) of Title 43A of the Oklahoma Statutes, to the administrator, the DDSD director or the APS programs manager, whichever is applicable, the assigned OKDHS long-term care nurse when applicable, and the applicable district attorney.

(4) When the OCA finding confirms an allegation against an accused caretaker who is not a community services worker, OCA sends a copy of the report to the administrator, the DDSD director, and the applicable district attorney.

(5) When the OCA finding confirms an allegation against a caretaker who is a community services worker or a Medicaid personal care assistant, OCA submits a copy of the report to the applicable district attorney and processes the report in accordance with OAC 340:100-3-39. When the due process procedures relating to the CSW Registry have been completed, OCA sends a copy of the report to the applicable administrator, and the DDSD director or the APS programs manager, whichever is applicable, and the assigned OKDHS long-term care nurse if applicable.

(6) The Hissom class member's assigned OCA advocate notifies the class member and the class member's guardian or close family member of the result of the investigation when the investigative finding has become final.

(7) If maltreatment by a guardian is confirmed, a copy of OCA's investigation report is submitted to the applicable guardianship court.

(p) **Confidentiality of OCA investigative reports.** Persons receiving copies of OCA investigative reports are bound by the confidentiality provisions of Sections 7005-1.2 through 7005-1.4 and 7107 et seq. of Title 10, and Section 10-110 of Title 43A of the Oklahoma Statutes, whichever is applicable.

(q) **Confirmed findings involving OKDHS operated facilities.** The findings of an OCA investigation report involving client maltreatment at an OKDHS operated facility are considered final when the time for requesting review pursuant to OAC 340:2-3-62(b) has expired and review has not been requested, or that review was timely requested and has concluded.

(1) When the Children and Family Services Division (CFSD), the Field Operations Division, or DDSD receives a copy of a final OCA investigative report or notice that a review pursuant to OAC 340:2-3-62 has been concluded, within 60 working days, the applicable division director notifies the advocate general in writing of:

(A) any personnel action taken or to be taken with regard to each accused caretaker named in the report,

(B) any corrective action taken or to be taken regarding areas of concern noted in the report, and

(C) for each worker found to have engaged in maltreatment, whether there have been any prior confirmations by OCA or the facility for client maltreatment by the worker and, if so, the basis for each such finding, and the personnel action taken in response.

(2) If personnel action has or will be taken, the division director also notifies the OKDHS Human Resources Management Division director. If the final OCA finding does not confirm maltreatment, no information or material pertaining to the allegation or the investigation is placed in the personnel file of an accused caretaker.

(3) OCA reports information regarding confirmed findings to the Oklahoma Commission for Human Services (Commission) during executive session.

(r) **Findings involving a Hissom class member.** This subsection applies to the administrator of a provider that employed, or contracted with a contractor that employed, an accused caretaker named in an OCA investigation report.

(1) Within 60 calendar days of receipt of a final OCA investigation report, the administrator or designee notifies the advocate general in writing:

(A) if any personnel action has or will be taken with regard to each accused caretaker named in the report; and

(B) of any corrective action taken or to be taken regarding areas of concern noted in the report.

(2) OCA reports information regarding confirmed findings to the Commission during executive session.

(s) **Storage and retention of OCA investigative records.** OCA maintains the original report, supporting documents, and applicable recorded tapes in locked file cabinets in accordance with the applicable OKDHS records management and disposition plan. Access to investigative files and records is limited to OCA employees on a need to know basis. Requests by OKDHS employees for access to or copies of OCA investigative reports are made to the advocate general on a need to know basis.

340:2-3-37. Caretaker conduct review (CCR)

(a) **Application.** This Section applies to referrals received by the Office of Client Advocacy (OCA) which OCA refers to a facility for an internal CCR in accordance with OAC 340:2-3-35(a)(2). This Section does not apply to allegations involving maltreatment of a Hissom class member or person receiving Developmental Disabilities Services Division (DDSD) waiver services.

(b) **Assignment to a facility to conduct a CCR.**

(1) When OCA receives a referral that indicates possible caretaker misconduct, in lieu of an investigation

OCA intake may refer it to the facility where it allegedly occurred for handling as a CCR if:

(A) there is no injury or evidence that the client might have been exposed to a significant risk of harm;

(B) there is a minor physical injury and it is not a suspicious injury;

(C) there is a serious physical injury and the known credible information makes it unlikely that the serious injury was the result of abuse or neglect; or

(D) excessive or unauthorized use of force is alleged and there is no injury or only a minor injury that is not suspicious.

(2) In addition to the referrals in subsection (b)(1), at Oklahoma Department of Human Services (OKDHS) operated facilities, a referral indicating possible maltreatment may be referred to the facility for handling as a CCR if the allegation involves a serious physical injury that occurred under unexplained or unusual circumstances.

(c) **Protocol for conducting a CCR.** When OCA intake assigns a facility the responsibility to conduct a CCR, the administrator or designee takes necessary steps to ensure the safety of all clients and to protect the integrity of all evidence. A facility employee designated to conduct a CCR follows the investigative procedures described in OAC 340:2-3-36, with the exception of tape recording the interviews in OAC 340:2-3-36(i)(1), including:

(1) reviewing pertinent documentation, records, and evidence collected;

(2) viewing any injuries and photos of injuries, and obtaining photos of injuries;

(3) obtaining written statements and conducting interviews with:

(A) each alleged victim;

(B) each eyewitness;

(C) other persons with knowledge relevant to the allegation; and

(D) each accused caretaker;

(4) reviewing statutes, policies, directives, standards, rules, or practices relevant to the allegation;

(5) analyzing the accused caretaker's actions in relation to relevant statutes, policies, directives, standards, rules and practices; and

(6) determining the appropriate finding(s) in accordance with OAC 340:2-3-36(l).

(d) **Returning the investigation responsibility to OCA.** If at any time during the CCR information is learned that gives cause to believe that a client was the victim of caretaker misconduct resulting in a serious injury, abuse or neglect, the administrator immediately discontinues the CCR and contacts OCA intake to report the new information warranting an OCA investigation. OCA intake notes the new information and changes the disposition on Form OCA-1, Office of Client Advocacy Intake Referral, or its electronic equivalent, and the case is assigned to an OCA investigator for investigation in accordance with OAC 340:2-3-35(c).

(e) **Written report of CCR.** After completion of the CCR process and determination of the appropriate finding, the person conducting CCR prepares a written report. Facilities are encouraged, but not required, to use the applicable OCA format for CCR reports, Form OCA-7, Caretaker Conduct Review Report - OKDHS Operated Facility, Form OCA-7-A, Caretaker Conduct Review Report - OJA Operated Facility, Form OCA-7-B, Caretaker Conduct Review Report - Residential Facilities. The written report contains:

(1) the allegation(s), including the dates, times, and location of the alleged incident(s), the date the allegation was reported to OCA, and the OCA case number;

(2) a statement of any injury sustained by the alleged victim(s) and, in cases involving an injury, a statement whether photographs were taken of the injury and if so, the date they were taken;

(3) the finding(s), whether caretaker misconduct did or did not occur, in accordance with OAC 340:2-3-36(m);

(4) a list of the involved parties, their titles and role in the matter, whether they were interviewed and, if so, when;

(5) citation to pertinent statutes, policies, directives, standards, rules, and practices, when applicable;

(6) an explanation of the basis for the finding(s);

(7) a summary of pertinent information obtained in interviews conducted during the review;

(8) a list of relevant documents and records reviewed;

(9) a list of attachments to the report;

(10) a list of areas of concern identified during the course of the investigation regarding facility or OKDHS practices or procedures which have implications for the safety, health, or welfare of clients but which do not rise to the level of abuse or neglect; and

(11) either on a cover memo or at the end of the report, the signature and date signed by the person who conducted the CCR, and the signature of the person who reviewed and approved the report.

(f) **Time for completion of report.** The final written report is submitted to the advocate general within 30 calendar days from the date that OCA intake notified the administrator that an allegation is referred for CCR.

(g) **OCA processing of CCR reports.** The administrator transmits the completed CCR to the advocate general. The advocate general or designee reviews the CCR report for completeness and appropriateness of the finding. If a report is incomplete or the finding is questionable, OCA contacts the administrator to request further inquiry into the allegation. OCA opens an investigation if a report indicates the need.

(h) **Review by Developmental Disabilities Services Division (DDSD) director.** Within five working days of completion of a CCR report at the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the facility administrator or designee informs the client and the client's guardian or parent of the result of the CCR. If the client or the guardian or parent does not concur with the finding(s), the facility administrator or designee notifies the advocate general in writing by e-mail or letter. The advocate general refers the matter to OCA's grievance coordinator to process for review by the DDSD director as a contested grievance in accordance with OAC 340:2-3-46 and 340:2-3-51(g) and the client or guardian

or parent who did not concur with the finding(s) is considered the grievant for purposes of that review. If the grievant does not concur with the proposed resolution of the division director or designee, the matter is reviewed by the Grievance and Abuse Review Committee (GARC) in accordance with OAC 340:2-3-62 and 340:2-3-64.

(i) **State office administrator's report.** The findings in a CCR are considered final when the time for requesting review pursuant to the paragraph (h) of this Section has expired and review has not been requested, or that review was timely requested and has concluded.

(1) Within 60 calendar days of the finding becoming final, the state office administrator or designee informs the advocate general in writing of:

(A) any personnel action taken or to be taken;

(B) any corrective action taken or to be taken; and

(C) for each worker found to have engaged in caretaker misconduct, whether there has been any prior confirmation by OCA or the facility for client maltreatment by the worker and, if so, the basis for each finding and the personnel action taken in response.

(2) If personnel action is involved, the state office administrator also notifies the OKDHS Human Resources Management Division director.

(3) If a CCR has not resulted in a confirmed finding, no information or material pertaining to the allegation or the investigation is placed in the personnel files of any employee named in the report.

340:2-3-38. Investigation of foster parent complaints of retaliation and discrimination

(a) **Application.** This Section describes processes relating to allegations of retaliation and discrimination against a foster parent by an employee of the Oklahoma Department of Human Services (OKDHS) or a child placing agency. The Office of Client Advocacy (OCA) is designated by Sections 7003-3.4(D) and 7204.1 of Title 10 of the Oklahoma Statutes to conduct administrative investigations into these allegations.

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

(1) **"Administrator,"** with regard to a child placing agency, means the chief administrative officer of the agency.

(2) **"Child placing agency"** means a private agency licensed to place children in foster family homes, group homes, adoptive homes, transitional or independent living programs, or family child care homes or other out-of-home placements, and which approves and monitors such placements and facilities in accordance with the licensing requirements established by the Oklahoma Child Care Facilities Licensing Act. [10 O.S. § 401 through 415]

(3) **"Child Welfare division"** means the OKDHS Field Operations Division (FOD) and the Children and Family Services Division (CFSD).

(4) **"Discrimination"** means knowing and willful application of a different standard to a particular foster parent which negatively affects the foster parent.

(5) **"Harassment"** means a knowing and willful course of conduct, statements, or behaviors serving no legitimate purpose directed at a foster parent that a reasonable person in the same or similar circumstances would find intimidating or substantially distressing.

(6) **"Retaliation"** means threatening a foster parent with removal of a child in the foster parent's care, harassing a foster parent, refusing or failing to place a child in a licensed or certified foster home, or disrupting a child placement in reprisal for the foster parent engaging in protected activity listed in (~~b~~c)(2) of this Section.

(7) **"State office administrator"** means the FOD director, CFSD director, or both, or their designees.

(c) **Scope.** A foster parent has the right, without fear of reprisal or discrimination, to lodge concerns and complaints with respect to the providing of foster care services. OCA initiates investigations of allegations that:

(1) an employee of OKDHS or a child placing agency has:

(A) threatened a foster parent with removal of a child in the foster parent's care;

(B) harassed a foster parent;

(C) refused or failed to place a child in a licensed or approved foster home; or

(D) disrupted a child placement; and

(2) for the purpose of retaliation or discrimination against a foster parent who has:

(A) filed or attempted to file a grievance with OKDHS (see OAC 340:2-3-45) or with a child placing agency, whichever is applicable;

(B) provided information regarding foster care services to any state official or OKDHS employee; or

(C) testified, assisted, or otherwise participated in an investigation, proceeding, or hearing against OKDHS or a child placing agency.

(d) **Exclusions.** The provisions of this Section do not apply to:

(1) a complaint by a foster parent regarding the result of a criminal, administrative, or civil proceeding for a violation by that foster parent of a law, rule, or contract provision, or an action taken by OKDHS or a child placing agency in conformity with the result of any such proceeding;

(2) allegations of acts of retaliation or discrimination that occurred more than one year prior to the date of the foster parent complaint; or

(3) allegations of a pattern of retaliation or discrimination the last incident of which occurred more than one year after the foster parent participated in protected activity.

(e) **What is reportable.** Section 7204.1 of Title 10 of the Oklahoma Statutes provides that any foster parent who has reasonable cause to believe he or she has been improperly treated by an employee of OKDHS or a child placing agency, as outlined in subsection (~~b~~c) of this Section, may file a complaint with OCA. The law provides that persons making a report in good faith under this Section may not be adversely affected solely on the basis of having made such report. The law also provides that any person who knowingly and willfully makes a

false or frivolous report or complaint or a report that the person knows lacks factual foundation may be subject to loss of foster parent approval or licensure status.

(f) **Reporting procedure.** Foster parents may file complaints by contacting:

(1) the Foster Parent Hotline, 1-800-376-9729; or

(2) OCA's offices in Oklahoma City, 1-405-525-4850 or 1-800-522-8014.

(g) **Confidentiality.** At the request of the reporter, OCA maintains confidential the identity of the reporter until the advocate general reports the results of the investigation to the Commission for Human Services (Commission) in accordance with subsection (m) of this Section. OCA maintains written records regarding the reporting source to provide information to the extent known at the time the report is received, including:

(1) the names and addresses of the foster child and the person(s) responsible for the child's welfare;

(2) the nature of the complaint; and

(3) the names of the persons and agencies responsible for the allegations contained in the complaint.

(h) **Interference prohibition.**

(1) An OKDHS employee who interferes with an OCA investigation may be subject to administrative action for misconduct under OKDHS personnel policy relating to cause for disciplinary action if the employee attempts to intimidate a witness, foster parent, or other OKDHS employee, or threatens any of them with physical or mental harm.

(2) Interference includes, but is not limited to:

(A) intimidating, harassing, or threatening a party to the investigation;

(B) retaliation against an employee for cooperating during an OCA investigation;

(C) denial of access to clients, employees, facilities, witnesses, records, or evidence; and

(D) causing or influencing another person to provide false information during the investigation.

(i) **Initiation of OCA investigation.** Upon acceptance of a report of retaliation or discrimination against a foster parent, OCA assigns an investigator to investigate the allegations in accordance with this Section. OCA's investigation does not duplicate and is separate from any investigation mandated by the Oklahoma Child Abuse Reporting and Prevention Act or other investigations having formal notice or hearing requirements.

(j) **Rights and responsibilities of employees.** The rights and responsibilities of OKDHS employees in an OCA foster parent investigation are listed in (1) through (7) of this subsection.

(1) Employees make themselves available for interviews and accommodate the investigator in scheduling interviews.

(2) Employees provide pertinent information and respond fully and truthfully to questions asked.

(3) In addition to being interviewed, employees may submit written statements relating to the events in question.

(4) Employees may seek advice concerning their rights and responsibilities from other parties within or outside OKDHS.

(5) Employees prepare written statements or reports relevant to the investigation upon request.

(6) Employees, who reasonably believe answers to official inquiries regarding the events in question may incriminate them in a criminal prosecution, may decline to answer those questions.

(7) Employees interviewed do not discuss their interviews with anyone outside of OCA.

(k) **Access.** OCA at all times is granted access to any foster home which is approved, authorized, or funded by OKDHS or a child placing agency.

(l) **Investigation procedures.** Investigations are conducted in accordance with OAC 340:2-3-36 unless otherwise provided in this Subchapter.

(1) **Notifying administrators and accused caretakers.** The assigned investigator notifies the applicable administrator or state office administrator of the investigation and arranges for document production, site visits, and interviews. The administrator or state office administrator who employed any accused employee at the time of an alleged incident promptly informs the accused employee of:

(A) the name and telephone number of the OCA investigator;

(B) the investigative process;

(C) the employee's rights and responsibilities relating to the investigation described in subsection (j) of this Section, using Form OCA-4-B, Investigations of Foster Parent Retaliation Complaints - Rights and Responsibilities of Accused OKDHS Employees, a copy of which is provided to the OCA investigator; and

(D) the nature of the allegation(s) made against the employee; however, at this time the employee is not provided the details of the allegations or the substance of the evidence.

(2) **OCA access to evidence.** Applicable administrators and state office administrators facilitate and cooperate with the OCA investigation by:

(A) providing access to requested information;

(B) producing relevant documents, files, and records, accompanying the investigator on foster home visits when requested by OCA; and

(C) providing access to accused employees and others who have knowledge of relevant information.

(3) **Document review and interviews.** The OCA investigator conducts a prompt investigation in accordance with OAC 340:2-3-36(g) through (i) unless otherwise provided in this Section.

(4) **Exit ~~conference~~ notice.** The OCA investigator ~~conducts~~ provides an exit ~~conference~~ notice, either ~~in person~~ electronically or by telephone, ~~with~~ to the applicable administrator or state office administrator when the information gathering portion of the investigative process is completed. The investigator informs the administrator

or state office administrator ~~of the preliminary investigative finding and~~ that a written report is forthcoming. Preliminary findings are not required.

(5) **The written investigation report.** After completing the information gathering portion of the investigative process, the OCA investigator prepares a written report containing:

(A) the allegations investigated, including the date, time, and location of the alleged incidents, the date the allegation was reported to OCA, and the assigned OCA case number;

(B) a list of the involved parties, their titles and role in the matter, whether they were interviewed and, if so, when and where;

(C) the applicable definition of the type of misconduct at issue, such as discrimination, retaliation, or both;

(D) whether the foster parent engaged in an activity listed in (b)(2) in this Section and, if so, a description of the activity;

(E) the findings in accordance with OAC 340:2-3-36(l);

(F) an explanation of the basis for the finding;

(G) in cases involving a confirmed finding, a summary of relevant information obtained during each interview conducted during the investigation;

(H) any areas of concern relating to the allegations that were identified during the investigation regarding practices or procedures of OKDHS or the child placing agency;

(I) a list of relevant documents and records reviewed during the investigation; and

(J) a list of attachments to the report.

(6) **Dissemination of the OCA investigative report.**

(A) In cases involving allegations against an OKDHS employee, the advocate general submits a copy of the final OCA investigation report to the OKDHS Director and the state office administrators.

(B) In cases involving an employee of a child placing agency, the advocate general sends a copy of the OCA report to the administrator of the agency and the appropriate state office administrator. If the administrator of the child placing agency is the subject of the report, the report is sent to the agency's board of directors.

(C) OCA sends the foster parent and each accused OKDHS employee a letter that summarizes the allegation and states OCA's finding.

(D) All parties receiving copies of the investigative reports are bound by the confidentiality provisions of Sections 7005-1.2 and 7107 of Title 10 and Section 10-110 of Title 43A of the Oklahoma Statutes.

(m) **OKDHS Director's request for review by the Grievance and Abuse Review Committee (GARC).** Within 20 calendar days of receipt of a final OCA investigative report, the OKDHS Director may request GARC to review the allegations and submit a report of its findings in accordance with OAC 340:2-3-63.

(n) **State office administrator's response to a confirmed finding.**

(1) When a state office administrator receives a copy of an OCA investigation report containing a finding that an OKDHS employee has engaged in retaliation or discrimination against a foster parent, within 30 calendar days of receipt of the OCA report the state office administrator notifies the advocate general in writing of any personnel action taken or to be taken with regard to the employee, and any corrective action taken or to be taken regarding areas of concern noted in the OCA report.

(2) If the OKDHS Director has referred the matter for review by GARC in accordance with subsection (l) of this Section, the state office administrator's response is due within 45 calendar days of GARC's written report to the OKDHS Director.

(3) When an administrator of a child placing agency receives a copy of an OCA investigation report containing a finding that an employee of the child placing agency has engaged in retaliation or discrimination against a foster parent, within 30 calendar days of receipt of the report the administrator notifies the advocate general in writing of any personnel action taken or to be taken with regard to each employee named in the report as having engaged in misconduct, and the status of any areas of concerns noted in the report.

(4) The advocate general reports to the Commission confirmed allegations and corrective action taken.

PART 5. GRIEVANCES

340:2-3-45. Grievance system protocols

(a) **Legal authority, scope, and purpose.**

(1) **Legal authority.**

(A) Section 7004-3.4 of Title 10 of the Oklahoma Statutes confers on the Office of Client Advocacy (OCA) the responsibility to establish and maintain a fair, simple, and expeditious grievance system for complaints filed by or on behalf of children in the custody of the Oklahoma Department of Human Services (OKDHS).

(B) Section 1415.1(A)(2) of Title 10 of the Oklahoma Statutes requires OKDHS to establish an ombudsman program for each institution and residential facility for the mentally retarded operated by OKDHS, including an appeals procedure for the resolution of grievances and complaints of residents, their parents, and their court-appointed guardians. OKDHS has conferred this responsibility on OCA.

(C) OKDHS also has conferred on OCA the responsibility for grievance systems for other clients listed in paragraph (2) of this subsection.

(2) **Scope.** OCA administers and monitors grievance programs for the individuals listed in (A) through (H) of this paragraph, all of whom are collectively referred to as the "client" throughout this Section and OAC 340:2-3-46. Further detail about grievances for:

(A) minors who are in the custody of OKDHS regardless of placement, refer to OAC 340:2-3-47 through 340:2-3-49;

(B) youth in voluntary care of OKDHS, refer to OAC 340:2-3-49;

(C) foster parents approved by OKDHS, refer to OAC 340:2-3-50;

(D) residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer), refer to OAC 340:2-3-51;

(E) Hissom class members, refer to OAC 340:2-3-52;

(F) other clients receiving services in the community from the Developmental Disabilities Services Division (DDSD) of OKDHS, refer to OAC 340:2-3-53;

(G) residents of group homes for persons with developmental or physical disabilities due to a developmental disability that are subject to Section 1430.1 et seq. of Title 10 of the Oklahoma Statutes, refer to OAC 340:2-3-54; and

(H) clients receiving OKDHS services who want to file a grievance about a problem, concern, or complaint for which there does not exist another grievance system within OKDHS, refer to OAC 340:2-3-55.

(3) **Purpose.** The purpose of OCA's grievance policies and procedures is to provide clients a fair, simple, effective, and timely system of problem resolution with access to procedures through which clients can obtain a thorough review, fair consideration, and correction when appropriate. These policies also ensure that persons filing grievances are free from restraint, coercion, reprisal, or discrimination. To further this purpose, OCA independently reviews and monitors the implementation of grievance programs subject to this Section.

(4) **Informal problem resolution.** Clients have the right to file grievances. However, resolving problems and concerns informally before filing a grievance is encouraged. Not all client inquiries and requests for explanation are considered grievances. Most can be handled within the regular relationship between clients and OKDHS, provider, and facility staff. Efforts are made at the local level to resolve issues and reach a consensus with the client on a plan of action to resolve the problem informally unless the client desires to proceed with the grievance process.

(b) **Definitions.** In addition to the definitions in OAC 340:2-3-2, the following words and terms when used in this Part shall have the following meanings, unless the context clearly indicates otherwise:

(1) **"Area director"** means a director of one of the six service delivery areas designated by OKDHS Field Operations Division (FOD).

(2) **"Area manager"** means a manager of one of the three service delivery areas designated by OKDHS DDSD.

(3) **"CFSD"** means the Children and Family Services Division of OKDHS.

(4) **"Client"** means any of the individuals listed in subsection (a) of this Section on whose behalf OCA maintains a grievance system.

(5) **"Contested grievance"** means a grievance that has not been resolved at the local level (levels one and two) and, at the request of the grievant or decisionmaker, is submitted to a higher authority for response.

(6) **"Decisionmaker"** means the person who has authority to decide whether to accept any resolution proposed at each level of the grievance process. It typically is the client who filed the grievance or on whose behalf a grievance was filed. For clients unable to advocate for themselves (for example, young children and persons with severe cognitive limitations), it is a person who speaks on the client's behalf, depending on the circumstances and the nature of the decision to be made.

(A) With regard to minors, it might be a parent, guardian, guardian ad litem, foster parent, or a legal custodian appointed by a court.

(B) With regard to DDSD clients who are adults, it might be a guardian or the individual support team for the client.

(7) **"Due date"** means the date by which some response or action is required, for example, the date by when a respondent must respond to a grievance. In calculating the due date, the first day of the period computed is not included and only business days are included. If the last day of the period computed is a Saturday, Sunday, or legal holiday, the period runs until the end of the next business day.

(8) **"E-mail"** communication with OCA or with the advocate general means an e-mail sent to the e-mail address: *oca.grievances@okdhs.org.

(9) **"Facility grievance"** means a grievance that involves:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of a facility as defined in OAC 340:2-3-2; or

(B) a decision, act, or omission of an employee, agent, or contractor of a facility.

(10) **"FOD"** means the Field Operations Division of OKDHS.

(11) **"Grievance"** is defined in subsection (c) of this Section.

(12) **"Grievant"** means a client or the person who files a grievance on behalf of a client.

(13) **"Local grievance coordinator"** or **"LGC"** means, with regard to:

(A) minors in OKDHS custody who live in a residential facility, the individual designated by the facility as its grievance coordinator;

(B) minors in OKDHS custody who do not live in a residential facility, including minors in foster care and foster parents, the individual designated as grievance coordinator in the OKDHS county office where the grievant resides;

(C) DDSD clients who are residents of Southern Oklahoma Resource Center (SORC), the Northern

Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the OCA advocate staff assigned to each facility;

(D) foster parents approved by OKDHS, the county director in the OKDHS county office where the grievant resides;

(E) DDSD clients who are pursuing a grievance with a provider of residential, vocational, or in-home supports, the individual designated by the provider as its grievance coordinator; and

(F) all other DDSD clients, the applicable DDSD area manager or designee.

(14) **"OCA grievance coordinator"** means the individual(s) designated by the advocate general to coordinate and monitor contested grievances.

(15) **"OKDHS grievance"** means a grievance that involves:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS (other than policies, rules, and regulations of OKDHS operated shelters and residential facilities for minors); or

(B) a decision, act, or omission of an employee of OKDHS, including but not limited to a Child Welfare (CW) specialist, a case manager, and OKDHS county directors, but not including an employee of an OKDHS operated facility.

(16) **"Placement grievance"** means a complaint about a present or proposed placement of a minor in OKDHS custody.

(17) **"Respondent"** means the person at each level in the grievance process who has the responsibility for reviewing the grievance and proposing a resolution to resolve the grievance.

(c) **Grievance defined.**

(1) **"Grievance"** means a problem or concern that an individual needs assistance resolving, including a complaint of unfair treatment. At the request of a client, an unresolved problem, concern, complaint, or dispute is processed as a grievance. When a client verbally communicates a complaint to an OKDHS employee or a facility or provider employee that is not resolved, the client is informed of the right to have the problem or concern processed as a grievance. At the request of the client, the employee prepares a written statement of the client's complaint or refers the client to the local grievance coordinator to assist in doing that.

(A) **Facility or provider grievances.** The subject of a facility grievance or a provider grievance is:

(i) the substance or application of any policy, rule, or regulation, written or unwritten, of an OKDHS operated shelter or residential facility for minors, or a facility, agency, or provider which contracts with OKDHS, or a child placing agency; or

(ii) a decision, act, or omission of an employee, agent, or contractor of such a facility, or any client residing in the same placement setting.

(B) **OKDHS grievances.** The subject of an OKDHS grievance is:

(i) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS, but this does not include policies, rules and regulations of OKDHS operated shelters and residential facilities for minors;

(ii) a decision, act, or omission of an employee of OKDHS other than an employee in an OKDHS operated facility; this includes a case manager, a CW specialist, and county office employees; or

(iii) a facility grievance filed by a resident of SORC, NORCE, or Greer.

(C) **Placement grievances.** A placement grievance is defined in subsection (b) of this Section.

(2) **Summary dispositions.** If a grievance is submitted and it falls into one of the categories listed in (A) through (K) of this paragraph, when appropriate, the LGC ~~meets with~~ contacts the client to provide assistance to the client in rewriting the grievance to state the problem(s) or concern(s) the client wants to grieve. If it is determined the client is asking to grieve a problem or concern covered by any of the categories below, the LGC informs the client why the grievance is not being processed, using Form OCA-GR-8, Notice of Summary Disposition of Grievance, OCA-GR-8-A, Notice of Summary Disposition of Grievance - DDSD Clients, OCA-GR-8-B, Notice of Summary Disposition of Facility Grievance, or OCA-GR-8-C, Notice of Summary Disposition of DDSD Provider Grievance, whichever is applicable. The LGC also writes the reason on the bottom of Form OCA-GR-1, Grievance Form, and then dates and signs the form. The grievance is logged on the grievance tracking log. The form used to notify the grievant along with a copy of the grievance form is sent within two business days to the advocate general for review, and the original is filed in the appropriate grievance file. Within ~~five working~~ three business days of receipt, the OCA grievance coordinator reviews the grievance. If the OCA grievance coordinator determines the grievance was improperly given a summary disposition, the OCA grievance coordinator informs the LGC who immediately processes the grievance. If the OCA grievance coordinator concurs with the summary disposition, the OCA grievance coordinator informs the LGC.

(A) **Untimely grievances.** A grievance which is not timely filed in accordance with OAC 340:2-3-45(g) can be accepted and processed when good cause exists for the delay in filing the grievance.

(B) **Discrimination based on race, color, national origin, sex, age, religion, or disability.** If a grievance alleges discrimination or other civil rights matters, the client is referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the grievance to the OKDHS civil rights administrator and so informs the grievant.

(C) **A problem which is moot.** A moot problem is one that already has been decided or settled or one that has no practical resolution. For example, a placement grievance with regard to a child who is no longer in OKDHS custody; or a grievance with regard to an event that was in future but is now in the past, when the dispute about the event is unlikely to occur again with regard to this client.

(D) **Duplicative grievances.** This is a grievance which duplicates another pending grievance in the same grievance system by or on behalf of the client involving the same incident or problem.

(E) **Requests to violate laws.** This is a grievance which requests an action that violates state or federal law.

(F) **Collateral complaint.** A collateral complaint does not involve a problem concerning the client who filed or on whose behalf the grievance was filed.

(G) **Remote grievances.** The grievance requires action by a private or public individual or entity over which OKDHS does not have authority or control, such as a grievance about the action of a public school teacher, a guardian, or a physician in private practice. In these situations, the LGC assists the grievant in using any grievance or complaint system which may be available regarding the subject of the grievance.

(H) **Pending proceedings.** The grievance involves a matter which is the subject of a pending civil, criminal, or administrative proceeding, or a decision of a court or administrative hearing, or the subject of a pending OCA, Office of Inspector General (OIG), or Child Welfare investigation.

(I) **Investigative findings.** The results of an investigation regarding abuse, neglect, verbal abuse, caretaker misconduct, or exploitation cannot be grieved.

(J) **Fair hearing decisions.** The results of a fair hearing cannot be grieved pursuant to OAC 340:2-5-50.

(K) **Frivolous grievances.** A frivolous grievance does not state a complaint or problem of any substance. Before declining to process a grievance of this nature, the LGC contacts the grievant to inquire if the grievant needs assistance in submitting a substantive grievance.

(3) **Documenting exclusions.** If a grievance is submitted and it falls into an excluded category listed in the preceding paragraph, the LGC dates and signs Form OCA-GR-1 as received, and notes on the form the reason the LGC does not process it. The grievant is informed of this decision and the reason. The grievance is logged in the grievance tracking log and the form is filed in the client's grievance file.

(4) **Who may file a grievance.** A grievance may be filed by any client listed in subsection (a) of this Section. A grievance may also be filed by or on behalf of a client by any person who knows the client and is interested in the client's welfare, including, but not limited to, a parent, guardian, relative, foster parent, court appointed special advocate, guardian ad litem, case manager, personal support team member, job coach, and others. This includes OKDHS employees and employees of residential, in-home supports, and vocational providers.

(5) **Group grievances.** Grievants whose complaints address the same issue(s) may together file a group grievance. At any time during the processing of a group grievance, an individual grievant can withdraw from the group grievance. If separate grievances are filed by two or more grievants regarding an identical issue, the interests of each grievant is identical, and the grievants do not object, a LGC can combine them for processing as a group, provided this does not unduly delay the processing of any particular grievance. When multiple grievances are grouped for processing, the LGC informs each grievant of that action. When a group grievance is filed, the LGC can ask the grievants to designate in writing a spokesperson for the group.

(6) **Grievances involving reportable incidents.** When a grievance alleges a reportable incident, including but not limited to, facts which constitute abuse, neglect, exploitation, or caretaker misconduct, as defined in OAC 340:2-3-2, the LGC immediately reports it to OCA intake pursuant to OAC 340:2-3-33. A grievance involving a reportable incident may be processed during a pending investigation provided the grievance does not interfere with the investigation and as needed is held in abeyance pending the conclusion of the investigation. If the grievance alleges additional facts which do not constitute abuse, neglect, exploitation, or caretaker misconduct, the grievance is processed as to those facts. The LGC contacts OCA and any other law enforcement agency investigating the matter to coordinate processing the grievance.

(d) **Grievance policies required.** Every provider and facility providing services to a client listed in OAC 340:2-3-45(a)(2) who is living in Oklahoma is required to operate a system for resolution of grievances by clients using policies and procedures meeting the requirements of this Part.

(1) **Designation of LGC.**

(A) Every public and private facility and provider subject to this Part, OKDHS county office, and DDSD area office designates an employee to serve as LGC to carry out the responsibilities described in this Section. Facilities and providers inform the advocate general of the name, phone number, mailing address, and e-mail address of their LGC, and inform the advocate general of any changes within 30 calendar days of the effective date of a change. OCA's advocates assigned to SORC, NORCE, and Greer serve as the LGC at those facilities. The LGC is an individual who:

(i) implements grievance policies and procedures;

(ii) has experience with the programs and functions of the facility, provider, county office, or DDSD area office;

(iii) functions impartially and independently in the processing of grievances;

(iv) reports directly to the administrator with regard to the LGC's grievance duties and functions; ~~and~~

(v) within 60 calendar days of being designated LGC, ~~receives~~ completes the online OCA Grievance Course when online training is available or substantially equivalent training that provides the LGC with a working knowledge of applicable grievance policies, forms, procedures, time frames, and the LGC's responsibilities under this Subchapter, and yearly training thereafter from ~~the~~ OCA; and

(vi) ensures that client requests regarding how to file a grievance are responded to within two business days.

(B) Each facility and provider subject to this Part, each OKDHS county office, and each DDSD area office displays in a place conspicuous to its clients a poster notifying clients of its grievance system and the name of its local grievance coordinator, using Form OCA-GR-9, Grievance Poster - Child Welfare Contracted Facilities, Form OCA-GR-9-A, Grievance Poster-OKDHS County Offices, or Form OCA-GR-9-B, Grievance Poster - DDSD Providers, whichever is applicable.

(2) **Advocate general review of grievance programs.** The grievance system operated by each facility and provider subject to this Part is subject to the approval of the advocate general. Each provider and facility other than an OKDHS operated facility is required to submit to the advocate general for approval its grievance policies and procedures, and any revisions which are adopted, along with proof that the policies or revisions have been approved by the applicable approving authority.

(3) **Notifying clients of their grievance rights.** Each client covered by these grievance policies is notified of his or her right to and how to access the grievance resolution procedures using Form OCA-GR-2, Notice of Grievance Rights - Minors in OKDHS Custody, OCA-GR-2-A, Notice of Grievance Rights - Minors in OKDHS Custody - Youth in Voluntary OKDHS Care, Form OCA-GR-3, Notice of Grievance Rights - DDSD Clients (General), Form OCA-GR-3-A, Notice of Grievance Rights - Hissom Class Members, or Form OCA-GR-4, Notice of Grievance Rights - Foster Parents, whichever is applicable. Hissom class members are provided notice in accordance with OAC 340:2-3-52. In addition, providers are encouraged to provide a simplified version of their grievance policies using language appropriate to the age level and cognitive functioning of its clients.

(4) **Monitoring and evaluation.** OCA ensures the quality of grievance systems by establishing minimum standards and through an ongoing monitoring program. The advocate general and OCA staff have immediate and unlimited access to clients, staff, and facility files, records, and documents relating to grievance procedures and practices.

(5) **Reporting deficiencies.** An LGC who becomes aware of a deficiency in a grievance system, including a failure to follow or implement the grievance policy, must report it to the advocate general by phone at 1-405-525-4850 or 1-800-522-8014, fax at 1-405-525-4855, or e-mail.

(6) **Advocate general deficiency report.** If the advocate general determines a deficiency exists in the grievance system of a facility or provider, the advocate general sends a report of deficiency to the administrator and, where applicable, to the state office administrator.

(7) **Advocate general grievance.** The advocate general may, on behalf of any or all clients served by the grievance policy in this Section, originate a grievance. An advocate general grievance is filed with the administrator or the state office administrator and processed as a contested grievance.

(8) **Advocate general report.**

(A) The advocate general may initiate an inquiry on behalf of any client as defined in subsection (a) of this Section regarding:

(i) any aspect of the care of a client that affects the quality of the client's life;

(ii) the substance, application, or interpretation of any policy, rule, or regulation, written or unwritten, of OKDHS operated shelter or residential facility, or a facility or agency that contracts with OKDHS, or a placement provider; or

(iii) any decision, behavior, or action of an employee, agent, or contractor of OKDHS, or of any client residing in the same placement setting.

(B) The person to whom the advocate general inquiry is addressed has seven business days to respond in writing to the advocate general.

(C) The advocate general issues a report which sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the state office administrator. A copy is submitted to the OKDHS Director.

(e) **The grievance form.** A grievant files a grievance by obtaining from the LGC Form OCA-GR-1, filling it out, and turning it in to the LGC or to any facility or OKDHS staff, who immediately transmits it to the LGC.

(1) LGCs obtain copies of this form from the OCA in Oklahoma City, 1-405-525-4850 or 1-800-522-8014.

(2) Any person who needs assistance in completing the grievance form is given assistance by the LGC coordinator or any other staff member.

(3) A grievance received on paper other than Form OCA-GR-1 is attached to a Form OCA-GR-1 filled out by the LGC on behalf of the grievant.

(f) **Retaliation prohibited.** No person filing a grievance shall be retaliated or discriminated against or harassed, solely or in part, for having asserted a grievance, or sought advice or inquired about filing a grievance. Clients are encouraged to use available grievance systems. Clients are not discouraged from filing a grievance.

(g) **Grievance time limits.** Except for DDSD clients, in order to be processed for action and resolution, a grievance must be filed within 15 business days of the date of the incident, decision, act, or omission complained about in the grievance, or within 15 business days of the date the grievant becomes aware of or, with reasonable effort, should have become aware of a grievable issue. The time limit for filing a grievance may be extended by the LGC.

(1) The filing time and all other time periods contained in this Section are counted in business days unless otherwise specified. In computing any period of time, the day of the incident, decision, act, or omission at issue is not included. The next calendar day is the first day of the time period. If the last day of the time period is a Saturday, Sunday, or legal holiday, the period is extended to the next business day.

(2) If the LGC or any respondent fails to meet any time limit for processing a grievance without obtaining an extension, the LGC processes the grievance to the next step within two business days of the grievant's request.

(3) Responses, notices, and other documents issued during the processing of a grievance are delivered to the grievant in person or by mail at the last known address of the grievant. A grievance is considered administratively resolved when a correctly addressed letter sent to the last known address of the grievant with proper postage is returned undeliverable with no forwarding address.

(4) There is no time limit on allegations of abuse, neglect, verbal abuse, exploitation, or caretaker misconduct. If a grievance, timely or untimely, consists of such an allegation, OCA intake is immediately notified in accordance with OAC 340:2-3-33.

(h) **Grievance records, logs, and quarterly reports.** The LGC maintains an accurate and complete record of each grievance filed as well as summary information about the number, nature, and outcome of all grievances filed. Records of grievances are kept separate and apart from other client records and files. Grievance records relating to DDSD clients are retained in accordance with OAC 340:100-3-40. OKDHS grievance records and files are retained in accordance with state and federal laws governing retention and destruction of records.

(1) Each LGC tracks grievances as they progress through the system and keeps a log of every numbered grievance form issued by OCA. Form OCA-GR-5, Grievance Tracking Log, can be used for this purpose. For grievances submitted by a client, the tracking log includes: the grievance number; the name of the grievant given the form; the date the form was submitted by the grievant; the nature and outcome of the grievance; the date of final resolution; and the level where it was resolved. If a grievance form is provided to a client and not turned in, the facility tracks only the number on the form, the name of the client to whom the form was given, and the date it was given to the client.

(2) Each LGC submits to the advocate general a quarterly grievance report, Form OCA-GR-6, Quarterly Grievance Report. The quarterly report is transmitted to the advocate general no later than the 21st day following the end of each calendar quarter. Quarterly reports are submitted by mail, fax, or e-mail. When no grievance activity occurred or was pending during a particular calendar quarter, the LGC can inform the advocate general of this by e-mail in lieu of submitting Form OCA-GR-6. The e-mail address is: *oca.grievances@okdhs.org.

(3) If a grievance becomes moot at any point during the processing of the grievance, the LGC can stop the grievance process and declare the grievance "administratively resolved." The LGC informs the grievant, notes it on the applicable Form OCA-GR-1 and the tracking log, and sends a copy of Form OCA-GR-1 to OCA with the next quarterly grievance report.

(i) **Processing the grievance form.** After completing Form OCA-GR-1, the grievant submits the form directly to the LGC or any other employee of the facility or OKDHS. Form OCA-GR-1 is printed in duplicate sets with a carbonless yellow copy. The grievant submits the white copy and keeps the yellow copy. If someone other than the LGC receives a grievance, that person submits it directly to the LGC within one business day of receipt.

(j) **Informal resolution of grievance.** If the LGC is able to promptly resolve the grievance to the grievant's satisfaction without further processing, the LGC fills out the bottom of Form OCA-GR-1, signs it, and files it in the appropriate grievance file.

(k) **First level problem resolution.** Within three business days of receipt of Form OCA-GR-1, if the grievance has not been resolved to the grievant's satisfaction, the LGC fills out Form OCA-GR-1-A, Local Grievance Coordinator Worksheet.

(1) The LGC identifies who has the authority to provide the quickest and surest resolution to the problem at the lowest level in the organizational structure.

(A) For OKDHS grievances of minors in OKDHS custody and youths in voluntary OKDHS care, the respondent is the supervisor of the grievant's Child Welfare specialist.

(B) For grievances regarding placements above the therapeutic foster care level made by Children and Family Services Division (CFSD) placement services, the respondent is the applicable CFSD programs manager.

(C) For placement grievances regarding a specific foster child, the respondent is the applicable county director.

(D) If the minor also is a DDSD client, this may be the DDSD case manager supervisor.

(2) The LGC completes the first box in the first level section on Form OCA-GR-1-A, attaches the corresponding Form OCA-GR-1 and other relevant documentation and information, and submits it to the first level respondent, by the most efficient means practicable, within three business days of receipt of the grievance from the grievant.

(3) The first level respondent responds to the grievance within five business days of receipt of Form OCA-GR-1-A by completing the second box in the first level section on Form OCA-GR-1-A. If the proposed resolution contains a

promise of some future action, a target date is specified for full implementation of that future action. The grievant can contest the target date by taking the grievance to the next level of problem resolution.

(4) The LGC monitors the timely response by the first level respondent. If a complete response is not timely received by the LGC, the LGC notes this on Form OCA-GR-1-A and the grievance immediately proceeds to the second level of problem resolution.

(5) Within two business days of receipt of the first level response, the LGC or designee contacts the grievant to inform the grievant of the proposed resolution and the right to take the grievance to the second level of problem resolution, and determines if the grievant is satisfied with the proposed resolution. The first level respondent might meet with the grievant along with the LGC. If the grievant needs time to decide whether to accept the proposed resolution, the grievant has two business days within which to make a decision. If no decision is communicated to the LGC within two business days, the grievant is deemed to have accepted the proposed resolution.

(6) If the grievant is satisfied with the proposed resolution, the LGC indicates the grievant's acceptance on Form OCA-GR-1-A, notifies the individuals responsible for resolution of the grievance, and places the form in the appropriate grievance file.

(7) If the proposed resolution has been accepted by the grievant but involves a target date in the future, the LGC monitors compliance with the target date. If the LGC determines that the resolution has not been achieved by the target date, the LGC immediately reopens the grievance and processes it for second level of problem resolution.

(8) If the grievant does not accept the proposed resolution and desires to take the grievance to the second level of problem resolution, the LGC processes the grievance for the second level of problem resolution in accordance with subsection (l) of this Section.

(l) **Second level problem resolution.**

(1) If the grievance is not resolved at the first level of problem resolution, the LGC processes it in accordance with this subsection within three business days of the grievant requesting the second level of problem resolution pursuant to subsection (k) of this Section.

(2) The LGC fills out the first box in the second level section on Form OCA-GR-1-A, ensures the corresponding Form OCA-GR-1 and other relevant documents are attached, and submits it immediately to the second level respondent. For facilities and providers subject to these rules, the administrator or designee is the second level respondent. For OKDHS grievances, the OKDHS county director or the DDSD area manager, whichever is applicable, is the second level respondent. If the administrator, county director, or DDSD area manager was the first level respondent, then the second level of problem resolution is skipped and the grievance is processed as a contested grievance pursuant to subsection (m) of this Section.

(3) The administrator or designee responds to the grievance within seven business days of receipt of Form OCA-GR-1-A by completing the applicable box in the second level section on Form OCA-GR-1-A. If the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action.

(4) The second level respondent for a placement grievance regarding a specific foster child is the applicable area director.

(5) The LGC monitors the timely response by the respondent. If a complete response is not timely received by the LGC, the LGC notes this on Form OCA-GR-1-A and the grievance immediately is processed as a contested grievance. A contested OKDHS grievance is processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.

(6) Within two business days of receipt of the second level response, the LGC contacts the grievant to inform the grievant of the proposed resolution and the right to contest the response to the grievance, and determines if the grievant is satisfied with the proposed resolution. If the grievant needs time to decide whether to accept the proposed resolution, the grievant has two business days within which to make a decision. If no decision is communicated to the LGC within two business days, the grievant is deemed to have accepted the proposed resolution.

(7) If the grievant is satisfied with the proposed resolution, the LGC indicates the grievant's acceptance on Form OCA-GR-1-A, notifies the individuals responsible for resolution of the grievance, and places the form in the appropriate grievance file.

(8) If the proposed resolution has been accepted by the grievant but involves a target date in the future, the LGC monitors compliance with the target date. If the LGC determines that the resolution has not been completed by the target date, the LGC immediately reopens the grievance and processes it as a contested grievance.

(9) If the grievant does not accept the proposed resolution and indicates a desire to contest the response, a contested OKDHS grievance is processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.

(m) **Contested facility or provider grievances.** If the grievant does not accept the proposed resolution, the target date of the second level decision-making, or both, a facility or provider grievance, with the exception of grievances of Hissom class members, is appealed to the chair of the board of directors of the facility or provider or an appeals committee designated by the board. Grievances at OKDHS operated facilities are appealed as a contested grievance in accordance with OAC 340:2-3-46.

(1) The LGC transmits a contested facility or provider grievance to the chair of the board of directors of the facility or provider, or an appeals committee designated by the board, within three business days of learning that the grievant does not accept the proposed resolution and is contesting the proposed resolution.

(2) In reviewing the contested grievance, the board of directors, or appeals committee if applicable, is not required to hold a hearing to hear evidence or arguments. In the event the board determines that hearing evidence would assist it in resolving the grievance, the board has the option of holding a hearing. If it does so, the hearing does not require the formalities of a fair hearing.

(3) Within ten business days of receiving a contested grievance, the chair of the board of directors or the appeals committee responds to the grievant by submitting a written decision to the LGC.

(4) Within two business days of receiving the written decision of the chair of the board of directors or the appeals committee, the LGC informs the grievant of that decision and provides the grievant with a copy of the board's written decision. This concludes the grievance process and the grievant's administrative remedies have been exhausted.

(n) **Fast track grievances.** When the subject of an OKDHS grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to the OCA grievance coordinator for processing as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance coordinator can shorten the time for responding as warranted by the circumstances.

(o) **Communications with OCA.** Any notices, forms or other information that facilities, providers, or OKDHS county offices are required to submit to OCA or the advocate general can be submitted by e-mail, using the e-mail address *oca.grievances@okdhs.org.

340:2-3-46. Contested grievances appealed to the state office

(a) **Application.** This Section describes the processes for contesting the second level response to Oklahoma Department of Human Services (OKDHS) grievances, facility grievances at OKDHS operated facilities, and provider grievances of Hissom class members.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Initiating the contested grievance.** When a grievant asks to appeal a grievance to the state office administrator, within two business days of being informed of that request, the local grievance coordinator (LGC) transmits to the Office of Client Advocacy (OCA), Attn. OCA grievance coordinator, Form OCA-GR-1-A, Local Grievance Coordinator Worksheet, attaching the corresponding Form OCA-GR-1, Grievance Form, and other documents and information relevant to the subject matter of the grievance.

(d) **Documentation requirements.** When Form OCA-GR-1-A is submitted to OCA, it has attached:

(1) the corresponding Form OCA-GR-1;

(2) supporting facts relating to the proposed resolution by the second level respondent, including documentation relating to the first level and second level of problem resolution processes; and

(3) any written rule, policy, procedure, regulation, and other information relevant to the subject matter of the grievance.

(e) **OCA processing of grievance.** Within three business days of OCA's receipt of a contested grievance, OCA reviews the contested grievance and accompanying documentation and determines if any additional information is necessary for disposition of the appeal. When any information appears to be missing, OCA contacts the person(s) in possession of the needed information and sets deadlines for submission of the information by the most efficient means to avoid delays in processing the contested grievance.

(f) **Rejected grievances.** If OCA determines the subject matter of a grievance falls in one of the categories listed in OAC ~~340:2-3-45(b)(2)~~ 340:2-3-45(c)(2), OCA returns the grievance to the LGC with a cover letter indicating the reason the grievance was not accepted for processing as a contested grievance. Within two business days of receipt of OCA's letter, the LGC contacts the grievant to inform the grievant of the status of the grievance.

(g) **OCA transmittal to state office administrator.** Within three business days of OCA's receipt of a contested grievance and all documents required by subsection (d) of this Section, the advocate general or designee prepares and sends Form OCA-GR-7, Contested Grievance Transmittal, to the state office administrator with decision-making authority to respond to the subject of the grievance.

(h) **State office administrator's response.** The state office administrator who receives a contested grievance responds to the grievant within ten business days. The advocate general may grant an extension when good cause is shown, such as the complexity of the issues. The state office administrator sends his or her response directly to the LGC after completing the middle portion of Form OCA-GR-7. A copy is sent to the advocate general. The state office administrator attaches his or her response to Form OCA-GR-7 and includes:

(1) the proposed resolution and how it is to be implemented;

(2) the person(s) responsible for implementing the proposed resolution;

(3) the target date for the proposed resolution;

(4) facts which support the appropriateness of the proposed resolution by the facility, including relevant documentation; and

(5) any written rule, policy, procedure, regulation, and other information relevant to the subject matter of the grievance and the proposed resolution.

(i) **Timely response required.** The OCA grievance coordinator monitors the timely response by the state office administrator. If a complete response is not timely received by the OCA grievance coordinator and an extension has not been granted, the OCA grievance coordinator immediately processes the grievance for review by the Grievance and Review Committee (GARC) in accordance with OAC 340:2-3-64(b). In that event, OCA notifies the grievant and affected state office administrator that the grievance is being processed for GARC.

(j) **Presentation of proposed resolution.** The LGC or designee contacts the grievant within two business days of receipt

by the LGC of the state office administrator's response. If the grievant accepts the proposed resolution, the LGC notes this on the OCA transmittal memo and files it in the client's grievance file.

(k) **Request for GARC review.** If the grievant does not accept the response of the state office administrator, the LGC completes the bottom portion of Form OCA-GR-7 and returns it to the OCA grievance coordinator within two business days. Upon receipt by OCA of Form OCA-GR-7, the grievance is processed for review by GARC in accordance with OAC 340:2-3-64.

340:2-3-50. Grievances of foster parents

(a) **Application.** This Section describes processes relating to grievances of foster parents approved by the Oklahoma Department of Human Services (OKDHS). Section 7213 of Title 10 of the Oklahoma Statutes confers on OKDHS the responsibility to establish grievance procedures for foster parents with whom state agencies or child placing agencies contract.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Form OCA-GR-4, Notice of Grievance Rights - Foster Parents, is given to each foster parent when approved as an OKDHS foster parent and at reassessment. It is given to the foster parent by the Child Welfare (CW) worker assigned to the foster home within two business days of the approval or the reassessment. This form is used to identify the local grievance coordinator (LGC) and to explain the foster parent's right to grieve. After the foster parent signs the form, a copy is given to the foster parent and the original is maintained in the permanent record for the foster parent.

(d) **Grievance defined.** Foster parents may file grievances with respect to the provision or receipt of services.

(1) **Grievable issues.** Except for the limitations listed in subsection (d)(2) of this Section, matters which can be the subject of a grievance include:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS; or

(B) a decision, act, or omission of an employee of OKDHS.

(2) **Summary dispositions.** If it is determined that the foster parent is asking to grieve a problem or concern covered by any of the categories in Section OAC 340:2-3-45(c)(2) or by any of the categories listed in (A) through (F), the LGC informs the foster parent why the grievance is not being processed, using Form OCA-GR-8-D, Notice of Summary Disposition of Foster Parent Grievance. In addition to the categories in Section OAC 340:2-3-45(c)(2), situations that are not grievable by foster parents under this grievance system are:

(A) a decision of a court;

(B) findings of a child abuse and neglect investigation or assessment in a foster home. The process for appealing these findings is found at OAC 340:75-1-12.2;

(C) disposition of a fair hearing regarding closure of a foster home. The fair hearing process regarding closure of a foster home is found at OAC 340:75-7-94;

(D) disputes with other foster parents;

(E) written plans of compliance. The foster parents provide their written input on the compliance documentation; and

(F) replacement of a child in a foster home after removal due to a child abuse or neglect investigation. The fair hearing process regarding replacement in foster care is found at OAC 340:75-1-12.6.

(3) **Grievances alleging retaliation.** Grievances alleging retaliation or discrimination, as those terms are defined in OAC 340:2-3-46(c), are processed in accordance with that Section.

(4) **Grievances alleging discrimination.** If a grievance alleges discrimination based on sex, age, national origin, religion, color or disability, the grievant is referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the grievance to the OKDHS civil rights administrator, and so informs the grievant.

(e) **Filing and processing of grievance.** A grievance filed by a foster parent is processed as an OKDHS grievance in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(1) The county director serves as the LGC for grievances filed by foster parents. For grievances involving specialized foster care, the applicable Developmental Disabilities Services Division (DDSD) area manager or designee serves as the LGC.

(2) Foster parent grievances must be filed within 45 calendar days of the occurrence.

(3) After the grievance procedure has been completed, a foster parent or former foster parent has a right of access to the grievance record of grievances the foster parent filed.

(f) **Contested grievances.** Contested grievances are processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section.

PART 7. GRIEVANCE AND ABUSE REVIEW COMMITTEE

340:2-3-62. Grievance and Abuse Review Committee(GARC) review of Office of Client Advocacy (OCA) investigation reports

(a) **Application.** GARC reviews OCA investigative reports involving allegations of abuse, neglect, verbal abuse, caretaker misconduct, or exploitation with the exception of cases involving a community services worker that are processed in accordance with OAC 340:100-3-39.

(b) **Requests for GARC review.** Requests for GARC review are submitted in writing to the advocate general within 30 calendar days of receipt of an OCA investigation report. Requests for GARC review include an explanation of the basis of the review and the reasons review is requested. Supporting

documentation for the request for review is included with the request.

(1) With regard to investigations involving a facility operated by OJA or under contract with the Office of Juvenile Affairs (OJA), a request for GARC review may be made by the facility administrator, the OJA advocate general, or the executive director of OJA. If a request is made by a facility administrator, he or she sends a copy of the request to the executive director of OJA.

(2) With regard to investigations involving Oklahoma Department of Human Services (OKDHS) operated facilities and facilities which contract with OKDHS, a request for GARC review can be made by the facility administrator, the applicable state office administrator, or the OKDHS Director. If a request is made by a facility administrator, he or she sends a copy of the request to the applicable state office administrator.

(3) With regard to investigations involving a Hissom class member that result in a not confirmed finding or in which the accused caretaker is not a community services worker, a request for GARC review can be made by the administrator of the provider agency that employed the accused caretaker at the time of the incident(s) investigated, or by the Developmental Disabilities Services Division (DDSD) director or designee.

(4) With regard to investigations involving a facility operated by the Department of Rehabilitation Services (DRS), a request for GARC review can be made by the facility administrator or the DRS director.

(5) With regard to all other investigations conducted pursuant to OAC 340:2-3-32, a request is made by the facility administrator.

(6) The advocate general also can request GARC review.

(c) **Scope of GARC review.** GARC conducts a *de novo* paper review of the alleged incident(s) at issue in the OCA investigation.

(1) GARC does not consider prior unsubstantiated allegations.

(2) Involved administrators, state office administrators, the OJA advocate general, if applicable, and their designees may attend the GARC meeting. The OCA investigator involved in a case being reviewed, and his or her supervisor, may attend the GARC meeting to provide information. The level of participation of attendees is within the discretion of the chair of GARC.

(3) If an administrator, state office administrator, or OJA representative wants to submit additional evidence not considered during the OCA investigation, it is submitted to the advocate general contemporaneously with the request for GARC review. For good cause shown, evidence can be submitted to the advocate general no later than five business days before the GARC meeting.

(4) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a case until its next meeting. GARC may request additional information from OCA, an administrator, the OJA advocate general, or a state office administrator.

(d) **GARC report contents.** Within 15 business days of a GARC meeting to review a case, GARC prepares a report that includes items (1) through (4) in this subsection.

(1) GARC's opinion whether the evidence is sufficient, based on a preponderance of the evidence standard, to confirm maltreatment has occurred and the basis for GARC's opinion.

(2) If in GARC's opinion the evidence is sufficient to confirm maltreatment, the report specifies the maltreatment found to have occurred, the specific acts constituting the maltreatment, the dates and places the conduct occurred, the rules, policies, and statutes violated, and the nature of any injury to the alleged victim(s).

(3) GARC's recommendation as to any action needed to protect the victim and other clients.

(4) Areas of concern identified during GARC's review of the case regarding facility or OKDHS practices or procedures.

(e) **OKDHS Director's review.** The advocate general submits to the OKDHS Director the GARC report, the corresponding OCA investigation report, and other pertinent documents.

(1) Within 15 business days of receipt of the GARC report, the OKDHS Director decides whether to:

(A) adopt GARC's findings;

(B) adopt GARC's findings with modifications;

(C) return the matter to GARC for further consideration; or

(D) reverse GARC's finding.

(2) If the OKDHS Director does not respond within 15 business days of receipt of the GARC report, the GARC finding becomes final.

(3) OCA notifies in writing all interested parties of the result of the OKDHS Director's review.

(f) **Routing the results of the OKDHS Director's review.**

(1) In cases involving OKDHS operated facilities, the advocate general sends a copy of the GARC report and the results of the OKDHS Director's review to the administrator of the facility and the appropriate state office administrator. Within two business days of receipt of the OKDHS Director's decision, the administrator informs each accused employee of the result of the OKDHS Director's review.

(2) In cases involving private or non-OKDHS operated public facilities, the advocate general sends a copy of the GARC report and the results of the OKDHS Director's review to the administrator and the director of any agency that contracts with or licenses the facility. When the administrator is named as an accused employee in the allegation, the GARC report and results of the OKDHS Director's review are sent to the chair of the facility's board of directors.

(g) **Response to results of the OKDHS Director's review.** After receipt of the results of the OKDHS Director's review of an OCA investigation involving an OKDHS employee, the affected state office administrator determines whether to initiate appropriate disciplinary action in accordance with OAC 340:2-3-12. Within 30 calendar days of receipt of the results

of the OKDHS Director's review, the state office administrator informs the advocate general of any disciplinary action taken or to be taken with regard to an employee found to have committed maltreatment and any corrective action taken or to be taken with regard to areas of concern identified by GARC in its report.

340:2-3-63. Grievance and Abuse Review Committee (GARC) review of Office of Client Advocacy (OCA) investigation reports regarding foster parent complaints

(a) **Application.** At the request of the Oklahoma Department of Human Services (OKDHS) Director, GARC reviews an OCA investigation report involving allegations of discrimination and retaliation investigated by OCA in accordance with OAC 340:2-3-38.

(b) **Scope of GARC review.** GARC conducts a *de novo* paper review of the alleged incident(s) investigated by OCA.

(1) Within three business days of receiving a request for GARC review from the OKDHS Director, the advocate general or designee informs the foster parent(s), the applicable state office administrators and the administrator of any affected child placing agency.

(2) GARC does not consider prior unsubstantiated allegations.

(3) The foster parent, the applicable administrator, affected state office administrators, or their designees, may attend the GARC meeting. The level of participation of attendees is within the discretion of the chair of GARC.

(4) If a foster parent or an administrator wants to submit additional evidence not considered during the OCA investigation, it is submitted to the advocate general contemporaneously with the request for GARC review. For good cause shown, additional evidence can be submitted to the advocate general no later than eight business days before the GARC meeting.

(5) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a case until its next meeting. GARC may request additional information from OCA, an administrator, or a state office administrator.

(c) **GARC report contents.** Within 15 business days of a GARC meeting to review a case, GARC prepares a report that includes:

(1) GARC's opinion whether the evidence is sufficient, based on a preponderance of the evidence standard, to confirm retaliation or discrimination occurred and the basis for GARC's opinion;

(2) if in GARC's opinion ~~whether~~ the evidence is sufficient to confirm retaliation or discrimination, the report specifies whether retaliation, discrimination, or both occurred and the specific acts constituting the retaliation or discrimination; and

(3) areas of concern identified by GARC during its review of the case regarding practices or procedures of the child placing agency or OKDHS.

(d) **OKDHS Director's response.** The advocate general submits to the OKDHS Director the GARC report, the corresponding OCA investigation report, and other pertinent documents.

(1) Within 15 business days of receipt of GARC's report, the OKDHS Director decides whether to:

(A) adopt GARC's findings;

(B) adopt GARC's findings with modifications;

(C) return the matter to GARC for further consideration; or

(D) reverse GARC's finding.

(2) If the OKDHS Director does not respond within 15 business days of receipt of a GARC report, GARC's opinion with regard to the finding(s) becomes final.

(e) **Notification of final result.**

(1) The advocate general provides notice of the final result of the OKDHS Director's request for GARC review to affected state office administrators and the applicable foster parent(s).

(2) Within two business days of receipt of this notification, a state office administrator responsible for an employee named in the allegation informs each such employee of the final result of GARC's review.

(3) Within 20 business days of receipt of this notification in a report which confirms retaliation or discrimination, the state office administrator informs the advocate general in writing if any personnel action has or will be taken with regard to an employee, and of any corrective action taken or to be taken with regard to areas of concern noted in the GARC report.

PART 9. OMBUDSMAN PROGRAMS

340:2-3-71. Advocacy services of the Office of Client Advocacy (OCA) in general

(a) **Legal authority.**

(1) Section 1415.1(A)(2) of Title 10 to the Oklahoma Statutes requires the Oklahoma Department of Human Services (OKDHS) to establish an ombudsman program for each institution and residential facility for the mentally retarded operated by OKDHS. OKDHS has conferred this responsibility on the Office of Client Advocacy (OCA).

(2) Orders of the United States District Court for the Northern District of Oklahoma in Homeward Bound et al. v. The Hissom Memorial Center, et al., Case No. 85-C-437-E, require OKDHS and OCA to provide ombudsman and advocacy services to individuals certified by the court as members of the plaintiff class, known as Hissom class members.

(3) OKDHS also has conferred on OCA other advocacy responsibilities as outlined in this Part of this Subchapter.

(b) **Scope.** OCA provides advocacy services to clients of the OKDHS Developmental Disabilities Services Division (DDSD) listed in this subsection, who are collectively referred to as "clients" in this Part of this Subchapter.

(1) OCA's advocacy services for residents of the Northern Oklahoma Resource Center of Enid (NORCE), the

Southern Oklahoma Resource Center (SORC), and the Greer Center Facility (Greer) are outlined in greater detail in Section 72 of this Subchapter.

(2) OCA's advocacy services for former residents of SORC, NORCE, and Greer for whom the director of the facility is guardian ad litem (GAL) are outlined in greater detail in Section 73 of this Subchapter.

(3) OCA's advocacy services for Hissom class members are outlined in greater detail in Section 74 of this Subchapter.

(4) OCA provides advocacy services on a short-term or emergency basis for other DDSD clients who have a special advocacy need pursuant to Section 75 of this Subchapter.

(c) **Mission statement and guiding principles.**

(1) **Mission statement.** OCA's advocacy programs advance the capacity and recognition of individual choice, the realization of rights and responsibilities of citizenship, and the personal well-being of recipients of DDSD services.

(2) **Guiding principles.** In addition to those listed in OAC 340:100-1-3-3.1, the guiding principles for OCA's advocacy on behalf of clients are listed in (A) through (D) of this paragraph.

(A) **Self-determination.** Advocates promote the individual as the driving force of life choices and decisions.

(B) **Meaningful choice.** Advocates promote the development of meaningful choices for persons with developmental disabilities consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, and interests.

(C) **Active citizenry.** Advocates promote the inclusion and involvement of persons with developmental disabilities in the social and political structures of the community.

(D) **Well-being.** Advocates promote access to physical and emotional supports necessary for a healthy life-style.

(d) **Definitions.** In addition to the definitions in Section 2 of this Subchapter, the following words and terms when used in Sections 71 through 75 shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Behavior Review Committee"** or **"BRC"** means the BRC established pursuant to OAC 340:100-3-5 and 100-3-5.1 and defined in OAC 340:100-1-2.

(2) **"Guardianship assessment"** means the process of determining an individual's capacity to make informed decisions and the need for assistance with decision-making regarding personal and financial matters, in accordance with OAC 340:100-1-2.

(3) **"Human Rights Committee"** or **"HRC"** means the HRC created by OAC 340:100-3-6 and defined in OAC 340:100-1-2.

(4) **"Individual plan"** or **"IP"** or **"plan"** means an individual plan established pursuant to OAC 340:100-5-51.

(5) **"Informed consent"** means informed consent as defined in OAC 340:100-1-2.

(6) **"Program coordinator"** or **"PC"** means a program coordinator as defined in OAC 340:100-1-2.

(7) **"Qualified Mental Retardation Professional"** or **"QMRP"** means a QMRP as defined in OAC 340:100-1-2.

(8) **"Service review"** means an assessment by an OCA advocate of a client's health, living circumstances, and the delivery of supportive services. The service review documents the extent of services provided to an individual client and identifies problem areas in service delivery. Each service review is a snapshot of the life of an individual at the time the review is completed.

(9) **"Unit coordinator"** means a team leader as defined in OAC 340:100-1-2.

(e) **Confidentiality.** Information in OCA's records relating to advocacy services provided to the clients listed in subsection (b) of this Section is confidential and protected from unauthorized use. Only authorized individuals are given access to client records or provided information from those records.

(1) The confidentiality provisions of OAC 340:100-3-2 apply to OCA's client files.

(2) The confidentiality provisions of OAC 340:105-3-34 apply to information in OCA records regarding allegations of abuse, neglect, and exploitation of a vulnerable adult as those terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes.

(3) A breach of confidentiality may result in a criminal prosecution. Violations by OKDHS employees can also result in personnel action.

(f) **Training requirements for advocates.** New and tenured OCA advocates receive appropriate training consistent with their background and experience. This includes training on the rights of DDSD clients under Oklahoma and federal law.

(g) **Client representation.**

(1) OCA maintains offices on campus at SORC and NORCE, and assigns advocates to represent residents of SORC, NORCE, and Greer.

(2) OCA assigns advocates, in accordance with this Part of this Subchapter, to represent specific DDSD clients living in community residential settings, including Hissom class members living in Oklahoma and former residents of SORC, NORCE, and Greer for whom the facility director is the GAL.

(3) An OCA advocate is knowledgeable about the clients represented by him or her and seeks to understand each client's specific challenges and communication styles, needs, interests, and goals. An advocate ascertains the preferences and choices of a client. An advocate becomes familiar with a client by:

(A) reviewing relevant client records and files;

(B) visits and other contacts with the client at home, at work, and in other contexts; and

(C) communication with the client's relatives, loved ones, guardians, program coordinator and other provider staff, case manager, and others in the client's circle of support.

(h) **OCA ombuds and advocacy services.**

(1) **Advocacy.** Advocacy is the function of assisting an individual in voicing his or her interests. Clients are encouraged to engage in self-determination, and are assisted to the extent they need and desire. When a client has a limitation in voicing his or her own interests, needs, and preferences, an advocate seeks to speak on behalf of the client. Advocacy services provided by OCA's advocates include:

(A) supporting the implementation of the least restrictive alternative in residential, vocational, therapeutic, and medical settings;

(B) supporting the most appropriate living environment for each client consistent with the client's needs and objectives;

(C) encouraging the development of natural supports, including friends, coworkers and neighbors in the community in which an individual lives; and

(D) advocating for those responsible for providing services for a client to fulfill their responsibilities by bringing performance issues to the attention of those who are responsible for correcting the situation.

(2) **Monitoring.** OCA monitors the well-being and provision of services to a client by means of: visits and other forms of contact with the client, staff, family members, and others who know the client; review of records, documentation, contracts, and financial agreements between clients and providers of services, incident reports, and professional assessments; and attendance at IP and other team meetings. OCA's advocates cooperate with and render assistance to outside monitoring and advocacy entities as provided for by federal and state laws, in accordance with the laws and rules relating to client confidentiality and release of information protocols. The monitoring role of an OCA advocate is to ensure that:

(A) individual needs, preferences, and choices are identified and met appropriately and consistently;

(B) health, safety, and welfare standards and safeguards are maintained; and

(C) problems and issues are addressed at the earliest juncture by appropriate persons and entities in a prompt manner.

(3) **Informal problem resolution.** An advocate seeks to resolve issues and client concerns by means of informal problem resolution at the lowest level of administrative responsibility or decision-making. Informal problem resolution seeks to resolve issues and reach a consensus with the client on a plan of action to resolve the problem informally. An advocate uses the problem resolution activity consistent with the nature and imminence of the problem. An advocate assists a client in development of problem resolution skills and self-advocacy.

(4) **Grievances.** As needed, an OCA advocate files grievances on behalf of clients in accordance with Part 5 of this Subchapter. OCA also advises clients and assists them with filing grievances on their own behalf when they so desire.

(5) **Protection and safety.** OCA staff take appropriate action under the circumstances to protect the health, safety, and well-being of clients, including reporting allegations of abuse, neglect, ~~mistreatment~~ maltreatment, and exploitation in accordance with Part 3 of this Subchapter.

(A) OCA advocates assist OCA and Adult Protective Services investigators and law enforcement officers in obtaining information necessary for completion of investigations in which a client is an alleged victim.

(B) Advocates engage in appropriate follow-up activity in response to receiving a referral from OCA's intake unit in accordance with Section 35(a)(7) of this Subchapter.

(C) When an advocate has a concern related to a client's health, safety, well-being, or program implementation, the advocate advises the client's case manager or designated QMRP, as applicable, and others (for example, DDSD staff, provider or facility staff, treatment staff, and health care professionals) as the circumstances warrant.

(D) Immediately upon becoming aware of any concerns regarding imminent risk of harm, an advocate advises the applicable residential or vocational provider as well as the client's case manager.

(E) An OCA advocate ensures that allegations of abuse, neglect, ~~mistreatment~~ maltreatment, and exploitation of which the advocate becomes aware are reported to OCA intake in accordance with Section 33 of this Subchapter.

(6) **Promoting informed choice.** An OCA advocate promotes informed decision-making, consistent with a client's unique strengths, resources, priorities, concerns, abilities, capabilities, and interests, through provision of necessary information and assisting a client in understanding options and potential consequences of a decision. If a client is unable to make an informed choice, the advocate seeks to provide the client's legal guardian, GAL, volunteer advocate, and other representative(s) with access to information to make an informed decision on behalf of the client. The advocate general does not provide legal advice to clients, but may provide information about the law.

(7) **Protection of rights.** An OCA advocate promotes the full exercise of legal rights guaranteed clients under federal and state laws. An advocate takes appropriate steps to protect a client's rights, including ensuring those rights are considered in team decisions and in the manner with which team decisions are carried out. An advocate seeks to ensure the application of due process in administrative, quasi-judicial, and judicial proceedings involving a client which might result in a rights restriction. When a rights restriction is absolutely necessary, OCA supports the least restriction necessary for the shortest period of time possible and a plan to remove the restriction as soon as possible.

(8) **Access to services.** An OCA advocate promotes client access to the full range of supports in accordance with the requirements of state and federal programs. Although an advocate takes a position with regard to services

needed by a client, an advocate does not have authority to approve services.

(9) **Guardianship issues.** The Oklahoma Guardianship Act promotes the participation of persons as fully as possible in the decisions which affect them, development of maximum self-reliance and independence, and appointment of guardians and others only to the extent necessitated by the mental and adaptive limitations or other condition of individuals. [30 O.S. § 1-103] Because a full guardianship of the person and estate of a client is the most restrictive intrusion on an individual's decision-making, OCA advocates for the least restrictive alternative to a full guardianship that is feasible under the circumstances, including but not limited to: limited guardianship; representative payee for financial benefits; volunteer advocate; supportive friends and family; health care proxy; durable power of attorney; and advance directives.

(10) **Promoting inclusion.** An advocate promotes the realization of active citizenship and inclusion in the community. This includes but is not limited to encouraging clients to: learn the rights and responsibilities of good citizenship, vote, take classes, participate in volunteer service organizations, attend religious services of the client's choice, attend recreational, cultural and social events, and join citizen advocacy organizations that promote inclusion in the community. An advocate encourages the development of friends who can serve as natural supports for a client. An advocate assists a client in locating relatives who are not currently active in the client's life and encourages relationship building between the client and family members.

(11) **End-of-life issues.** End-of-life issues for an individual with a developmental disability do not differ from those of the community at large. Regardless of the medical circumstance which bring these issues to the forefront, an OCA advocate seeks to have physicians, guardians, and loved ones of a client adhere to Oklahoma laws relating to do-not-resuscitate orders, withdrawal or denial of nutrition or hydration, and withdrawal or termination of medical treatment. In the absence of clear and convincing evidence of a client's wishes, an advocate presumes the client would choose life sustaining measures.

(i) **On-call advocate.** OCA advocates carry pagers or cell phones during office hours. If an advocate is not available during office hours, his or her supervisor serves as a back-up to the advocate and can be contacted. Information about the name of the advocate assigned to a client, the advocate's phone and pager numbers, and the name of the advocate's supervisor can be obtained from OCA's offices in Oklahoma City ~~(~~1-405-525-4850, 1-800-522-8014~~)~~ and Tulsa ~~(~~918-732-7543~~)~~. After hours, weekends, and holidays, an advocate is assigned to serve as the on-call advocate 24 hours a day. The on-call advocate can be contacted by cell phone ~~(~~1-405-203-6056~~)~~.

(j) **OCA access to client records and information.** OCA staff are provided access to all records, files, documents, and information needed to fulfill OCA's responsibilities regarding a client. DDSD case managers and employees and staff of provider agencies send to the assigned OCA advocate a copy of documents and notices sent to the client.

340:2-3-72. Advocacy services for residents of Northern Oklahoma Resource Center of Enid (NORCE), the Southern Oklahoma Resource Center (SORC), and the Greer Center Facility (Greer)

(a) **Application.** This Section describes ombudsman and advocacy services the Office of Client Advocacy (OCA) provides to residents of SORC, NORCE, and Greer ("the facilities"). Section 1415.1(A)(2) of Title 10 to the Oklahoma Statutes requires the Oklahoma Department of Human Services (OKDHS) to establish an ombudsman program for each institution and residential facility for the mentally retarded operated by OKDHS. OKDHS has conferred on OCA this responsibility. Ombudsman and advocacy services are provided to residents of the facilities consistent with Section 71 of this Subchapter.

(b) **Grievance coordination.** OCA's advocates serve as grievance coordinators for resident grievances in accordance with Section 51 of this Subchapter.

(c) **Abuse and neglect reporting.**

(1) OCA's advocates provide training to new employees of SORC, NORCE, and Greer regarding their obligation to report suspected incidents of abuse, neglect, verbal abuse, and caretaker misconduct in accordance with Section 33 of this Subchapter.

(2) OCA's advocates receive referrals of suspected abuse, neglect, and ~~mistreatment~~ maltreatment, and immediately transmit that information to OCA intake in accordance with Section 33 of this Subsection.

(d) **Advocacy and monitoring.** OCA's advocates provide advocacy and monitoring to ensure compliance with policies, rules, and regulations applicable to the health, safety, and well-being of residents. In addition to the activities described in Section 71 of this Subchapter, advocacy and monitoring activities at the facilities include:

(1) a face-to-face visit with each resident at least annually, and more frequently as indicated, to assess the resident's advocacy needs;

(2) periodic site visits to facility buildings frequented by residents, including residential units, vocational programs, canteen, and therapy departments, at least quarterly and more frequently as warranted to monitor compliance with health and safety requirements and protection of client rights, including but not limited to privacy rights;

(3) a visit with a resident at the request of the resident, the resident's guardian, or other person concerned about the well-being of the resident unless contraindicated;

(4) review relevant documentation within seven calendar days of receipt, including but not limited to: individual plan (IP) and interim IPs; accident and incident reports; OCA investigation findings; and behavior data collection forms, guardianship assessments, and other professional reports and assessments;

(5) serving as a member of a resident's personal support team;

(6) attending team meetings when it can reasonably be anticipated that a significant issue will be addressed, including any rights issue and in particular a rights restriction or an intrusive behavior intervention strategy;
(7) participating in Guardianship Assessment meetings and annual reviews;
(8) attending facility Behavior Review Committee (BRC) and Human Rights Committee (HRC) meetings as required or indicated;
(9) attending Death Review meetings pursuant to OAC 340:100-3-35;
(10) promoting team discussion of alternatives to living in the facility, and consulting with teams regarding community supports and community residential alternatives;
(11) participation in discharge planning meetings;
(12) when a resident who has been discharged from the facility is not eligible for assignment of an OCA advocate in the community, providing transition advocacy assistance for 90 calendar days from the date the resident moves out of the facility. The 90 days can be extended by the advocate general or designee as warranted; and
(13) reporting, for administrative action and correction, policy violations to the facility director or quality assurance designee.

[OAR Docket #05-679; filed 4-19-05]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 5. ADULT PROTECTIVE SERVICES

[OAR Docket #05-676]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
340:5-1-6. [AMENDED]
Subchapter 3. Reports of Maltreatment of Vulnerable Adults
340:5-3-4. [AMENDED]
340:5-3-6. [AMENDED]
Subchapter 5. Investigation of Adult Protective Services Referrals
340:5-5-2. through 340:5-5-4. [AMENDED]
340:5-5-6. [AMENDED]
Subchapter 7. Long Term Investigations Section
340:5-7-2. through 340:5-7-7. [NEW]
(Reference APA WF # 04-06 and 04-34)
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Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Sections 10-101 through 10-111 of Title 43A of the Oklahoma Statutes.
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Subchapter 1. General Provisions
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Subchapter 3. Reports of Maltreatment of Vulnerable Adults
340:5-3-4 [AMENDED]
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Subchapter 5. Investigation of Adult Protective Services Referrals
340:5-5-2 through 340:5-5-4 [AMENDED]
340:5-5-6 [AMENDED]
Subchapter 7. Long Term Investigations Section
340:5-7-2 through 340:5-7-6 [NEW]
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Family Support Services Division rules for Adult Protective Services (APS) are revised to: (1) bring the definitions used in Oklahoma Department of Human Services (OKDHS) APS rules into compliance with the definitions used in Title 43A of the Oklahoma Statutes; (2) require referral of reports of alleged maltreatment of a Greer Center resident by an employee of the facility to OKDHS Office of Client Advocacy (OCA); (3) change the time frame for initiating investigations of non-emergency referrals of maltreatment from 72 hours of receipt to three working days excluding weekends and official OKDHS holidays; (4) simplify follow-up planning; (5) no longer arbitrarily require follow-ups on all substantiated cases where the client is receiving services; (6) add language regarding referrals involving other licensed or certified individuals and alleged victims who are criminal defendants; (7) add language where referrals are sent involving a residential care facility, assisted living facility, and continuum of care; (8) correct rule references; (9) add language to include court related services; (10) change incapacitated to vulnerable; (11) add language that OKDHS is responsible for assuring basic needs for safety and security are met for referrals that result in a client receiving involuntary services; (12) add rules concerning follow-up visits on temporary guardianship cases; (13) clarify rules on emergency services responsibilities for out-of-home placements; and (14) add rules for involuntary protective services when APS has temporary guardianship and emergency out-of-home placement when APS has an ex-parte hearing.

Rules are added to address: (1) program coordination; (2) procedure for handling complaints concerning Long Term Care (LTC) investigators; (3) procedure and responsibility for screening Long Term Care Investigations (LTCI) reports; (4) time frames for initiating and completing an LTC investigation; (5) elements of an LTC investigation; and (6) local APS staff is notified of findings of LTCI as needed to determine safe placements for community APS clients.
CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

340:5-1-6. Definitions

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

"Abuse" means causing or permitting the:

(A) infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish; or

(B) deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult~~;~~.

"Activities of daily living (ADLs)" means basic self-care activities such as toileting, transfer, feeding, bathing, and dressing.

"Adult" means a person ~~aged~~ 18 years of age or older.

"APS specialist" means an Oklahoma Department of Human Services (OKDHS) worker who has successfully completed Adult Protective Services (APS) New Worker Academy or is working under the oversight of a more experienced APS specialist.

"Caretaker" means a person who is responsible for the care of or financial management for a vulnerable adult as a result of family relationship or has assumed responsibility for care of a vulnerable adult voluntarily, by contract, or by friendship; or who serves as a legally appointed guardian, limited guardian, or conservator.

"Emergency" means a situation in which a vulnerable adult is likely to suffer death or serious physical harm without immediate intervention.

"Evidence" means all documentation, photographs, interviews, observations, objects, and other information collected, observed, or otherwise obtained during the course of an investigation.

"Exploitation" means ~~an~~ unjust or improper use of the person or resources of a vulnerable adult for the profit or advantage of another person through undue influence, coercion, harassment, duress, deception, false representation, or false pretense.

"Guardian" means one of the types of guardianship specified in the Oklahoma Guardianship and Conservatorship Act, Title 30 of the Oklahoma Statutes.

(A) **General guardian.** A general guardian is a person appointed by the court to serve as the guardian of an incapacitated person to ensure that the essential requirements for the health and safety of the person are met, to manage the estate of the person, or both.

(B) **Limited guardian.** A limited guardian is a person appointed by the court to serve as the guardian of a partially incapacitated person and is authorized by the court to exercise only certain powers of a guardian over the person, or estate or financial resources of the person, or both.

(C) **Special guardian.** A special guardian is a person appointed by the court to exercise certain specified powers to alleviate a situation in which there is a threat of serious impairment to the health or safety of an incapacitated or partially incapacitated person, or a situation in which the financial resources of the person will be seriously damaged or dissipated unless immediate action is taken.

"Incapacitated adult" means a vulnerable adult whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person lacks the capacity to manage his or her financial resources or to meet essential requirements for the person's mental or physical health or safety without assistance.

"Indecent exposure" means forcing or requiring a vulnerable adult to:

(A) look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult; or

(B) touch or feel the body or private parts of another person.

"Instrumental activities of daily living (IADLs)" means abilities necessary for an adult to function independently in the community, such as preparing meals, using the telephone, driving or arranging for transportation, shopping, and handling finances.

"Maltreatment" means abuse, neglect, ~~self-neglect~~ self-neglect, exploitation, sexual exploitation, or verbal abuse.

"Neglect" means:

(A) failure to provide protection for a vulnerable adult who is unable to protect his or her own interest;

(B) failure to provide adequate shelter, nutrition, health care, or clothing for a vulnerable adult; or

(C) ~~causing or permitting~~ negligent acts or omissions that result in harm or ~~the~~ unreasonable risk of harm to a vulnerable adult through action or inaction, or lack of supervision by a caretaker providing direct services.

"Power of attorney" means authority granted by a legal document authorizing a person or other entity to act for the principal, subject to the extent of the power authorized. The power is revoked upon:

(A) written revocation of the principal;

(B) incapacity of the principal unless it is a durable power of attorney;

(C) death of the principal;

(D) a termination date if specified in the document;

(E) order of the court; ~~and~~ or

(F) the appointment of a guardian, in most cases.

"~~Self-neglect~~ Self-neglect" means neglect brought about by a vulnerable adult's own actions or inactions which causes the vulnerable adult to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence, or incapacity.

"Services which are necessary to aid an individual to meet essential requirements for mental or physical health

and safety" means services which include, but are not limited to the:

(A) identification of adults in need of protective services;

(B) provision of medical care for physical or mental health needs; and

(C) provision of assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical maltreatment, guardianship referral, outreach, and transportation necessary to secure any of such needs. This excludes taking the adult into physical custody without the adult's consent except through proper procedures for the provision of involuntary services.

"Sexual abuse" means:

(A) oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult with any other object by a caretaker or other person providing services to the vulnerable adult ~~with any other object~~;

(B) for the purpose of sexual gratification, the touching, feeling, or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult; or

(C) indecent exposure by a caretaker or other person providing services to the vulnerable adult.

"Sexual exploitation" means and includes, but is not limited to, a caretaker causing, allowing, permitting, or encouraging a vulnerable adult to engage in prostitution or in lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult as those acts are defined by Oklahoma law.

"Substantiated" means more than 50% of the evidence collected during an APS investigation ~~suggests~~ determines that maltreatment occurred.

"Temporary guardian" means a person or other entity appointed by the court under Title 43A of the Oklahoma Statutes with authority only to consent on behalf of an incapacitated adult to the provision of protective services determined necessary to remove conditions creating an emergency need and other services approved by the court. A temporary guardian serves in that capacity only until the expiration of the order appointing him or her.

"Unsubstantiated" means evidence found during an APS investigation was insufficient to determine maltreatment occurred.

"Verbal abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions, or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame, or degradation.

"Vulnerable adult" means an adult who, because of physical or mental disability or other impairment, may be subject to maltreatment and is substantially impaired in his or her ability to independently:

(A) provide adequately for his or her own care or custody;

(B) manage his or her property and financial affairs effectively;

(C) meet essential requirements for mental or physical health or safety; or

(D) protect himself or herself from maltreatment without assistance. This determination is not made based on a person's eligibility for disability benefits from any source or on the impairment being permanent, but solely on the adult's reported physical or mental condition at the time an APS referral is made and the APS specialist's assessment of that condition during investigation.

SUBCHAPTER 3. REPORTS OF MALTREATMENT OF VULNERABLE ADULTS

340:5-3-4. Reports under the jurisdiction of agencies other than local APS

Some reports of alleged maltreatment of vulnerable adults are not investigated by local Adult Protective Services (APS) staff.

(1) **Reports of alleged victims who are residents of Northern Oklahoma Resource Center of Enid (NORCE), ~~the~~ Greer Center, or Southern Oklahoma Resource Center (SORC) of Pauls Valley, or former residents of ~~the~~ Hissom Memorial Center.** Reports which allege a resident of NORCE, Greer Center, or SORC has suffered maltreatment by an employee of the facility, as well as reports which allege maltreatment of a former resident of ~~the~~ Hissom Memorial Center by a current caretaker, are referred to the Oklahoma Department of Human Services (OKDHS) Office of Client Advocacy (OCA).

(2) **Alleged victims of maltreatment in hospital settings.** Reports of alleged maltreatment of vulnerable adults who are receiving services in medical hospitals, rehabilitation facilities, or private psychiatric hospitals by staff of the facility are referred to the Oklahoma State Department of Health, Protective Health Services, Medical Facilities Service.

(3) **Alleged victims of maltreatment by staff of the Oklahoma Department of Mental Health and Substance Abuse Services (DMHSAS) and its contracted providers.** Reports of alleged maltreatment of a vulnerable adult by staff of a public or private community mental health agency are referred to the Advocacy Division of DMHSAS. If DMHSAS declines to conduct an investigation, the report may be referred back to the local APS office.

(4) **Reports alleging maltreatment of residents by staff of nursing facilities.** Reports of alleged maltreatment of nursing facility residents are sent to the Family

Support Services Division, APS Unit, Long Term Care Investigations Section. These reports are also sent to the Oklahoma State Department of Health, Protective Health Services.

(5) **Reports involving local, state, or federal correctional facilities.** Reports of abuse, neglect, or exploitation of residents by staff of state or federal public hospitals, jails, prisons, or similar facilities are referred to the facility's regulatory department for investigation and to the local district attorney.

(6) **Reports involving deceased alleged victims.** Reports of maltreatment of persons who are already deceased at the time the report is made are not accepted by APS. Reporters are referred to the state or local Office of the Medical Examiner, local law enforcement, or, if the death occurred in a nursing facility, to the Medicaid Fraud Control ~~unit~~ Unit in the Office of the Attorney ~~General's office~~ General.

340:5-3-6. Screening APS reports

(a) **Responsibility for screening reports.** Adult Protective Services (APS) supervisors are responsible for screening reports and either accepting them as APS referrals or classifying them as Information and Referral. When a request is accepted as an APS referral, the supervisor determines whether an emergency response is indicated, whether the referral is employee related, and which APS specialist is assigned the referral.

(b) **Reports involving domestic violence.** APS situations are often forms of domestic violence. Reports received alleging maltreatment of an adult by a spouse or other family or household member~~,~~ are considered protective services requests if the alleged victim is vulnerable as defined in OAC 340:5-1-6.

(c) **Reports involving OKDHS employees or their families.** Specific procedures are followed when a report of maltreatment is received which involves an employee of the Oklahoma Department of Human Services (OKDHS).

SUBCHAPTER 5. INVESTIGATION OF ADULT PROTECTIVE SERVICES REFERRALS

340:5-5-2. Initiating investigations

An Adult Protective Services (APS) investigation is initiated by a visit to the vulnerable adult who is the alleged victim (AV) at the adult's home or other place of residence.

(1) **Time frame for initiating investigations.**

(A) Investigations of referrals of maltreatment are initiated as soon as possible within ~~72 hours~~ three working days, excluding weekends and official OKDHS holidays, of receipt of the referral by the assigned APS ~~specialist~~ unit.

(B) In the case of an emergency situation when immediate action may be required, the investigation is initiated as soon as possible within four hours of receipt.

(2) **Denial of access to the ~~alleged victim~~ AV.** If the APS specialist is denied entry into the residence of the ~~alleged victim~~ AV, or is denied a private interview with the ~~alleged victim~~ AV, the Oklahoma Department of Human Services may petition the court for an order allowing entry or access.

340:5-5-3. Elements of an investigation

Although the investigation process may vary depending on the initial allegations and other factors, all Adult Protective Services (APS) investigations include paragraphs (1) through (~~9~~10).

(1) **Notification of local law enforcement.** Local law enforcement is provided notification of all APS referrals assigned for investigation.

(2) **Efforts to locate and notify others.** APS specialists must make every reasonable effort to locate and notify the vulnerable adult's caretaker, guardian, and next of kin.

(3) **Visits to and interviews with the vulnerable adult.** Each APS investigation includes at least one visit and private interview with the vulnerable adult, and may include as many as are necessary to reach a conclusion and determine what, if any, protective services are needed.

(4) **Consultation with others.** Other people who have or can reasonably be expected to have pertinent knowledge about the alleged victim's (AV's) circumstances are interviewed during the investigation, including any alleged perpetrator of maltreatment.

(A) This consultation includes medical, psychiatric, or other evaluations as necessary to assist in the determination of a vulnerable adult's decision-making capacity and need for services.

(B) The ~~alleged victim's~~ AV's permission is not required for these contacts.

(5) **Photographs.** The APS specialist may take still photographs or video recordings to document injuries to the vulnerable adult, or conditions in the adult's residential environment which have resulted or may result in an injury or serious harm to the adult.

(6) **Other relevant data.** The APS specialist collects any data relevant to the situation being investigated, including records, to arrive at a finding on the referral. If the APS specialist is denied access to pertinent records, documentation, or other information relevant to the investigation, the Oklahoma Department of Human Services (OKDHS) may petition the court for an order allowing access.

(7) **Determining the adult's decision-making capacity.** OKDHS is mandated by ~~law [~~Section 10-106.C of Title 43A of the Oklahoma Statutes~~]~~ to determine a vulnerable adult's capacity to consent to receive services, especially with regard to the need for involuntary services. Each investigation includes an evaluation of the vulnerable adult's decision-making capacity.

(A) Information is obtained from medical or psychiatric sources, if available, to assist in the determination. In making this determination, the APS specialist assesses and considers:

(i) the client's short and long term memory;

(ii) the client's ability to plan and execute a plan;

(iii) the client's ability to recognize risk factors;

(iv) denial of problems by client or caretaker;

(v) the client's ability to understand and follow directions;

(vi) indicators of affective disorders such as depression or bipolar disorder; and

(vii) indicators of substance abuse, dementia, delirium, psychosis, traumatic brain injury, uncharacteristic socially inappropriate behaviors, impaired decision-making, and other factors.

(B) The APS specialist's assessment of a client's mental capacity to consent to protective services takes into account the client's awareness of:

(i) the limitations and deficiencies in the physical environment;

(ii) the client's own physical or mental limitations;

(iii) resources available to assist in meeting the client's needs; and

(iv) the consequences to the client if nothing is done to improve the situation.

(C) If a client is deficient in all or most of the areas in (B) of this paragraph, he or she may lack the capacity to consent to protective services and it may be appropriate to petition the district court for an order authorizing the provision of needed services.

(D) If a client expresses awareness of all four areas in (B) of this paragraph, it is likely that the present circumstances are the client's choice, though in some cases a client might express awareness in these areas and still lack the capacity to consent to provision of services.

(E) If a client appears unaware of the consequences of the present situation, and an emergency exists, legal intervention is appropriate.

(8) **Evaluation to determine the need for protective services.** The evaluation consists of the APS specialist's analysis and consultation with the supervisor of all evidence gathered during the initial phases of the investigation. The evaluation includes consideration of whether:

(A) the vulnerable adult needs protective services. If so, the need for protective services is documented in a statement that includes the least restrictive services that will meet the ~~adult's~~ person's needs;

(B) services that are identified as needed are available through OKDHS or in the community, and the sources and manner in which they can be provided~~, which will be~~. Options are explored with the vulnerable adult;

(C) ~~whether~~ the vulnerable adult is capable and willing to obtain services for himself or herself;

(D) the vulnerable adult can pay for needed services or is eligible for public assistance programs;

(E) a caretaker or guardian is willing to provide or agree to the provision of needed services; and

(F) the vulnerable adult desires the services.

(9) **Completion of investigation.** The APS specialist determines, within 30 days of receipt of the referral, whether the evidence indicates the referral is substantiated or unsubstantiated based on the definitions of terms in OAC 340:5-1-6.

(10) **Follow-up.** The APS specialist, in consultation with the APS supervisor, is responsible for determining what follow-up is needed in each case investigated.

(A) On ~~unsubstantiated referrals and those which are substantiated but the client has refused services, no~~ cases not requiring court-ordered involuntary services, follow-up ~~is required~~ needs are determined on a case-by-case basis.

(i) ~~The APS specialist and~~ If the supervisor ~~may~~ and APS specialist determine ~~whether~~ no follow-up is ~~indicated~~ necessary, that decision and the reasons for it are documented in the case record.

(ii) If the supervisor and APS specialist determine follow-up is ~~indicated~~ necessary, ~~supervisory approval of the~~ that decision ~~is~~ and the reasons for it are documented in the case record, along with the plan for completing follow-up, the findings of the follow-up, and any action necessary in response to those findings.

(B) ~~On substantiated referrals in which the client is receiving voluntary services, at least one follow-up visit is made within 60 days after the substantiation decision is reached and services are put in place. The client's circumstances at the time of the follow-up visit are documented in the case record, including an assessment of risk of further maltreatment.~~ When the contact is made by phone or other means than face-to-face visit, supervisory approval of the means of contact is documented in the case record, along with the reasons justifying contact other than face-to-face.

~~(i) After the initial follow-up visit, if the service plan is still in place and the client's situation is stable or improving, the case may be closed.~~

~~(ii) If the client's situation is deteriorating at any time during the follow-up period, the service plan is reassessed with the client and care providers and appropriate adjustments made. At least one additional follow-up visit is required.~~

(C) For referrals ~~which~~ that resulted in a client receiving involuntary services, ~~a~~ OKDHS is responsible for assuring basic needs for safety and security are met as required by the court. The APS specialist monitors the delivery of court-ordered protective services and continues to assess the need for additional services determined by the changing needs of the client. At least one follow-up visit is made at 30 days regardless of whether OKDHS continues to hold temporary guardianship.

(i) If the client's situation is stable or improving after 30 days and OKDHS no longer holds guardianship, the case is closed.

(ii) If OKDHS continues to hold guardianship after 30 days, a follow-up ~~visits~~ visit to the client

~~are~~ is required ~~at 30-day intervals~~ at least once each 30 days for the duration of the temporary guardianship.

(iii) If the client's situation is deteriorating at any time during the follow-up period, the service plan is reassessed and changed as needed with the concurrence of the court.

(iv) Follow-up visits to clients receiving involuntary services may be made as often as needed to comply with APS specialist guardianship responsibilities and to monitor the client's situation.

(v) If an out-of-home placement is used as a temporary or long term solution to identified needs, the APS specialist has regular contact with the client for the duration of the court ordered temporary guardianship. The frequency of this contact is determined by the APS specialist and supervisor's determination of the specific client situation and the availability of an independent objective third party to provide follow-up and notification to the APS specialist. Visits to the client are made at least once every 30 days while the client is under APS guardianship. Information from follow-up visits is documented in the case record and made available to the court on review of the guardianship. Follow-up visits may be made as frequently as the APS specialist and supervisor determine they are needed, based on an individual client's situation. For clients placed:

(I) in medical facilities such as geriatric psychiatric units or medical hospital for care, the worker follows-up with the client's assigned social worker;

(II) in group homes, residential care facilities, and assisted living centers, the APS specialist may contact other professionals not associated with the facility providing treatment or services to the client may provide follow-up information every 30 days or more often as indicated;

(III) at any facility owned or operated by OKDHS, face-to face-visits are made every 30 days with interim contacts with the social work staff or more often as indicated; and

(IV) at any type of nursing home, the APS specialist visits the client, at least once every two weeks during the first month of placement to check for changes in the client's condition, such as injuries, signs of over-medication, and cognitive state. Concerns are discussed with the nursing home administrator or director of nursing, and the APS supervisor. After the first month, the APS specialist visits the client at least once every 30 days, reviews the nursing home charts and incident reports, and discusses care needs with the staff and client's family, if available.

(D) The APS specialist may determine as a result of follow-up contacts that further placement options need exploring. This may be the result of inappropriate action on the part of the provider, current information about the facility's ability to provide care for the client, or the facility's request to relocate the client. Placement alternatives are determined in accordance with this Section and approved by the supervisor, county director, and the area APS field liaison. The court appointed attorney for the client and the family is notified of the problems and alternatives that have been developed. A written report of the change of placement is submitted to the court, with a copy of the motion to the client's family and attorney of record.

(E) Follow-up contact with clients remaining at home in temporary guardianship is made frequently with a minimum of every 30 days to assure that client safety and needs are being met by the established service plan. Modifications are made as needed to the service plan as well as provision of services by providers. The quality of care and the method of contact are evaluated on a case-by-case basis depending on the individual needs of the specific client including a face-to-face visit every 30 days. Reports are submitted at the request of the court or a minimum of every 30 days.

(F) In the event the client is placed in a facility out-of-county, the APS supervisor or designee immediately contacts the APS supervisor in the county of placement to notify the receiving county of the placement and that follow-up activities pursuant to this paragraph must be provided by the receiving county.

(i) The APS specialist in the county where the client is residing is the worker designated to provide follow-up services for temporary guardianship cases. That APS specialist documents contacts and required information as set forth in this subparagraph and sends it to the county of jurisdiction once a month.

(ii) The resident county APS specialist is responsible for all issues that require written consent and other problems or concerns and acts in coordination with the APS specialist in the county of court jurisdiction for reporting to the court as required by the court order with a minimum of every 30 days. All actions are discussed with APS specialist in the county of court jurisdiction.

(iii) The APS specialists and supervisors from both counties discuss and determine the best course of action for renewals of temporary guardianships.

(I) The decision takes into account, the client's specific situation, the family and their desires, the availability of the courts in the two counties, and the advice of the client's court appointed attorney, and the attorney(s) representing OKDHS in the matter.

(II) The area APS field liaison, State Office APS, and attorneys for the OKDHS Legal Division are consulted as needed for assistance in determining the best course of action.

340:5-5-4. Special considerations during investigations

(a) **Referrals regarding members of Indian tribes.** Referrals are accepted for an alleged ~~victims~~ victim (AV) who ~~are~~ is a tribal ~~members~~ member, but as soon as tribal affiliation is known, the Adult Protective Services (APS) specialist determines whether that tribe has an APS program.

(1) If the tribe has an APS program, the referral is made to the tribal authorities, and Oklahoma Department of Human Services (OKDHS) APS staff do not become involved unless their assistance is requested.

(2) If there is no tribal APS program, local OKDHS APS investigates the referral. Voluntary services may be provided or arranged as indicated for a vulnerable adult whether or not the adult resides on tribal land.

(3) If involuntary services are required and the vulnerable adult resides on tribal land, OKDHS cannot petition the district court for an order to provide emergency protective services ~~since~~ because the district court has no jurisdiction over tribal land.

(b) **Referrals involving two or more counties.** If a referral involves two or more counties, as when the ~~alleged victim~~ AV lives in one county and the alleged perpetrator (AP) in another, local APS staff in both counties are involved in the investigation.

(c) **Referrals involving Medicaid fraud.** If an APS investigation indicates fraud by a provider receiving Medicaid funds, the Medicaid Fraud Control Unit (MFCU) in the Office of the Oklahoma Attorney General is notified immediately. APS cooperates with any investigation by MFCU. If MFCU declines to investigate, APS completes the investigation and sends a summary report to MFCU upon completion of the investigation.

(d) **Referrals involving individuals and provider agency employees.** APS investigations of maltreatment of vulnerable adults ~~can~~ may include all persons in a relationship of caretaker, regardless of organizational affiliation, except those noted in Subchapter 3 of this Chapter. Care providers who may be subject to ~~adult protective services~~ APS investigation include, but are not limited to, home health providers, community ~~service~~ services workers for persons with developmental disabilities, personal care assistants, adult foster homes, adult day care centers, independent living centers, residential care facilities, and assisted living centers.

(1) These agency investigations include all the elements of an APS investigation, with special emphasis placed on:

(A) interviewing agency staff and other residents or participants who may have knowledge of the reported incident;

(B) obtaining copies of applicable charts and records;

(C) reviewing medication lists and schedules;

(D) taking photographs;

(E) examining habilitation or other care plans;

(F) examining financial records and other money management documentation;

(G) reviewing time schedules and time sheets; and

(H) requesting any other information needed to complete the investigation.

(2) If assistance is needed in assessing medical issues in these cases, involvement of the OKDHS long term care nurse may be requested.

(3) Findings of substantiated referrals of maltreatment by persons who are personal care assistants, Medicaid personal care attendants (MPCA), and community services workers subject to the requirements of the Community Services Worker (CSW) Registry maintained by Developmental Disabilities Services Division (DDSD) pursuant to Section 1025.3 of Title 56 of the Oklahoma Statutes are submitted within three working days to the OKDHS Office of Client Advocacy for consideration of placement of the worker's name on the statewide CSW Registry. Persons whose names are on the CSW Registry cannot be employed by providers for direct care services to individuals with developmental disabilities or as personal care attendants (PCA) paid through the Medicaid ADvantage Waiver.

(4) For agency employees who are not subject to the ~~community services worker abuse registry~~ CSW Registry requirements, the agency director or board is notified of any substantiated elements of the investigation. Any corrective action plan on the part of the agency becomes a part of the APS case record. If the agency fails to cooperate in addressing the substantiated elements of the investigation, the licensing agency, any appropriate governing board, and the district attorney's (DA's) office are notified of the failure to cooperate.

(e) **Referrals involving other licensed or certified individuals.** Findings are sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation, including, where appropriate, the Oklahoma State Department of Health (OSDH), the Oklahoma Board of Nursing, and any other appropriate state licensure or certification board, agency, or registry.

(~~e~~f) **Referrals alleging exploitation.** Referrals involving exploitation are complex. To assist in handling some of these referrals, the OKDHS Office of the Inspector General (OIG) may accept for investigation referrals of exploitation involving large amounts of funds or the need to access complex records regarding financial transactions. If OIG declines to investigate, the APS specialist completes the investigation. Protective services that ~~can~~ may be provided in cases of exploitation include:

(1) ~~a change of~~ changing the representative payee;

(2) freezing all assets of the client; and

(3) petitioning the court for an order allowing access to records.

(~~f~~g) **Persons remanded to OKDHS.** ~~APS no longer receives new remands. APS staff continue to carry open cases on persons previously remanded to OKDHS under Section 1175.6.A.4.a of Title 22 of the Oklahoma Statutes as long~~

~~as the court order stands.~~ Although courts are no longer authorized to remand criminal defendants to OKDHS, based on a finding of lack of competency, the courts are authorized to refer the alleged incompetent defendant to OKDHS for consideration of voluntary assistance according to Section 1175.6.A.4.a of Title 22 of the Oklahoma Statutes. In order to qualify for such findings, the court must make findings described in (1) or (2) of this subsection.

(1) The AV has been found by the court to be incompetent and not capable of achieving competency within a reasonable period of time for reasons other than the AV is a person requiring mental health treatment as defined by the Mental Health Code in Title 43A of the Oklahoma Statutes.

(2) If the APS specialist is notified by a court, the DA's office, or the attorney for a criminal defendant that a referral for voluntary APS services has been made, a copy of the order is obtained from the person making the referral. If after evaluation, it appears to the APS specialist the AV may also be developmentally disabled, the APS specialist makes immediate contact with the local DDSD office and requests their involvement in the process of determining what voluntary services are available. This is a joint effort between the APS specialist and the DDSD worker.

(~~g~~h) **~~Alleged victims~~ AV receiving services from DDSD.** When ~~a vulnerable adult~~ an AV is receiving or may be eligible for services from ~~Developmental Disabilities Services Division (~~DDSD~~)~~, the APS specialist contacts the appropriate DDSD case manager to coordinate activities to enhance the ~~client's~~ AV's safety. Situations involving an AV facing criminal charges, often meet the definition of an AV with developmental disabilities. Section 1175.3.D.1.b of Title 22 of the Oklahoma Statutes authorizes a court to call for DDSD to conduct a competency evaluation to determine whether mental retardation or other developmental disability may be involved.

(i) **Referrals involving residents of residential care facilities, assisted living facilities, and continuum of care facilities.** A copy of the final investigative report is sent to OSDH.

340:5-5-6. Provision of protective services to ~~APS~~ clients receiving APS services

(a) **Voluntary protective services.** Protective services may be provided on a voluntary basis when a vulnerable adult consents to provision of ~~such~~ services, requests ~~such~~ services, and is willing to allow the Adult Protective Services (APS) specialist to provide or arrange for ~~such~~ services as authorized by Section 10-106 of Title 43A of the Oklahoma Statutes.

(b) **Payment for protective services.** The cost of providing voluntary or involuntary protective services is borne by the client if the APS specialist determines that the person is financially able to make ~~such~~ payment or by any private or public programs for which the vulnerable adult is eligible. If a caretaker controls the person's funds and refuses to pay for necessary services, this may be construed as caretaker interference and is handled as described in OAC ~~340:5-5-6(d)~~ 340:5-5-6(b)(3).

(1) **Payment for voluntary services.** If voluntary services are required to meet an emergency need and no other payment source is available, procedures described in OAC ~~340:5-5-7(c)~~ 340:5-5-6(b)(3) are followed. In cases where the services are not to meet an emergency need, the APS specialist arranges for voluntary services if:

(A) services can be provided free of charge;

(B) the client has funds and agrees to pay for the services; or

(C) there is a public or private assistance program available to pay for the services.

(2) **Payment for involuntary services.** Payment for involuntary protective services is made from the client's funds only upon order of the court. If payment is required for involuntary services, procedures described in OAC ~~340:5-5-7(c)~~ 340:5-5-6(b)(3) are followed if:

(A) no funds are available from the client's assets; and

(B) no private or public payment source is available.

(3) **Payment for emergency protective services.** The Oklahoma Department of Human Services (OKDHS) maintains a limited APS Emergency Fund ~~to~~ that may be accessed only ~~if~~ when specific criteria are met. This fund is used as a short-term measure for crisis situations until other arrangements ~~can be~~ are made.

(c) **Court-related services.** All petitions or motions filed with the court regarding a vulnerable adult require the signature of the district attorney (DA), assistant district attorney (ADA), or OKDHS Legal Division attorney.

(~~c~~d) **Non-cooperation of caretaker.** When a vulnerable adult consents to receive protective services but the caretaker refuses to allow the provision of ~~such~~ services, OKDHS may petition the court for an injunction prohibiting the caretaker from interfering with the provision of protective services in accordance with OAC 340:5-5-6(~~d~~e).

(~~d~~e) **Petitioning the court - order enjoining caretaker.** When the client's caretaker refuses to allow the provision of protective services to which the client has consented or otherwise interferes in the provision of ~~such~~ services, OKDHS may petition the court for an Order to Enjoin Caretaker.

(~~e~~f) **Refusal to consent to protective services.** If ~~an~~ a vulnerable adult does not consent to the provision of needed services, or withdraws consent after it is given, the APS specialist documents the client's refusal in the case narrative or on Form APS-2, ~~Report of~~ Adult Protective Services Report of Investigation. Services are terminated unless OKDHS determines that the person lacks capacity to consent. In that case, the APS specialist considers action as outlined in OAC 340:5-1-4.

(~~f~~g) **Involuntary protective services.** Involuntary protective services are authorized by Section 10-107 of Title 43A of the Oklahoma Statutes. If a vulnerable adult is suffering from abuse, neglect, or exploitation ~~which~~ that presents a substantial risk of death or immediate and serious physical harm to ~~himself or herself~~ self, or significant and unexplained depletion of the adult's estate, but lacks the capacity to consent to receive protective services and no consent can be obtained from anyone acting as caretaker, the services may be ordered by the court on an involuntary basis. The court authorizes provision of specific

services that the court finds least restrictive of the rights and liberty of the person involved.

(~~g~~h) **Petitioning the court - emergency order for involuntary protective services.** OKDHS may petition the court for an order to provide emergency protective services. The petition is made in the county of the client's residence or in a county where any of the protective services are provided.

(1) If an emergency order to provide protective services is issued by the court, the order includes the appointment of a temporary guardian for the person in need of services. The temporary guardian may be either OKDHS or an interested person. The order gives the temporary guardian authority only to consent to the specified protective services on behalf of the person.

(2) The vulnerable adult, ~~the~~ temporary guardian, or any other interested person may at any time petition the court to have the emergency order set aside or modified ~~at any time~~.

(~~h~~i) **Notice to recipient.** The court sets a date to hear the case. The hearing is scheduled within five days of the date the judge signs the notice to the recipient of protective services. The ~~incapacitated~~ vulnerable adult must receive notice 48 hours in advance of the hearing. Notice may be waived by the court in emergency cases, as described in OAC 340:5-5-6(~~h~~i)(2).

(1) A court order is issued showing OKDHS has petitioned the court for an order to provide protective services, and giving the date, time, and place of the hearing. The order specifies who serves the notice to the client.

(2) When petitioning the court for an order for emergency protective services, OKDHS may file a motion to waive notice if there is a risk that immediate and reasonably foreseeable death or serious physical harm to the person will result from a delay. This action is authorized by Section 10-108.D of Title 43A of the Oklahoma Statutes. In response, the court may enter a 72-hour verbal order if not during regular court hours or issue a limited order during regular hours and order written notice be served on the client and attorney, if known, of a hearing to be held within that 72-hour period.

(3) If the hearing is declined, the court may either terminate the emergency temporary guardianship or enter a temporary 30-day order to provide involuntary protective services.

(~~i~~j) **Emergency services ~~- change of residence~~ responsibilities for out-of-home placements.** As a result of a substantiated investigation, determination of capacity to consent, needs, and risk assessment, the APS specialist develops a service plan to address the identified needs and safety issues. All out of home placements, including any change of placement, of clients under APS guardianship are reported to and subject to approval of the court. Only protective services that are necessary to remove the conditions immediately threatening the life and well-being of the person are ordered. Protective services ~~which~~ that may be authorized by an emergency court order include a change of residence only if the court gives specific approval for such action and names the facility in its order. Emergency placements may be made to nursing homes, personal medical institutions, other home placements, or other appropriate facilities. Emergency placement is not made to facilities for the acutely mentally ill.

(1) When the service plan recommends out-of-home placement for safety, health, and care needs, the APS specialist discusses this plan with the client. The client is provided with all the information necessary to make an informed decision. This may include visits to a variety of placement options arranged or facilitated by the APS specialist. The client's family, if appropriate and approved by the client, are included in the planning stages. The client or family is provided with all the information available to the APS specialist regarding the quality of care provided by the identified and selected placement.

(2) Information on current quality issues of specific nursing facilities are obtained from a variety of sources to determine the appropriateness of a facility for a client receiving APS services. Placements are determined by the local APS specialist and supervisor, with approval from the county director and area APS field liaison. If a facility has any OSDH deficiencies at or above the actual harm level, or has had more than three substantiated Long Term Care Investigations (LTCI) reports in the past year, the placement must be approved by the APS state program office.

(~~j~~k) **Time limits for providing involuntary emergency protective services.** Protective services under an emergency court order other than a 72-hour order ~~can~~ may be provided for 30 days. If the APS specialist determines protective services are required past this 30-day period, a petition is filed for continuation of involuntary protective services in accordance with ~~OAC 340:5-5-6(k)~~ (I) of this Section.

(~~k~~l) **Continuation of services.** Continuation of services is authorized by Section 10-108.L of Title 43A of the Oklahoma Statutes.

(1) If, upon expiration of the original 30-day order, the ~~incapacitated~~ vulnerable adult continues to require protective services, OKDHS immediately files a motion for the court to order either or both:

(A) appointment of a guardian; and

(B) commitment of the ~~incapacitated~~ vulnerable adult to a nursing home, personal medical institution, ~~a~~ home placement, or other appropriate facility other than a facility for the acutely mentally ill.

(2) Before the court enters a six-month order for continued protective services, the court directs that a comprehensive evaluation of the ~~incapacitated~~ vulnerable adult is conducted and submitted to the court within 30 days at a review hearing. The evaluation includes at least:

(A) the address where the person ~~is residing~~ resides and the name of any persons or agencies presently providing care, treatment, or services;

(B) a summary of the professional treatment and services provided the person by OKDHS or other agency, if any, in connection with the problem creating the need for protective services; and

(C) a medical, psychological or psychiatric, and social evaluation and review, including recommendations for or against maintenance of partial legal rights and recommendations for placement consistent with the least restrictive environment required.

(3) The original order continues in effect until the evaluation is submitted and the hearing is held on the motion.

(4) Notice of this hearing is served as described in OAC 340:5-5-6(~~h~~i).

(5) The APS specialist is responsible for assembling the required information and submitting it to the court of jurisdiction.

(6) When an investigation indicates that the ~~incapacitated~~ vulnerable adult is likely to need assistance with his or her affairs for an extended period of time, consideration is given to identifying a relative, friend, or other person interested in the well-being of the client to serve as permanent guardian. Any person interested in the welfare of a person believed incapacitated or partially incapacitated may file a guardianship petition with the court. Procedures for filing the petition are given in Section 3-101 of Title 30 of the Oklahoma Statutes, the Oklahoma Guardianship and Conservatorship Act. Interested persons are referred to the office of the district court clerk for further information and assistance.

(~~l~~m) **Continuation of services for an additional period.** If after the hearing the ~~incapacitated~~ vulnerable adult is found in need of continued protective services, the court issues an order to continue the temporary guardianship to provide specified protective services for an additional period not to exceed six months, as authorized by Section 10-108.L of Title 43A of the Oklahoma Statutes.

(~~m~~n) **Responsibilities of the temporary guardian of the person or estate.** The APS specialist as temporary guardian is responsible for ~~insuring~~ ensuring, to the extent possible, protection of the client residence, resources, and belongings. This includes:

(1) securing the residence, checking and gathering the mail, and feeding or arranging for care for the client's domestic animals or livestock;

(2) inventorying the client's home and personal property, using a video camera where available.

(A) For enhanced accountability a minimum of two people must be present during the inventory, one of whom is a law enforcement representative or ~~other~~ non-OKDHS employee.

(B) All persons present during the inventory must sign a document attesting to the authenticity of the inventory and/or the video recording;

(3) establishing an account at a local financial institution and depositing any cash and uncashed checks; and

(4) securing other valuables located during the inventory. The APS specialist:

(A) arranges to have the locks changed or padlocks the residence to secure it from intrusion, if necessary; and

(B) advises all parties that no one is allowed to enter the residence unless accompanied by a representative of OKDHS, for as long as the temporary guardianship is in effect.

(~~n~~o) **Additional responsibilities of temporary guardian of the estate.** The APS specialist responsible for the temporary guardianship of the estate:

(1) opens a guardianship account in a local financial institution and regularly collects and deposits monies due to the client;

(2) submits an accounting to the court as ordered by the court, no less than quarterly;

(3) works with the court, the client's attorney, the ~~district attorney~~ DA, and the OKDHS Legal Division to obtain a professional accountant to manage the estate; and

(4) absent the availability of professional financial management, is responsible for regular financial activities as dictated by the client's circumstances, which include, but are not limited to, the timely:

(A) payment and documentation of the client's expenses, and other bills as they occur. Cash transactions require documentation of APS supervisory approval and a signed and witnessed receipt from the recipient of the cash;

(B) deposit of funds received;

(C) redirection of incoming funds to the new account; and

(D) protection of existing accounts.

(p) **Responsibility of APS specialist - involuntary protective services.** In cases where temporary guardianship of the person has been granted to OKDHS, the APS specialist provides, arranges, or facilitates the protective services ordered by the court. This may include, but is not limited to:

(1) hiring of in-home caregivers to provide in-home care and protection for the client;

(2) placement in a medical facility for treatment of health related problems;

(3) placement in a safe and anonymous location;

(4) placement in a facility for either short or long term care needs. Long term care facilities include:

(A) residential care facilities;

(B) group homes;

(C) nursing homes;

(D) intermediate care facilities for persons with mental retardation;

(E) assisted living centers;

(F) skilled nursing facilities;

(G) or any other type of facility licensed to provide 24-hour care and/or services for vulnerable adults.

(q) **Responsibility of APS specialist - emergency out-of-home placement - ex-parte hearing.** When an emergency situation requires immediate placement, the APS specialist places the client in a licensed facility that, to the best of the APS specialist's knowledge, provides the required services needed to ameliorate the current emergency situation. Reasons for this choice are documented in the case record and provided to the court at the 72-hour hearing.

SUBCHAPTER 7. LONG TERM CARE INVESTIGATIONS SECTION

340:5-7-2. Program coordination

All Adult Protective Services (APS) rules apply to long term care investigations (LTCI) except those noted in this Subchapter.

340:5-7-3. Complaints concerning LTCI

Complaints regarding a Long Term Care Investigations (LTCI) investigator are submitted by telephone, in written form, or by e-mail to an Adult Protective Services (APS) programs manager in the Family Support Services Division. A written response is provided to the complainant within 45 days stating the general findings of the review. No confidential information is included in the report.

340:5-7-4. Screening of LTCI reports

The Adult Protective Services (APS) programs manager or designee is responsible for screening reports and either accepting them as Long Term Care Investigations (LTCI) reports, screening them out if they do not meet criteria, or referring them to another agency for follow-up.

340:5-7-5. Initiating long term care investigations

A long term care investigation (LTCI) is initiated by a visit to the vulnerable adult in the nursing facility.

(1) **Time frame for initiating investigations.**

(A) Investigations of reports of maltreatment are initiated within five working days or as soon as possible if circumstances indicate immediate action is needed.

(B) For circumstances that do not require immediate action, the investigation is initiated within seven working days.

(2) **Completion of LTC investigative reports.**

(A) The LTC investigator determines, within 30 working days of the receipt of the referral, whether the evidence indicates the referral is substantiated or unsubstantiated based on the definitions of terms in OAC 340:5-1-6.

(B) The findings are sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation such as, the Oklahoma State Department of Health, local district attorney, long term care ombudsman in the Aging Services Division, or any other appropriate state licensure or certification board, agency, or registry. The special considerations during investigations in OAC 340:5-5-4(d), (e), and (i) apply to LTCI.

340:5-7-6. Elements of an investigation

Long term care investigations (LTCI) follow elements of an investigation in OAC 340:5-5-3(1) through (6) and (9) through (10) for community adult protective services (APS).

340:5-7-7. Information available to local OKDHS offices

Long Term Care Investigations staff provide information on the findings of their investigations to local Oklahoma Department of Human Services (OKDHS) offices as needed to assist in locating appropriate placements for community Adult Protective Services (APS) clients.

[OAR Docket #05-676; filed 4-19-05]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 25. CHILD SUPPORT ENFORCEMENT DIVISION

[OAR Docket #05-692]

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PERMANENT final adoption

RULES:

Subchapter 1. Scope~~,~~ and Applicability~~, and General Provisions~~
340:25-1-1.1. through 340:25-1-1.2. [AMENDED]
Subchapter 5. Operational Policies
Part 9. Disclosure of Information
340:25-5-67. [AMENDED]
Part 15. Case Initiation, Case Management, and Case Closure
340:25-5-110. through 340:25-5-110.1. [AMENDED]
340:25-5-114. [AMENDED]
340:25-5-117. through 340:25-5-118. [AMENDED]
340:25-5-123. through 340:25-5-124. [AMENDED]
340:25-5-124.2. [AMENDED]
340:25-5-133. [AMENDED]
Part 17. Past Support
340:25-5-140. through 340:25-5-140.1. [AMENDED]
Part 20. Medical Support
340:25-5-169. [AMENDED]
Part 21. Establishment
340:25-5-178. [AMENDED]
340:24-5-179.1. [AMENDED]
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Part 22. Review and Modification
340:25-5-198.1. [AMENDED]
Part 23. Enforcement
340:25-5-201.1. [AMENDED]
340:25-5-211.1. through 340:25-5-213. [AMENDED]
Part 33. Interstate and International Cases
340:25-5-270. [AMENDED]
Part 38. IV-D and Non-IV-D Central Case Registry Information
340:25-5-340. [AMENDED]
Part 39. Accounting and Distribution
340:25-5-350.1. [AMENDED]
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Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Social Security Act, Sections 453, 454, 454A, and 454B; Section 1738B of Title 28 of the United States Code; United States House Resolution 3130 (Public Law 105-200); Sections 302.31, 302.32, 302.38, 307.11, 307.13, and Part 310 of Title 45 of the Code of Federal Regulations; Sections 7003-8.7 and 7003-8.8 of Title 10 of the Oklahoma Statutes (10 O.S. §); 12 O.S. § 1171.3; 36 O.S. § 6058A; 43 O.S. §§ 112, 112A, 118, 118.2, 118.4, 137, 139, 139.1, 413, and 601-604; and 47 O.S. §§ 1-153, 6-201, 6-201.1, 6-211 and 6-212; 56 O.S. §§ 237, 237A, 237.1, 238, and 240.15 through 240.21A.

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ANALYSIS:

The revisions to Subchapters 1 and 5 of Chapter 25: (1) supersede emergency rules submitted in May 2004 that establish policy and procedures to provide services to child care subsidy recipients and reduce the $25 application fee for child support services to one cent to be paid by the Child Support Enforcement Division (CSED); (2) delete duplicative statutory language regarding driver license revocation to comply with the provisions in the 2004 legislative Senate Bill 1425 which revised Titles 43, 47, and 56 of the Oklahoma Statutes; (3) add policy to describe process for establishing and updating an address of record and to allow a custodial person to designate an attorney's address to be used as the address of record under the provisions of the 2004 legislative Senate Bill 1210 which revised Section 118.4 of Title 43 of the Oklahoma Statutes; (4) specify policy on defending paternity establishments and when genetic testing requests are out of time; (5) specify policy on settlement of past support or interest due the custodial person or the State of Oklahoma and add policy on distribution of past support payments when the custodian dies; (6) specify policy on the establishment of current support and support for a prior period relative to incarcerated noncustodial parents; (7) implement policy changes recommended during the annual CSED policy review process; and (8) improve readability and clarity of rules by eliminating unnecessary language and conforming with current formatting.

340:25-1-1.1 adds definitions for IV-E foster care and Non-IV-E foster care; amends definitions for custodial person or custodian, district office, support order, and tribunal; removes acronyms in defintions for biological parent, custodial person or custodian, and noncustodial parent.

340:25-1-1.2 adds policy to include enforcement of medical and child care costs judgments as a child support service; clarifies CSED does not establish judgments for birthing costs if paid by Medicaid, and medical or child care costs separate from judgments for past support.

340:25-5-67 clarifies direct and automated release of information to other Oklahoma Department of Human Services (OKDHS) programs.

340:25-5-110 specifies when CSED does not initiate an action to disestablish paternity or conduct genetic tests, or request the court to order genetic tests, after paternity establishment.

340:25-5-114 clarifies the requirement that a custodial person receiving Temporary Assistance for Needy Families (TANF) or non-TANF Medicaid must assign rights to child support; and adds indications of a custodial person's noncooperation.

340:25-5-123 adds criteria for case closure upon custodial person request when the custodial person is a child care subsidy program participant and is not receiving TANF or non-TANF Medicaid, receiving non-TANF Medicaid benefits for a child(ren) only, or a child care subsidy program participant and is receiving non-TANF Medicaid benefits for a child(ren) only; and clarifies policy on termination of Notice of Income Assignment with the employer when a case closes.

340:25-5-124 and 340:25-5-201.1 include minor revisions, such as punctuation, syntax, and correction or clarification of statutory cites, to simplify language or improve clarity.

340:25-5-124.2 clarifies tribal office case eligibility requirements and jurisdictional boundaries; describes conditions under which cases are assigned and transferred to the tribal office; describes conditions under which CSED accepts cases returned to CSED by the tribal office; and specifies that CSED may register child support orders in state courts and may establish and enforce a child support order in tribal courts that are outside the tribal office service areas.

340:25-5-133 clarifies that CSED directs past support payments to the person CSED records indicate is owed; and provides for distribution of past support payments already collected when the custodial person dies.

340:25-5-140 clarifies the due date when the support order does not specify an effective date; provides for settlement of past support, waiver of past support due the custodial person, and negotiation of past support owed to the State of Oklahoma; and describes how CSED distributes past support payments when custodial person dies.

340:25-5-140.1 specifies CSED uses a monthly accrual and calculates simple interest unless a court orders a compound interest rate, and if a court so orders the prevailing party is responsible for preparing the interest calculation; and provides for settlement of interest, waiver of interest due the custodial person, and negotiation of interest owed to the State of Oklahoma.

340:24-5-179.1 specifies CSED reserves adjudication for support for a prior period until the noncustodial parent is released from incarceration.

340:25-5-185.1 specifies the time frame for promptly docketing child support orders; and describes how prompt docketing facilitates all issues filed in the same district court case number.

340:25-5-211.1 deletes duplicative statutory language; clarifies the desk review process for license reinstatement when the obligor is complying with a court-ordered payment plan; and clarifies the denial notification and administrative license reinstatement hearing processes.

340:25-5-212 describes conditions under which CSED releases funds from levy.

340:25-5-213 clarifies when and how an annual notice is served and mailed.

340:25-5-270 specifies CSED communication practices with custodial persons in interstate and international cases.

340:25-5-340 adds policy to describe process for establishing and updating an address of record.

340:25-5-350.1 describes the process for return of payment in excess of obligation or erroneous overcollection, specifically when there is an unknown address involved.

340:25-5-350.3 adds policy on support payments from employers and other payors through electronic funds transfer, issuance of payments to custodial persons or other states by paper warrant or electronic funds transfer, and the forged endorsement process when warrants are fraudently endorsed and subsequently cashed; and defines warrants as checks.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. SCOPE~~,~~ AND APPLICABILITY~~, AND GENERAL PROVISIONS~~

340:25-1-1.1. Definitions

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

"Address of record" means an address for a party or a ~~custodian~~ custodial person in the Central Case Registry of the Child Support Enforcement Division (CSED) that is used for service of process in support, custody, and visitation actions. An address of record may be different from the party's or ~~custodian's~~ custodial person's physical address.

"Annual notice" means the yearly notice provided for in Section 237A of Title 56 of the Oklahoma Statutes to notify the obligor and obligee of the amount due, actions that may be taken to enforce the child support obligation, actions required of the obligor and obligee, and other related information and instructions.

"Arrears," "arrearage," or **"past-due support"** means the total amount of unpaid support obligations that has accrued under a support order. See also the definition for "Delinquency" in this Section.

"Assignment" means any transfer of rights to support to the State of Oklahoma under Section 408 or 471 of the Social Security Act or any transfer of rights to medical support and to payment of medical care from any third party under Section 433.146 of Title 42 of the Code of Federal Regulations.

"Authorized representative" means a person designated by a custodial person, noncustodial parent, or biological parent according to OAC 340:25-1-3.1.

"Biological parent" ~~or "BP"~~ means the natural parent of a child.

"Case" means the relationship of a particular group of people bound by legal rights and duties for the support of a child(ren) who ~~are~~ is receiving or ~~who have~~ has received child support services and all of the records and actions associated with the group.

"Central Case Registry" means Oklahoma's repository for Title IV, Part D, of the Social Security Act (IV-D) cases and child support orders established or modified in Oklahoma after October 1, 1998. It includes, but is not limited to, information required to be transmitted to the federal case registry under Section 454A of the Social Security Act. CSED maintains the Central Case Registry under Section 112A of Title 43 of the Oklahoma Statutes.

"Centralized Support Registry" means a repository maintained by CSED to receive, allocate, and distribute support payments, including child support, spousal support when paid in conjunction with child support, and related support payments under Section 413 of Title 43 of the Oklahoma Statutes. It serves as Oklahoma's State Disbursement Unit under Section 454B of the Social Security Act. The Centralized Support Registry processes payments:

(A) *in all cases in which child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes* until all monies owed for child support are no longer owed;

(B) *in all other cases in which support is being paid by income withholding*; and

(C) when a court orders payments to be made through the Centralized Support Registry. [43 O.S. § 413]

"CSED" means the Child Support Enforcement Division of the Oklahoma Department of Human Services. CSED includes a central state office, district offices, and other offices that may be administered through contract or cooperative agreements with district attorneys, Community Action Program (CAP) agencies, Native American tribal organizations, and others. CSED includes all of these offices and their employees and agents.

"Custodial person~~,~~" or **"custodian~~,~~"** ~~or "CP"~~ means the person who has primary physical custody of the child(ren).

"Delinquency" means *any payment under an order for support which becomes due and remains unpaid.* [12 O.S. §1170~~;~~ and 56 O.S. § 237.7]

"DHHS" means the federal Department of Health and Human Services.

"DHS" or **"OKDHS"** means the Oklahoma Department of Human Services. OKDHS is the state agency designated to administer the Child Support Enforcement Program for the ~~state~~ State of Oklahoma.

"District office" ~~or "local office"~~ means a child support enforcement office operated by OKDHS or through contract or agreement with OKDHS to serve a specific area of the state.

"Family violence" means domestic abuse or child abuse, including physical or emotional harm.

"FPLS" means the Federal Parent Locator Service.

"Full-service case" means a child support case for which CSED provides all appropriate IV-D services as described in OAC 340:25-1-1.2.

"High-volume administrative enforcement cases in interstate actions" means, on request of another state, the identification by a state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other states, and the seizure of such assets by the state through levy or other appropriate processes. [42 U.S.C. § 666]

"Income assignment" means an assignment, by operation of law or by court or administrative order, of a portion of the monies, income, or periodic earnings due and owing by the obligor to the person entitled to the support or to another person designated by the support order or assignment. An income assignment may be for payment of current support, ~~or~~ arrearages, or both. [12 O.S. § 1170 and 56 O.S. § 237.7]

"Interstate case" means a case in which at least one party resides in another state or country, or a support order was entered in another state or country.

"IV-A" means Title IV, Part A, of the Social Security Act covering the federal-state Temporary Assistance for Needy Families (TANF) Program.

"IV-B" means Title IV, Part B, of the Social Security Act covering child welfare services.

"IV-D" means Title IV, Part D, of the Social Security Act generally relating to child support. Title IV appears in the United States Code as Sections 601 through 687, Subchapter IV, Chapter 7, Title 42.

"IV-D case" means a child support case receiving IV-D services.

"IV-D programs and services" means programs and services under Title IV, Part D, of the Social Security Act.

"IV-E" means Title IV, Part E, of the Social Security Act covering foster care.

"IV-E foster care" means state funded placement of a child(ren) removed from a home whose family members meet the eligibility criteria for federal participation for IV-E foster care.

"Medicaid" or **"Title XIX"** means medical assistance provided under a state plan approved under Title XIX of the Social Security Act.

~~**"Medical support"** means health or dental insurance coverage or health benefits ordered to be paid by a parent(s) for the benefit of a minor child(ren).~~

"Medical enforcement only case" or **"MEO case"** means a child support case for which CSED provides only IV-D services related to securing medical support to non-TANF Medicaid recipients.

"Medical support" means health or dental insurance coverage or health benefits ordered to be paid by a parent(s) for the benefit of a minor child(ren).

"Noncustodial parent" ~~or **"NCP"**~~ means a parent who does not have primary ~~care,~~ physical custody~~, or control~~ of the child(ren).

"Non-IV-D case" means a private child support case not receiving IV-D services.

"Non-IV-E foster care" means state funded placement of a child(ren) removed from a home where the child(ren) does not meet federal IV-E participation requirements.

"OAH" means the OKDHS Office of Administrative Hearings: Child Support, which conducts child support enforcement administrative hearings. [56 O.S. § 237.7]

"Obligee" or **"person entitled"** means:

(A) *a person to whom a support debt or support obligation is owed;*

(B) *the Department of Human Services or a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services; or*

(C) *a person designated in a support order or as otherwise specified by the court.* [56 O.S. § 237.7]

"Obligor" means the person who is required to make payments under an order for support. [12 O.S. § 1170 and 56 O.S. § 237.7]

"OCSE" means the federal Office of Child Support Enforcement.

"Offset" means an amount of money intercepted from a parent's state or federal tax refund, or from an administrative payment such as federal retirement benefits, to satisfy a child support debt.

"Overpayment" means a payment to a custodial person, noncustodial parent, or other entity by CSED to which the entity or ~~individual~~ person is not entitled.

"Participant in a case" means a child, parent or putative father, or custodial person associated with a child support enforcement case.

"Past support" means past-due support or support for a prior period. See the definition for "Arrears" in this Section.

"Payment plan" includes, but is not limited to, a plan approved by the court or the support enforcement entity that provides sufficient security to ensure compliance with a support order or that incorporates voluntary or involuntary income assignment or a similar plan for periodic payment of past-due support and, if applicable, current and future support. [43 O.S. § 139.1~~;~~ and 56 O.S. § 237.7] A payment plan is intended to incrementally reduce arrears.

"Payor" means *any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person.* [12 O.S. § 1170 and 56 O.S. § 237.7]

"Putative father" means an alleged biological father of a child.

"Social Security Act" means Public Law 74-271, approved August 14, 1935, as currently in effect.

"SPLS" means the CSED State Parent Locator Service.

"Support" means all payments or other obligations due and owing to the obligee or person entitled by the obligor under a support order, and may include, but is not limited to, child support, medical insurance or other health benefit plan premiums or payments, child care obligations, support alimony payments, and other obligations as specified in Section 118 of Title 43 of the Oklahoma Statutes. [56 O.S. § 237.7]

"Support for a prior period" means the amount of child support ordered under the child support guidelines in Sections 118 and 119 of Title 43 of the Oklahoma Statutes in paternity orders and in TANF notice of support debt orders for past months when no child support order was in effect.

"Support order" means a ~~judgment, decree, or order, whether temporary or final, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, income withholding, arrearage, past support, or reimbursement, and may include related costs and fees, interest, attorney's fees, and other relief. [12 O.S. § 1170]~~ *judgment, decree, order or directive, whether temporary, final, or subject to modification, issued by a tribunal for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.* [43 O.S. § 601-101]

"TANF" means Temporary Assistance for Needy Families. TANF has replaced Aid to Families with Dependent Children (AFDC). References to TANF include AFDC.

"Tribal office case" means a ~~CSED~~ child support case ~~eligible for assignment, or a case that has been transferred~~ assigned to the Chickasaw Nation Tribal Child Support Office (tribal office) under OAC 340:25-5-124.2.

"Tribunal" means ~~*a court, administrative agency, or quasi judicial entity authorized to establish, enforce, or*~~

~~modify support orders or to determine parentage~~ a court or administrative agency authorized to establish, enforce or modify support orders, or determine parentage. [43 O.S. § 601-101]

"UIFSA" means the Uniform Interstate Family Support Act. In Oklahoma, UIFSA is codified at Sections 601-100 through 601-901 of Title 43 of the Oklahoma Statutes.

"Unreimbursed public assistance" means money paid as cash assistance from IV-A and IV-E programs that has not yet been recovered.

340:25-1-1.2. Structure and services

(a) Under Title IV, Part D, of the Social Security Act every state must designate a single state agency to administer a statewide plan for child support enforcement. ~~DHS~~ The Oklahoma Department of Human Services has been designated as that agency in Oklahoma and has established a Child Support Enforcement Division (CSED) to administer the plan. CSED provides services through a state office and other offices throughout the state which may be administered through ~~cooperative~~ service agreements or contracts with district attorneys and other entities, such as Community Action Program (CAP) agencies, and ~~Indian~~ Native American tribal organizations, to provide legal child support enforcement services. The primary function of CSED is to provide child support enforcement services in all IV-A TANF, IV-E Foster Care, and non-TANF Medicaid cases where eligibility is due to absence of one or both parents, and in other cases for ~~individuals~~ persons who have applied for services ~~and paid a $25 application fee~~. In addition, CSED provides these services in cases forwarded by IV-D agencies of other states and may provide services in cases forwarded by ~~Indian~~ Native American tribes and foreign jurisdictions, as appropriate. CSED complies with the standards for an effective program and the organization and staffing requirements prescribed by Section 303 of Title 45 of the Code of Federal Regulations. IV-D services include, but are not limited to:

(1) establishment of paternity, child support obligations, and medical support obligations through administrative and court actions;

(2) enforcement of child support, fixed sums and judgments for medical support, health care coverage, judgments for child care costs, and in some instances spousal support obligations;

(3) location of ~~non-custodial~~ noncustodial parents and their assets by establishing intrastate and interstate links with local, state, and federal agencies as well as various private sources;

(4) review of cases for modification of support orders as appropriate;

(5) collection and distribution of support payments in accordance with state and federal law; and

(6) establishment and maintenance of accounting and other records in accordance with state and federal law.

(b) CSED services do not include:

(1) establishment or modification of spousal support, visitation, or custody; and

(2) establishment of judgment for unreimbursed medical expenses or child care costs that are not included in the fixed monthly child support obligation.

SUBCHAPTER 5. OPERATIONAL POLICIES

PART 9. DISCLOSURE OF INFORMATION

340:25-5-67. Information disclosure

All applications, information and records concerning any applicant or recipient obtained pursuant to law or as authorized by law by the Department of Human Services or any other public or private entity shall be confidential. [56 O.S. § 183] All files and records concerning the assistance or services provided under the Child Support Enforcement Program or concerning a putative father of a child born out of wedlock are confidential except as otherwise authorized by law. [56 O.S. § 237] Any information the Child Support Enforcement Division (CSED) obtains from federal or state agencies is subject to limitations on disclosure imposed by laws governing the information received from those agencies. CSED does not disclose or use the contents of any child support records, files, papers, or communications for purposes other than those directly connected to the administration of the Child Support Enforcement Program. Nothing in this Section authorizes disclosure of the location of a case participant with a family violence indicator set under OAC 340:25-5-67.1. Otherwise, information may be shared with:

(1) persons duly authorized by the United States in connection with the performance of their official duties, [56 O.S. § 183] including, but not limited to:

(A) exchange of information to the extent necessary to carry out the state agency IV-D program responsibilities directly and through automated information networks within the Oklahoma Department of Human Services (OKDHS), with authorized representatives of OKDHS divisions and other agencies of the state and other states, and with federal and tribal agencies and other countries;

(B) exchange of information directly and through automated information networks with representatives of OKDHS and other state agencies administering programs under ~~Title~~ Titles IV-A, IV-E and ~~Title~~ XIX, to the extent necessary to carry out state agency ~~Title~~ Titles IV-A, IV-E and ~~Title~~ XIX responsibilities;

(C) release of information received from the Federal Parent Locator Service, through the State Parent Locator Service, to an authorized person representing:

(i) agencies administering or enforcing programs under ~~Title~~ Titles IV-B and IV-E of the Social Security Act, to the extent necessary to carry out state agency ~~Title~~ Titles IV-B and IV-E responsibilities; and

(ii) the United States or the State of Oklahoma for purposes of enforcing or prosecuting any federal or state law with respect to the unlawful taking or restraint of a child, or any court or agent of such court having jurisdiction to make or enforce a child custody or visitation determination; and

(D) release of Social Security numbers for child support enforcement purposes, such as locating the parents, submitting cases for federal administrative and income tax refund offset, state income tax refund offset, financial institution data match, enrolling children as beneficiaries of health insurance coverage, and processing interstate child support enforcement;

(2) parties to a child support case, their attorneys, interpreters, and authorized representatives, who may only access:

(A) pay records and payment calculations;

(B) documents, exhibits, worksheets, and supporting documents filed with the court and any administrative documents that are part of the order, such as guideline worksheets and financial affidavits;

(C) specific case activity in the course of providing child support enforcement services, such as the number and dates of locate attempts, and establishment and enforcement of child support or medical support orders;

(D) information required by Titles 43 or 56 of the Oklahoma Statutes to be disclosed for the purpose of reviewing, establishing, or modifying a support order; and

(E) information necessary to enroll children as beneficiaries of health insurance coverage;

(3) parents or ~~custodians~~ custodial persons requesting disclosure of address of record under Section 112A of Title 43 of the Oklahoma Statutes and OAC 340:25-5-340.1; and

(4) persons as directed by court order or by a subpoena that has been approved by a child support attorney.

PART 15. CASE INITIATION, CASE MANAGEMENT, AND CASE CLOSURE

340:25-5-110. Scope and applicability

(a) The Oklahoma Department of Human Services, through its Child Support Enforcement Division (CSED), opens, or initiates, and closes child support enforcement cases to provide appropriate IV-D services. In initiating and closing cases, CSED is governed by Sections 302.33, 303.2, and 303.11 of Title 45 of the Code of Federal Regulations; Title IV, Part D, of the Social Security Act; and Section 237 of Title 56 of the Oklahoma Statutes.

(b) CSED does not initiate action to disestablish paternity if:

(1) there has been an acknowledgment of paternity executed in Oklahoma or another state and not rescinded within the allowable time, which is 60 days in Oklahoma; [10 O.S. § 70(B)(1)]

(2) the child is born during the course of the marriage and is reared by the husband and wife as a member of their family without disputing the child's legitimacy for a period of at least two years; [10 O.S. § 3(B)] or

(3) paternity has been established by a district or administrative court order. [10 O.S. § 70(B)(3)]

(c) In the absence of a court order, CSED does not conduct genetic tests or request the court to order genetic tests after the 60 day rescission period has expired on:

(1) an acknowledgment of paternity; or

(2) a court order that has been entered establishing paternity.

340:25-5-110.1. Applications

(a) To apply for child support enforcement services, a person must submit a completed and signed application form ~~and a $25 application fee, if required under OAC 340:25-5-117~~, to the address on the form. ~~The application fee must be paid by check or money order payable to the Oklahoma Department of Human Services (OKDHS).~~ A one cent application fee is paid by the Child Support Enforcement Division (CSED) for each application received. Form CSED-1, Application for Child Support Services, is submitted in every circumstance, ~~except those allowing submission of Form CSED-1-C, Request for Child Support Services. Form CSED-1-C is submitted by applicants who:~~ including applications received by:

(1) ~~previously had a~~ former Temporary Assistance for Needy Families (TANF), Aid to Families with Dependent Children (AFDC), or non-TANF Medicaid ~~case~~ recipients with the Oklahoma Department of Human Services (OKDHS);

(2) ~~have or previously had a case with the Oklahoma Child Support Enforcement Division (CSED)~~ former participants in IV-D cases; or

(3) ~~receive~~ persons receiving child support payments from the Centralized Support Registry and not currently receiving child support services through CSED.

(b) Application forms are obtained at any child support or other OKDHS office or by writing or telephoning the Child Support Enforcement Division. The mailing address to obtain an application form is~~:~~ P.O. Box 53552, Oklahoma City, Oklahoma, 73152-3552. The customer service toll-free telephone number is 1-800-522-2922. Printable application forms are available on the Internet at http://www.okdhs.org/childsupport/.

(c) CSED sends outreach letters to noncustodial parents who have filed Form CSED-209, Affidavit Acknowledging Paternity, with the Oklahoma State Department of Health, Bureau of Vital Records. Outreach letters provide information about OKDHS services and invite noncustodial parents to participate in these services. These noncustodial parents may apply for child support services through this outreach process.

(~~c~~d) An applicant who is a custodial person must give OKDHS authority to endorse and negotiate payments related to child support and to spousal support on behalf of the custodial person and child(ren).

(e) CSED accepts an application and opens a case if the child is a minor.

(f) CSED accepts an application to establish paternity for a minor child against a deceased noncustodial parent consistent with OAC 340:25-5-176.

(~~d~~g) CSED does not accept applications for collection of past-due support when:

(1) all children on the application have reached the age of majority;

(2) there is no longer a current child support order because the former custodial person's parental rights have been terminated and the child has been adopted;

(3) the child is deceased; or

(4) the child is a minor but no longer lives with the custodial person.

340:25-5-114. Procedures for determining and processing noncooperation on TANF and non-TANF Medicaid cases

(a) **Cooperation of custodial persons.** The custodial person must cooperate with the Child Support Enforcement Division (CSED) in establishing paternity or in establishing, modifying, or enforcing a support order under Section 454 of the Social Security Act and Section 264.30 of Title 45 of the Code of Federal Regulations. ~~OAC 340:10-10-5 describes the requirement for~~ A custodial ~~parents~~ person receiving:

(1) Temporary Assistance for Needy Families (TANF) ~~or non-TANF Medicaid to cooperate with the Child Support Enforcement Division (CSED) in child~~ must assign any rights to support ~~enforcement services~~ to the Oklahoma Department of Human Services (OKDHS) under Section 408 of the Social Security Act; and

(2) non-TANF Medicaid must assign to OKDHS any rights to medical support under Section 433.146 of Title 42 of the Code of Federal Regulations.

(b) **Noncooperation of custodial persons.** ~~If the~~ When a custodial ~~parent~~ person fails to cooperate ~~as described in OAC 340:10-10-5~~, CSED reviews the case to determine ~~non-cooperation~~ noncooperation. If CSED determines noncooperation, CSED notifies ~~the Oklahoma Department of Human Services (~~OKDHS~~)~~ Family Support Services (FSS) staff in the county office. OKDHS FSS staff in the county office update the computer document for noncooperation with CSED and a computer-generated notice under OAC 340:65-5-1 is sent to advise the recipient of any decrease in benefits due to noncooperation.

(1) For CSED to make a noncooperation determination, the cooperation must be essential for the next step in providing child support enforcement services.

(2) Noncooperation is indicated when the custodial person:

(A) fails to appear at a district office to provide information or evidence relevant to the case;

(B) refuses to complete and sign documents necessary to take legal action against the noncustodial parent(s) when requested to do so by the district office;

(C) fails to comply with an order to submit oneself and the child(ren) to genetic testing to determine paternity;

(D) fails to appear as a witness at an administrative or district court hearing or other proceeding;

(E) fails to provide information, or attest to lack of information, under penalty of perjury;

(F) fails to forward to CSED all child support payments received from the noncustodial parent(s);

(G) refuses to make a repayment agreement or to comply with a repayment plan when child support receipts are retained; or

(H) pursues private legal action affecting paternity, child support, medical support, or child care without giving CSED notice.

(~~b~~3) OKDHS FSS staff in the county office determine whether good cause for noncooperation with CSED exists based on OAC 340:10-10-6.

340:25-5-117. Initiation of IV-D cases

(a) **IV-A, IV-E foster care, ~~and~~ non-TANF Medicaid, and child care subsidy referrals.**

(1) The Child Support Enforcement Division (CSED) automatically initiates child support enforcement cases without additional application ~~or fee~~ for certified IV-A, IV-E foster care, ~~and~~ non-TANF (Temporary Assistance for Needy Families) Medicaid, and child care subsidy referrals.

(2) ~~Custodians~~ Custodial persons who apply for non-TANF Medicaid on behalf of themselves and their child(ren) must assign medical support rights to the state under Section 1912 of Title XIX of the Social Security Act and Section 1396k of Title 42 of the United States Code.

(A) These ~~custodians~~ custodial persons must cooperate in establishing paternity and obtaining medical support unless an exception exists under Sections 1902, 1912, or 1925 of Title XIX of the Social Security Act or Sections 1396a(l)(1)(A), 1396k, or 1396r-6 of Title 42 of the United States Code.

(B) CSED must open a IV-D medical enforcement only case as described in OAC 340:25-5-169. CSED may open a full-service case to provide all appropriate IV-D services as described in OAC 340:25-1-1.2 at the ~~custodian's~~ custodial person's request.

(3) When CSED receives a referral from the Family Support Services (FSS) worker, CSED must open a full-service case if any child in the household is certified for a child care subsidy. [OAC 340:40-7-9]

(~~3~~4) When CSED receives a non-TANF Medicaid referral from the ~~Family Support Services Division~~ FSS worker in which assigned court-ordered child support is owed, CSED must open a full-service case~~.~~, under ~~[~~OAC 340:25-5-169~~]~~.

(~~4~~5) ~~Custodians~~ Custodial persons who apply for non-TANF Medicaid on behalf of their child(ren) only are not required to assign medical support rights or ~~to~~ cooperate in establishing paternity and obtaining medical support. Therefore, except when (a)(3) of this Section applies, CSED does not provide child support services unless the ~~custodian~~ custodial person requests services for the child(ren). The ~~custodian~~ custodial person may

request a full-service case or a medical enforcement only case.

(b) **Termination of IV-A, IV-E foster care, and non-TANF Medicaid benefits.** When a family is no longer eligible for assistance under IV-A, IV-E foster care, or Medicaid programs, all appropriate IV-D services continue without application ~~or fee~~ under Section 302.33 of Title 45 of the Code of Federal Regulations. Non-TANF Medicaid cases previously limited to medical support continue as full-service cases. If a ~~custodian~~ custodial person refuses continued IV-D services and subsequently requests services, the person must submit a completed and signed Form CSED-1~~-C~~, ~~Request~~ Application for Child Support Services~~, and pay a non-refundable $25 fee~~ even if CSED has an active case because of unreimbursed assistance owed to the state.

(c) **Referrals from other jurisdictions.** CSED accepts cases referred by any state's IV-D agency and from other countries if the noncustodial parent lives in Oklahoma. CSED does not require an application ~~or charge a fee to~~ for cases referred from another state's IV-D agency. CSED accepts interstate referrals for judgment only collections if the case was opened in the initiating state during the minority of any child on the case.

(d) **Responses from noncustodial parents who sign an acknowledgment of paternity.** CSED opens full-service cases for noncustodial parents who have filed Form CSED-209, Affidavit Acknowledging Paternity, with the Oklahoma State Department of Health, Bureau of Vital Records, and requested child support services in response to outreach letters sent to them as described in OAC 340:25-5-110.1.

(~~d~~e) **Other IV-D cases.** Except as provided in (a), ~~and~~ (c), and (d) of this Section, an applicant must submit a completed and signed Form CSED-1 ~~or Form CSED-1-C, Request for Child Support Services, and pay a non-refundable $25 application fee~~ to receive all appropriate child support enforcement services or to receive locate services only. ~~CSED charges a fee to reopen a case, but does not charge a fee if the applicant has an active IV-D case, except as provided in (a) of this Section.~~

340:25-5-118. Noncooperation on non-TANF and child care subsidy cases

(a) The Child Support Enforcement Division (CSED) determines noncooperation in a non-TANF case on the same basis as ~~in~~ a Temporary Assistance for Needy Families (TANF) case. OAC ~~340:10-10-5~~ 340:25-5-114 describes indications of noncooperation. If CSED determines noncooperation, CSED closes the case under Section 303.11 of Title 45 of the Code of Federal Regulations.

(b) CSED requires a new application ~~and a $25.00 application fee~~ to reopen a case closed because of noncooperation. The applicant for services must agree to cooperate with CSED.

(c) OAC 340:40-7-9 describes the requirement to pursue child support with CSED, as a condition of eligibility, for custodial persons participating in the Oklahoma Department of Human Services (OKDHS) child care subsidy program. If CSED determines noncooperation of a custodial person receiving CSED child support services and child care subsidy services, CSED notifies the OKDHS Family Support Services (FSS) worker in the county office. CSED initiates case closure action under Section 303.11 of Title 45 of the Code of Federal Regulations. The FSS worker closes the child care subsidy benefits under OAC 340:40-7-9.

340:25-5-123. Case closure system

(a) Except as provided in (b) and (c) of this Section, the Child Support Enforcement Division (CSED) closes cases eligible for closure under Section 303.11 of Title 45 of the Code of Federal Regulations.

(b) A child support case may not be closed when:

(1) court ordered support is owed to the state; and

(2) current child support is being collected by income assignment.

(c) A child support case may be closed when any of the criteria in (1) through (4) of this subsection applies:

(1) less than $500~~.00~~ in court ordered support is owed to the state, unless there has been:

(~~1~~A) a collection during the past six months; or

(~~2~~B) a federal or state income tax refund intercept in the past 18 months~~.~~;

(2) the custodial person is participating in the Oklahoma Department of Human Services (OKDHS) child care subsidy program, is not receiving Temporary Assistance for Needy Families (TANF) or non-TANF Medicaid, requests closure, and (A) and (B) of this paragraph apply:

(A) there is a child support order; and

(B) the custodial person is receiving the full amount of the current monthly child support obligation and has reported to Family Support Services receipt of this child support income;

(3) the custodial person is receiving non-TANF Medicaid benefits for a child(ren) only, requests closure, and (A) and (B) of this paragraph apply:

(A) the custodial person later contacts CSED to decline child support services; and

(B) no legal action has been initiated to enforce the child support order, including the medical support portion; or

(4) the custodial person is participating in the OKDHS child care subsidy program, is receiving non-TANF Medicaid benefits for a child(ren) only, requests closure, and all the criteria in paragraphs (2) and (3) of this subsection apply.

(d) When CSED closes a non-public assistance child support case because the parties to a case reunite, CSED terminates the notice of income assignment (NOIA) with the employer.

(e) When CSED closes a non-public assistance child support case for reasons other than reunification, CSED keeps the NOIA with the employer in effect unless ordered by district or administrative court to terminate the notice with the employer.

(1) The income assignment order remains in effect as long as support is owed under 12 O.S. § 1171.3 (B)(14). If the district or administrative court orders that the NOIA be terminated, CSED sends a termination notice to the employer.

(2) Income assignment child support payments continue to be processed in a non-IV-D child support case through the Centralized Support Registry under 43 O.S. § 413(A)(2) and OAC 340:25-5-350.3.

340:25-5-124. Assignment of cases to child support offices

In assigning cases to child support offices, Child Support Enforcement Division (CSED) staff first determine if the case is eligible for assignment to the tribal office under OAC 340:25-5-124.2. If the case is not a tribal office case, CSED assigns cases under this Section.

(1) Oklahoma child support cases are assigned to a district office serving the county where the Oklahoma order for current child support was entered or docketed in district court. ~~Other child~~ Child support orders from another state, or federal or tribal child support orders are assigned to a district office serving the county in which the order is registered under Sections 601-601 through 601-614 of Title 43 of the Oklahoma Statutes. If there are multiple Oklahoma support orders, cases are assigned to a district office serving the county where the presumed controlling order for ~~future~~ current child support was entered or docketed in district court.

(2) ~~If there is no Oklahoma order for current support, cases~~ Cases are assigned to a district office serving the county where the custodian of the child(ren) resides ~~unless an order is registered in Oklahoma or~~ when there is ~~a deprived or delinquent juvenile court action.~~:

(A) no Oklahoma child support order;

(B) a federal or tribal child support order; or

(C) a child support order from another state.

(3) Except in cases in which a child support order is registered in Oklahoma, if the custodian of the child(ren) does not reside in Oklahoma, cases are assigned to the disrtrict office serving the county where the noncustodial parent or putative father resides.

(4) If the ~~child~~ child(ren) is in a deprived or delinquent juvenile court action, and there is:

(A) no existing child support order, the case is assigned to a district office serving the county in which the district court has jurisdiction over the juvenile court action~~.~~; or

(B) ~~Except in cases in which~~ an existing child support order ~~is registered in Oklahoma, if the custodian of the child(ren) does not reside in Oklahoma, cases are~~, the case is assigned to ~~the~~ a district office serving the county ~~where the noncustodial parent or putative father resides~~ in which the order was entered or docketed.

(~~3~~5) CSED does not transfer cases docketed or registered under Sections 601-601 through 601-614 of Title 43 of the Oklahoma Statutes in district court because the custodial person or noncustodial parent moves to a county outside of the original district office's service area.

(~~4~~6) CSED ~~may reassign~~ reassigns a case to another district office to avoid a conflict of interest, under OAC 340:2-1-29.

340:25-5-124.2. ~~Assignment~~ Tribal case assignments and transfer of cases to the tribal office

(a) **Jurisdictional requirements.** The ~~Child Support Enforcement Division (CSED) assigns or transfers eligible cases to the~~ Chickasaw Nation Tribal Child Support Office (tribal office):

(1) provides child support services in tribal and federal courts within their service area under the Court of Indian Offenses civil jurisdiction requirements in Section 11.103 of Title 25 of the Code of Federal Regulations, ~~and~~ the Full Faith and Credit for Child Support Orders Act (FFCCSOA) in Section 1738B of Title 28 of the United States Code, and the jurisdictional requirements in the Chickasaw Nation Code Sections 101.0 and 101.3~~.~~; and ~~CSED assigns and transfers cases to the tribal office when the child(ren) is under the protection of the Indian Child Welfare Act.~~

(2) ~~CSED~~ does not ~~assign or transfer cases to the tribal office~~ provide child support services when the child(ren) is in a deprived or delinquent state juvenile court action.

(b) **New tribal case assignments and transfers from CSED.**

(1) Under the requirements of OAC 340:25-5-124, the Oklahoma Interstate Central Registry and the Oklahoma Centralized Support Registry, also known as the State Disbursement Unit, assign to a child support office incoming interstate referrals and Form CSED-1, Application for Child Support Services, with a:

(A) Native American noncustodial parent;

(B) tribal child support order; or

(C) tribal employer.

(2) The assigned district child support office processes the case and transfers cases that meet the requirements under subsection (d) of this Section to the tribal office.

(3) The Child Support Enforcement Division (CSED) retains cases with noncustodial parent tribal members and tribal child support orders unless:

(A) the custodial person or noncustodial parent requests a transfer of the tribal case to the tribal office, and the tribal case meets the eligibility requirements of the tribal office under subsection (d) of this Section; or

(B) the tribal or federal courts within the tribal office service area have exclusive jurisdiction over the tribal case.

(c) **Transfers from the tribal office and CSED registration of tribal child support orders.** CSED accepts cases returned to CSED from the tribal office due to the lack of jurisdiction to proceed in the tribal court system. CSED registers tribal child support orders in state courts under FFCCSOA in Section 1738B of Title 28 of the United States Code and may establish and enforce a child support order in tribal or federal courts that are outside the tribal office's service area.

(d) **Tribal office case eligibility requirements.**

(1) **Establishment.** ~~The eligibility criteria for assigning or transferring a case to~~ A person may receive services from the tribal office for paternity establishment and establishment of a child support order ~~are:~~ when

~~(A)~~ the noncustodial parent or putative father is~~:~~ an enrolled member of one of the tribes in the tribal office's service area and lives within the boundaries of that tribe.

~~(i) Native American; or~~

~~(ii) non-Native American and the custodian is Native American and both agree to transfer the case to the tribal office and to submit to tribal court jurisdiction; and~~

~~(B) the case must not have any pending action before district or administrative court.~~

(2) **Enforcement.** ~~Cases with~~ A person may receive services from the tribal office for enforcement of a child support ~~orders are eligible for assignment or transfer to the tribal office for enforcement if there is no pending action before district or administrative court and if~~ order when any one of (A) through (~~D~~C) of this paragraph applies.

(A) The order is a tribal order from one of the tribes in the tribal office's service area.

(B) The order is ~~not a tribal order~~ issued by a state court, either district or administrative, and the noncustodial parent is ~~Native American~~ an enrolled member of one of the tribes in the tribal office's service area and lives within the boundaries of that tribe. The tribal office staff notifies the state district court, the Office of Administrative Hearings: Child Support or, if necessary, both courts of the intention of the tribal office to proceed with the case in tribal court.

(C) The order is ~~not a tribal order~~ issued by a state court, either district or administrative, and the noncustodial parent is a non-Native American tribal employee of one of the tribes in the tribal office's service area. Within 30 days of case assignment to the tribal office, the tribal office registers the state order in tribal court only for enforcement of the child support order. If the noncustodial parent leaves tribal employment, the tribal office transfers the case to CSED.

~~(D) The order is not a tribal order, the noncustodial parent is non-Native American, the custodian is Native American, and both agree to transfer the case to the tribal office and submit to tribal court jurisdiction.~~

~~(3) When CSED assigns or transfers a case to the tribal office under this Section, the tribal office notifies the custodian.~~

~~(b) CSED accepts cases returned to CSED from the tribal office due to the lack of jurisdiction to proceed in the tribal court system.~~

(~~c~~e) **Definitions.** ~~For purposes of~~ The following words and terms, when used in this Section, shall have the following meanings unless the context clearly indicates otherwise:

(1) **"Native American"** means a person who is an enrolled member of a federally recognized Indian tribe~~, or the tribal office has verified that a person is eligible for tribal membership~~.

(2) **"Tribal case"** means a child support case with a Native American noncustodial parent, tribal child support order, tribal employer, or any combination.

340:25-5-133. Current child support follows the child when physical custody changes

(a) When the legal custodian relinquishes physical custody of a child(ren) to another ~~custodian~~ custodial person, the Child Support Enforcement Division (CSED) of the Oklahoma Department of Human Services (OKDHS) redirects current child support payments to the new custodian under Sections 7202.3 of Title 10 and 237 of Title 56 of the Oklahoma Statutes. A custodial person who relinquishes physical custody of a child(ren) to another custodian must notify CSED of the change. CSED remits current child support payments to the new ~~custodian~~ custodial person. Transfer of child support payments occurs with the first payment received in the month after a change in physical custody takes place.

(b) When the legal custodian of a child(ren) dies and another ~~custodian~~ custodial person, who is not the obligor, assumes custody of the child(ren), CSED establishes a new support order with the new custodian as the obligee. The new ~~custodian~~ custodial person must submit an application for child support services if an application is required under OAC 340:25-5-117. CSED redirects current child support payments to the new ~~custodian~~ custodial person pending receipt of an application if required and establishment of the new support order. CSED distributes any past support payments already collected prior to the custodial person's death according to OAC 340:25-5-140.

(c) When a new custodial person assumes custody of a child(ren), CSED directs past-due support payments to the custodian(s) to whom the past-due support is owed.

PART 17. PAST SUPPORT

340:25-5-140. Past support

(a) The Oklahoma Department of Human Services Child Support Enforcement Division (CSED) takes appropriate action to collect support and ~~to~~ secure compliance with support orders. When a support order does not specify an effective date, a payment is due on the first day of the month following the entry of the child support order ~~is entered~~, and on the first day of each month thereafter except when another state's law governs the due date. CSED bases its determination of past-due support and support for a prior period on information in available records from courts, IV-D and other public and private agencies, custodial persons ~~(CPs)~~, noncustodial parents ~~(NCPs)~~, and others. CSED may require sworn written statements and supporting documents from ~~CPs, NCPs~~ custodial persons, noncustodial parents, and others pertaining to support payments. The primary legal foundations for determination and collection of past-due support and support for a prior period~~,~~ are applicable provisions of:

(1) Title IV, Part D, of the Social Security Act;

(2) Section 1738B of Title 28 of the United States Code;

(3) Chapters 302 and 303 of Title 45 of the Code of Federal Regulations; and

(4) Chapters 1 and 3 of Title 10, Chapters 3 and 21 of Title 12, Title 43, and Sections 231 through 240.23 of Title 56 of the Oklahoma Statutes.

(b) CSED takes action to enforce past-due support and support for a prior period under Part 23 of this Subchapter.

(c) Settlements of past support may include a noncustodial parent's lump sum partial payment or a series of payments made toward the total amount of past support. Settlements may include an agreement for the noncustodial parent to pay a specified number of current child support payments in the future or in-kind payments. In accordance with Section 112 of Title 43 of the Oklahoma Statutes, CSED:

(1) acknowledges the rights of the custodial person and noncustodial parent to mutually agree to waive, with approval of the court, all or a portion of the past child support due to the custodial person, or

(2) may negotiate the right to collect all or part of past support owed to the State of Oklahoma.

(~~c~~d) CSED uses the annual notice to obligor under Section 237A of Title 56 of the Oklahoma Statutes to confirm the amount of past-due support and remaining balances on previously confirmed judgments. Past-due support and remaining balances on judgments for support for a prior period may also be confirmed during other enforcement actions as provided in Part 23 of this Subchapter.

(e) If the custodial person dies and no past support is owed to any state, CSED refunds child support payments to the decedent's estate when notified in writing by the administrator of the estate. CSED does not file a forced probate court action to determine heirs and distribute past support to heirs. When:

(1) CSED does not receive notice from the administrator of the estate within six months of the custodial person's death, CSED refunds child support payments to the payor.

(2) the payor's address is unknown, or payments are returned due to the inability to distribute, support payments are returned to the noncustodial parent.

(3) past support is owed to any state, CSED distributes the payments according to OAC 340:25-5-351.

340:25-5-140.1. Interest

(a) **General.** The Child Support Enforcement Division (CSED) collects and enforces interest on delinquent Oklahoma court-ordered child support payments under Section 114 of Title 43 of the Oklahoma Statutes.

(b) **Support for a prior period.** CSED collects interest on support for a prior period established under OAC 340:25-5-179.1 from the date of the order.

(~~b~~c) ~~**Delinquency**~~ **Accrual date.** ~~For interest purposes,~~ Interest accrues on any unpaid portion of ~~an amount due is considered delinquent~~ the monthly current child support obligation on the first day of the month following:

(1) ~~after~~ the due date specified in the court order~~.~~; or ~~If the court order does not specify a specific due date of the month, the payment must be made by the last day of the month, and it is delinquent on the first day of the following month if it is not paid~~

(2) the entry date of the child support order when a support order does not specify a due date.

(~~c~~d) **Grace period and accrual.** CSED may allow a grace period during which interest is not charged. Interest accrues from the date the arrears are in excess of one month's current support.

(~~d~~e) **Interest rate.**

(1) CSED calculates simple interest under Section 114 of Title 43 of the Oklahoma Statutes. If a court orders a compound interest rate, the prevailing party is responsible for preparing the interest calculation.

(~~1~~2) For orders established in other states, the law of the state entering the order determines the amount and rate of interest due.

(~~2~~3) For orders established in Oklahoma, Oklahoma law determines the amount and rate of interest due.

(~~e~~f) **Order silent as to interest.** When an order that settles a child support arrearage is silent as to interest, the party with the right to collect has not waived the interest.

(~~f~~g) **Enforcement.** Accrued interest is considered child support. Interest is included in all enforcement remedies unless specifically prohibited by that remedy.

(~~g~~h) **Interstate cases.** CSED collects interest on incoming interstate cases when an initiating state calculates the interest owed and requests that CSED collect it.

(~~h~~i) **Application of payments to interest.** CSED applies payments to interest as described in OAC 340:25-5-351.

(~~i~~j) **Waiver of interest.** CSED acknowledges the rights of the custodial person and noncustodial parent to mutually agree to waive, with approval of the court, all or a portion of the interest due to the custodial person. CSED may ~~waive~~ negotiate the right to collect all or part of the interest owed to the State of Oklahoma ~~only when there has been sufficient consideration to relinquish that right. CSED may consider a noncustodial parent's lump sum partial payment made toward the total interest due to be sufficient consideration~~. Settlements of interest may include:

(1) a noncustodial parent's lump sum partial payment or a series of payments; or

(2) an agreement for the noncustodial parent to pay:

(A) a specified number of current child support payments in the future; or

(B) in-kind payments.

(~~j~~k) **Reopening closed cases.** CSED does not reopen closed child support cases at the request of a customer for the purpose of collecting interest.

PART 20. MEDICAL SUPPORT

340:25-5-169. Establishment of medical support only

(a) When a person receiving non-TANF (Temporary Assistance for Needy Families) Medicaid notifies the Child Support Enforcement Division (CSED) that only IV-D services related to securing medical support are requested, CSED follows Sections 302.33, 302.56, 303.30, and 303.31 of Title 45 of the Code of Federal Regulations, Section 6058A of Title 36, Sections 112, 118, 118.2, and 119 of Title 43, and Section 237 of Title 56 of the Oklahoma Statutes. CSED establishes paternity, if necessary, and a child support order. The child support order must include:

(1) a provision for current child support as described in OAC 340:25-5-178;

(2) a provision for support for a prior period under OAC 340:25-5-179.1 if appropriate; and

(3) a provision for medical support as described in OAC 340:25-5-168.

(b) CSED opens a full-service case when CSED receives a non-TANF Medicaid referral from the Family Support Services ~~Division~~ worker in which:

(1) assigned court-ordered child support is owed under OAC 340:25-5-117; ~~or~~

(2) the child(ren) is in a deprived or delinquent juvenile court action~~.~~; or

(3) the custodial person is a child care subsidy recipient.

PART 21. ESTABLISHMENT

340:25-5-178. Establishment of current child support

(a) The Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) establishes current child support under:

(1) Sections 454, 456, and 466 of the Social Security Act;

(2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and

(3) Chapters 1 and 3 of Title 10; Title 43; and Sections 231 through 240.23 of Title 56 of the Oklahoma Statutes.

(b) CSED uses the child support guidelines in Sections 118 and 119 of Title 43 of the Oklahoma Statutes to:

(1) establish the amount of current support; and

(2) prepare a child support computation form under Section 120 of Title 43 of the Oklahoma Statutes.

(c) To establish the amount of current support, CSED considers "actual" child care expenses to be the ~~total~~ amount paid to the child care provider ~~including any amount paid by OKDHS~~ by the custodial person except when subsection (d) applies. CSED determines the amount of prospective annual child care costs and allocates this amount between the parents in the same proportion as their adjusted gross income. The amount allocated to the noncustodial parent becomes part of the fixed monthly child support obligation.

(d) When the custodial person is participating in the OKDHS child care subsidy program under Section 230.50 of Title 56 of the Oklahoma Statutes, CSED uses OKDHS Appendix C-4, Page 1, Child Care Eligibility/Rates Schedule to determine the family share co-payment amount to be considered as actual child care costs on the child support computation form. [43 O.S. § 118]

(1) CSED considers the noncustodial parent's share of the base monthly obligation for child support and the custodial person's gross monthly income as the custodial person's monthly income when applying Appendix C-4. Upon selecting the applicable income level on Appendix C-4, Page 1, CSED uses the corresponding family share co-payment amount based on the number of children in OKDHS subsidized child care. CSED allocates the family share co-payment amount indicated on Appendix C-4, Page 1, in the same proportion as base child support. Child support staff perform a separate child support guidelines calculation for each noncustodial parent.

(2) If the custodial person has a child(ren) in OKDHS subsidized child care other than a child(ren) included in the child support case being established, CSED uses the proportionate share of the family share co-payment for the child(ren) included in the case.

(~~d~~e) CSED establishes child support orders for a minor child(ren) only.

(~~e~~f) When the noncustodial parent is a minor, CSED establishes paternity under OAC 340:25-5-176 if necessary and establishes a child support order. If a minor noncustodial parent or a ~~custodian~~ custodial person is under 16 years of age, CSED does not impute gross income for the minor parent in the child support computation ~~form,~~ unless there is evidence of actual income. If a minor noncustodial parent or ~~custodian~~ custodial person is between 16 and 18 years of age and regularly and continuously attending high school, CSED does impute gross income for the minor parent(s) based on minimum wage at 20 hours per week, unless:

(1) there is evidence of actual income; or

(2) it is otherwise inappropriate.

(~~f~~g) CSED enforces child support orders for disabled adults under Section 112.1A of Title 43 of the Oklahoma Statutes.

(~~g~~h) CSED establishes or modifies child support orders to continue after the child reaches the age of majority under Section 112.1A of Title 43 of the Oklahoma Statutes if the application or referral for IV-D services is received during the ~~minority of the child~~ period when child support is due pursuant to Section 112 of Title 43 of the Oklahoma Statutes.

(i) CSED establishes a child support order on an incarcerated noncustodial parent and requests the court to enter the effective date of the child support obligation as the first day of the second month following release from incarceration.

340:25-5-179.1. Establishment of support for a prior period

(a) The Child Support Enforcement Division (CSED) establishes support for a prior period.

(1) When paternity is being established by court order or when paternity has been previously established by a signed Form CSED-209, Affidavit Acknowledging Paternity, CSED establishes current support and support for a prior period at the same time under Sections 70 and 83 of Title 10, Sections 118 and 119 of Title 43, and Section 238.6B of Title 56 of the Oklahoma Statutes.

(2) When a child(ren) is born during a marriage and no order addressing support for a prior period exists, CSED establishes support for a prior period under Sections 118 and 119 of Title 43 and Section 238.1 of Title 56 of the Oklahoma Statutes.

(A) CSED establishes support for a prior period under this subsection only when:

(i) current child support is sought; and

(ii) Temporary Assistance for Needy Families (TANF) has been expended in any month during the past five years.

(B) CSED may issue a Notice of Support Debt or file a district court action to establish support for a prior period. CSED limits this prior period to the number of months on TANF during the five years immediately before the date CSED issues the Notice of Support Debt, or files the district court action.

(b) When a child support order is entered against a minor noncustodial parent, CSED establishes support for a prior period under the criteria for establishing current child support described in OAC 340:25-5-178. CSED establishes a monthly payment plan amount of ~~a~~ at least $1 a month.

(c) CSED does not establish an order for support for a prior period on an incarcerated noncustodial parent. Adjudication for support for a prior period is reserved until release from incarceration.

340:25-5-185.1. Docketing

The Child Support Enforcement Division promptly dockets child support orders entered by the Oklahoma Department of Human Services Office of Administrative Hearings: Child Support~~, Oklahoma Department of Human Services,~~ within 30 days with the appropriate district court under Sections 238.1, 238.6B, and 240.2 of Title 56 of the Oklahoma Statutes. Prompt docketing gives notice of the existence of the administrative order so other issues will be filed in the same district court case number.

PART 22. REVIEW AND MODIFICATION

340:25-5-198.1. Review of a support order

(a) **Purpose.** The purpose of the review process is to determine whether a child support order should be modified to ensure substantial compliance with the child support guidelines in Section 118 of Title 43 of the Oklahoma Statutes and OAC 340:25-5-178.

(b) **Notification requirements.** At least once every three years after a support order is established, reviewed, or modified, the Child Support Enforcement Division (CSED) notifies all parties in a full-service case of the right to request a review of the order and the process for requesting a review.

(c) **Initiation of review.** When CSED receives a request to review an order in a full-service case, CSED determines the state with the legal authority under the Uniform Interstate Family Support Act (UIFSA) to modify the order. If another state has the legal authority to modify the order, CSED follows the provisions of (h) of this Section. If Oklahoma has the legal authority to modify the order, CSED follows the provisions of this subsection. CSED completes the review and modification process within 180 days after a request is received or the non-requesting party is located, whichever is later.

(1) CSED reviews a support order on the written request of any party in a full-service case when ~~all of~~ the criteria described in (A) and (B) of this paragraph are met.

(A) It has been more than 12 months since the support order was established, reviewed, or modified. CSED uses the date the order was entered to compute time periods. If an order is not entered after the review or modification process, CSED uses the completion date of the review to compute time periods. The 12-month time period ~~in this subparagraph~~ does not apply when a military reservist custodial person or noncustodial ~~person~~ parent is ~~recalled~~ called to active duty.

(B) The non-requesting party is located.

(2) Within 15 days after receiving a request for a review, CSED determines if the criteria described in paragraph (1) ~~(A) and (1)(B)~~ of this subsection are met. CSED notifies the requesting person if the criteria for review are not met. If the criteria are met, CSED sends notice to all parties with instructions for submitting financial and other information needed for the review.

(3) CSED may initiate reviews of orders in full-service cases on its own initiative for any reason, at any time, without a request under Section 118.1 of Title 43 of the Oklahoma Statutes. CSED notifies the parties of the review with instructions for submitting financial and other information required for the review.

(4) When medical insurance becomes available or the cost of existing medical insurance changes, a party in a currently active non-TANF (Temporary Assistance for Needy Families) Medicaid case where CSED is providing medical enforcement only services may request a review of the support order.

(A) If either the ~~custodian~~ custodial person or the noncustodial parent requests a review, CSED conducts the review as a full-service case. CSED notifies the parties of the intended action before changing the case from a medical enforcement only case to a full-service case.

(B) If the noncustodial parent requests the review, the noncustodial parent must complete Form CSED-1~~-C~~, ~~Request~~ Application for Child Support Services, described in OAC 340:25-5-110.1.

(5) Each party must submit any requested financial and other information as instructed within 20 days after the date the notice is sent under paragraphs (2) or (3) of this subsection.

(d) **Review.** Within 30 days after the deadline for the parties to submit requested financial and other information to CSED under (c)(5) of this Section, CSED completes the review process and notifies parties of its determination as to whether ~~or not~~ the support order should be modified.

(1) If CSED finds the existing support order deviates in excess of ten percent from the child support guidelines, CSED makes a determination that the support order should be modified.

(2) The notice of determination includes instructions for contesting the determination.

(e) **Contest of review determination.** Any person aggrieved by the review determination may contest the determination by submitting new or additional information within

15 days after the date on the notice of determination. CSED considers any new or additional information that is timely submitted, and within 15 days makes a final determination whether ~~or not~~ the support order should be modified.

(f) **Modification after review.** CSED proceeds with the modification of the order when:

(1) there is no contest within 15 days after a CSED determination that the order should be modified; or

(2) the final determination after contest of review is to modify the support order.

(g) **Termination of the review process.**

(1) The person requesting a review may withdraw the request after the review process begins, upon approval by CSED. CSED does not accept requests to withdraw the review after making a determination that the child support order should be modified.

(2) If the requesting person fails to supply information requested by CSED as instructed, CSED may terminate the review process, unless CSED or the non-requesting party requests the process continue.

(h) **Interstate cases.** When another state has legal authority under UIFSA to modify an order, CSED obtains the information necessary for the review and transmits the documents to the other state within 20 days after receipt.

PART 23. ENFORCEMENT

340:25-5-201.1. Amendment of income assignment and modification after ~~obligor~~ noncustodial parent obtains custody

(a) The Child Support Enforcement Division (CSED) amends the "Order/Notice To Withhold Income For Child Support" to stop current support when ~~an obligor~~ a noncustodial parent obtains physical custody of all children who are the subject of the support order, or when the parties to the case reunite. CSED does not amend the "Order/Notice To Withhold Income For Child Support" if there is any indication of parental kidnapping or involuntary relinquishment.

(b) If the ~~obligor~~ noncustodial parent obtains physical or legal custody of all children who are the subject of the support order and makes application for services, CSED initiates modification of the order to establish current support.

340:25-5-211.1. License revocation and reinstatement

(a) The Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) may apply this Section in considering obligors' requests to reinstate occupational and recreational licenses. Otherwise, this Section only applies to obligors' requests to reinstate an Oklahoma driver license for an obligor who is not in compliance with an order for child support.

(b) CSED follows Sections 139 and 139.1 of Title 43 of the Oklahoma Statutes, Sections 1-153, 6-201, 6-201.1, and 6-211 of Title 47 of the Oklahoma Statutes, and Sections 237.1 ~~and~~ , 240.15 through ~~240.21A~~ 240.17, and 240.19 through 240.21A of Title 56 of the Oklahoma Statutes in processing enforcement actions to order the revocation, suspension, nonissuance, nonrenewal, or probation of an Oklahoma driver license for an obligor who is not in compliance with an order for child support.

~~(c) After an obligor's driver license has been revoked, suspended, not issued, or not renewed, CSED considers written reinstatement requests and conducts an informal desk review under (f) of this Section to determine if an obligor is complying with a child support payment schedule as defined in (i) of this Section.~~

~~(d) CSED considers an obligor to be complying with a child support payment schedule when the obligor has:~~

~~(1) paid the current monthly child support and the monthly arrearage payments each month for the current month and two months immediately preceding the current month, or paid an amount equivalent to three months of child support and arrearage payments which satisfies the current child support and monthly arrearage payments for the current month and two months immediately preceding the current month;~~

~~(2) fully disclosed all information regarding health care insurance coverage availability and has obtained and maintained such insurance coverage as required by the child support order; and~~

~~(3) fully disclosed all employment and address information.~~

(~~e~~c) ~~If CSED determines~~ When an obligor is complying with a ~~payment schedule~~ a court-ordered payment plan under Section 240.17 of Title 56 of the Oklahoma Statutes, CSED ~~presents to the OKDHS Office of Administrative Hearings: Child Support (OAH) or district court, as appropriate, an order authorizing reinstatement of driving privileges and placing the obligor on probation regarding child support payments.~~

~~(f) A representative of CSED~~ conducts a desk review of the case file within 15 days after receipt of a written request for reinstatement. If CSED determines an obligor is not complying with a court-ordered payment ~~schedule~~ plan, CSED sends a notice to the obligor that the request for reinstatement of a driver license is denied. The notice ~~includes instructions for requesting~~ advises the obligor that the obligor has 15 days to request an administrative ~~or district court~~ reinstatement hearing ~~within 15 days after the date on the denial notice~~.

(~~g~~d) Upon receipt of a timely request for a hearing, CSED schedules the matter for a hearing before the OKDHS Office of Administrative Hearings: Child Support ~~(OAH) or district court as appropriate~~.

~~(h) If an obligor again fails to comply with a child support payment schedule after reinstatement of a driver license, the amounts to be paid under (d)(1) of this Section may be insufficient to show the obligor is complying with the child support payment schedule.~~

~~(1) Subsequent failures require an obligor to comply with (d) of this Section and may require additional payments in an amount sufficient to ensure future compliance.~~

~~(2) Additional payments for subsequent failures to comply with a child support payment schedule are determined by CSED on a case-by-case basis.~~

~~(i) For purposes of this Section, "payment schedule" means the court-ordered plan for current child support and a monthly~~

~~amount toward the arrearage in effect at the time the court orders a driver license revoked, suspended, not issued, or not renewed.~~

340:25-5-212. Financial institution data match reporting system

(a) **Legal basis.** The ~~DHS~~ Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) maintains a financial institution data match reporting system to identify obligors' assets and to issue levies on accounts of obligors who are in noncompliance with an order for support. In maintaining the system, CSED follows Title IV, Part D, of the Social Security Act, associated federal regulations, and state statutes. This Section establishes provisions necessary to implement Sections 666 (a)(17) and 669A of Title 42 of the United States Code and Sections 240.22 ~~-~~ through 240.22G of Title 56 of the Oklahoma Statutes. The definitions in Section 240.22A of Title 56 of the Oklahoma Statutes apply to the terms used in this Section.

(b) **Financial institutions.**

(1) All data supplied to CSED by financial institutions doing business in Oklahoma must be in accordance with the Financial Institution Data Match Specifications Handbook published by the ~~United States~~ federal Office of Child Support Enforcement.

(2) A financial institution may charge an account levied on by CSED a fee of $20~~.00~~, under Section 240.22E ~~(D)~~(E) of Title 56 of the Oklahoma Statutes, which is deducted from the account before the financial institution remits funds to CSED. If the levied funds are subsequently refunded by CSED because of a CSED error described in (d)(4)(A) or (d)(4)(B) of this Section, CSED refunds any fee charged~~,~~ to the appropriate account holder.

(c) **Levies.** Levies are for the total amount of past-due support as defined in Section 237.7 of Title 56 of the Oklahoma Statutes.

(d) **Notice of levy and administrative review.**

(1) CSED sends a notice of levy to an obligor within three days after sending the levy to the financial institution. [56 O.S. § 240.22G] The notice of levy includes:

(A) instructions for the obligor or a non-obligated joint account holder to request an administrative review;

(B) a description of the grounds for requesting an administrative review;

(C) a description of the review process; and

(D) notice that failure to submit a timely request for review means the levy is final.

(2) It is the responsibility of the obligor to notify any joint account holder(s) of the levy.

(3) Either the obligor or a non-obligated joint account holder may request an administrative review of the levy after the date on the notice of levy under Section 240.22G of Title 56 of the Oklahoma Statutes.

(4) The obligor may request an administrative review because:

(A) there is a mistake of identity;

(B) the obligor did not owe three months of child support at the time of the levy;

(C) the amount taken by the levy is more than the obligor owes; or

(D) the levied funds are owned by a non-obligated joint account holder.

(5) A non-obligated joint account holder may request an administrative review because the levied funds are not owned by the obligor.

(6) The purpose of the administrative review is to quickly resolve any obvious factual errors.

(7) After the administrative review, CSED issues a notice of administrative review decision and information about requesting an administrative hearing.

(e) **Administrative hearing.** Either the obligor or a non-obligated joint account holder may request a hearing before the ~~DHS~~ OKDHS Office of Administrative Hearings: Child Support, by the date specified in the notice of administrative review decision.

(f) **Release of funds from levy.** CSED releases funds from levy when the obligor submits sufficient and credible evidence at the administrative review that the source of the funds is:

(1) Supplemental Security Income (SSI) benefits;

(2) State Supplemental Payments (SSP) for Aged, Blind and the Disabled;

(3) Temporary Assistance for Needy Families (TANF) benefits; or

(4) child support payments, if the obligor is the custodial person of a minor child(ren) and is receiving the payments as required by a court order.

340:25-5-213. Annual notice

(a) The Child Support Enforcement Division (CSED) sends a notice required by Section 237A of Title 56 of the Oklahoma Statutes to obligors and custodial persons in IV-D cases at least once every 12 months~~.~~, *unless the amount of past due support has been determined in a court proceeding within the past twelve months.* [56 O.S. § 237A] CSED refers to this notice as a Notice and Order of Child Support Lien or ~~an~~ annual notice. The annual notice confirms the amount of past support and establishes a payment plan to collect past support. It may establish an address of record for obligors and custodial persons, and it includes notice of the procedure to submit address changes to the Central Case Registry. The annual notice:

(1) informs the obligor that child support services under the state plan are being provided;

(2) instructs the obligor to redirect the support payments to the Centralized Support Registry; and

(3) advises the obligor of the amount of past support and collection actions that may be taken to collect the support debt.

(b) The annual notice includes directions for the obligor to make specified monthly payments to satisfy past-due support. Under Section 137 of Title 43 of the Oklahoma Statutes, the past-due support repayment schedule may not exceed three years unless specific findings of fact supporting the action are made. CSED compares the monthly payment amount based on this three-year repayment schedule with 50 percent of the

current monthly support obligation and sets the amount of the monthly payment included in the annual notice at the greater of these two amounts.

(c) The initial notice is served upon the obligor as provided in Section 2005 of Title 12 of the Oklahoma Statutes. If there is an address of record on file with the Central Case Registry under Section 112A of Title 43 of the Oklahoma Statutes, the notice may be served by regular mail at the address on record. Subsequent notices may be served by regular mail with a certificate of mailing to the last address of record. The initial notice and subsequent annual notices are sent to the custodial person by regular mail with a certificate of mailing.

PART 33. INTERSTATE AND INTERNATIONAL CASES

340:25-5-270. Interstate and international cases

(a) In referring and processing interstate and international IV-D cases the Oklahoma Department of Human Services Child Support Enforcement Division (CSED) is governed by:

(1) the Uniform Interstate Family Support Act (UIFSA) as provided in~~:~~

~~(1)~~ Sections 601-100 through 601-901 of Title 43 of the Oklahoma Statutes~~, and~~;

(2) Section 240.9 of Title 56 of the Oklahoma Statutes;

(~~2~~3) Section 1738B of Title 28 of the United States Code;

(~~3~~4) Sections 454, 459A, and 466 of the Social Security Act; and

(~~4~~5) Sections 302.36 and 303.7 of Title 45 of the Code of Federal Regulations.

(b) CSED operates an interstate registry in accordance with Section 303.7 of Title 45 of the Code of Federal Regulations, and Section 112A of Title 43 of the Oklahoma Statutes.

(c) CSED uses forms issued by the Secretary of the U.S. Department of Health and Human Services under Section 452 of the Social Security Act as applicable for processing interstate cases.

(d) When Oklahoma is the initiating state, CSED obtains information and communicates with the custodial person. When Oklahoma is the responding state, CSED communicates to the initiating state with which CSED has established a case.

PART 38. IV-D AND NON-IV-D CENTRAL CASE REGISTRY INFORMATION

340:25-5-340. Collection and maintenance of addresses of record

(a) Section 112A of Title 43 of the Oklahoma Statutes provides the basis for the Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) to collect and maintain addresses of record for:

(1) parties and ~~custodians~~ custodial persons subject to paternity orders or child support orders entered in Oklahoma~~.~~;

(2) ~~CSED also collects and maintains addresses of record for~~ noncustodial parents under Section 237A of Title 56 of the Oklahoma Statutes and OAC 340:25-5-213~~.~~; ~~CSED may also:~~

(~~1~~3) ~~collect addresses of record for~~ parties and ~~custodians~~ custodial persons subject to paternity orders or child support orders entered in other jurisdictions; and

(~~2~~4) ~~accept and maintain addresses of record voluntarily submitted by~~ parties and ~~custodians~~ custodial persons when they voluntarily submit them.

(b) Custodial persons and noncustodial parents establish the initial address of record through:

(1) completion of Form CSED-8, Family Violence - Address of Record Statement;

(2) a court order; or

(3) a support order summary form when services are not being provided under the OKDHS state IV-D plan pursuant to Section 237 of Title 56 of the Oklahoma Statutes.

(c) Custodial persons and noncustodial parents may also use Form CSED-8 to designate a family violence indicator under OAC 340:25-5-67.1.

(~~b~~d) Addresses of record are subject to release for the purpose of service of process in support, visitation, and custody actions under Section 112A of Title 43 of the Oklahoma Statutes.

(~~c~~e) A person who is responsible for maintaining an address of record on file with CSED under Section 112A of Title 43 or Section 237A of Title 56 of the Oklahoma Statutes must notify CSED of any change in the address within 30 calendar days. The person may send changes to CSED, Central Case Registry, P.O. Box 528805, Oklahoma City, OK 73152-8805 or to a district child support office. CSED may require proof of a person's identity before establishing or changing a person's name or address of record and may attempt to verify or confirm the correctness of addresses of record.

(f) A custodial person updates an address of record:

(1) by completing and signing a change of records letter;

(2) by telephoning CSED customer service at 405-522-2273 in the Oklahoma City calling area, 918-295-3500 in the Tulsa calling area, or toll-free at 1-800-522-2922 and entering an OKDHS customer identification number and personal identification number. This provides restricted access to the custodial person's case information for CSED to update the address of record by telephone; or

(3) through a court order.

(g) A noncustodial parent updates an address of record:

(1) by completing a change of records letter; or

(2) through a court order.

(h) CSED records the custodial person's address of record as the address of a custodial person's attorney only if the custodial person designates the attorney's address as the address of record pursuant to Sections 112A and 413(F) of Title 43 of the Oklahoma Statutes.

(i) CSED does not change a custodial person's address of record to that of a collection agency to send support payments to the collection agency's address. CSED denies any such request unless there has been an assignment of child support to

an attorney pursuant to Section 118.4 of Title 43 of the Oklahoma Statutes.

PART 39. ACCOUNTING AND DISTRIBUTION

340:25-5-350.1. Return of overcollected support amounts

If the Child Support Enforcement Division (CSED) receives:

(1) a support payment in excess of the noncustodial parent's obligations, CSED returns the excess amount to the ~~noncustodial parent~~ payor within 45 days after discovering the overcollection. If the ~~noncustodial parent's~~ payor's address is unknown, or the ~~support~~ payment is returned due to the inability to distribute it, the support payment is returned to the ~~employer or other payor~~ noncustodial parent~~;~~.

(2) a support payment and the custodial person's address is unknown, CSED applies support collections to any unreimbursed public assistance debt associated with the noncustodial parent~~;~~.

(3) an erroneous excess payment, CSED returns it to the ~~noncustodial parent~~ payor ~~if possible~~ within 45 days after discovering the overcollection. If the ~~noncustodial parent's~~ payor's address is unknown, or the payment is returned due to the inability to distribute it, the support payment is returned to the ~~employer or other payor~~ noncustodial parent~~; or~~.

(4) a payment that cannot be disbursed to a custodial person, or returned to the payor or noncustodial parent, and there is no debt to the State of Oklahoma, CSED remits the payment to the Oklahoma Department of Human Services ~~(OKDHS)~~ General Revenue Fund Treasury.

340:25-5-350.3. Payment of support through Centralized Support Registry

(a) **Centralized Support Registry.** The Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) operates a Centralized Support Registry (Registry), also known as the State Disbursement Unit, for the receipt, recording, allocation, distribution, and disbursement of support payments. CSED operates the Registry under Sections 410 and 413 of Title 43 of the Oklahoma Statutes, Sections 302.51 and 303.100 of Title 45 of the Code of Federal Regulations, and Sections 454B and 457 of the Social Security Act. This Section applies to both IV-D and non-IV-D cases unless the context clearly indicates otherwise.

~~(b) The Registry is also known as the State Disbursement Unit. CSED operates the Registry under:~~

~~(1) Sections 410 through 413 of Title 43 of the Oklahoma Statutes;~~

~~(2) Sections 302.51 and 303.100 of Title 45 of the Code of Federal Regulations; and~~

~~(3) Sections 454B and 457 of the Social Security Act.~~

(~~c~~b) **Support payments.** Support payments must be paid as instructed in writing by CSED. CSED may require payors and ~~individuals~~ persons to provide information needed to identify and properly allocate and distribute payments and to submit payments to the Registry in accordance with Section 413 of Title 43 of the Oklahoma Statutes.

(1) CSED may receive support payments from employers and other payors through electronic funds transfer. To transfer child support payments electronically, employers first call CSED at the telephone numbers as provided in OAC 340:25-1-2.1 to set up the electronic funds transfer process.

(2) CSED safeguards case information and records received from payors and ~~individuals~~ persons. Information and records concerning IV-D and non-IV-D recipients of services through the Registry are confidential under Section 183 of Title 56 of the Oklahoma Statutes except as provided in OAC 340:25-5-67.

(~~d~~3) CSED sends ~~custodians~~ custodial persons a quarterly written notice of the amount of current support, arrears, and interest collected, and the amount of collections paid to the custodian. ~~Custodians~~ Custodial persons may also obtain this information over the Internet or by telephoning CSED as described in OAC 340:25-1-2.1.

(~~e~~4) CSED reserves the right to refuse to accept a personal check after receiving a non-sufficient funds check from the same payor.

(~~f~~5) CSED considers the date of collection the date that payments are received by the Registry.

(~~g~~6) CSED allocates and distributes support payments under OAC 340:25-5-351.

(~~h~~c) **Payment issuance.** CSED issues payments, made out only to the ~~custodian only~~ custodial person or the initiating state, by mailing a paper warrant or transferring funds electronically, also known as direct deposit, under subsection (11)(B) of Section 454 of the Social Security Act and Section 302.38 of Title 45 of the Code of Federal Regulations.

(1) For purposes of this Section, warrant, also known as a check or bank draft, means an unconditional written order by which one person authorizes another person to pay a certain sum of money to a third person.

(2) CSED reissues a fraudulently endorsed and subsequently cashed warrant to the payee upon CSED's confirmation of a forged signature.

(3) For purposes of this Section, payee means the person or entity to whom the check is written. CSED confirms a check as forged when:

(A) the payee completes Form ADM-44-B, Affidavit of Forged Endorsement;

(B) the payee completes Form ADM-44-C, Investigation Questionnaire; and

(C) CSED compares the payee's signature against the endorsement on the check and verifies that the signatures do not match.

(~~i~~d) **Overcollected support amounts.** CSED returns ~~undistributed collections to the noncustodial parent within 30 days if CSED is unable to distribute the collection. If the noncustodial parent's address is unknown, the~~ overcollected support ~~payment is returned to the employer or other payor~~ amounts as described in OAC 340:25-5-350.1.

(e) **Distribution errors.** CSED manages distribution errors as described in this subsection.

(~~j~~1) CSED is not responsible for overpayment, underpayment, nonpayment, misdirection of payment, or other distribution error caused by either incorrect payments or information submitted to CSED, or CSED receiving no information or payment. CSED does not attempt to recover, redirect, forward, repay, or otherwise correct this type of error.

(~~k~~2) When CSED errs, CSED recovers overpayments to parties or ~~custodians~~ custodial persons in IV-D and non-IV-D cases as described in Part 37 of this Subchapter.

[OAR Docket #05-692; filed 4-21-05]

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

[OAR Docket #05-678]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Procedures Relating to Case Changes
340:40-9-2. [AMENDED]
Subchapter 10. Electronic Benefit Transfer (EBT) System for Child Care [NEW]
340:40-10-1. through 340:40-10-4. [NEW]
Subchapter 13. Child Care Rates and Provider Issues
340:40-13-4. [REVOKED]
(Reference APA WF 04-38)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law (P.L.) 104-193; the Balanced Budget Act of 1997, P.L. 105-33; and 45 Code of Federal Regulations (CFR) Parts 98 and 99.
DATES:
Comment period:
January 18, 2005 through February 17, 2005
Public hearing:
None requested.
Adoption:
February 22, 2005
Submitted to Governor:
February 22, 2005
Submitted to House:
February 22, 2005
Submitted to Senate:
February 22, 2005
Gubernatorial approval:
April 8, 2005
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 19, 2005.
Final adoption:
April 19, 2005
Effective:
June 1, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Family Support Services Division rules for Child Care Services are revised to: (1) change the date a worker closes a child care benefit to ten days from the date he or she takes the action; (2) add a new Subchapter to make rules and procedures regarding EBT more easily found by Oklahoma Department of Human Services (OKDHS) staff and the public; (3) add a new rule to advise staff and the public regarding procedures to follow when the client is misusing the EBT card; and (4) revoke rules that are now included in the new Subchapter 10.
CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2005:

SUBCHAPTER 9. PROCEDURES RELATING TO CASE CHANGES

340:40-9-2. Case changes

(a) **Case changes.** The client must report any changes in his or her circumstances that would result in an increase or decrease in the ~~level of~~ child care ~~services~~ benefit within ten days. The worker acts on changes which increase or decrease the child care ~~services~~ benefit regardless of whether the client is a semi-annual reporter or not. Failure to report changes timely may result in an overpayment assessment against the client ~~or in the client being responsible to pay for increased services for previous time periods~~. Examples of changes the client must report include:

(1) household income;
(2) household composition;
(3) names and number of household members in child care;
(4) the reason child care is needed;
(5) parent's or caretaker's work or school schedule affecting the days and hours child care is needed;
(6) the client's address or telephone number;
(7) the child care facility the child is attending;
(8) child care is no longer being used or needed;
(9) family size; and
(10) days and hours child care is needed.

(b) **Additional child request.** When an additional child requires child care, the worker completes the request within two working days of the client providing all necessary verification to determine eligibility. The client completes the last page of Form FSS-1, Comprehensive Application and Review, or Form K-2, Application for Child Care Services, only when the days and hours this child needs the child care ~~services~~ benefit differs from the current plan of service. If eligible, the child can be approved for a child care ~~benefits~~ benefit beginning with the date of request. Family share co-payment increases due to adding an additional child to the case are effective the month after the month the client requests a child care ~~services~~ benefit for that child.

(c) **Changes which increase the ~~level of~~ child care ~~services~~ benefit.** ~~Changes that increase the level of child care services are planned as needed between the worker and the client when changes are reported timely.~~ When the client reports a change timely that increases the child care benefit, the client and the

worker jointly plan the effective date of the change. When changes are not reported timely, the earliest date the worker increases the ~~level of~~ child care ~~services~~ benefit is the first day of the month in which the client reports the change.

(d) **Changes that decrease ~~or terminate the level of~~ the child care ~~services~~ benefit.** ~~Whenever~~ When possible, the worker plans with the client changes that decrease the ~~level of~~ child care ~~services with the client~~ benefit before implementing the change. ~~The worker also notifies the provider before decreasing services.~~ When the client reports an increase in income, the worker uses Oklahoma Department of Human Services (OKDHS) Appendix C-4, Child Care Eligibility/Rates Schedule, to determine whether the household meets income guidelines. See OAC 340:40-5-1(h).

(e) **Change in provider.** When a client reports a change in provider, the change is effective the date the change in provider occurs, regardless of whether or not the client reports this change timely ~~or not~~. ~~Provider changes are completed by the~~ The worker completes provider changes within two working days of the ~~change being reported~~ date the client reports the change.

(f) **Closure of the child care benefit.** When advance notice is required, the worker closes the child care benefit ten days from the date he or she takes action. Ten day advance notice is not required when the client is no longer using the child care benefit or gives written permission to the worker agreeing to an earlier closure date.

(~~f~~g) **Reopen action.** When a client's child care ~~benefits close they~~ benefit closes, it can be reopened using current eligibility information if policy and procedures were not administered correctly or if county staff receive new or additional information ~~is received~~ within 30 days of the effective date ~~benefits were~~ the benefit terminated that shows the family continues to be eligible. The worker cannot reopen the child care ~~benefits~~ benefit when:

(1) a 30 day period of job search was given because the client lost his or her job or successfully completed school and the child care benefit was closed~~. See OAC 340:40-7-8(a)(2)~~;

(2) expedited eligibility processing is used and requested verification is not returned within 30 days of the application date. See OAC 340:40-3-1(b); or

(3) the payee for the child care case changes. A new application must be completed in this instance.

SUBCHAPTER 10. ELECTRONIC BENEFIT TRANSFER (EBT) SYSTEM FOR CHILD CARE

340:40-10-1. Electronic benefit transfer (EBT) system for child care

(a) The EBT system for child care is used to track time and attendance for a child using subsidized child care and to process child care payments sent to child care providers. This system involves use of an EBT card by a client to document attendance by swiping the card through a point-of-service (POS) machine at the child care facility. The client is able to swipe real time attendance or can enter previous in and out times for up to ten days, the current day and nine previous days. The system works best if all or most of the client's swipes are completed real time.

(b) The child care applicant is issued an EBT card at the time a request is made for a child care benefit.

(c) Only two EBT cards can be issued per Family Support Services Division (FSSD) child care case; one card for the parent or caretaker and one for an authorized representative. The authorized representative can be the other parent or someone else who helps the client take the child to and pick up the child from the child care facility. The client is responsible for all swipes made by the authorized representative. The authorized representative cannot be the child care provider or anyone who is employed by the child care provider.

(d) Two EBT cards can be issued per child in a Child Welfare case if each child in the case is residing with different foster parents.

340:40-10-2. Client, worker, and provider electronic benefit transfer (EBT) responsibilities

(a) **Client EBT responsibilities.** Client EBT responsibilities include:

(1) watching the client training video;

(2) swiping correct attendance days and times with his or her EBT card through the provider's point-of-service (POS) machine within ten days, current day and previous nine days;

(3) checking the message on the POS machine after each swipe to see if it is approved, denied, or pending. If the message shows denied or pending, the client is responsible to report the problem to the worker right away;

(4) not swiping attendance for any day the child does not attend child care;

(5) not giving the EBT card or personal identification number (PIN) to anyone else, including the child care provider; and

(6) paying for care the Oklahoma Department of Human Services (OKDHS) does not pay because:

(A) the client did not swipe attendance timely for days and times his or her child attended child care;

(B) swipes were denied and the client did not get them corrected within ten days; or

(C) the provider loses the absent day payment for a weekly authorization because the client did not swipe correct attendance for every day that the child attended care for a given month.

(b) **Worker EBT responsibilities.** Worker EBT responsibilities include:

(1) ensuring that the client reads and states he or she understands the EBT responsibilities shown on the last page of the child care application;

(2) arranging for the client to receive his or her EBT card and watch the training video as soon as possible after the child care request is signed;

(3) if the client chooses an authorized representative, arranging for that person to receive his or her EBT card and watch the training video as quickly as possible;

(4) acting on swipe errors reported by the client as soon as they are reported;

(5) acting on reports of misuse of the EBT card per policy at OAC 340:40-10-3 as soon as they are reported.

(c) **Provider EBT responsibilities.** Provider responsibilities include:

(1) never being in possession of or swiping client's EBT card through the POS machine;

(2) never moving the POS machine to another location without receiving prior written approval from OKDHS Family Support Services Division (FSSD) Child Care Section;

(3) requiring clients to swipe attendance as care is used;

(4) never asking or requiring a client to swipe attendance for a day the child does not attend; and

(5) ensuring that claimed attendance submitted via the EBT system is correct and voiding any incorrect transactions within the ten day swipe limit, current day and previous nine days.

340:40-10-3. Misuse of the electronic benefit transfer (EBT) card

(a) When the worker becomes aware that the client or the authorized representative of the client is misusing his or her EBT card, he or she cancels that EBT card.

(b) Misuse can occur when the client or authorized representative gives his or her EBT card to another person such as the child care provider to swipe attendance or when he or she knowingly swipes incorrect attendance dates and times.

(c) Before the EBT specialist issues a new EBT card, the client or authorized representative must view the EBT training video regarding the proper use of the EBT card again and sign Form EBT-5, Access Oklahoma Card Violation.

340:40-10-4. Child care electronic benefit transfer (EBT) payment process

(a) **Child care payments.** The Oklahoma Department of Human Services (OKDHS) makes payments for child care services to providers electronically using the EBT system unless the provider is an in-home provider, a provider on a military base, or an out-of-state provider. These providers are paid manually via the EBT system after submitting Form ADM-12-S, Child Care Claims.

(b) **Point-of-service (POS) machines.** Contracted child care providers are issued a POS machine within ten days of the date the worker authorizes care for a child and the provider notifies the OKDHS contractor that he or she is beginning to care for a child eligible for an OKDHS subsidy.

(c) **Attendance swiping.** Clients record actual times their child attends child care by swiping an EBT card through the POS machine. Providers can charge clients for care provided on days they fail to bring their EBT card or when the machine message shows care is denied. If care is later approved for that date(s), the provider must reimburse the client for any care paid for by the client above the family share co-payment.

(1) Providers must monitor the POS machine to ensure correct attendance times are recorded. If incorrect times are recorded, the provider can void the incorrect transaction and ask the client to start over.

(2) When clients forget to swipe their EBT card for a day their child attends care, record incorrect times that are voided by the provider, or receive a denied error message, the system allows the client to swipe previous in and out times for the current day and the previous nine days.

(3) Based on attendance recorded and the level of care authorized, electronic settlements to providers are made weekly.

(d) **EBT payment week.** The EBT payment week begins every Sunday at 12:01 A.M. and ends every Saturday at midnight. Electronic settlements are made each week in the provider's designated financial institution account on Tuesday morning for services provided two weeks prior to the current week. If the financial institution is closed on Monday or Tuesday or Monday is a holiday, the electronic settlement is deposited on Wednesday morning.

(e) **Manual claims process.** When the provider reports he or she was not paid correctly, he or she can submit Form ADM-12-S or ask the client's worker to submit Form EBT-4, Report of EBT Child Care Payment Adjustments, to the Finance Division for a manual adjustment. The provider waits to submit Form ADM-12-S until approximately the 20th of the next month. Finance Division staff evaluate whether to adjust payment to the provider based on why care was not paid electronically.

(1) If the client did not attempt to record attendance electronically, no payment is made to the provider for days swipes are not recorded unless extenuating circumstances beyond the client's and/or provider's control exist. These extenuating circumstances must be documented on Form ADM-12-S.

(2) If the client swiped correct attendance times but swipes were denied in error, Finance Division staff make manual adjustments.

(3) If the family share co-payment applied by the EBT system was incorrect, Finance Division staff make manual adjustments.

(4) If the provider was paid the wrong rate either because of incorrect coding of the child care plan, an incorrect birth date shown for a child, or an incorrect star status paid, Finance Division staff make manual adjustments.

(f) **Absent day payments.** Providers can be paid an absent day payment for a child who misses some days of scheduled attendance and is authorized for care on a weekly basis. An absent day payment is electronically deposited in the provider's account in their weekly settlement received after the tenth of the month following the month care was given. To be eligible to receive this additional payment, the child must be approved for a weekly authorization and must attend the minimum number of full-time days shown on OKDHS Appendix C-4-B, Guidelines for Weekly Authorizations, for that month. The provider is not eligible for an absent day payment if the child did not attend the minimum number of full-time days for that calendar month or attended the maximum days paid that is also shown on OKDHS Appendix C-4-B. The formulas used to

determine the minimum number of days the child must attend to qualify for an absent day payment are:

(1) three-day work week equals the number of days in the individual month minus the greater number of days for four days per week minus three;

(2) four-day work week equals the number of days in the individual month minus the greater number of days for three days per week minus four;

(3) five-day week equals the number of days in the individual month minus the greater number of days for two days per week minus five;

(4) six-day week equals the number of days in the individual month minus the greater number of days for one day per week minus five; or

(5) seven-day week equals the number of days in the individual month minus five.

SUBCHAPTER 13. CHILD CARE RATES AND PROVIDER ISSUES

340:40-13-4. Child care payment process [REVOKED]

~~(a) **Child care payments.** The Oklahoma Department of Human Services (OKDHS) makes payments for child care services to providers electronically using the electronic benefit transfer (EBT) system unless the provider is an in-home provider, a provider on a military base, or an out-of-state provider. These providers are paid manually after submitting Form ADM-12-S, Child Care Claims.~~

~~(b) **Point-of-service (POS) machines.** Contracted child care providers are issued a POS machine within ten days of the date the worker authorizes care for a child(ren) and the provider notifies the OKDHS contractor that he or she is beginning to care for a child(ren) eligible for an OKDHS subsidy.~~

~~(c) **Attendance swiping.** Clients record actual times their child(ren) attends child care by swiping an EBT card through the POS machine. Providers can charge clients for care provided on days they fail to bring their EBT card or when the machine message shows care is denied. If care is later approved for that date(s), the provider must reimburse the client for any care paid for by the client above the family share co-payment.~~

~~(1) Providers must monitor the POS machine to ensure correct attendance times are recorded. If incorrect times are recorded, the provider can void the incorrect transaction and ask the client to start over.~~

~~(2) When clients forget to swipe their EBT card for a day their child(ren) attends care, record incorrect times that are voided by the provider or receive a denied error message, the system allows the client to swipe previous in and out times for the current day and the previous nine days.~~

~~(3) Based on attendance recorded and the level of care authorized, electronic settlements to providers are made weekly.~~

~~(d) **EBT payment week.** The EBT payment week begins every Sunday at 12:01 A.M. and ends every Saturday at midnight. Electronic settlements are made each week in the provider's designated financial institution account on Tuesday morning for services provided two weeks prior to the current week. If the financial institution is closed on Monday or Tuesday or Monday is a holiday, the electronic settlement is deposited on Wednesday morning.~~

~~(e) **Manual claims process.** When the provider reports he or she was not paid correctly, he or she can submit Form ADM-12-S or ask the client's worker to submit Form EBT-4, Report of EBT Child Care Payment Adjustments, to the Finance Division for a manual adjustment. The provider waits to submit Form ADM-12-S until approximately the 20th of the next month. Finance Division staff evaluate whether to adjust payment to the provider based on why care was not paid electronically.~~

~~(1) If the client did not attempt to record attendance electronically, no payment is made to the provider for days swipes are not recorded unless extenuating circumstances beyond the client's and/or provider's control exist. These extenuating circumstances must be documented on Form ADM-12-S.~~

~~(2) If the client swiped correct attendance times but swipes were denied in error, Finance Division staff make manual adjustments.~~

~~(3) If the family share co-payment applied by the EBT system was incorrect, Finance Division staff make manual adjustments.~~

~~(4) If the provider was paid the wrong rate either because of incorrect coding of the child care plan, an incorrect birth date shown for a child, or an incorrect star status paid, Finance Division staff make manual adjustments.~~

~~(f) **Absent day payments.** Providers can be paid an absent day payment for children who miss some days of scheduled attendance and are authorized for care on a weekly basis. An absent day payment is electronically deposited in the provider's account in their weekly settlement received after the tenth of the month following the month care was given. To be eligible to receive this additional payment, the child must be approved for a weekly authorization and must attend the minimum number of full-time days shown on OKDHS Appendix C-4-B, Guidelines for Weekly Authorizations, for that month. The provider is not eligible for an absent day payment if the child(ren) did not attend the minimum number of full-time days for that calendar month or attended the maximum days paid that is also shown on OKDHS Appendix C-4-B. The formulas used to determine the minimum number of days the child(ren) must attend to qualify for an absent day payment are:~~

~~(1) three-day work week equals the number of days in the individual month minus the greater number of days for four days per week minus three;~~

~~(2) four-day work week equals the number of days in the individual month minus the greater number of days for three days per week minus four;~~

~~(3) five-day week equals the number of days in the individual month minus the greater number of days per week minus five;~~

~~(4) six-day week equals the number of days in the individual month minus the greater number of days for one day per week minus five; or~~
~~(5) seven-day week equals the number of days in the individual month minus five.~~

[OAR Docket #05-678; filed 4-19-05]

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

[OAR Docket #05-693]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 1. Scope and Applicability
340:75-1-12.6. through 340:75-1-12.7. [AMENDED]
Subchapter 7. Foster Home Care
Part 2. Development of Resources
340:75-7-12. [AMENDED]
340:75-7-14. [AMENDED]
340:75-7-18. [AMENDED]
340:75-7-24. [AMENDED]
Part 4. Foster Parents' Roles and Responsibilities
340:75-7-37. through 340:75-7-38. [AMENDED]
Part 5. Eligibility and Payments
340:75-7-51. through 340:75-7-53. [AMENDED]
Part 6. Foster Home Care Support Services
340:75-7-65. [AMENDED]
Part 8. Continuous Quality Assessment of a Resource Home
340:75-7-94. [AMENDED]
Part 25. Emergency Foster Care Program
340:75-7-262. [AMENDED]
Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services Division Services
Part 1. Therapeutic Foster Care
340:75-8-1. [AMENDED]
340:75-8-2. through 340:75-8-3. [REVOKED]
340:75-8-4. [AMENDED]
340:75-8-5. [REVOKED]
340:75-8-6. through 340:75-8-9. [AMENDED]
340:75-8-11. through 340:75-8-13. [AMENDED]
Subchapter 15. Adoptions
Part 8. Adoptive Placement Process
340:75-15-59. [AMENDED]
Part 10. Adoptive Family Assessment and Preparation Process
340:75-15-83. through 340:75-15-84. [AMENDED]
340:75-15-88. [AMENDED]
Part 12. Post Placement Services
340:75-15-103. [AMENDED]
340:75-15-106. [AMENDED]
(Reference APA WF 04-31)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Sections 7004-1.1, 7004-2.1, 7201 et seq., and 7501-1.1 et seq. of Title 10 of the Oklahoma Statutes.
DATES:
Comment period:
January 18, 2005 through February 17, 2005
Public hearing:
None requested.
Adoption:
February 22, 2005
Submitted to Governor:
February 22, 2005
Submitted to House:
February 22, 2005
Submitted to Senate:
February 22, 2005
Gubernatorial approval:
April 8, 2005
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 19, 2005.
Final adoption:
April 19, 2005
Effective:
May 26, 2005
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 7. Foster Home Care
Part 5. Eligibility and Payments
340:75-7-52. [AMENDED]
(Reference APA WF 04-15)
Gubernatorial approval:
August 9, 2004
Register publication:
22 Ok Reg 19
Docket number:
04-1278
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The revisions to Subchapters 1, 7, 8, and 15 of Chapter 75 clarify: (1) fair hearing procedures; (2) foster family requirements; (3) foster and adoptive pre-service training requirements; (4) time frames for the signature of foster care contracts; (5) difficulty of care rates and descriptions; (6) child care not paid by Oklahoma Department of Human Services (OKDHS); (7) non-compliance issues in foster homes; (8) purpose of emergency foster care (EFC) and visitation requirements; (9) responsibilities of OKDHS foster parents; (10) therapeutic foster care (TFC) program purpose and contractor responsibilities; (11) procedures for pre-placement visits and direct placement of a child with an adoptive family; (12) use of Form CWS-KIDS-26, Adoption Post Placement Service Plan, with adoptive families; and (13) by revoking sections of rule that are duplicative.

340:75-1-12.6 is amended to clarify the fair hearing process and update applicable rule cites.

340:75-1-12.7 is amended to clarify general information regarding the foster parent hotline.

340:75-7-12 and 75-15-83 are amended to better detail foster and adoption applicant requirements.

340:75-7-14, 75-7-18, 75-15-84, and 75-15-88 are amended to clarify foster and adoption assessment processes, including the house assessment and reasons for denial.

340:75-7-24 is amended to specify that an OKDHS records search is conducted prior to the initial placement of a child in kinship care.

340:75-7-37 is amended to clarify that the foster parent participates in developing a parent-child visitation plan that is approved by OKDHS and that foster parents must complete training requirements each calendar year.

340:75-7-38 is amended to reflect the use of physical restraint only when the foster parent has been properly trained in the restraint technique demonstrated in Behavior Crisis Management Training.

340:75-7-51 is amended to delete a reference to the automated phone number for warrant status checks.

340:75-7-52 supercedes emergency revisions and is amended to better detail the time frames and conditions that must be met before signing the foster care contract.

340:75-7-53 is amended to reflect the movement of difficulty of care rates and descriptions to OKDHS Appendix C-20, Children and Family Services Division Rates Schedule.

340:75-7-65 is amended to specify that foster care child care is not paid by OKDHS when the foster parent chooses more than one child care provider per child per day.

340:75-7-94 is amended to reflect procedures relating to the decision not to return a child as a result of an investigation and when smoking is a non-compliance issue with the foster family.

340:75-7-262 is amended to include the purpose of EFC and reference a rule cite for Child Welfare worker visitation requirements.

340:75-8-1 is amended to include the legal base and definitions for TFC.

340:75-8-2, 75-8-3, and 75-8-5 are revoked as the information regarding these Sections was incorporated into 340:75-8-1.

340:75-8-4 is amended to update TFC contract procedures and an associated rule reference.

340:75-8-6 is amended to include TFC contractor responsibilities when a child has overnight visitation with peers.

340:75-8-7 and 75-8-8 are amended to clarify TFC contractor requirements, including joint approval procedures.

340:75-8-9 is amended to reflect medical necessity criteria and considerations for sibling placements.

340:75-8-11 is amended to clarify extension of stays for the child in TFC.

340:75-8-12 is amended to delete unnecessary language regarding area resource coordinator responsibilities.

340:75-8-13 is amended to delete unnecessary language pertaining to Child Welfare (CW) worker responsibilities.

340:75-15-59 is amended to reflect procedures relating to pre-placement visits and direct placement of a child with an adoptive family.

340:75-15-103 is amended to clarify procedures regarding notification to adoptive parents of court hearings and the use of Form CWS-KIDS-26.

340:75-15-106 is amended to reflect the use of Form CWS-KIDS-26.

CONTACT PERSON:

Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. SCOPE AND APPLICABILITY

340:75-1-12.6. Fair ~~Hearings~~ hearings

(a) The primary purpose of the fair hearing is to safeguard the rights of ~~individual~~ clients and ~~to~~ provide recourse to address infractions of individual rights and interests. A fair hearing may be granted to the:

(1) ~~to~~ foster ~~parents if~~ parent when Oklahoma Department of Human Services (OKDHS):

(A) ~~the Department has denied their~~ denies the foster parent's claim for foster care ~~maintenance payments~~ reimbursement;

(B) ~~the Department has paid them~~ pays foster care ~~maintenance payments~~ reimbursement to the foster parent in a sum lower than the amount claimed;

(C) ~~the Department has~~ does not ~~paid the~~ pay foster care ~~maintenance payments~~ reimbursement to the foster parent in a timely manner;

(D) ~~the Department has closed the~~ closes the foster parent's home as indicated on Form DCFS-17, Notice of Closure to OKDHS Foster Parents; or

(E) ~~the Department has~~ does not ~~returned~~ return a child in OKDHS custody removed from ~~a~~ the foster parent's home due to a child abuse or neglect investigation as indicated on Form DCFS-17-A, Notice of Decision Not to Return Child After Investigation; or

(2) ~~to~~ adoptive ~~parents if~~ parent when OKDHS:

(A) ~~the Department has denied their~~ denies the adoptive parent's application for an adoption ~~subsidy~~ assistance payment as indicated on Form DCFS-50, Request for Review of Denial;

(B) ~~the Department has approved their~~ approves the adoptive parent's application for an adoption ~~subsidy~~ assistance payment in an amount less than requested; or

(C) ~~the Department has delayed~~ delays or ~~denied~~ denies an authorized adoptive placement ~~with an~~ out-of-state with the adoptive parent, ~~family. [~~per OAC 340:75-15-47~~]~~.

(b) Fair hearing requests ~~as to~~ regarding:

(1) adverse decisions on adoption ~~subsidies~~ assistance payments, are filed within 30 days of the date of the written notice of the adverse action~~.~~, ~~[~~per OAC 340:75-15-128~~(j)]~~; or

~~(c) Fair hearing requests as to departmental decisions regarding~~

(2) closures of approved ~~DHS~~ OKDHS foster homes, are processed per OAC ~~340:75-7-92(2) through (4)~~ 340:75-7-94 and OAC ~~340:2-5-6~~ 340:2-5-94.

(~~d~~c) Every effort is made at the local level to resolve matters that may evolve into requests for fair hearings. The Child Welfare (CW) worker and immediate supervisor meet informally with the foster or adoptive parents to ~~try to~~ clarify the basis for the decision that ~~has~~ prompted them to inquire about a fair hearing.

(~~e~~d) Information gathered for the fair hearing is provided to ~~the Appeals Unit of~~ the OKDHS Legal Division Appeals Unit in accordance with Form H-1-A, Hearing Summary. The appellant ~~has~~ is given access, prior to the date of the hearing, to any information to be used in the hearing ~~prior to the date of the hearing~~. Any information acquired after the notice of the adverse decision and after the request for the fair hearing may be used in the hearing process ~~as long as~~ provided the appellant is notified of this information and of the intent to use it. Such information is made available to the appellant ten days prior to the hearing date.

(~~f~~e) Rulings and issues resulting from findings made by the court are not appealable in the fair hearing process.

(~~g~~f) Findings made pursuant to a Child Protective Services (CPS) appeal process are not subject to review in the fair hearing process.

340:75-1-12.7. Foster ~~Parent Hotline~~ parent hotline

Section 7204 of Title 10 of the Oklahoma Statutes directs ~~the~~ Oklahoma Department of Human Services (OKDHS) to establish a statewide toll-free ~~Foster Parent Hotline~~ foster parent hotline to provide ~~two functions. One function is to provide~~ information related to foster care services and ~~the second function is~~ a means to report allegations of foster parent's rights violations. The ~~foster parent may access the Foster Parent Hotline~~ hotline is accessed by calling 1-800-376-9729.

(1) **Foster care general information or concerns.** The hotline may be contacted when a:

(A) ~~Individuals requesting~~ person needs general information regarding foster care policy or procedures; or

(B) foster ~~parents who have~~ parent does not feel his or her specific concerns ~~they~~ have been ~~unable to engage~~ addressed by the county ~~office in addressing may contact the hotline~~. ~~A DHS foster parent answers the hotline and provides assistance to the caller.~~

(2) **Foster parent's rights violation.** ~~If~~ When a foster parent ~~has reason to believe that~~ believes his or her rights have been violated, the hotline call is directed to ~~the~~ OKDHS Office of Client Advocacy, which initiates investigations regarding allegations that an employee of ~~the Department~~ OKDHS or a child-placing agency has:

(A) threatened a foster parent with removal of a child in the foster parent's care;

(B) harassed a foster parent;

(C) refused to place a child in ~~a licensed or certified~~ an approved foster home; or

(D) disrupted a child placement as a result of retaliation or discrimination against a foster parent who has:

(i) filed a grievance with ~~the Department's~~ OKDHS Child Welfare ~~Division~~;

(ii) provided information to any state official or ~~Department~~ OKDHS employee; or

(iii) testified, assisted, or otherwise participated in an investigation, proceeding, or hearing against ~~the Department~~ OKDHS or a child-placing agency~~.~~, ~~[~~per OAC ~~340:2-3-25(j)]~~ 340:2-3-46.

SUBCHAPTER 7. FOSTER HOME CARE

PART 2. DEVELOPMENT OF RESOURCES

340:75-7-12. Initial screening ~~of foster family inquiries~~ and requirements

(a) **Inquiries.** Any person~~,~~ who is at least 21 years of age~~,~~ may apply to become a foster parent by contacting the local Oklahoma Department of Human Services (OKDHS) office.

(b) **Requirements.** Requirements described in OAC 340:110-5 serve as a framework for families and OKDHS in the mutual assessment process that assists in selecting the best home for children placed in foster family care. All applicants must:

(1) be at least 21 years of age and preferably no more than 55 years older than the child considered for placement;

(2) if married, be married one year or more. Applicants may be married, single, legally separated, or divorced;

(3) have the ability to manage personal and household financial needs without relying on the foster care reimbursement;

(4) provide appropriate sleeping arrangements for each child placed;

(5) provide verification that all household members ~~of the household~~ are in sufficiently good physical and mental health to provide for the individual needs of each child placed;

(6) submit to a search of all OKDHS records, including Child Welfare ~~(CW)~~ records;

(7) ensure that each household member ~~of the household~~, 18 years of age or older, submits fingerprints for a state and national criminal history records search;

(8) submit to a search of Juvenile Justice Information System (JOLTS) records for any child older than 13 years of age in the household;

(9) ensure that no household member ~~of the household~~ has a prior conviction of any sexual offense;

(10) not smoke in the home when a child is placed in the home;

(11) not smoke in the automobile when transporting a child placed;

(~~10~~12) provide references;

(~~11~~13) complete 27 hours of pre-service training;

(~~12~~14) complete 12 hours of in-service training each ~~contract~~ calendar year;

(~~13~~15) demonstrate the basic competencies that are to:

(A) protect and nurture children who have been abused, emotionally maltreated, or neglected;

(B) meet the medical and developmental needs of these children;

(C) support relationships between children and their parents, siblings, and kin, as specified by OKDHS;

(D) connect ~~the child~~ children to ~~a~~ safe, nurturing ~~relationship~~ relationships; and

(E) collaborate with OKDHS as a team member;

(~~14~~16) have a house assessment completed;

(~~15~~17) have extended family or friends to provide support and child care other than, or~~,~~ in addition to, licensed child care paid by OKDHS;

(~~16~~18) submit verification of employment when requesting OKDHS paid child care services for a child in foster care;

(~~17~~19) acknowledge and agree to abide by applicable ~~State~~ Oklahoma statutes and OKDHS rules regarding ~~children~~ the child in their care that include, but are not limited to:

(A) OKDHS, as the legal custodian of the child, has the right to move any child from any foster home at any time when in the child's best interests and in accordance with statutes governing movement of children;

(B) the necessity of maintaining and respecting the confidential nature of all information regarding a child placed in the foster home~~,~~. ~~and that a~~ A breach of confidentiality may be grounds for closure of the foster home and termination of the foster care contract; and

(C) the requirement that OKDHS investigate or assess allegations of abuse, neglect, or maltreatment of any child in OKDHS custody placed in an approved foster home in the same manner as any other abuse or neglect investigation or assessment conducted by OKDHS;

(~~18~~20) notify OKDHS whenever any member of the foster family is seriously ill or hospitalized;

(~~19~~21) provide a physician's statement, once approved as a foster parent:

(A) for any hospital stay;

(B) for ongoing outpatient medical or mental health care, including psychological counseling; or

(C) upon OKDHS request;

(~~20~~22) agree to provide foster care as a planned, temporary placement for ~~children with~~ the ~~goal~~ child whose permanency plan ~~of~~ is family reunification or other permanency plan;

(~~21~~23) work as a member of a professional multidisciplinary team with OKDHS staff to develop a ~~case~~ permanency plan for each child placed;

(~~22~~24) share parenting of the child in care with the parent(s), who may have different values and lifestyles;

(~~23~~25) treat all information regarding the child and family as confidential, only sharing such information necessary to obtain services for the child or with persons who are directly involved with the case;

(~~24~~26) participate in the development of an effective parent and child visitation plan that may include contact with the parents and siblings, if siblings are separated;

(~~25~~27) comply with OKDHS rules on discipline;

(~~26~~28) maintain requirements necessary for continued approval as a foster home;

(~~27~~29) participate in the re-assessment of the foster home and the evaluation of the OKDHS Foster Care program and services;

(~~28~~30) utilize the foster care reimbursement for the care and maintenance of the child's basic needs, such as food, clothing, shelter, incidentals, non-prescription medications, including special activity fees, allowances, and recreational opportunities;

(31) utilize the clothing allowance included in the foster care reimbursement to provide adequate clothing for the child placed; and

(~~29~~32) comply with all ~~state~~ Oklahoma statutes relating to the care and support of minors including those that prohibit the use of tobacco, alcohol, or non-prescribed medications.

(c) **Specific inquiries.** Temporary Assistance for Needy Families (TANF) recipients and OKDHS employees may apply to be OKDHS foster families.

(d) **Requests from other states.** When former foster parents apply in another state to be a foster resource and that state requests information about the foster parents from OKDHS, Children and Family Services Division Foster Care Section responds to the request.

340:75-7-14. Training

(a) **Pre-service training.** Applicants and adult household members who will be caring for a child in Oklahoma Department of Human Services (OKDHS) custody complete a prescribed course of training that addresses the values and competencies essential to caring for ~~children~~ a child who ~~are victims~~ is a victim of maltreatment.

(1) Each adult in a foster home identified as a provider for a child completes required training or is determined to possess required competencies as a result of prior foster care training and experience.

(2) Required pre-service training consists of approximately 27 hours of instruction addressing required competencies, including, but not limited to:

(A) protecting and nurturing children who have been abused, emotionally maltreated, or neglected;

(B) meeting the medical and developmental needs of these children;

(C) supporting relationships between children and their parents, siblings, and kin, as specified by ~~the Oklahoma Department of Human Services (~~OKDHS~~)~~;

(D) connecting ~~the child~~ children to safe, nurturing relationships; and

(E) collaborating with OKDHS as a team member ~~of a team~~.

(3) Applicants may request a waiver of training requirements by submitting to the resource specialist a list of subjects addressed in training as a result of prior service with Oklahoma, another state, or a private agency. Requests for training waivers are reviewed and acted on by Children and Family Services Division (CFSD) Foster Care and Training Sections programs managers.

(A) An applicant with a break in OKDHS service of less than five years meets the training requirements.

(B) Supplemental information or confirmation of training may be requested from another state or private agency identified by the applicant to aid in decision-making.

(C) The resource specialist notifies the applicant of the decision within 30 working days of the request for a training waiver.

(4) ~~Resource~~ Kinship families may be approved as initial placement resources before the conclusion of classroom training.

(5) ~~Resource~~ Foster and kinship families may request exception to training based on work schedule or disability.

(A) A self-study curriculum addressing the required competencies may be:

(i) requested by an adult in the applicant's home when the person's work schedule precludes the completion of training; and

(ii) approved by the Foster Care and Training programs managers. The assigned resource specialist supervises self-studies.

(B) A permanent training waiver may be approved by the Foster Care programs manager for adults in the applicant's home when verification is received that the person has a significant disability that precludes completion of classroom or self-study curriculums. Persons who are granted a permanent training waiver may not be considered as a provider for a child.

(b) **In-service training.** All foster parents complete 12 hours of continuing in-service training per calendar year on subjects that promote their skills and interests as providers.

(1) OKDHS offices provide free in-service training options to foster families, including conferences, video and taped instruction, and literature.

(2) Internet instruction through recognized state and private foster care agencies is accepted as meeting in-service training requirements. ~~Certificates of completion listing approved hours are typically~~ The foster family provides to the resource specialist the certificate of training, if available, from the training source, ~~upon completion of such training~~ listing the completed approved hours.

(3) Foster families have options in selecting classes, conferences, reading materials, or other learning opportunities that enhance their skills as providers and meet the in-service training requirement. Prior approval from the resource specialist is secured to ensure a common understanding of credit for each event.

(4) Foster families caring for children in OKDHS custody residing in another state must meet the requirements of that state for ongoing training to maintain approval.

340:75-7-18. Resource family assessment

(a) **Resource family assessments.** Resource family assessments are completed by Oklahoma Department of Human Services (OKDHS) staff or by a contractor of OKDHS. The foster family assessment consists of an evaluation of the items listed in (1) through (7).

(1) **Background investigation.** A completed and signed Form DCFS-26, Resource Family Assessment Application, and Form ADM-130, Request for Background Check, authorizes OKDHS to conduct an investigation into criminal and OKDHS records, including Child Welfare (CW) records, of the applicant and each adult ~~member of the~~ household member, per OAC 340:75-7-15.

(2) **House assessment.** The resource specialist conducts an evaluation of the applicant's residence to assess the location, condition, and ~~ability~~ capacity to accommodate children in foster care. The ~~evaluation addresses requirements found in OAC 340:110-5.~~ resource specialist assesses:

(A) location. The home must be accessible to school, medical, and recreational resources;

(B) play space. Adequate and safe indoor and outdoor space for play activities must be available;

(C) equipment. Age appropriate child care equipment, such as beds, high chairs, and toys must be available and in good repair;

(D) communications. A working phone must be maintained in the home;

(E) automobiles. The applicant must maintain an automobile in working order, carry the statutorily mandated automobile liability insurance, possess a valid Oklahoma driver license, and have a current, valid license tag. The resource specialist observes passenger restraints and advises the applicant that proper automobile restraints are used at all times when a child in OKDHS custody is riding in an automobile.

(i) Every driver must use a child passenger restraint system that meets federal standards when transporting a child who is younger than six years of age.

(ii) Every child age six to 18 years who is transported in an automobile must be protected by a passenger restraint system or seat belt.

(iii) The provisions in (i) and (ii) do not apply to the:

(I) driver of a school bus, taxicab, moped, motorcycle, or other vehicle not required by law to be equipped with safety belts;

(II) driver of a vehicle in which all seat belts are in use;

(III) transportation of a child for whom medical reasons prohibit the use of a passenger restraint system or seat belt; or

(IV) transportation of a child who weighs more than 40 pounds and is transported in the back seat using only a lap seat belt when the back seat of the vehicle is not equipped with combination lap and shoulder belts or when the combination lap and shoulder belts are used by other children weighing more than 40 pounds. The back seat includes all seats located behind the front seat of a vehicle; and

(F) sleeping arrangements and privacy.

(i) The applicant's home provides a separate bed for each child with the exception of siblings younger than six years of age who exhibit a need for mutual support. A separate bedroom is provided for a child who acts out sexually.

(ii) Preferably, no more than two children share a bedroom. Primary consideration is given to the child's safety according to age and emotional needs.

(iii) The applicant's home provides separate bedrooms for children older than six years of age who are of the opposite sex.

(iv) A child in OKDHS custody, with the exception of an infant who is younger than 12 months of age, does not share a bedroom with an adult in the household.

(v) The applicant's home provides space for the child's personal possessions and for a reasonable degree of privacy.

(vi) The applicant may not designate a room, such as the living room, utility room, den, dining room, pantry, or unconverted garage, as a bedroom unless the room is specifically designed as a bedroom.

(3) **Total number of children in placement.** The total number of children in OKDHS custody placed in a kinship or foster home may not exceed five. The total number of all children in the home, which includes biological, adoptive, foster, and other children not in OKDHS custody, ~~cannot~~ may not exceed six.

(4) **Children younger than two years of age.** No more than two children younger than two years of age, including the foster family's own children, are placed in the same home.

(5) **References.** The resource specialist solicits and reviews the comments of personal, employer, and school references identified by the applicant regarding the applicant's parenting strategies and skills. Information obtained through references is confidential.

(A) Three personal references are interviewed by phone or in person.

(B) The applicant's current or most recent employer is contacted by letter, phone, or in person. When the applicant is self-employed, a reference is obtained from a customer.

(C) School teachers, counselors, or administrators who have recently served the applicant's child are contacted by letter, phone, or in person to assess the applicant's involvement in educational concerns, if applicable.

(D) All adult children of the applicant are interviewed in person, by letter, or by phone, if applicable.

(E) The mental health professional is contacted by letter, when the applicant or applicant's child has received counseling, whether currently or in the past.

(~~E~~F) A ~~total~~ minimum of ~~at least~~ six references are required.

(6) **Military discharge.** If an applicant has been discharged from the armed forces, a copy of DD Form 214, Certificate of Release of Discharge From Active Duty, is required to determine the type of discharge. Any discharge other than honorable must be specifically addressed in the assessment as a consideration in the applicant's ability to attend to the safety and well-being of a child requiring foster care services.

(7) **Previous foster care experience.** Applicants who have previously served as foster parents in another state or with a private agency provide or authorize release of all previous foster home assessments, reports, and training records from the state or agency.

(8) **Household income.** The applicant provides verification that he or she can manage personal and household financial needs without relying on the foster care reimbursement. The applicant must have sufficient income to meet the needs of an additional child placed in his or her home until receipt of foster care reimbursement for that child.

(b) **Disposition of foster home assessments.** Upon completion of the foster home assessment, a decision regarding disposition is made assessing all the information gathered. The assessment process is completed and the determination regarding disposition is made no later than 90 days after receipt of Form DCFS-26. The resource specialist confirms in writing all decisions made concerning the assessment and application with the applicant. The resource specialist shares with the applicant Form DCFS-69, Guidelines for Resource Family Assessment, or Form DCFS-69-A, Resource Family Assessment, as applicable, for the applicant's input prior to deciding to select in or out of the Foster Care program. Disposition of the assessment may result in:

(1) ~~the~~ postponement of the assessment. The applicant is advised of any condition that does not conform to Foster Care rules, per OAC 340:75-7, during the assessment. When determined appropriate, the resource specialist postpones the assessment to afford the applicant the opportunity to resolve issues of concern;

(2) ~~a~~ voluntary withdrawal of the application. If the resource specialist determines ~~that~~ the applicant does not meet the requirements for becoming a foster parent, the reasoning for the determination is explained, and the resource specialist gives the applicant the option to voluntarily withdraw the application;

(3) ~~the~~ approval of the assessment.

(A) The resource specialist reviews and discusses the assessment with the applicant, except for the Juvenile Justice Information System (JOLTS) review, CW records search, and reference information.

(B) The resource specialist, CW supervisor, and applicant sign Form DCFS-69-A, and a copy is provided to the applicant. The home is not considered approved until the CW supervisor approves the family assessment in KIDS and signs Form DCFS-69-A.

(C) Prior to initiation of reimbursement, the applicant signs the foster care contract with the exception of a kinship placement, per OAC 340:75-7-24.

(D) The resource specialist provides the family OKDHS Publication No. 99-17, Foster Parent Handbook. Each foster parent signs verification of the receipt of OKDHS Publication No. 99-17 via Form DCFS-116, Verification of Receipt of OKDHS Rules.

(E) The foster parent signs Form OCA-GR-4, Notice of Grievance Rights - Foster Parents; ~~or~~

(4) exceptions to the assessment. OKDHS may, at its discretion, grant an exception of specific rules or standards upon request by the applicant.

(A) OKDHS may establish conditions that must be met by the applicant in order to operate under the exception granted.

(B) Exceptions may be granted upon a showing by the applicant that:

(i) the particular rule or standard that is the subject of the exception request may not be applied as written because strict application of the rule or standard would cause undue hardship; and

(ii) adequate standards affording protection for the health, safety, and care of the child exists and will be met in lieu of the exact requirements of the rule or standard in question; or

(~~4~~5) ~~the~~ denial of the assessment. The decision to deny requires an explanation to the applicant by the resource specialist regarding the reasons the assessment is denied. If a kinship home is denied, the child in OKDHS custody in the home is moved immediately. Reasons for denying an assessment may include, but are not limited to:

(A) ~~the~~ a lack of stable, adequate income to meet the applicant's own or total family needs or poor management of available income;

(B) ~~inadequate~~ a physical ~~facilities~~ facility that is inadequate to accommodate the addition of children to the home or presents health or safety concerns;

(C) ~~a~~ the applicant or any person residing in the home has a history of alleged or confirmed child abuse, ~~or~~ neglect, or both, per OAC 340:75-7-15; ~~or~~

(D) the applicant or any person residing in the home has a history of arrests or convictions per OAC 340:75-7-15;

(E) the age, health, or any other condition of the applicant impedes the applicant's ability to provide appropriate care for a child;

(F) relationships in the household are unstable and unsatisfactory;

(G) the mental health of the applicant or other family or household member impedes the applicant's ability to provide appropriate care for a child;

(H) references are guarded or have reservations in recommending the applicant;

(I) the applicant fails to complete the application, required training, or verifications in a timely manner as requested or provides information that is incomplete, inconsistent, or untruthful; or

(~~D~~J) the home is determined unsuitable for the child requiring placement.

(c) **Re-application to provide foster care.** Persons who desire to re-open their foster home must re-apply.

(d) **Dissolved marriage or other relationships.** If foster parents divorce or the relationship is dissolved, the person who continues to foster retains the existing resource number and information.

(e) **Contract foster home assessments.** Children and Family Services Division (CFSD) may contract with licensed child-placing agencies or a qualified person to provide a range of CW services that include conducting resource family assessments. OKDHS makes the final decision regarding the disposition of all resources assessed by contractors.

(f) **Changes in the household.** The foster parent must notify the resource specialist within 24 hours of any change in the household that precludes the foster parent from providing adequate care for the child, including, but not limited to:

(1) income;

(2) location;

(3) health; or

(4) relationship.

340:75-7-24. Kinship placements

(a) **Kinship care.** Kinship care is considered as the first option in providing care for the child requiring out-of-home placement, provided the child's needs are met and safety is reasonably ensured in the kinship placement. A kinship placement is assessed as a potential permanent placement for the child if reunification is not achieved. Kinship relationships do not require a blood relationship. The types of kinship relationships are identified in (1) through (6).

(1) **Related by blood.** Blood relatives considered as kinship, including half-blood, are:

(A) siblings;

(B) grandparents, including those denoted by prefixes of great and great-great;

(C) aunts and uncles, including those denoted by prefixes of great and great-great;

(D) nieces and nephews, including those denoted by prefixes of grand and great-grand; and

(E) cousins.

(2) **Related by marriage.** Per OAC 340:75-7-24(a)(1), relationships by marriage, whether common-law or ceremonial, including step-relations and even after the marriage is terminated by death or divorce, are considered kinship.

(3) **Related by adoption.** Relatives by adoption, per OAC 340:75-7-24(a)(1) and (2), are considered kinship.

(4) **Paternal relatives.** Paternal relatives, per OAC 340:75-7-24(a)(1) through (3), of children born out of wedlock, are considered kinship.

(5) **Related by emotional tie or bond.** An emotional tie or bond exists when a child or the child's parent acknowledges and accepts a person as part of the extended family or in the family's close network of friends and relationships. The family relationship role exists prior to the necessity for out-of-home placement of the child.

(6) **Non-custodial parent.** A child returned to or placed with a non-custodial parent or a parent whose rights were terminated is not a kinship placement. Biological parents are not kinship resources and are not eligible for foster care reimbursement.

(b) **Initial kinship placement.** A child may be placed in a kinship foster home prior to completion of the resource family assessment and pre-service training, provided:

(1) Form DCFS-10, Initial Kinship Placement Agreement, is completed and signed;

(2) Form DCFS-26, Resource Family Assessment Application, and Form ADM-130, Request for Background Check, are completed and signed, per OAC 340:75-7-15 and 340:75-7-18;

(3) an Oklahoma Department of Human Services (OKDHS) records search, including Child Welfare (CW) records, is completed and documented on Form DCFS-109, Records Check;

(~~3~~4) Form DCFS-11, House Assessment, is completed and approved; and

(~~4~~5) three personal references, only one of whom is a family member, are interviewed by phone.

(c) **Kinship reimbursement option.** The kinship applicant may opt for payment by ~~the Oklahoma Department of Human Services (~~OKDHS~~)~~ or a money payment for which the child is eligible instead of the foster home reimbursement. Payment may include:

(1) Supplemental Security Income (SSI);

(2) Social Security for a deceased or disabled parent (SSA);

(3) other financial resources, per OAC 340:75-13-28; or

(4) Temporary Assistance for Needy Families (TANF) benefits, per OAC 340:10-9.

(d) **Kinship requirement.** All kinship foster homes, paid or non-paid, must meet the same requirements as all other CW foster homes. For paid kinship foster homes, reimbursements begin at the time requirements are met and are not retroactive.

PART 4. FOSTER PARENTS' ROLES AND RESPONSIBILITIES

340:75-7-37. Responsibilities of foster parents

As members of a professional team with ~~the~~ Oklahoma Department of Human Services (OKDHS) staff, foster parents assume responsibility both to OKDHS and to the children and families served. A clear understanding of the roles, abilities, and requirements of the foster parents is necessary for effective coordination with OKDHS staff and the children and families served.

(1) **Responsibilities of the foster parent to the child in OKDHS custody and the child's family.** Responsibilities of the foster parent include:

(A) integrating the child into the foster family setting and caring for the child as the foster parent would for the foster parent's own child;

(B) providing mentoring services to the child's parent(s) and coordinating visitation and contact whenever possible to facilitate timely reunification, including phone and mail contact when appropriate;

(C) working as a multidisciplinary team member with the Child Welfare (CW) worker and the child's parent(s) toward family reunification or other permanency plan;

(D) helping the child understand why he or she is in foster care and to deal with the grief caused by the separation;

(E) cooperating and assisting in sibling contact or visitation, including phone and mail contact, when siblings are separated;

(F) cooperating and assisting the CW worker in the placement of siblings;

(G) helping the child develop a positive identity and self-esteem by feeling lovable, capable, worthwhile, and competent;

(H) helping the child learn appropriate behavior without using physical punishment;

(I) utilizing appropriate behavior management, parent-child conflict resolution, and stress management techniques in a manner appropriate to the age and development of the child in foster care;

(J) enrolling the child in an accredited school, if applicable, and ensuring ~~that~~ the child attends;

(K) advocating for the child to obtain appropriate educational testing and placement in a timely manner ~~which~~ that may include becoming a surrogate parent volunteer for participation in the child's Individualized Education Plan (IEP). To serve as a surrogate parent volunteer, the foster parent must complete ~~the~~ Oklahoma State Department of Education Sooner-Start Form EI-12, Surrogate Parents Verification of Training;

(L) attending school conferences;

(M) ensuring the child participates in extracurricular and other recreational activities as appropriate;

(N) ensuring the child's necessary medical, dental, and counseling needs are met by:

(i) making appointments;

(ii) providing transportation to appointments and sibling and parent visits; and

(iii) obtaining prescription medications or over-the-counter medications as necessary and administering the medication as directed;

(O) maintaining records of all medical, dental, and counseling appointments and notifying the CW worker of the time and place of the appointments, all medications prescribed for the child, and over-the-counter medications given to the child;

(P) notifying the CW worker of all medical and educational problems and progress;

(Q) ensuring the child's opportunity to participate in the religious practices of the child's family's choice, including the provision of transportation to worship services other than those of the foster parent, if necessary, and ensuring a child in foster care is not made to attend religious services against the child's wishes;

(R) providing transportation for the child to meet with legal counsel upon reasonable request, attending court hearings as desired or required, submitting to the court written reports or presenting testimony concerning the strengths, needs, behavior, important experiences, and relationships of the child, in addition to other information the court requests;

(S) providing from the foster care reimbursement:

(i) essentials such as food, shelter, non-prescription medical needs, clothing, shoes, and toiletries;

(ii) clothing and fees for special activities;

(iii) school pictures;

(iv) athletic and band instrument fees;

(v) cap and gown rental and prom clothing; and

(vi) birthday and holiday gifts;

(T) providing federally mandated independent living services to youth who are at least 16 years of age and assisting other children in learning basic life skills that allow the opportunity to improve self-concept and strengthen identity in preparation for life after foster care;

(U) allowing the child access to mail from family members and the child's attorney; and

(V) allowing the child overnight stays with friends of the child whom the foster parent knows and approves while ensuring the safety of the child.

(2) **Responsibilities of the foster parent in the development and support of an appropriate permanency**

~~goal~~ plan **for each child.** Responsibilities of the foster parent include:

(A) informing the CW worker and other team members of each child's strengths, needs, progress, and development;

(B) participating in the development of an effective parent and child visitation plan approved by OKDHS that defines contact with the parent(s) and siblings, if siblings are separated;

(C) collaborating with the child's CW worker prior to visits with the birth parents unless part of a specific plan;

(D) advising the CW worker of all pertinent information about the child and family;

(E) participating in meetings and case staffings when appropriate;

(F) completing all required training hours ~~annually~~ each calendar year, including ~~annual~~ policy training when offered; and

(G) maintaining current medical and education records for each child in foster care. A Life Book is maintained for each child placed in the home to support the child's sense of family continuity. These records accompany the child when he or she leaves the foster home.

340:75-7-38. Discipline for children in foster family care

(a) **Primary responsibility.** A primary responsibility of foster families is to help children learn behaviors that promote their self-regard, personal ability, and socialization skills. The rules governing these efforts are outlined in OAC 340:75-7-38(b) through (d).

(b) **Positive interactions.** Foster family interactions with a child:

(1) protect and nurture the child's physical and psychological well-being;

(2) advance the child's development;

(3) meet the child's needs;

(4) teach the child ways to prevent and solve problems;

(5) maintain and build the parent and child relationship;

(6) build the child's self-control and responsibility; and

(7) comply with ~~the~~ Oklahoma Department of Human Services (OKDHS) rules on discipline to provide a safe, nurturing environment that allows the child to experience security and positive self-esteem.

(c) **Teaching techniques.**

(1) **Positive behavior management.** Positive behavior management techniques include, but are not limited to:

(A) rewards. Rewards may be small gestures of approval, such as treats, toys, and symbols of recognition such as stickers, stars, happy faces, or money. Rewards are for the interest, desire, and effort the child displays, not for performance, talent, or ability. This technique must not be used all the time;

(B) privileges. Privileges allow the child to experience greater freedom or opportunity and an increased responsibility. Privileges are used to encourage the child's interest and talents by supporting the child's efforts in pursuing interests; and

(C) praise. Praise may be communicated with a smile or nod of approval, expressing to the child how pleased the person is with him or her.

(2) **Self-control.** To promote the child's self-control, foster parents clearly communicate expectations and provide structured, safe environments. The foster parent's use of planning and preparation prevents confrontation, acting-out, and negative behaviors by:

(A) establishing expectations. Children in out-of-home care experience varied expectations of foster parents in every placement setting. Since each placement setting is different, the foster parent must communicate expectations to the child. Expectations are communicated through setting rules, telling the child what to expect, and modeling. Clearly communicated expectations provide structure for the child and a structure for building and maintaining self-control; and

(B) modifying the environment. Structured, safe environments allow children to succeed at identified tasks. Foster parents structure environments by removing sources of stimulation for the child and establishing routines and consistency in day-to-day schedules.

(3) **Direct intervention.** When the child does not have sufficient self-control to ensure acceptable behavior, the foster parent uses direct intervention and techniques, per OAC 340:75-7-38(c)(1) and (2). Techniques used are dependent upon the child's developmental needs and anticipated outcomes. Techniques appropriate for responding to lack of self-control include:

(A) rules. Rules are established guidelines that:

(i) allow the child to know what can and cannot be done;

(ii) help the child know right from wrong;

(iii) communicate to the child how something is done and help prevent problems; or

(iv) provide a way to respond to a problem;

(B) time-out. Time-out provides space between the child and a situation where the child exhibits behavior that is not acceptable or where the situation is dangerous. Recommended time-out is one minute per age of the child. Time out is typically used for the younger child;

(C) restricting privileges. Privileges are restricted when a child is not allowed to do something for a specified period of time, such as not playing with a particular toy, watching television, playing the stereo, playing computer games, having phone privileges, or engaging in some other pleasant activity. Talking to parents or siblings is not included in restricting phone privileges;

(D) grounding. Grounding involves imposing restriction on a child's interaction and involvement with friends or activities outside of the placement setting, such as restriction to the house or leaving the premises

to attend parties, movies, or visit friends. Grounding is typically used for the older child;

(E) logical consequences. Logical consequences require the family to impose a response to the child's behavior consistent with and connected to the unacceptable behavior exhibited; and

(F) natural consequences. Natural consequences occur in response to the behavior. This technique is most appropriately used with adolescents and for those who tend to get in power struggles. Natural consequences are never allowed when a child's safety or well-being is in question.

(4) **Physical discipline.** OKDHS prohibits the use of any form of physical discipline for any child in OKDHS custody in an out-of-home placement or any act or omission that would emotionally, physically, or psychologically harm the child.

(A) The foster parent contacts the child's Child Welfare (CW) worker or the resource specialist if he or she cannot discipline the child through appropriate non-physical means.

(B) OKDHS does not authorize any school personnel to administer corporal punishment to any child in OKDHS custody. The foster parent does not sign such authorizations, but refers school personnel to the child's CW worker to establish alternative discipline methods.

(C) The developmental needs of a child and the desired outcomes define the discipline techniques used to modify the behaviors of the child. Some of the circumstances that may affect the technique used include:

(i) the behavior the child is exhibiting;

(ii) the foster parent's feelings about the behavior;

(iii) the purpose assigned to the behavior;

(iv) where the behavior occurs; and

(v) who is present at the time of the behavior.

(5) **Punishment.** Unacceptable behavior management methods and techniques promote negative behavior, are punitive, and do not promote self-control. Unacceptable behavior management techniques for a child include, but are not limited to:

(A) the use of the hand or any object, such as a board, fly swatter, paddle, belt, switch, electrical cord, hair brush, or wooden spoon, to hit, strike, swat, or physically discipline;

(B) deprivation of food or sleep;

(C) deprivation of family visits;

(D) slapping, pinching, shaking, biting, pushing, shoving, thumping, or rough jerking;

(E) cursing or other verbal abuse;

(F) private or public humiliation or any act that degrades;

(G) derogatory remarks about the child, the child's biological family, race, religion, or cultural background;

(H) solitary confinement in areas such as closets, cellars, and rooms with locked doors;

(I) threatening to move the child from the foster home;

(J) use of any chemical agent, such as mace, sleeping pills, or alcohol;

(K) physical force or threat of physical force;

(L) assuming and maintaining an unnatural position, that may include holding arms out-stretched from the body, placing the nose against a wall, or forced squatting;

(M) tying with a rope, cord, or other object;

(N) ordering, allowing, or encouraging physical discipline or hitting by other children or anyone else in the home;

(O) washing the mouth out with soap, eating certain foods, ~~which~~ that may include peppers or hot sauce for punishment; and

(P) forced physical exertion, such as running laps and push-ups.

(d) **Physical restraint.** The use of physical restraint is only justified as an emergency safety measure in response to imminent danger to the child or others and when no alternative means are sufficient to accomplish the purpose. Physical restraint may only be used when the foster parent has been properly trained in the restraint technique demonstrated in Behavior Crisis Management Training (BCMT). The foster parent completes and submits to the child's CW worker or resource specialist Form DCFS-53, Restraint Report for Foster Family Care, when restraint is used.

(e) **OKDHS rules.** The foster family must abide by OKDHS rules for discipline of a child in OKDHS custody even ~~if~~ when there is a difference between OKDHS discipline rules and the methods used to discipline the family's own children.

PART 5. ELIGIBILITY AND PAYMENTS

340:75-7-51. Foster care claims

(a) Reimbursement for foster care claims requires the completion and approval of a foster home assessment, pre-service training, and a signed foster care contract. Reimbursement may not precede the date of the contract signatures.

(~~1~~b) ~~**Foster care claims adjustments.**~~ Foster parents are responsible for ensuring the accuracy of claims upon receipt. When errors occur, the procedures for adjustments listed in ~~(A)~~(1) through ~~(D)~~(4) must be completed.

(~~A~~1) The foster parent immediately notifies the resource specialist upon discovery of an error in reimbursement.

(~~B~~2) ~~The~~ Oklahoma Department of Human Services (OKDHS) authorizes reimbursements upon discovery for previously unclaimed services, underpayments. When an overpayment coincides with the underpayment, the overpayment is recouped before payment of the underpayment.

(~~C~~3) OKDHS authorizes repayment schedules when foster parents are paid for services not rendered or at an

amount greater than authorized. The county office and foster family establish an agreed upon repayment plan.

(~~i~~A) Foster parents are responsible for reimbursing OKDHS for any overpayment, regardless of the party responsible for the initial error, per OAC 340:75-1-27. Each monthly payment toward resolving the overpayment must equal at least ten percent of the overpayment.

(~~ii~~B) The resource specialist authorizes overpayment reimbursement schedules. The foster parent is sent a notice of overpayment ~~on~~ via Form DCFS-8, Notification of Overpayment in Foster Home.

(~~iii~~C) The Foster Care Section refers the overpayment to the Legal Division if the foster family does not respond to the letter from the county documenting overpayment or abide by the agreement.

(~~iv~~D) Payments must be made by check or money order with payment assigned to OKDHS. Cash is not accepted from the foster family.

(~~v~~E) When the foster family chooses to reduce the foster family claim by an agreed upon amount until the overpayment no longer exists~~.~~, ~~A~~ a signed and notarized statement from the foster family authorizing the reduction of the claim in reimbursement is sent to OKDHS.

(~~I~~i) Payments are made by the day fixed by the repayment schedule each month.

(~~II~~ii) Payments may be deducted from claims for current services, or the foster parent may make payments to the Finance Division by check or money order. Reference to the payment purpose is listed in the memo section of the check or transmittal letter to ensure proper credit.

(~~D~~4) OKDHS may authorize the issuance of a warrant when the foster care reimbursement is late or lost.

(~~i~~A) The contract for services affords OKDHS 20 days to process each claim. Late claim adjustments are not made during this interval. ~~The foster family may verify the status of the warrant by calling the automated phone number provided to each family.~~

(~~ii~~B) OKDHS cancels the reimbursement warrant per ~~state~~ Oklahoma statutes when a foster parent reports the warrant lost after 90 days.

340:75-7-52. Foster care contracts and rates of reimbursement

(a) **Foster care contracts.** The rules in OAC 340:75-7-52 and the provisions of a contract for services define the responsibilities of foster parents and Oklahoma Department of Human Services (OKDHS) regarding the care of children in a foster home. Foster care contracts are signed when all conditions for approval are met, per OAC 340:75-7-18, except for kinship, per OAC 340:75-7-24.

(1) Foster care contracts are perpetually renewed and considered in effect unless a specific action by one of the parties to the contract terminates the contract. Foster ~~parents are eligible for foster care reimbursement effective the date the contract is signed. Kinship~~ and kinship parents are eligible for foster care reimbursement effective the date the home is approved. Kinship parents are not paid retroactive to date of placement.

(2) Reimbursements are authorized for intervals of care provided to a child in foster care placed through OKDHS or a tribe with an approved Tribal State Agreement with OKDHS.

(3) Kinship families may be approved for expedited reimbursements, per OAC 340:75-7-24.

(4) Kinship families who meet the degree of relationship, per OAC 340:10-9-1, may ~~file~~ apply for assistance through Temporary Assistance for Needy Families (TANF) at the local OKDHS office pending foster home approval and entry into a contract, per OAC 340:75-7-52(a)(1) through (3) ~~and OAC 340:10-9~~.

(b) **Foster care reimbursement.** The foster care contract authorizes reimbursement to offset the cost of each child's care and a difficulty of care (DOC) ~~adjustment~~ payment to address the additional expense of caring for a child with extraordinary needs. The OKDHS Committee on Rates and Standards authorizes the amount of reimbursement available through the foster care reimbursement and ~~the~~ DOC ~~adjustment~~ payment rate, per OAC 340:75-7-53.

(1) Foster care payments correspond to the child's age~~:~~ set out in OKDHS Appendix C-20, Children and Family Services Division Rates Schedule, as amended from time to time, as approved by the Commission for Human Services.

~~(A) birth through 5 years, the monthly rate is $300 and the daily rate is $10;~~

~~(B) 6 through 12 years, the monthly rate is $360 and the daily rate is $12; and~~

~~(C) 13 years and older, the monthly rate is $420 and the daily rate is $14.~~

(2) Foster care payments are provided to address the costs of room, board, clothing, and incidentals.

(3) Foster parents receive a ~~monthly and quarterly~~ clothing allowance for each child, per OAC 340:75-13-45.

(4) The medical expense of a child in foster care is covered through Medicaid~~, if~~ when private insurance is not available to the child, per OAC 340:75-13.

(5) Reimbursement received through the foster care contract is not considered income pursuant to Section 131 of Title 26 of the United States Code Annotated and the foster family does not receive Form 1099 from OKDHS at year's end. Foster parents ~~should~~ may consult their own tax advisor for advice.

(6) Foster care reimbursement and DOC payment rates are a fixed monthly amount.

(7) When a partial month of foster care service is provided, reimbursement begins on the child's date of entry to the home and concludes on the day before the child's departure from the home. A prorated sum is paid based on the number of days of service provided multiplied by the daily rate, per ~~OAC 340:75-7-52(b)(1)~~ OKDHS Appendix C-20.

(8) When a change in the child's age qualifies for a new rate, the new rate becomes effective on the first day of the month following the child's birthday.

(9) When a child is out of the foster home for family reunification purposes or is absent without leave (AWOL) for up to seven consecutive days, the foster parent receives reimbursement if the child is expected to return to the foster home.

(10) The foster parent is eligible for prorated foster care reimbursement and DOC payments when the child attends an Indian boarding school, Oklahoma School for the Deaf, Oklahoma School for the Blind, or a similar residential program and returns to the foster home for weekends or school vacations. When the child returns to the foster home for a summer vacation, the monthly rate is used.

~~(11) The standard rate includes room, board, clothing, care, and incidental expenses.~~

(~~12~~11) The foster parent is eligible for foster care reimbursement and DOC payment for up to 20 days of each event of hospitalization for the child's treatment of health or mental health concerns when there is no evidence of foster parent misconduct contributing to the event.

(~~13~~12) The foster care reimbursement is an automatic electronic filing system based on the child's placement episode in the KIDS system.

(~~14~~13) A foster care contract is signed for approved Interstate Compact on the Placement of children (ICPC) foster families residing in another state providing care for children in OKDHS custody, per OAC 340:75-1-86. No foster care contract is signed for ICPC foster families living in Oklahoma caring for children in the custody of another state.

(14) There is no reimbursement after the effective date of cancellation or termination of the contract.

(c) **Cancellation of the foster care contract.** Cancellation of the foster care contract occurs when:

(1) the foster family fails to meet the terms and conditions of the contract. Cancellation of the contract results from:

(A) a ~~criminal~~ felony conviction, per OAC 340:75-7-15(h)(1);

(B) the receipt of findings of the Oklahoma State Bureau of Investigation (OSBI) records search and Federal Bureau of Investigation (FBI) national criminal history records search when a child has been placed through kinship or in the home initially approved; or

(C) a serious and significant violation of the foster care contract, OKDHS rule, or law. Serious and significant violations include, but are not limited to, behaviors by the foster parent or other person in the foster home that place the child at significant risk of harm;

(2) OKDHS closes a foster family home that no longer meets OKDHS requirements, per OAC 340:75-7-12; or

(3) the foster parent fails to implement provisions of Form DCFS-115, Written Plan of Compliance, per OAC 340:75-7-94, designed to resolve conditions that present a risk to the child and do not conform with the requirements of the foster care contract or rules, per OAC 340:75-7-52.

(d) **Termination of the foster care contract.** A foster parent requests termination of the foster care contract verbally or in writing. Verbal requests are witnessed whenever possible.

(1) Contract termination occurs subsequent to a request by the foster family only ~~if~~ when there are no pending issues of concern.

(2) When the relationship between the foster parents is dissolved, and the person who wishes to continue providing foster care services, per OAC 340:75-7-18, is not the primary foster parent, that foster parent signs a new foster care contract. ~~Removal of the~~ The child is not removed from the home ~~is not necessary~~ during contract transition when the foster parent is determined fit and continued placement is in the child's best interests.

340:75-7-53. Difficulty of care

(a) **Difficulty of care payments.**

(1) Difficulty of care (DOC) payment rates are available to reimburse Oklahoma Department of Human Services (OKDHS), tribal, and contracted emergency foster care (EFC) foster families for the additional care and supervision required due to the child's extraordinary physical, mental, or emotional needs.

(2) DOC reimbursement is not available to children in specialized community homes, specialized foster care through Developmental Disabilities Services Division, therapeutic community homes, and therapeutic foster care placements.

(b) **DOC rates and descriptions.** DOC payments are made in addition to foster care reimbursement~~, per OAC 340:75-7-52,~~ or adoption assistance payments~~, per OAC 340:75-15-128.1~~ set out in OKDHS Appendix C-20, Children and Family Services Division Rates Schedule, as amended from time to time, as approved by the Commission for Human Services. When approved, DOC payments are:

(1) not retroactive; and

(2) available the first day of the month the DOC rate is requested.

~~(1) **DOC Rate I:** $50 per month or $1.67 per day. A child approved for DOC Rate I has one or more of the needs, conditions, or behaviors described in (A) through (D). The child:~~

~~(A) requires ongoing scheduled medical or psychological appointments that routinely occur more than twice weekly;~~

~~(B) displays emotional difficulties that result in destruction of property;~~

~~(C) requires medical or educational supplies on a routine basis that are not compensable through Medicaid; or~~

~~(D) requires daily physical therapy performed by the foster family.~~

~~(2) **DOC Rate II:** $100 per month or $3.33 per day. A child approved for DOC Rate II has one or more of the needs, conditions, or behaviors described in DOC Rate I and, in addition:~~

~~(A) requires 24 hour intensive supervision due to severe medical or emotional needs;~~

~~(B) requires special food preparation and feeding due to a condition that restricts normal eating;~~

~~(C) requires special equipment for transportation that results in restricted mobility for the child and foster family;~~

~~(D) displays incontinence of the bladder and bowel that is not age appropriate;~~

~~(E) displays multiple disabilities, birth defects, or brain damage that prevents normal intellectual or physical functioning;~~

~~(F) requires strict monitoring of medication;~~

~~(G) requires assistance in movement that is very difficult due to the child's size;~~

~~(H) requires post-hospitalization care, such as frequent changing of bandages, tubes, and special hygiene techniques; or~~

~~(I) displays emotional disturbances, developmental delay, or mental retardation that results in behavior, such as constant difficulties in school, aggressive and delinquent activities, destructiveness, resistance to authority, and sexual disturbances.~~

~~(3) **DOC Rate III:** $150 per month or $5.00 per day. A child approved for DOC Rate III has one or more of the needs, conditions, or behaviors described in DOC Rates I and II and, in addition, requires:~~

~~(A) medical supplies, special equipment, or educational supplies on a routine basis that are not compensable through Medicaid; or~~

~~(B) specialized substitute care.~~

~~(4) **DOC Rate IV:** $225 per month or $7.50 per day. A child approved for DOC Rate IV has one or more of the needs, conditions, or behaviors described in DOC Rates I, II, and III and requires such specialized care that normally the child would be in institutional or inpatient psychiatric care. The child:~~

~~(A) requires special equipment, such as apnea monitor, suction machine, gastrostomy tube, oxygen, tracheotomy tube, and shunt;~~

~~(B) requires special feeding or nursing care around-the-clock;~~

~~(C) requires frequent nighttime supervision and care that is not age appropriate;~~

~~(D) displays frequent seizures or other abnormal physical reactions that require 24-hour monitoring;~~

~~(E) displays bizarre, socially unacceptable behavior, violent tendencies, potentially harmful behavior to self or others, or sexually predatory behavior to others or animals;~~

~~(F) required previous inpatient mental health treatment or was recently discharged from an inpatient facility;~~

~~(G) requires such intensive care that the foster family is severely restricted in normal daily activities and is frequently homebound;~~

~~(H) requires frequent 24-hour awake supervision; or~~

~~(I) requires post-hospitalization care for severe burns.~~

~~(5) **DOC Rate V:** $400 per month or $13.33 per day. A child approved for DOC Rate V has one or more of the needs, conditions, or behaviors described in DOC Rates I, II, III, and IV and has a significant number of intense needs. The child's level of need is likely to become more severe over time and is likely at some time to require personal attendant care or specialized care outside of the home, when prescribed by a professional. A current medical or psychological report within the last six months is required from a qualified physician. This report must include a diagnosis, prognosis, and recommended treatment. Conditions considered in the determination of DOC Rate V include a child who has:~~

~~(A) been diagnosed by a qualified physician as having severe mental illness, such as child schizophrenia, severe developmental disabilities, brain damage, or autism;~~

~~(B) severe physical disabilities or medical conditions that are not expected to improve over time and adversely impact life expectancy when compared with others who have similar physical disabilities or medical conditions;~~

~~(C) severely inhibiting diagnosed mental health conditions, defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM), diagnosed within the past year, that severely limit normal social and emotional development and require ongoing outpatient behavioral health services;~~

~~(D) severe mental retardation as determined by the Social Security Administration and defined by the DSM;~~

~~(E) been waiting for organ transplant or is up to one year post transplant; or~~

~~(F) a physical condition uncontrolled by medication or treatment, such as Tourette's syndrome or epilepsy.~~

(c) **DOC request.** ~~A~~ The foster parent, ~~a~~ Child Welfare (CW) worker, or ~~an~~ adoption specialist may initiate ~~a~~ the request for DOC.

(1) Requests are made in the child's KIDS case.

(2) The relevant CW supervisor reviews and may authorize DOC Rates I through IV based on the criteria per ~~OAC 340:75-7-53~~ OKDHS Appendix C-20.

(3) Requests for DOC Rate V are forwarded to the Children and Family Services Division (CFSD) Foster Care programs manager.

(4) A CFSD committee reviews and makes the determination for DOC Rate V.

(5) Actions by each party in the DOC review process occur within ten calendar days of receiving all necessary information for a determination.

(6) Each DOC authorization is limited to one year.

PART 6. FOSTER HOME CARE SUPPORT SERVICES

340:75-7-65. Foster care child care and supportive services

Child Welfare (CW) staff arranges services that address the needs of foster parents as well as children in foster care. Foster parent needs are assessed as a component of treatment planning for each child in foster care and appropriate services are recorded on Form CWS-KIDS-8, Placement Plan. Service delivery and effect are monitored monthly to ensure intended effects. Form CWS-KIDS-8 is modified as necessary to address the evolving needs of foster parents.

(1) **Child care paid by OKDHS.**

(A) **Foster care.** Services available to foster families include child care when both foster parents in a foster home are employed 20 hours a week or more or when only one foster parent works and the other foster parent has a significant disability that precludes employment.

(i) Child care must be provided:

(I) in a licensed and contracted child care center or home; or

(II) by a registered caregiver in the foster parent's home, per OAC 340:40-13-1 and 340:40-13-2.

(ii) The foster parent may request approval for child care by contacting the child's CW worker.

(iii) Child care paid by OKDHS must be approved before payment may occur.

(iv) The foster parent provides written verification of gainful employment that includes the number of hours and days the foster parent works. When the foster parent operates a child care home, refer to OAC 340:40-7-8(a). In a foster family, when one foster parent works days and the other foster parent works nights, refer to OAC 340:40-7-7(b).

(B) **Family Support Services Division (FSSD).** If the foster parent is not receiving a foster payment through OKDHS, the family is referred to local OKDHS FSSD staff for child care, per OAC 340:40. Child care may be available to:

(i) tribal foster homes providing care for tribal custody children;

(ii) foster parents who have finalized an adoption on a foster child;

(iii) non-paid foster parents receiving training or attending school; and

(iv) children in the custody of another state placed in a kinship home through the Interstate Compact on the Placement of Children (ICPC).

(2) **Foster care child care not paid by OKDHS.** Foster care child care is not paid when the:

(A) child is placed in contracted emergency foster care;

(B) child is placed in therapeutic foster care;

(C) foster parent attends school or participates in training;

(D) foster parent chooses child care providers per OAC 340:40-5-1(g);

(E) foster parent chooses more than one child care provider to provide service to a child on the same day;

(~~E~~F) foster parent's hours of employment interfere with the provision of suitable family life; or

(~~F~~G) foster parent makes informal arrangements for child care.

(3) **Child care services for a child with disabilities.** Refer to OAC 340:75-6-91.

(4) **Electronic benefit transfer (EBT) responsibilities.** Refer to OAC 340:40-13-4 for information regarding the EBT system that includes the manual claim process. Foster parent responsibilities include:

(A) watching the EBT training video;

(B) signing Form K-2, Application for Child Care Services;

(C) swiping the EBT card every day the child attends child care;

(D) not swiping the EBT card for any day the child does not attend child care;

(E) checking the message on the point of service (POS) machine for correct times of attendance and approval;

(F) not giving the EBT card or personal identification number (PIN) to anyone, including the child care provider; and

(G) paying for care that OKDHS refuses to pay because:

(i) the EBT card was not swiped for the correct days and times the child attended child care;

(ii) swipes were denied and not corrected within ten days; and

(iii) the provider loses the weekly rate payment for absent days because the correct attendance for every day the child attended that month was not swiped.

(5) **Therapeutic child care services.** Therapeutic child care services are paid by OKDHS when recommended by a mental health professional and supporting documentation is provided. Prior authorization from ~~the Administrative Services Unit (ASU) of~~ Children and Family Services Division ~~(CFSD)~~ Administrative Services Unit (ASU) is required. ASU makes the determination of the availability of funds.

(6) **Overpayment of child care.** OKDHS seeks repayment for any child care paid in error to a licensed child care center, ~~child care~~ home, or ~~licensed child care~~ professional in the foster parent's own home. The foster parent is responsible for reimbursing these costs to the child care provider when overpayment occurs due to the foster parent's ineligibility for child care paid through OKDHS.

(7) **Informal arrangements or baby-sitting.** Foster parents may make informal care arrangements with friends, neighbors, or relatives for the occasional care of children, including before and after school hours.

(A) The foster parent ensures that informal care providers possess the maturity and skills to address the needs of the child in foster care.

(B) The foster parent secures prior authorization for informal care from the child's CW worker.

(C) The resource specialist considers whether the needs of the child can be met in informal care.

(D) Prior authorization may apply to multiple events using the same informal provider.

(E) A person younger than 18 years of age living outside of the home may not be an informal provider.

(F) An informal provider living in the home must be at least 16 years of age and related to the foster parent.

(G) Informal providers must ~~know~~ be notified how to reach the foster parent and other emergency contacts.

(H) The foster parent does not utilize a child in OKDHS custody to baby-sit a younger child, unless approved by the child's CW worker.

(8) **Alternate care.** The foster family is encouraged to develop a relationship with another family as an alternate provider who can serve as respite in case of family emergencies, family vacations, or when the family needs a break. The foster family is responsible for identifying an alternate provider and reimbursing the alternate provider. The alternate provider must be at least 21 years of age and willing to:

(A) submit to a background assessment by ~~the~~ Oklahoma State Bureau of Investigation (OSBI), per OAC 340:75-7-15;

(B) submit to a CW records search for past confirmations of child maltreatment involving the alternate provider, per OAC 340:75-7-15;

(C) submit to a search of Juvenile Justice Information System (JOLTS) records for any child older than 13 years of age living in the house, per OAC 340:75-7-15;

(D) engage in an evaluation of the home to assess the locale, repair, and ~~ability~~ capacity to accommodate the child in foster care;

(E) provide one reference; and

(F) comply with discipline policy, per OAC 340:75-7-38.

(9) **Insurance for foster homes.** Liability insurance is provided for foster families for damages incurred by children in OKDHS custody.

(10) **Foster care associations.** OKDHS cooperates with and promotes the development of foster care associations for foster parents in each county. OKDHS provides names and addresses of foster families, who have provided written authorization for the release of this information, to persons who are developing a local foster care association.

(11) **Foster parent hotline.** The foster parent hotline number, 1-800-376-9729, is maintained by the CW foster parent liaison in the Office of Information and Referral. The foster parent liaison assists with problem resolution, policy clarification, and grievance information.

(12) **Foster parents' rights.** Foster parents' rights are found in Section 7206.1 of Title 10 of the Oklahoma Statutes. Information shared among CW staff, foster parents, and parents includes, but is not limited to:

(A) the child's legal status;

(B) upcoming court hearings;

(C) reason for foster care placement;

(D) the child's and parent(s)' prior and present living experiences; and

(E) the child's medical, psychological, and behavioral information, current pictures, and educational records.

(13) **Foster care grievance procedures.** Foster parents and children in foster care have access to OKDHS grievance procedures through the Office of Client Advocacy, per OAC 340:2-3.

(14) **Timely response to questions or needs.** OKDHS staff commits to responding to foster families' questions and inquiries within one working day. The resource specialist is the key person to provide necessary information to the foster family.

(15) **Information relevant to fostering.** Pre-service and in-service training is provided to enhance the foster family's skills, ability to foster, and interests. A quarterly newsletter is sent to all foster families informing of OKDHS, related issues, and articles with relevant information.

PART 8. CONTINUOUS QUALITY ASSESSMENT OF A RESOURCE HOME

340:75-7-94. Foster care reviews

(a) **Concerns in a foster home.** Child Welfare (CW) staff evaluates concerns with discipline practices or other issues, including, but not limited to, foster parent's judgment or supervision, at the time of observation or upon receipt of the information.

(1) CW staff evaluates and determines the need for a referral, per OAC 340:75-3-8.1.

(2) If a child in Oklahoma Department of Human Services (OKDHS) custody is removed from a foster home during an investigation and the decision is not to return the child to the home, the CW worker:

(A) notifies the foster family immediately by phone; and

(B) provides the foster family, within three days of the decision, Form DCFS-17-A, Notice of Decision Not to Return Child After Investigation.

(3) When the situation does not meet the criteria for abuse, neglect, or both, per OAC 340:75-3, the resource specialist documents the information on Form DCFS-117, Report of Violation of Rules in an OKDHS Resource Home.

(b) **Non-compliance issues.** When non-compliance issues or rule violations in the foster home require remediation for continued use of the home, Form DCFS-115, Written Plan of Compliance, is initiated. Form DCFS-115 is a joint effort between OKDHS and the foster family to identify the action

steps for the foster family and OKDHS to ensure continued compliance of the foster home.

(1) The resource specialist initiates Form DCFS-115:

(A) with the foster family to address issues identified as a result of an assessment or investigation, per OAC 340:75-3, or a rule violation and concern, per OAC 340:75-7-94(a); and

(B) within ten working days of the completed investigation, if no appeal is requested, per OAC 340:75-1-12.2, or, if appealed, within ten working days after a final determination of the findings is made by Children and Family Services Division (CFSD) Appeals Section.

(2) When new non-compliance issues are identified, Form DCFS-115 is reviewed to determine whether additional action is warranted. If ~~so~~ warranted, the action steps are added to the current Form DCFS-115.

(3) If the foster family disputes the identified issues and refuses to sign Form DCFS-115, the CW supervisor forwards Form DCFS-115 to CFSD Foster Care Section for review. The Foster Care Section reviews and responds in writing to the CW supervisor within ten working days.

(4) When the non-compliance issue is smoking in the home or automobile while a child in OKDHS custody is present, and the foster parent refuses to comply, OKDHS may or may not:

(A) remove the child from the home;

(B) approve future placement of children in the foster home; and

(C) close the home when the child leaves the foster home.

(c) **Yearly re-assessments.** The foster parent's performance is formally assessed yearly to evaluate accomplishments and ~~to~~ identify areas needing improvement. The resource remains approved, regardless of the timeliness or findings of assessments, until there is a specific action by either party to terminate the foster care contract or close the home.

(1) **Re-assessments.** Resource reviews:

(A) are conducted yearly by the assigned resource specialist following initial approval of the home using Form DCFS-9, ~~Resource~~ Foster Home Annual Assessment, via KIDS Resource Re-Assess screen;

(B) are arranged at a time of convenience to foster families and conducted in the foster home. The resource specialist:

(i) reviews the resource record;

(ii) completes Form DCFS-11, House Assessment, with the foster family;

(iii) reviews with the foster family OKDHS Publication No. 99-17, Foster Parent Handbook, and Form DCFS-116, Verification of Receipt of OKDHS Rules;

(iv) explains Form OCA-GR-4, Notice of Grievance Rights - Foster Parents. The foster parent verifies the review of Form OCA-GR-4 by signing;

(v) asks the foster parent to complete, every three years, Forms:

(I) DCFS-20, Resource Family Financial Assessment; and

(II) ADM-130, Request for Background Check; and

(vi) provides Form DCFS-38, Medical Examination Report, every three years or more often if circumstances warrant; and

(C) conform to rules per OAC 340:75-7.

(2) **Review results.**

(A) The resource specialist and CW supervisor discuss any concerns identified in Form DCFS-9.

(B) The resource specialist and ~~the~~ foster family review Form DCFS-9, and the foster parent signs.

(C) The CW supervisor signs and approves Form DCFS-9.

(D) Signed copies of Forms DCFS-9 and OCA-GR-4 are provided to the foster family.

(E) A signed copy of Form DCFS-9 and attachments are filed in the resource record.

(3) **Placement of children.** CW workers and resource specialists:

(A) do not place additional children until Form DCFS-9 is completed;

(B) do not move children currently placed in the home, even when the foster family fails to submit the required forms timely, per OAC 340:75-7-94(c)(1); and

(C) suspend or close the home until the forms per OAC 340:75-7-94(c)(1) are received, if there are no children currently placed.

(d) **Closure of a foster home.**

(1) The foster home is closed when services are no longer needed, including a:

(A) kinship home when kinship children are no longer placed in the home; or

(B) jointly approved foster home for a specific child when the child leaves the home.

(2) The resource specialist contacts the foster family in person or by phone to discuss closure of the foster home and provides ~~a copy of~~ Form DCFS-17, Notice of Closure to OKDHS Foster Parents, that explains the reason for closure.

(3) Foster parents retain the right to appeal closure of the home through the fair hearing process, per OAC 340:75-1-12.6. When the local OKDHS office receives a copy of the appointment letter for the fair hearing, the resource specialist distributes one copy of Form H-1-A, Hearing Summary, with attachments, to the appellant and authorized representative, if any, prior to the hearing date.

(4) The foster care contract is either cancelled or terminated per OAC 340:75-7-52.

PART 25. EMERGENCY FOSTER CARE PROGRAM

340:75-7-262. Emergency foster care

(a) **Purpose.** Emergency foster care (EFC) is short-term substitute care for children in the custody of Oklahoma Department of Human Services (OKDHS) provided by a contract agency to meet the child's needs through service coordination and delivery in conjunction with OKDHS.

(~~a~~b) **Admissions.**

(1) **Shelters.** The Pauline E. Mayer ~~Shelter~~, Laura Dester ~~Shelter~~, and J. Roy Dunning Children's ~~Shelter~~ shelters are the primary points of admission to ~~emergency foster care (~~EFC~~)~~.

(A) **Children eligible for EFC.**

(i) A child younger than six years of age may not remain in an ~~Oklahoma Department of Human Services (~~OKDHS~~)~~ operated shelter longer than 24 hours. A child who reaches age six while in EFC remains eligible for the service.

(ii) When it is appropriate, per OAC 340:75-6-30, and in the best interests of the child younger than six years of age to have his or her sibling between the ages of six through nine years or minor parent placed in the same placement, a plan is negotiated with the contractor and OKDHS.

(iii) The placement of a child older than six years of age occurs only after written approval from Children and Family Services Division ~~(CFSD)~~ Foster Care Section.

(B) **Admission from shelter.** Shelter staff contacts the contract agency by phone and provides available information about the child's medical, educational, social, routine, and special care needs as required to select an appropriate placement. This information is provided to the contract agency upon discharge from the shelter and includes:

(i) the shelter intake sheet with all available information;

(ii) all personal possessions;

(iii) medications and equipment;

(iv) Form DCFS-EFC-11, Authorization for Foster Parent Consent for Medical Services - Emergency Custody, or Form DCFS-EFC-12, Authorization for Foster Parent Consent for Medical Services; and

(v) Form OCA-GR-2, Notice of Grievance Rights - Minors in OKDHS Custody. Shelter and contract agency staff coordinate admission.

(2) **Hospitals.** When a child in inpatient hospital care for treatment of medical conditions related to abuse, neglect, or illness requires EFC placement, relevant background and care information is provided to the contract agency to assist in identifying an appropriate placement. Priority for placement into EFC is given to children discharged from hospitals. The contract agency identifies an appropriate EFC placement and coordinates the hospital discharge date, time, and any special training required with the provider and notifies OKDHS.

(3) **Other EFC admissions.** A child who is diverted to a non-OKDHS operated shelter or remains in current placement pending admission into EFC is placed on a waiting list maintained by the OKDHS liaison. Admissions occur as beds become available.

(~~b~~c) **Roles and responsibilities.**

(1) **CW worker.** The Child Welfare (CW) worker remains the primary connection among the child, parent(s), EFC agency, EFC provider, OKDHS liaison, other service providers, and court while the child is in EFC. The CW worker visits the child placed in EFC per OAC 340:75-6-48. At the time of admission or as soon as possible after placement, the CW worker provides the necessary information about the child to the EFC provider, including:

(A) behavioral, psychological, and social history;

(B) previous medical care;

(C) legal documentation verifying OKDHS custody status;

(D) religious affiliation; and

(E) Form CWS-KIDS-7, Placement Provider Information.

(2) **OKDHS liaison.** The OKDHS liaison assists the EFC agency, staff, and providers in maintaining effective working relationships with OKDHS staff by providing support and consultation regarding respective roles and responsibilities.

(3) **EFC agency.** The EFC agency ensures the availability of qualified, trained staff and EFC providers 24 hours a day for the placement and care of eligible children. The EFC agency coordinates with the CW worker to afford the child all services that promote the child's progress and ensures that the child's total care needs are met while in placement. To facilitate movement of children from EFC to another placement, weekly staffings occur between the CW worker and the contract agency.

(~~c~~d) **Discharge from EFC.**

(1) **Notice.** When discharge from EFC to another type of placement is made, the contract agency is given as much advance notice as possible, but not less than two hours.

(A) The CW worker notifies the contract agency of the planned move in writing, using the Client Movement Authorization Form provided by the contract agency, and coordinates the date and time for placement.

(B) The CW worker shares information to assist the EFC provider in preparing the child for the move.

(C) The contract agency transports the child to the county office or site designated for pick-up by the CW worker or staff responsible for completing the new placement.

(2) **Change of placement information accompanies the child.** All forms completed by the EFC provider while the child is in care assist the new provider in helping the child adjust to the new placement, provide information needed for continuity of care, and alert the new provider of the child's special needs and strengths. These forms are not given to the parent(s) if the child is returning home. Required information and items include:

(A) all medications, with instructions for dosage and use;

(B) equipment or supplies required for the child's special care;

(C) dates of any follow-up appointments;

(D) personal items, unused OKDHS clothing ~~vouchers~~ authorizations, and clothing purchased by OKDHS, including disposable diapers;

(E) Women, Infants and Children (WIC) vouchers, non-perishable food, and other items obtained through WIC; and

(F) at least a 24-hour supply of formula, baby food, and other items for immediate use by the new provider.

SUBCHAPTER 8. THERAPEUTIC FOSTER CARE AND DEVELOPMENTAL DISABILITIES SERVICES DIVISION SERVICES

PART 1. THERAPEUTIC FOSTER CARE

340:75-8-1. Purpose, ~~of therapeutic foster care~~ legal base, and definitions

(a) **Purpose.** Therapeutic foster care (TFC) serves ~~DHS custody~~ children, ~~ages~~ three through 18 years of age, in Oklahoma Department of Human Services (OKDHS) custody who:

(1) ~~can~~ respond to close relationships within a family setting;

(2) require more intensive behavioral health services than available in traditional foster family settings; and

(3) do not require 24-hour awake supervision.

(b) **Legal base.**

(1) Section 7004-1.1 of Title 10 of the Oklahoma Statutes (10 O.S. § 7004-1.1) mandates that OKDHS review and assess each child in OKDHS custody to determine the type of placement consistent with the child's treatment needs in the nearest geographical proximity to the child's home.

(2) 10 O.S. § 7004-2.1 mandates that OKDHS develop and implement a diversity of community-based residential care, as needed, to provide for adequate and appropriate community-based treatment or rehabilitation of each child in a:

(A) foster home;

(B) group home;

(C) community residential center; or

(D) non-secure facility consistent with the child's individualized treatment needs and, when possible, in or near the child's home community.

(c) **Definitions.** The following words and terms, when used in Part 1 of this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Oklahoma Health Care Authority (OHCA)"** means the entity designated for administering Title XIX Medicaid reimbursement and responsible for the establishment of medical necessity criteria for children and youth receiving therapeutic foster care services.

(2) **"Oklahoma Foundation for Medical Quality"** means the agency under contract with OHCA responsible for prior authorization for:

(A) the admission and extension of Medicaid or Title XIX reimbursed inpatient psychiatric treatment and therapeutic foster care services; and

(B) Medicaid or Title XIX reimbursed outpatient behavioral healthcare services.

(3) **"Therapeutic foster care (TFC)"** means residential behavioral management services provided in a specialized foster care setting for a child or youth who:

(A) meets medical necessity criteria, per OAC 317:5-741;

(B) has special psychological, behavioral, social, and emotional needs;

(C) accepts and responds to close relationships within a family setting; and

(D) requires more intensive or therapeutic services than are found in traditional foster care.

(4) **"TFC contractor"** means a licensed child care agency that meets OKDHS and OHCA requirements to provide residential behavioral management services in a foster care setting. A TFC contract agency:

(A) provides direct clinical treatment services to the child placed; and

(B) recruits, trains, certifies, reimburses, and provides supportive services to the TFC foster parent.

340:75-8-2. Legal base and authority [REVOKED]

~~The rules in this Subchapter are issued in compliance with Section 7004-1.1 of Title 10 of the Oklahoma Statutes, which mandates the Department to review and assess each child in the Department's custody to determine the type of placement consistent with the treatment needs of the child in the nearest geographical proximity to the home of the child; and Section 7004-2.1 of Title 10 of the Oklahoma Statutes which mandates the Department to take all necessary steps to develop and implement a diversity of community-based residential care as needed to provide for adequate and appropriate community-based care, treatment or rehabilitation of children in the Department's custody. Community-based care is in a foster home, group home, community residential center or similar non-secure facility consistent with the individualized treatment needs of the child and provided, whenever possible, in or near the child's home community.~~

340:75-8-3. Definitions [REVOKED]

~~The following words and terms, when used in Part 1 of this Subchapter, have the following meaning, unless the context clearly indicates otherwise:~~

~~**"AWOL"** means absent without leave.~~

~~**"OHCA"** means Oklahoma Health Care Authority, the state agency responsible for administering Medicaid programs.~~

~~**"OFMQ"** means Oklahoma Foundation for Medical Quality, the agency under contract with OHCA to manage gatekeeping for the admission and extension of Medicaid or Title XIX reimbursed inpatient psychiatric treatment and therapeutic foster care services and to provide prior authorization for Medicaid or Title XIX reimbursed outpatient behavioral health care services.~~

~~**"RBMS"** means Residential Behavior Management Services.~~

~~**"TCH"** means Therapeutic Community Homes.~~

~~**"TFC"** means Therapeutic Foster Care.~~

340:75-8-4. Contract procedures for therapeutic foster care ~~(TFC) and therapeutic community homes (TCH)~~

(a) Contracts for the provision of therapeutic foster care (TFC) ~~and TCH~~ placements are issued ~~according to rules and procedures found~~ in accordance with OAC 340:2-13-10 through 340:2-13-14.18 ~~in accordance with~~ and Section 85 of Title 74 of the Oklahoma Statutes. Prior to issuance of the Oklahoma Health Care Authority (OHCA) Title XIX contract for TFC services, providers are approved by the Children and Family Services Division (CFSD) programs manager for TFC as eligible TFC contractors. ~~Prior to the issuance of the CFSD contract for TCH services, providers are approved by Developmental Disabilities Services Division (DDSD) program staff as DDSD contractors.~~

(b) Contracts for the provision of TFC ~~and TCH~~ placements are monitored on-site at least annually to ensure that services provided are in compliance with contract terms~~,~~. ~~[~~ per OAC ~~340:2-14-14.14]~~ 340:2-13-14.14.

340:75-8-5. Definition of therapeutic foster care [REVOKED]

~~Therapeutic foster care (TFC) is specialized foster care for a child or youth with special psychological, social, and emotional needs who can accept and respond to the close relationships within a family setting but whose special needs require more intensive or therapeutic services than are found in traditional foster care. These service needs of the child require additional support services to prevent placement disruption. A child receiving TFC services meets medical necessity criteria defined in Oklahoma Health Care Authority (OHCA) rules OAC 317:30-5-741(b)(1) through 317:30-5-741(b)(6) as determined by an OHCA authorized gatekeeper. The TFC agency recruits, trains, certifies, reimburses, and provides services to the therapeutic foster home as well as providing the direct clinical treatment services to the child placed in the therapeutic foster home. TFC services are provided by agencies licensed as a child placing agency by the Division of Child Care and under formal contract with Department of Human Services (DHS) and OHCA.~~

340:75-8-6. General requirements for ~~all~~ contracted therapeutic foster care ~~(TFC) and therapeutic community home (TCH)~~ placement providers

~~All contracted~~ Contracted therapeutic foster care (TFC) ~~and TCH~~ placement providers ~~described in this Subchapter~~ must:

(1) maintain a written case record on each child that documents all services provided or obtained for the child while in placement;

(2) implement and review an individualized treatment plan for each ~~custody~~ child in placement, with documented input of the child's Child Welfare (CW) county of jurisdiction and county of placement ~~workers~~ worker, when different, according to the ~~guidelines defined~~ requirements set forth in the Oklahoma Department of Human Services (OKDHS) contract. The TFC contractor notifies the CW county of jurisdiction worker of the initial treatment plan meeting within five days of the child's ~~TFC~~ placement;

(3) assume responsibility for maintenance of basic needs of each child placed ~~in one of the contractor's certified homes~~;

(4) accept responsibility for a reasonable knowledge of the child's whereabouts at all times.

(A) ~~In the event~~ When a child:

(i) is removed by anyone without authorization~~,~~;

(ii) is taken into custody by law enforcement officials~~,~~;

(iii) runs away~~,~~; or

(iv) otherwise cannot be accounted for, the TFC contractors notify the:

(I) CW county of jurisdiction and county of placement workers~~,~~;

(II) contract liaison~~,~~; and

(III) police by ~~telephone~~ phone.

(B) The contractor submits a written incident report to the child's CW county of jurisdiction worker describing the circumstances and files a copy in the child's case record;

(5) ensure ~~that~~ the child receives all needed routine, specialized, and emergency medical care in a timely manner provided by a medical provider who accepts Medicaid payment.

(A) Prior consultation and consent from ~~Department of Human Services (DHS)~~ OKDHS and the child's ~~parents~~ parent(s) are required for emergency medical care. If the appropriate ~~DHS~~ OKDHS authority cannot be contacted and the situation is life-threatening, the contractor has the authority to obtain emergency care and treatment, ~~but is to notify DHS~~ and notifies OKDHS at the earliest possible time.

(B) Prior consultation and consent from ~~DHS~~ OKDHS and the child's ~~parents is~~ parent(s) are required for any extraordinary medical procedure, such as surgery and invasive procedures.

(C) Prior consultation and consent from ~~DHS~~ OKDHS and the child's ~~parents is~~ parent(s) are not required for ordinary medical care. Provision of all medical or dental care is documented in the contractor's case record, including notification and attempts of notification in emergency situations~~.~~, ~~Refer to~~ per OAC 340:75-13-65;

(6) notify the CW county of jurisdiction and county of placement workers and the contract liaison of any accidental or non-accidental injuries sustained by the child, per OAC 340:75-3-6.1~~(f)~~ and ~~340:75-6-28(8)~~ 340:75-6-88;

(7) ensure that the religious and cultural observations of the child comply with OAC ~~340:75-7-39~~ 340:75-6-49;

(8) develop and implement written policy and ~~procedure~~ procedures regarding each child's access to legal counsel, court-appointed special advocate (CASA) ~~worker~~, ~~DHS~~ OKDHS staff, ~~telephone~~ phone, mail, and visitation, ~~in compliance with~~ per OAC 340:75-6-30 and 340:75-11-237;

(9) develop and implement written policy and ~~procedure~~ procedures regarding the maintenance and safeguarding of each child's clothing, personal items, property, and funds while placed ~~in a contractor's certified home~~;

(10) ensure the completion of a clothing and personal item inventory for each ~~custody~~ child entering and leaving placement and ensure each ~~custody~~ child leaves the placement with all of his or her clothing and personal items;

(11) obtain prior approval from the CW county of jurisdiction worker any time the child travels overnight outside of the county of placement or ~~outside the state~~ Oklahoma, per OAC ~~340:75-6-67~~ 340:75-6-89;

(12) develop and implement written policy and ~~procedure~~ procedures defining situations in which any ~~individual~~ person, other than family members previously approved by the CW county of jurisdiction worker, may take the child away from the placement on a day pass, not to exceed six hours, without supervision of the placement provider. ~~The contractor's policy and procedures shall comply with the requirements in (A) - (C) of this paragraph.~~

(A) The contractor does not allow a child any overnight visitation~~, except with peers per OAC 340:75-7-66(b),~~ without the prior planning and documented written approval of the child's CW county of jurisdiction ~~worker~~ and county of placement workers. ~~A home study is completed on the overnight visitation resource, either by a CW worker in the county where the overnight visitation resource is located or by the contractor if the contractor is a licensed child placing agency, and the home study is approved by the CW county of jurisdiction worker and supervisor prior to the child's overnight visitation.~~ Overnight visitation with peers is considered time outside of the direct supervision of the TFC parent.

(i) The contractor is responsible for:

(I) completing an evaluation of the appropriateness of the overnight plan;

(II) submitting the overnight plan to the CW county of placement and county of jurisdiction workers and supervisors;

(III) securing written confirmation of the plan from the CW county of placement and county of jurisdiction workers and supervisors; and

(IV) documenting the results in the child's case.

(ii) CW county of placement and county of jurisdiction workers and supervisors are responsible for reviewing the overnight plan developed and submitted by the TFC contractor.

(B) The contractor does not secure any placement without the prior planning and documented written approval of the CW county of jurisdiction worker.

(C) If the contractor utilizes volunteers, the contractor's policy for approval and utilization of volunteers ~~complies with the CW requirements for approval and utilization of volunteers~~ must, at a minimum, require criminal history and sex offender registry checks;

(13) develop and implement written policy and ~~procedure~~ procedures that prohibit the utilization of any child in OKDHS custody ~~children~~ for ~~advertising~~ commercial purposes;

(14) submit written ~~quarterly~~ reports to the child's CW county of jurisdiction and county of placement workers describing the child's stay in placement, progress toward meeting identified treatment goals, education, and medical care ~~on a quarterly basis, or more frequently if~~ as requested for court hearings, and file a copy of the reports in the child's case record;

(15) develop and implement written policy and procedures for discipline that comply with ~~DHS discipline policy per~~ OAC ~~340:75-7-80;~~ 340:75-7-38 and ~~DHS licensing standards, Section~~ Sections 7004-3.2 and ~~Section~~ 7004-3.3 of Title 10 of the Oklahoma Statutes (10 O.S. § 7004-3.2 and 7004-3.3);

(16) ensure ~~all employees~~ each employee and ~~foster parents are~~ TFC parent is trained in an approved passive physical restraint curriculum defined in OAC 340:75-11-237~~(12)~~;

(17) develop and implement written policy and procedures requiring the contractor, and all employees of the contractor, having reason to believe any child in placement has been subject to abuse or neglect to report the matter~~.~~ ~~The contractor makes the report~~ to the ~~nearest DHS county~~ local OKDHS office~~,~~ or ~~if after hours or emergency, to~~ the ~~Child Abuse Hotline~~ child abuse hotline the same day of the incident. Failure to report is a misdemeanor pursuant to ~~Section~~ 10 O.S. § 7103 ~~of Title 10 of Oklahoma Statutes~~;

(18) develop and implement written policy that prohibits possession ~~of~~ or ~~the~~ use of tobacco and tobacco products by ~~children~~ any child in placement, and prohibits the use of tobacco or tobacco products by employees of the contractor in the presence of ~~children~~ any child in placement;

(19) develop and implement written policy and a system for resolution of grievances by ~~children in TFC placements~~ any child placed and by the TFC ~~contractor's certified foster parents~~ parent regarding the substance or application of any written or unwritten policy or rule, decision, act, or omission of the contractor, or employees or agents of the contractor~~.~~, ~~The grievance system used by the contractor complies with~~ per OAC 340:2-3-49 ~~regarding grievances of minors~~ and ~~OAC~~ 340:2-3-50 ~~regarding grievances of foster parents~~;

(20) afford ~~to~~ the TFC ~~and TCH parents~~ parent the same rights as all foster parents in ~~the state of~~ Oklahoma, per OAC ~~340:75-7-36~~ 340:75-7-37;

(21) develop and implement written policy and procedures ~~in accord with DHS Communicable Disease policy~~ regarding communicable disease, per OAC 340:75-1-114;

(22) develop and implement written policy and procedures that certify compliance in providing or continuing to provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988;

(23) develop and implement written policy and procedures to maintain confidentiality with regard to children in placement in order to comply with ~~DHS~~ OKDHS rules regarding the protection, use ~~of~~, and release of client information, ~~and with Section~~ per 10 O.S. § 7005-1.2 ~~of Title 10 of the Oklahoma Statutes~~ and Part 3 of OAC 340:75-1-~~42 through 340:75-1-46~~;

(24) plan and coordinate each child's discharge with the child's CW county of jurisdiction worker and provide a minimum of 48 hours notice to discharge, except in medical or psychiatric emergency situations. On-site crises intervention must be provided prior to any emergency discharge. Contractor's recommendation for discharge is approved by the child's CW county of jurisdiction worker prior to the contractor's implementation of the discharge plan;

(25) submit a written discharge summary to the child's CW county of jurisdiction worker within 30 days of the child's discharge and file a copy in the child's case record. The discharge summary includes:

(A) a summary of treatment services~~,~~;

(B) child's progress on treatment goals~~,~~;

(C) reason for discharge~~,~~; and

(D) recommendations for future placements and services for the child's treatment needs;

(26) ensure that all staff comply with the:

(A) minimum licensing standards defined in the Division of Child ~~Care's~~ Care (DCC) licensing standards for child-placing agencies; and

(~~27~~B) ~~ensure that all staff comply with the~~ staffing requirements ~~mandated in the DHS~~ per OKDHS Placement Agreement for TFC ~~or TCH that are in addition to the minimum staffing requirements found in the DCC minimum licensing standards~~;

(~~28~~27) develop and implement written policy and operating procedures regarding corrective discipline procedures for employees;

(~~29~~28) ensure that the ~~contractor's certified~~ foster ~~parents maintain~~ parent maintains a current Life Book for each ~~custody~~ child, regardless of the child's age, that documents the child's stay in care and provides continuity throughout the child's life, per OAC 340:75-7-37 ~~and 340:75-7-46(a)(5)~~;

(~~30~~29) develop and implement written policy and operating procedures to govern the foster ~~parents'~~ parent's maintenance and administration of prescription and non-prescription medication to ~~custody children~~ each child in ~~TFC~~ placement~~.~~, ~~Policy and operating procedure will include~~ including transporting prescription and non-prescription medication when ~~children in TFC placement will receive~~ the child receives medication any place other than the TFC home, ~~to include~~ such as respite placements, family visits, and medication administered during school hours;

(~~31~~30) develop written policy and operating ~~procedure~~ procedures regarding the use of physical force for behavior management of ~~custody children in TFC or TCH placement~~ any child placed.

(A) The use of mechanical restraints and the use of medication for behavior management are prohibited in the care and treatment of ~~DHS~~ the child in OKDHS custody ~~children~~.

(B) The use of physical force is permitted when it is necessary for the protection of the child or others consistent with an approved passive physical restraint curriculum~~.~~, ~~The physical contact aspects of the system are utilized only~~ such as when the child's behavior poses an immediate danger or threat of danger to self or others and other methods have been exhausted~~.~~; and ~~The passive physical restraints curriculum includes graded alternatives using a combination of psychological and physical techniques with emphasis toward:~~

~~(A) the reduction of injury;~~

~~(B) de-escalation of the situation; and~~

~~(C) elimination of abuse to persons with acting out behavior; and~~

(~~32~~31) develop and implement written policy and operating procedures and supervision guidelines regarding use of solitary confinement and separation programs~~.~~, ~~Room restriction may be utilized in the child's~~ such as restricting the child to his or her own room for a cooling off period. The duration of room restriction is specified at the time of ~~the~~ assignment and is consistent with the child's chronological age, developmental level, behavioral, emotional, and medical needs, and availability of supervision.

340:75-8-7. Contracted therapeutic foster care services

(a) **Contractor rules.** Therapeutic ~~Foster Care~~ foster care (TFC) contractors meet Oklahoma Health Care Authority (OHCA) rules as described in Parts 1, 3, and 5 of OAC 317:30-3-~~1 through 317:30-3-88~~ and Part 83 of OAC 317:30-5-~~740 through 317:30-5-746~~.

(b) **TFC services.** Contracted TFC services include:

(1) individual therapy, a minimum of four 30-minute sessions per month for each child;

(2) family therapy, a minimum of four 30-minute sessions per month for each child. The TFC contractor:

(A) works with the parent(s) or placement provider to whom a child in TFC will be discharged;

(B) seeks to support and enhance the child's relationship with family members, including siblings;

(C) arranges for and encourages regular contact and visitation between the child and parent(s) and other family members; and

(D) engages the child's parent(s) and siblings in visitation and family therapy with the child, when the case plan goal is reunification. The TFC contractor provides consultation, support, and technical assistance to the TFC ~~parent(s)~~ parent in the implementation of the child's treatment plan;

(3) group rehabilitative treatment in accordance with OAC 317:30-5-740.2, a minimum of two 30-minute sessions per month for each child. Group rehabilitative treatment services include education and supportive services, such as basic living skills, social skills redevelopment, interdependent living, self-care, lifestyle change, and recovery principles. Thirty minutes of individual therapy, family therapy, or both may be provided in lieu of one hour of group rehabilitative treatment;

(4) substance abuse or chemical dependency therapy, as needed, by a child with behavioral or emotional problems directly related to substance abuse, a minimum of two one-hour sessions per month. A minimum of two hours of education and prevention therapy per 90-day period is required for a child who does not have behavioral or emotional problems directly related to substance abuse;

(5) basic living skills redevelopment, a minimum of 30 minutes per day per child;

(6) social skills redevelopment, a minimum of two 30-minute sessions per day per child;

(7) crisis behavior management and redirection services to ensure contract staff availability 24 hours a day, seven days a week for response to the residential placement provider during a placement crisis to stabilize the child's behavior and prevent placement disruption. Crisis behavior management and redirection services are consistent with the goals and objectives of the child's treatment plan;

(8) ~~Independent~~ independent living (IL) services consistent with the IL program administered by ~~the~~ Oklahoma Department of Human services (OKDHS), per Part 13 of OAC 340:75-6; and

(9) TFC agency developed policy and operating procedures that support collaboration with Child Welfare (CW) workers in the completion of the child's basic life skills assessment and the development of the child's IL plan.

(c) **Contractor requirements.** TFC contractors are required to provide services and meet requirements as identified in OAC 340:75 and the TFC contract. The contractor:

(1) seeks to ensure ~~that~~ services provided to the youth age 16 to 21 assist in planning for the youth's future and enhancing individual strengths and abilities;

(2) ensures ~~that~~ the youth in OKDHS custody applies for Medicaid upon his or her 18th birthday, if the youth remains in placement in voluntary care to complete his or her secondary education;

(3) ensures ~~that all~~ TFC staff comply with the qualifications in OHCA rules, per OAC 317:30-5-740 and 317:30-5-740.1;

(4) after initial placement of a child, provides clothing. Emergency funds for clothing may be accessed per OAC 340:75-13-45;

(5) ensures ~~that~~ recreation, other than school and church attendance, is available through a wide range of activities to provide the child opportunities to pursue his or her talents, hobbies, or interests;

(6) supports all permanency planning efforts as identified in the child's Form CWS-KIDS-10, Treatment Plan, or Form CWS-KIDS-24, Individualized Service Plan (ISP);

(7) advocates for educational services in the community that best meet the needs of each child in compliance with Section 1-113 of Title 70 of the Oklahoma Statutes.

(A) The contractor:

(i) ensures timely school enrollment and provides the child's school with the information defined in the TFC contract at the time of enrollment~~.~~; and

(~~B~~ii) ~~The contractor~~ provides or arranges tutoring services in conjunction with the CW county of jurisdiction or county of placement worker.

(~~C~~B) A child in TFC may:

(i) attend a private school accredited by Oklahoma. OKDHS does not pay the cost or related cost of private school education~~.~~; and

(~~D~~ii) ~~A child in TFC may~~ be home schooled consistent with OAC 340:75-6-50. The TFC contractor consults with the Children and Family Services Division (CFSD) TFC programs manager and the involved CW field liaison in the decision to home school;

(8) completes a written incident report describing any extreme behavioral incident or major rule violation, including the contractor's response. The contractor provides a copy to the child's CW county of jurisdiction and placement workers and contract liaison, and files in the TFC record per contract specifications;

(9) complies with children's rights per OAC 340:75-11-237;

(10) complies with all general requirements per OAC 340:75-8-6;

(11) complies with all other requirements specified in the OKDHS contract;

(12) maintains documentation of the child's absent without leave (AWOL) and leave days defined in the contract and reports leave days on Form DCYS-S-2, CFSD Claim for Purchase of Residential Care; and

(13) submits Form DCYS-S-2 for reimbursement to ~~the~~ CFSD Administrative Services Unit. TFC contractors are reimbursed by:

(A) OHCA at a fixed daily rate for the provision of Medicaid services per OAC 317:30-5-743 and 317:30-5-744~~.~~; and

(B) ~~TFC contractors are reimbursed by~~ OKDHS at a fixed daily rate. The fixed daily rate is a blend of Title IV-E federal funds, per eligibility of each child served, and state funds.

340:75-8-8. ~~TFC~~ Therapeutic foster care contractor requirements ~~for TFC parents~~

(a) Therapeutic foster care (TFC) contractors:

(1) certify ~~therapeutic foster~~ TFC homes according to rules established by ~~the~~ Division of Child Care (DCC), ~~and the~~ Children and Family Services Division (CFSD), ~~for approved resource families per~~ OAC ~~340:75-7-15~~ 340:75-7-10 through ~~340:75-7-18~~ 340:75-7-19, Oklahoma Health Care Authority (OHCA), and the requirements outlined in Oklahoma Department of Human Services ~~(DHS)~~ (OKDHS) Placement Agreement for Residential Behavioral Management Services (RBMS) in TFC~~.~~ Settings;

(~~b~~2) ~~The TFC contractor ensures~~ ensure the TFC home meets all certification requirements prior to the placement of a child in the ~~TFC~~ home~~.~~;

(~~c~~3) ~~TFC contractors~~ engage in active recruitment of potential ~~therapeutic foster~~ TFC parents who reflect the racial and ethnic diversity of children ~~needing~~ requiring placement, in compliance with the Multiethnic Placement Act of 1994 per OAC 340:75-7-10~~.~~;

(~~d~~4) ~~TFC contractors~~ continually evaluate the TFC ~~parents'~~ parent's ability to provide TFC services and meet the ~~requirements~~ needs of children receiving residential behavior management services in a foster care setting per OAC ~~340:75-7-86, 340:75-7-90, and 340:75-7-91.~~ 340:75-7-94;

(~~e~~5) ~~TFC contractors~~ ensure ~~that~~ each TFC ~~parents are~~ parent:

(A) is trained according to ~~rules established by~~ DCC rules, OHCA rules per OAC 317:30-5-740.1, and ~~defined~~ the requirements outlined in ~~the DHS~~ OKDHS Placement Agreement for RBMS in TFC Settings, prior to the placement of a child in the ~~TFC~~ home~~.~~;

(~~f~~B) ~~TFC contractors ensure that TFC parents meet~~ meets the requirements for in-service training as defined in the OKDHS contract~~.~~; and

(~~g~~C) ~~TFC contractors ensure that TFC parents have~~ has access to respite care per OAC 340:75-8-11~~(d).~~;

(~~h~~6) ~~The TFC contractor~~ requests approval from the CFSD programs manager for TFC prior to ~~custody children~~ accessing ~~child~~ day care for a child. ~~DHS~~ OKDHS does not reimburse for child care for ~~custody children~~ a child in TFC placement. The written request includes the:

(~~1~~A) ~~the~~ therapeutic justification in the child's treatment plan of daily child care outside of the child's TFC ~~placement~~ home ~~in the child's treatment plan~~;

(~~2~~B) ~~the~~ ability of child care staff to meet the child's emotional and behavioral problems;

(~~3~~C) ~~the~~ availability of the TFC parent and TFC contractor staff to respond to problems at the child care center;

(~~4~~D) ~~The~~ child care center's licensing status, ratings, and adult:child ratio ~~of the day care center~~; and

(~~5~~E) ~~the~~ planned length of use of child care as a service component of the child's treatment plan~~.~~;

~~(i) Certified TFC homes may be jointly certified per OAC 340:75-7-19.~~

~~(1) Joint certification of a TFC home occurs following written approval between the TFC contractor and the other certifying agency.~~

~~(2) A TFC home certified by more than one agency cannot accept placements of children from any certifying agency without the prior written approval of all certifying agencies.~~

(~~j~~7) ~~TFC contractors~~ do not accept applications from any foster ~~parents~~ parent certified by any other agency, including all licensed child-placing agencies and ~~DHS~~ OKDHS, without prior written approval of the current certifying TFC contractor~~.~~;

(~~k~~8) ~~TFC contractors~~ do not certify the TFC ~~homes~~ home unless at least one TFC parent is available to provide care for the child any time the child is not in school~~.~~;

(~~l~~9) ~~TFC contractors~~ do not certify ~~DHS employees~~ an OKDHS employee as a TFC ~~parents~~ parent without prior written approval from the CFSD director or designee. The TFC contractor submits the written request to the CFSD programs manager for TFC. The review of the request is consistent with OAC 340:75-7-12~~(3).~~; and

(~~m~~10) ~~TFC contractors~~ do not accept a foster parent ~~applications~~ application from ~~individuals~~ a person licensed ~~as family~~ to provide child care ~~homes~~ services. Families are not ~~certified~~ approved as licensed family child care homes and TFC homes without prior written approval from the CFSD programs manager for TFC.

(b) TFC homes may be jointly approved per OAC 340:75-7-19.

(1) Joint approval of a TFC home occurs following written approval between the TFC contractor and the other certifying agency.

(2) A TFC home certified by more than one agency may not accept new placements from either certifying agency without prior written agreement of all certifying agencies.

340:75-8-9. Placement procedures ~~for custody children~~ in ~~TFC~~ therapeutic foster care homes

(a) Therapeutic foster care (TFC) is the least restrictive community-based residential care placement setting. ~~Custody children~~ Children in Oklahoma Department of Human Services (OKDHS) custody served in TFC placements are

ages three through 18, male or female, and determined by the Oklahoma Health Care Authority (OHCA) authorized ~~gatekeeper~~ reviewer to meet the medical necessity criteria for TFC services, ~~defined in OHCA rules~~ per OAC 317:30-5-741.

(1) The child has been diagnosed with any DSM-IV AXIS I primary diagnosis, with the exception of V codes and adjustment disorders, accompanied by a detailed description of the symptoms supporting the diagnosis.

(2) The child's conditions are directly attributed to a mental illness or serious emotional disturbance as the primary need for professional attention.

(3) It has been determined by the reviewer that the child's current disabling symptoms cannot be or have not been managed in a less intensive treatment program.

(4) There is evidence that the child's presenting emotional or behavioral problems prohibit full integration in a family or home setting without the availability of 24-hour crisis response, behavior management, and intensive clinical interventions from professional staff, preventing the child from living in a traditional family home.

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

(b) A ~~custody~~ child whose behavior requires 24-hour awake supervision or who poses a danger in a family setting is not appropriate for TFC placement.

(c) The TFC contractor receives referrals for the placement of ~~custody~~ children from the ~~Area Resource Coordinators~~ area resource coordinator (ARC).

(d) The TFC contractor requests ~~gatekeeping extensions~~ a TFC authorization extension 30 days prior to the expiration of the authorized length of stay. If the ~~gatekeeper~~ OHCA authorized reviewer denies the extension of services, the TFC contractor provides written notification within one working day of the denial to the CW county of jurisdiction and county of placement workers, if different.

(e) TFC contractors request written approval from the Children and Family Services (CFSD) programs manager for TFC prior to the placement of a child ~~under three~~ five years of age or younger. The written request includes:

(1) the proposed treatment plan for the child;

(2) the credentials, experience, and training of the TFC contractor's staff documenting the staff's ability to develop an age appropriate treatment plan and ~~to~~ deliver clinical services to ~~the population of emotionally disturbed or behaviorally disordered~~ children, ~~under the~~ five years of age ~~of three~~ or younger, with emotional disturbances or behavioral disorders; and

(3) a description of the proposed TFC parent's:

(A) family structure, including ~~the parent's ability to meet the needs of a~~ each child ~~under age three.~~ placed in the home and the child's treatment needs; and

(B) ability to meet the needs of a child, including a child age five or younger.

(f) The TFC contractor does not place more than two children in a TFC home without prior written approval from the CFSD programs manager for TFC. The TFC contractor submits the written request that includes:

(1) primary treatment needs for the proposed ~~third child~~ placement of a third child and ~~all other~~ any subsequent children in the TFC home;

(2) availability, placement history, skills, completed or planned corrective action, and additional contractor supports of the TFC parent identified for proposed placement of a third child ~~placement~~;

(3) risk factors considered and compelling reasons for proposed ~~third~~ placement of a third child;

(4) documentation of TFC contractor contact with CW ~~worker~~ workers or ~~supervisor~~ supervisors for each child in the home, involved professionals, and each TFC family member, regarding the impact of the proposed placement of a third child ~~placement~~; ~~and~~

(5) documentation of TFC contractor's review of any separated siblings placed in the proposed third placement; and

(~~5~~6) other information as requested by the CFSD programs manager for TFC.

(g) Title XIX payments for TFC services are not made for TFC parents who move ~~outside of the state~~ out of Oklahoma. TFC placements are made only in ~~the state of~~ Oklahoma.

(h) A ~~custody~~ child may remain in TFC placement on a voluntary basis after age 18, per OAC ~~340:75-7-45~~ 340:75-6-115.9.

340:75-8-11. ~~TFC~~ Therapeutic foster care placement stability

(a) The therapeutic foster care (TFC) contractor notifies the Child Welfare (CW) county of jurisdiction and county of placement workers, ~~Area Resource Coordinators~~ area resource coordinators (ARCs) involved in the placement, and the contract liaison of all placement changes, including all types of respite, for each child in ~~therapeutic foster care (~~TFC~~)~~ placement.

(b) Respite care is a planned reprieve for the TFC parent with whom a child is placed and includes a defined time frame for the length of stay and an identified date for the ~~child to~~ child's return to the TFC parent with whom the child is placed.

(c) Respite care is provided in the home of a TFC ~~parents~~ parent, certified and trained by the TFC contractor. ~~according to the TFC contract standards for the certification and training of TFC parents, not~~ Respite care does not occur in emergency shelters.

(d) ~~There are three types of respite~~ Respite care is described in this subsection.

(1) Planned respite is a planned reprieve for the TFC ~~parents~~ parent with whom a child is placed.

(2) Unplanned respite is an unplanned or crisis reprieve, not to exceed three working days, for the TFC ~~parents~~ parent with whom the child is placed.

(A) The TFC contractor submits a written request for an extension of ~~the~~ time ~~frame~~, if ~~necessary~~ needed, to the CW county of placement supervisor.

(B) A copy of the county approved respite extension is sent by the TFC contractor to the CW county

of jurisdiction supervisor, when different from the county of placement, and Children and Family Services Division (CFSD) programs manager for TFC for information purposes.

(3) ~~Transitional~~ Traditional placement is a stabilization and assessment period, not to exceed five working days, utilized following a TFC home placement disruption, allowing the TFC contractor and CW county of jurisdiction worker time to develop an appropriate plan for the child's next placement.

(A) The TFC contractor submits a written request for an extension of ~~the~~ time frame~~, if necessary,~~ to the ~~CFSD programs manager~~ CW county of jurisdiction supervisors for ~~TFC~~ approval.

(B) A copy of the approved extension is maintained in the child's case and sent to the CFSD programs manager for TFC for information purposes.

(e) The TFC contractor ensures ~~that~~ the respite TFC ~~parents are~~ parent is informed of the child's current treatment issues, behavioral, medical, and physical needs. The TFC contractor supervises the respite TFC ~~parents~~ parent in the implementation of the in-home treatment strategies identified in the TFC contractor's individualized treatment plan for the child.

(f) The TFC ~~parents provide~~ parent provides 14 days notice to the TFC contractor when requesting a child's removal from the TFC home unless the removal is required to protect the health or safety of the child or TFC family member.

(g) TFC contractors are required to provide behavior redirection and crisis management services to prevent disruption of TFC placements, per OAC 340:75-8-7~~(b)(8)~~.

340:75-8-12. Responsibilities of ~~the Area Resource Coordinators~~ area resource coordinators

Therapeutic foster care (TFC) contractors receive referrals for the placement of ~~custody~~ children in Oklahoma Department of Human Services custody in TFC homes from the ~~Area Resource Coordinator~~ area resource coordinator (ARC). ~~CW~~ Child Welfare workers assigned as ARCs have responsibilities for the referral of ~~custody~~ children ~~for~~ to TFC contractors.

340:75-8-13. Additional responsibilities of the ~~CW workers for custody children in TFC placements~~ Child Welfare worker

~~Custody children~~ Children in ~~Therapeutic Foster Care~~ Oklahoma Department of Human Services (OKDHS) custody and therapeutic foster care (TFC) placements receive Child Welfare (CW) services consistent with OAC 340:75-6-47 and 340:75-6-85.

(1) A ~~custody~~ child placed in OKDHS custody and a TFC home:

(A) in ~~his or her~~ the child's county of jurisdiction receives ~~child welfare~~ CW services from a CW worker in the county of jurisdiction~~.~~; and

(B) ~~A custody child, if placed in a TFC home~~ outside of ~~his or her~~ the child's county of jurisdiction~~,~~ receives ~~child welfare~~ CW services from a CW worker in the county of jurisdiction and a CW worker in the county of placement.

(2) CW county of jurisdiction and county of placement workers have responsibilities for ~~custody~~ children in OKDHS custody and TFC placements. ~~CW county of placement workers have responsibilities for custody children in TFC placements.~~

SUBCHAPTER 15. ADOPTIONS

PART 8. ADOPTIVE PLACEMENT PROCESS

340:75-15-59. Transition to adoptive placement

(a) **Coordination of placement process.** The adoption specialist in ~~conjunction~~ consultation with the child's Child Welfare (CW) worker determines how to best transition the child into the adoptive family. If there are differences or issues in how best to proceed, the area adoption supervisor, in consultation with the CW supervisor, assists with a resolution. Visits between the child and adoptive family occur prior to placement.

(1) Each visit is evaluated before a decision is made for additional visits, and to determine whether the child and family are ready for placement.

(2) Visits may be of different duration depending on the child's age and readiness or upon the adoptive family's request.

(3) When the adoptive family is interested but uncertain about a particular child, a blind showing, where the child is not aware that he or she is meeting with a potential adoptive family, may be arranged.

(b) **Pre-placement and placement agreements.** Form DCFS-41-A, Preadoptive Placement Visit Agreement, is completed with the family prior to pre-placement visitation. Form DCFS-41, Adoptive Placement Agreement, is completed with the family when the child is placed in trial adoption.

(c) **Out-of-state placements.** When an out-of-state adoptive family is identified and placement is authorized by Children and Family Services Division Adoption Section for a child in Oklahoma, pre-placement visits are arranged in coordination with the Adoption Section. The visits may include the child traveling to the adoptive family's home and visitation with the child in Oklahoma by the adoptive family.

(d) **Direct placement.** Direct placement of a child into an adoptive home requires approval by the Adoption Section. Direct placement is only utilized when the child must be moved immediately from his or her present placement, which does not allow for transitioning the child into the adoptive home.

PART 10. ADOPTIVE FAMILY ASSESSMENT AND PREPARATION PROCESS

340:75-15-83. Eligibility to adopt

(a) Section 7503-1.1 of Title 10 of the Oklahoma Statutes states that persons eligible to adopt a child are:

(1) a husband and wife jointly, if both spouses are at least 21 years of age;

(2) either the husband or wife if the other spouse is a parent or ~~a~~ relative of the child;

(3) an unmarried person who is at least 21 years of age; or

(4) a married person who is at least 21 years of age who is legally separated from the other spouse.

(b) Adoptive applicants are required to reside in ~~Oklahoma~~ and remain in ~~the state long enough for an~~ Oklahoma until the assessment and preparation process of the family ~~to be~~ is completed.

~~(c) The Oklahoma Department of Human Services (OKDHS) does not process applications from adoptive applicants outside the state, but accepts certified resource family studies or assessments from a licensed agency or the public agency in another state. In cooperation with a licensed adoption agency in another state, an adoptive family may be considered for an Oklahoma child. The State Office Adoption Section coordinates placement and supervision with an agency in the state where the adoptive family resides. All provisions of the Interstate Compact on the Placement of Children are followed. [OAC 340:75-15-61 and 75-15-82(f)]~~

~~(d) Families desiring to adopt specific types of children of which OKDHS anticipates having few such children available for adoption are referred to licensed child-placing agencies that are more likely to place children matching the request.~~

340:75-15-84. Application process

(a) **Application to adopt.** The applicant is referred to the adoption specialist for the county in which the applicant lives. The adoption specialist responds promptly to prospective applicants. The applicant is invited to attend a group orientation meeting or an individual intake interview is scheduled upon request of the applicant. If the applicant chooses to apply, the adoption specialist provides an application packet. The adoption specialist discusses with the ~~family~~ applicant information about the adoption program ~~included~~ described in (1) through (10).

(1) The program is child focused. A family is selected who will best meet the child's long-term best interests and individual needs. Families inquiring about adopting a child of a certain age, race, or other characteristic OKDHS reasonably believes may not be available for adoption in the foreseeable future are advised their application will not be processed.

(2) The completed resource family assessment summary is the basis for selection.

(3) ~~The~~ Oklahoma Department of Human Services (OKDHS) contracts with licensed child-placing agencies to complete resource family assessments.

(4) There is no assurance that a child will be placed as a result of the application. This includes foster ~~parent(s)~~ parents and relative ~~applicant(s)~~ applicants.

(5) There is no fee for services provided by OKDHS to applicants who apply to adopt a child in the legal custody of OKDHS.

(6) A family is referred to licensed child-placing agencies if the family is interested in adopting a specific type of child that is not available through OKDHS.

(7) A criminal background check is required and includes, but is not limited to:

(A) fingerprinting and a Federal Bureau of Investigation (FBI) check of each ~~adoptive parent~~ applicant and ~~each~~ adult residing in the household if he or she has lived in the state less than ten consecutive years;

(B) an Oklahoma State Bureau of Investigation (OSBI) check ~~which~~ that includes Department of Public Safety check and Sex Offenders Registry check for each adult household member;

(C) a Child Abuse ~~Registry~~ and Neglect Information System check and OKDHS records check for each adult household member;

(D) a Juvenile Justice Information System (JOLTS) records check for each child in the family 13 years ~~and~~ of age or older; and

(E) a certificate of release of discharge from active duty, DD Form 214, Certificate of Release of Discharge From Active Duty, ~~which~~ that is provided by ~~applicants~~ the applicant.

(8) Verification of marriages, divorces, legal separations, or annulments, employment, and income are required.

(9) Applicants are required to complete ~~Oklahoma Parents as Tender Healers (OK PATH) orientation and~~ 27 hours of pre-service training, including six hours of Behavior Crisis ~~management~~ Management Training (BCMT)~~.~~, ~~[~~per OAC 340:75-7-~~103]~~14.

(10) Applicants are responsible for providing copies of any non-OKDHS assessments or evaluations to OKDHS~~. This includes~~ including previous adoptive, foster home, relative, divorce custody, or other custody assessments.

(b) **Application to adopt by OKDHS employees.** OKDHS employees may apply to adopt from OKDHS, though no preferential treatment is given.

(c) **Reapplication to adopt.** ~~Many~~ When previous adoptive parents ~~will~~ apply to adopt again, the adoption application information is updated. ~~These families can be valuable resources for children with special needs.~~

(d) **Denial or withdrawal of applications.** When it becomes apparent that the applicant does not meet the resource family requirements ~~as~~ set out in Form DCFS-69, Guidelines for Resource Family Assessment, the resource family assessment process may be discontinued and the application withdrawn or denied.

(1) The reasons ~~and requirements are explained to the applicant.~~ for discontinuing the assessment prior to completion, ~~[~~per OAC 340:75-15-88~~(d)]~~, are explained to the applicant in person when possible and are stated in a letter to the applicant regardless whether personal contact is made.

(2) The applicant may voluntarily withdraw the application. If the applicant declines to withdraw the application, local staff ~~deny~~ denies the application.

(3) Families desiring to adopt a child of a certain age, race, or other characteristic OKDHS reasonably believes may not be available for adoption in the foreseeable future are referred to licensed child-placing agencies that are more likely to place children matching this request.

(e) **Out-of-state adoptive applicants.** OKDHS does not process applications from adoptive applicants outside of Oklahoma, but accepts certified resource family studies or assessments from a licensed agency or the public agency in another state.

(1) In cooperation with a licensed adoption agency in another state, an adoptive family may be considered for a child in Oklahoma.

(2) Children and Family Services Division Adoption Section coordinates placement and supervision with an agency in the state where the adoptive family resides.

(3) All provisions of the Interstate Compact on the Placement of Children are followed, per OAC 340:75-15-61 and 340:75-15-82.

340:75-15-88. Completed resource family assessment and recommendation

(a) **Resource family assessment.** The resource family assessment is conducted as outlined in Form DCFS-69, Guidelines for Resource Family Assessment. The completed assessment includes impressions of the family, their strengths and risks in adopting, and the special needs, age range, and ~~sex~~ gender of the child(ren) they wish to adopt.

(1) A copy of the resource family assessment, ~~except~~ excluding the ~~Reference Section~~ verification and reference sections, is ~~shared~~ reviewed with the family prior to completion of the final written assessment summary. The reference and verification sections are confidential and are not provided to the family.

(2) The family is given an opportunity to correct errors prior to completion of the final written assessment ~~summary~~.

(3) Once the assessment is finalized, it is signed by the resource family applicant and contractor and submitted to the area adoption supervisor for approval. A copy of the final supervisor approved resource family assessment, excluding the verification and reference sections, is provided to the applicant by the adoption specialist.

(b) **Approval.** The resource family assessment is approved by the area adoption supervisor if the applicant meets requirements as outlined in Form DCFS-69~~, Guidelines for Resource Family Assessment~~ and Oklahoma Department of Human Services (OKDHS) policy.

(c) **Resource family relocation.** When a family moves to another county within Oklahoma the assigned adoption specialist transfers the resource family record. An evaluation is done to reflect the adoptive family's new home and situation.

(d) **Denial.** ~~Some reasons~~ Reasons for denial ~~are~~ may include, but are not limited to:

(1) a lack of a stable, adequate income to meet the ~~applicants'~~ applicant's own or total family needs or poor management of available income;

(2) ~~inadequate~~ a physical facility that is inadequate to accommodate the addition of children to the home or that presents health or safety concerns;

(3) the applicant or any person residing in the home has a history of alleged or confirmed child abuse, ~~and~~ neglect, or both;

(4) the applicant or any person residing in the home has a history of arrests or convictions.

(A) ~~The~~ A felony conviction for any of the offenses ~~which~~ listed in (i) through (iii) ~~will result~~ results in an automatic denial of the application ~~are:~~.

(~~A~~i) ~~a~~ A crime involving violence including, but not limited to, rape, sexual assault, or homicide, but excluding physical assault or battery~~;~~.

(~~B~~ii) ~~child~~ Child abuse or neglect~~;~~.

(~~C~~iii) ~~a~~ A crime against a child, including, but not limited to, child pornography~~;~~.

(~~D~~B) A felony conviction for physical assault, domestic abuse, battery, or a drug related offense within a five year period preceding the date of the application ~~to adopt, physical assault, domestic abuse, battery, or a drug related offense;~~ results in denial of the application unless special approval is obtained from the court, following initial approval by Children and Family Services Division (CFSD) Adoption Section, per OAC 340:75-15-88(e).

(~~5~~C) ~~conviction~~ The application is denied if the applicant has been convicted of a sex offense and subject to ~~the Oklahoma Sex Offenders Registration Act~~ or married to or living with a person subject to the Oklahoma Sex Offenders Registration Act~~;~~.

(~~6~~5) the age, health, or ~~both,~~ any other condition of the applicant would impede his or her ability to provide care for a child on a permanent basis into adulthood;

(~~7~~6) relationships in the household are unstable and unsatisfactory;

(~~8~~7) the mental health of the applicant or other family or household member would impede ~~his or her~~ the applicant's ability to provide care for a child;

(~~9~~8) references are guarded or have reservations in recommending the ~~applicants~~ applicant;

(~~10~~9) the applicant does not complete ~~Oklahoma Parents as Tender Healers (OK PATH) orientation and Behavior Crisis Management Training (BCMT)~~ the required pre-service training within one year of application, unless the applicant has previously completed Parent(s)' Resource for Information, Development and Education (PRIDE). Exceptions must be requested from the ~~State Office, Children and Family Services Division,~~ Adoption Section; ~~and~~

(~~11~~10) the applicant has applied to adopt a child of a ~~type for which the Oklahoma Department of Human Services~~ certain age, race, or other characteristic that OKDHS reasonably believes ~~it does not have a sufficient number~~ may not be available for adoption in the foreseeable future~~.~~, ~~[~~per OAC ~~340:75-15-83]~~ 340:75-15-84; and

(11) one or more other factors concerning the applicant, a family, or household member or conditions in the home

as described in the denial letter renders the applicant or home environment inappropriate as an adoptive resource.

(e) An applicant with a conviction, ~~as listed in~~ per OAC 340:75-15-88(d)(4)(~~D~~B), may be considered on a case-by-case basis ~~in~~ prior to initial placement of the child following consultation with and recommendation by the ~~State Office~~ Adoption Section.

(1) If the applicant provides verifiable information that the applicant has been evaluated by a qualified professional who concluded that the applicant no longer poses a risk of harm to others, the ~~following~~ factors listed in (2)(A) through (E) of this subsection are considered in determining whether to conditionally approve the home:, subject to final approval by the court.

(2) The child is not placed in the applicant's home until evidence is presented to the court that clearly and convincingly indicates that no child will be at risk in the applicant's home and the court has given approval after reviewing the:

(~~1~~A) ~~the~~ nature and seriousness of the crime in relation to the adoption;

(~~2~~B) ~~the~~ time elapsed since the crime was committed;

(~~3~~C) ~~the~~ circumstances under which the crime was committed;

(~~4~~D) ~~the~~ degree of rehabilitation; and

(~~5~~E) ~~the~~ number of crimes committed by the person involved~~; and~~.

~~(6) evidence that no child will be at risk in the child's home~~.

PART 12. POST PLACEMENT SERVICES

340:75-15-103. Services to the child and family in adoptive placement

Services designed to assist the family to incorporate the child ~~or children~~ into the adoptive family are provided during the post placement period prior to legal finalization of the adoption. The adoption specialist for the adoptive family assumes case responsibility for the child at the time of placement in the adoptive home. Every effort is made to ensure that the confidentiality of the placement is maintained.

(1) **Post placement period.** When the child has had no prior relationship with the adoptive family, the post placement period is usually six months. In relative or foster parent adoptions when the child has been in the home, the post placement period may be shorter if the child and family have successfully adjusted to the placement.

(2) **Notice to preadoptive parent of juvenile court hearing.** The ~~pre-adoptive parent~~ preadoptive parent(s) providing care for the child is provided with notice of, and an opportunity to be heard in, any review or juvenile court hearing ~~to be~~ held with respect to the child. The adoption specialist completes Form DCFS-83, Hearing Notification, and mails or hand-delivers it to the current preadoptive parent(s) no later than 15 calendar days after the hearing is set.

(3) **Case records.** Both the adoption specialist and child's Child Welfare (CW) worker are responsible for maintaining case records for the child.

(4) **Family assessment and treatment and service plan.** A written case plan document is required on all children and families receiving CW services, including adoptive families.

(A) ~~Form~~ Forms CWS-KIDS-9, Family/Child Strengths and Needs Assessment, and ~~Form~~ CWS-KIDS-~~10~~26, ~~Treatment~~ Adoption Post Placement Service Plan, are completed with the family, including the child placed for adoption, within 30 calendar days of the child's placement.

(B) Form CWS-KIDS-~~10~~26 is not sent to the juvenile court.

(C) The ~~CW worker~~ adoption specialist updates Form CWS-KIDS-~~10~~26 every six months.

(5) ~~**Visits**~~ **Contacts.** The adoption specialist ~~visits~~ contacts the child in the adoptive placement regularly.

(A) **Adoption by ~~non-relative(s)~~ non-relative.** The adoption specialist ~~visits~~ contacts the child in the adoptive placement within two weeks of the date of signing Form DCFS-41, Adoptive Placement ~~Affidavit~~ Agreement, and at least once every ~~four weeks~~ calendar month thereafter, with no more than 31 days between contacts.

(B) **Adoption by ~~relative(s)~~ relative or foster ~~parent(s)~~ parent.** When there is no physical change in placement, the adoption specialist is not required to ~~visit~~ contact the child within the first two weeks of trial adoption. A ~~visit~~ contact is required prior to the end of the calendar month of placement and at least once every ~~four weeks~~ calendar month thereafter, with no more than 31 days between contacts.

(6) **Disclosure affidavit.** ~~The initial~~ Form DCFS-89, Affidavit of Information Disclosure for Adoption, and all subsequent disclosures are documented ~~in the Disclosure Affidavit screen on KIDS~~ and provided to the adoptive parent.

340:75-15-106. Post placement services

Services are available to assist the adoptive family and child during the post placement period. Post placement services are identified for the family during the adoptive family assessment process. Form CWS-KIDS-~~10~~26, ~~Treatment~~ Adoption Post Placement Service Plan (APPSP), is developed with the adoptive family at the time of placement of the child into the adoptive home, ~~in accordance with~~ per OAC 340:75-15-103, and outlines the post placement services to be provided.

(1) **Post placement supervision.** The adoption specialist meets with the adoptive family as required per OAC 340:75-15-103~~(5)~~.

(2) **Pre-finalization adoption assistance.** Adoption assistance may be provided to the adoptive family at the time the child enters the adoptive home in legal risk or legally free adoptive placement, ~~in accordance with~~ per

OAC 340:75-15-128 through 340:75-15-128.6. ~~The adoption~~ Adoption assistance may include a monthly ~~money~~ payment, Medicaid, or both.

(3) **Medical services.** Children in adoptive post placement are eligible to receive Medicaid services.

(4) **Counseling.** The adoptive family is fully informed of the child's history of psychological counseling and referred for services at the time of placement, if needed. Under Medicaid, all ~~out-patient~~ outpatient psychological services except for the first hour of psychological evaluation must have prior authorization.

(5) **Comprehensive Home-Based Services.** Comprehensive Home-Based Services (CHBS), ~~in accordance with~~ per OAC 340:75-1-176, are available to assist trial adoptive and post adoptive families who are experiencing difficulty and are at risk of having the child disrupt from the placement.

(6) **Adoptive parent support groups.** Adoptive parent support groups provide social and emotional support to the adopted child and his or her parent(s). The adoption specialist informs the adoptive parent(s) of the benefits of support groups.

[OAR Docket #05-693; filed 4-21-05

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

[OAR Docket #05-694]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 6. Permanency Planning
Part 13. Independent Living
340:75-6-110. [AMENDED]
340:75-6-115. through 340:75-6-115.1. [AMENDED]
340:75-6-115.3. through 340:75-6-115.5. [AMENDED]
340:75-6-115.10. [NEW]
Subchapter 7. Foster Home Care
Part 2. Development of Resources
340:75-7-15. [AMENDED]
Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services Division Services
Part 3. DDSD Services for ~~Custody~~ Children
340:75-8-36. through 340:75-8-40. [AMENDED]
Subchapter 11. Child Welfare Community-Based Residential Care
Part 17. Contracted Community-Based Residential Care Providers
340:75-11-230. [AMENDED]
340:75-11-231. through 340:75-11-232. [REVOKED]
340:75-11-233. through 340:75-11-234. [AMENDED]
340:75-11-235. [REVOKED]
340:75-11-236. through 340:75-11-240. [AMENDED]
Part 19. Residential Diagnostic and Evaluation Services
340:75-11-250. [AMENDED]
340:75-11-251. through 340:75-11-253. [REVOKED]
Part 21. Residential Intensive Treatment Services
340:75-11-265. [AMENDED]
340:75-11-266. through 340:75-11-268. [REVOKED]
Part 23. Specialized Community Homes
340:75-11-285. [REVOKED]
340:75-11-286. through 340:75-11-287. [AMENDED]
340:75-11-288. [REVOKED]
340:75-11-289. [AMENDED]
340:75-11-290. through 340:75-11-292. [REVOKED]
Part 25. Non-Funded and Funded Contracted Level B Placements
340:75-11-300. through 340:75-11-301. [AMENDED]
340:75-11-302. through 340:75-11-307. [REVOKED]
Part 27. Residential Maternity Services
340:75-11-320. through 340:75-11-322. [AMENDED]
340:75-11-323. [REVOKED]
Part 29. Non-Funded and Funded Level C Placements
340:75-11-330. [AMENDED]
340:75-11-331. through 340:75-11-337. [REVOKED]
Part 31. Contracted Level D Placements
340:75-11-350. [AMENDED]
340:75-11-351. through 340:75-11-353. [REVOKED]
Part 33. Contracted Level D Plus and Level E Placements
340:75-11-360. [AMENDED]
340:75-11-361. through 340:75-11-363. [REVOKED]
Part 35. Contracted Level E Placements [REVOKED]
340:75-11-370. through 340:75-11-373. [REVOKED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children in ~~Substitute~~Out-of-Home Care
Part 2. Title IV-E Eligibility and Reimbursability
340:75-13-11. through 340:75-13-13. [AMENDED]
340:75-13-15. through 340:75-13-17. [AMENDED]
340:75-13-19. [AMENDED]
340:75-13-20. [REVOKED]
340:75-13-21. through 340:75-13-22. [AMENDED]
Part 3. Income and Resources ~~to~~of the Child
340:75-13-30. [NEW]
(Reference APA WF 04-36)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Sections 7004-1.1, 7004-1.6, and 7004-2.1 of Title 10 of the Oklahoma Statutes; Section 3230 of Title 70 of the Oklahoma Statutes; and Sections 620 through 679 of Title 42 of United States Code.

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None requested.
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n/a

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n/a

ANALYSIS:
The revisions to Subchapters 6, 7, 8, 11, and 13 of Chapter 75 clarify: (1) Independent Living (IL) program services, procedures, and residential programs, including IL contingency funds; (2) educational and scholarship assistance opportunities for youth in Oklahoma Department of Human Services (OKDHS) custody; (3) Developmental Disabilities Services Division (DDSD) services for children in OKDHS custody; (4) contracted community-based residential care (CBRC) procedures; (5) residential and diagnostic evaluation (D & E) services; (6) residential intensive treatment services (ITS); (7) specialized community homes (SCH); (8) non-funded and funded contracted Level B and Level C placements; (9) contracted Level D, Level D plus (+), and Level E placements; (10) Title IV-E (IV-E) criteria and related procedures; (11) procedures for establishing a Special Needs Trust

(SNT) for children receiving Supplemental Security Income (SSI); and (12) by revoking sections of policy that are duplicative.

340:75-6-110 is amended to clarify the provision of IL services to youth.

340:75-6-115 is amended to reflect current IL support services.

340:75-6-115.1 is amended to clarify IL eligibility criteria, community contracted services, and assistance services.

340:75-6-115.3 is amended to include One Time Only contingency funds as a category of available funds to eligible youth.

340:75-6-115.4 is amended to specify that IL incentive payments are contingent upon funding availability.

340:75-6-115.5 is amended to include Oklahoma Higher Learning Access program (OHLAP) and Education and Training Voucher (ETV) program information.

340:75-6-115.10 is issued to detail IL SCH opportunities and eligibility criteria.

340:75-7-15 is amended to clarify all required background searches for foster applicants.

340:75-8-36 is amended to clarify the process for identification of and application and needs assessment for children with developmental disabilities.

340:75-8-37 is amended to reflect the reference to the Child Welfare (CW) worker's responsibilities to a child receiving Home and Community-Based Waiver Services (HCBWS).

340:75-8-38 is amended to clarify the role and responsibilities for DDSD staff for a child receiving HCBWS.

340:75-8-39 is amended to specify the shared roles of CW and DDSD staff for a child receiving HCBWS.

340:75-8-40 is amended to detail the grand staffing process between Children and Family Services Division and DDSD for a child that requires intensive support services.

340:75-11-231 and 75-11-232; 75-11-235; 75-11-251 through 75-11-253; 75-11-266 through 75-11-285; 75-11-288; 75-11-290 through 75-11-292; 75-11-302 through 75-11-307; 75-11-323; 75-11-331 through 75-11-337; 75-11-351 through 75-11-353; 75-11-361 through 75-11-373 are revoked as most of the information contained in these Sections was incorporated throughout Subchapter 11.

340:75-11-230 is amended to reflect the incorporation of the legal base for CBRC and applicable definitions for terms used in Subchapter 11.

340:75-11-233 through 75-11-234 are amended to better detail CBRC placement requirements and services.

340:75-11-236 through 75-11-240 are amended to clarify the rights of children placed in CBRC, CW county of jurisdiction worker's and contract liaison's responsibilities for these children, and general requirements for all CBRC providers.

340:75-11-250 is amended to specify residential D & E services and children served.

340:75-11-265 is amended to reflect residential ITS requirements and children served by ITS.

340:75-11-286 and 75-11-287 are amended to reflect the requirements of SCH contractors.

340:75-11-289 is amended to reference the current form used for SCH contract reimbursement.

340:75-11-300 and 75-11-301 are amended to better detail funded contracted Level B placement requirements and children served.

340:75-11-320 through 75-11-322 are amended to reflect non-funded contracted residential maternity services for the youth and the youth's infant and the role of the contract liaison.

340:75-11-330 is amended to specify funded Level C placement provisions and children served.

340:75-11-350 is amended to reflect procedures relating to children served in contracted Level D placements.

340:75-11-360 is amended to include information regarding contracted Level E placements and children served in Level D+ and Level E placements.

340:75-13-11 is amended to clarify the legal base and purpose of IV-E as provided through the Social Security Act.

340:75-13-12, 75-13-16, and 75-13-17 are amended and 75-13-20 is revoked to delete references to IV-E eligibility for children in Office of Juvenile Affairs (OJA) custody.

340:75-13-13 and 75-13-15 are amended to include references to DHS:10 policy cites and clarify IV-E eligibility criteria.

340:75-13-19 is amended to specify applicable policy cites regarding IV-E adoption assistance.

340:75-13-21 is amended to clarify the role of OKDHS when an Indian child is placed in the custody of a tribe and that tribe has an agreement with OKDHS for foster care services.

340:75-13-22 is amended to clarify the conditions regarding a trial home visit for a child.

340:75-13-30 is issued to include information regarding SNT for children who do require the utilization of the full amount of SSI.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 6. PERMANENCY PLANNING

PART 13. INDEPENDENT LIVING

340:75-6-110. Independent Living program

The Independent Living (IL) program seeks to ensure the successful transition of youth ages 16 to 21 from out-of-home care to adulthood by assisting them in planning for their future and enhancing their individual strengths and abilities. Laws that guide IL services administered by ~~the~~ Oklahoma Department of Human Services (OKDHS) are described in (1) and (2).

(1) **Federal IL component.** The Foster Care Independence Act of 1999 was enacted as part of Public Law (P.L.) 106-169. P.L. 106-169:

(A) supports states, including Oklahoma, in the delivery of IL services to youth in OKDHS ~~and~~ or tribal custody ~~youth in~~ and out-of-home ~~placement~~ care and provides these youth with services after they exit care at age 18~~. Youth in Office of Juvenile Affairs (OJA) custody up to age 19, who are in foster family care or specialized community homes, are eligible for certain services, per OAC 340:75-6-115.1. IL services~~ that focus on:

(i) education~~,~~;

(ii) career planning~~, emergency housing,~~;

(iii) life skills; and

(iv) aftercare services~~.~~; and

(B) ~~The Foster Care Independence Act~~ requires that IL services complement the youth's own efforts to achieve self-sufficiency and that program participants recognize and accept personal responsibility for the transition from out-of-home care to adulthood.

(2) **State IL component.** Section 7004-2.1 of Title 10 of the Oklahoma Statutes (10 O.S. § 7004-2.1) requires OKDHS, to the extent of available funds, to provide or contract for services for children in OKDHS custody. The Independent Living Act, ~~Section~~ 10 O.S. § 7004-1.6 ~~of Title 10 of the Oklahoma Statutes~~, ensures that youth who are currently in ~~foster~~ out-of-home care, or who were in ~~foster~~ out-of-home care nine months between ages 16 to 18 ~~years of age~~, receive the protection, support, and

education necessary to become self-reliant and productive citizens. The provision of IL services for youth:

(A) are initiated by the Child Welfare worker according to the age of the youth, per Oklahoma Department of Human Services Publication No. 94-08, Oklahoma Independent Living Program;

(B) in OKDHS custody placed in other states is the responsibility of OKDHS, per OAC 340:75-1-86;

(C) placed in Oklahoma through Interstate Compact for the Placement of Children (ICPC) is approved by Children and Family Services Division IL Section on a case-by-case basis, per OAC 340:75-1-86; and

(D) up to age 19 in Office of Juvenile Affairs (OJA) custody and foster family or specialized community homes is in accordance with OAC 340:75-6-115.1.

340:75-6-115. Independent ~~Living (IL)~~ living support services

In order to ~~assure~~ facilitate the successful transition of youth from out-of-home care to independence, the Independent Living (IL) program provides a variety of services, ~~and~~ resources, and youth development funds. Each service, ~~and~~ resource, and youth development fund category listed in (1) through (9) has distinct eligibility requirements. ~~The service and resource categories are:~~

(1) ~~community~~ Community contracted services~~;~~, ~~[~~per OAC 340:75-6-115.1~~]~~.

~~(2) Oklahoma Children's Services; [OAC 340:75-6-115.2]~~

(~~3~~2) ~~contingency~~ Contingency funds~~;~~, ~~[~~per OAC 340:75-6-115.3~~]~~.

(~~4~~3) ~~incentive~~ Incentive payments~~;~~, ~~[~~per OAC 340:75-6-115.4~~]~~.

(~~5~~4) ~~educational~~ Educational opportunities and scholarships~~;~~, ~~[~~per OAC 340:75-6-115.5~~]~~.

(~~6~~5) Youth Advisory Board~~;~~, ~~[~~per OAC 340:75-6-115.6~~]~~.

(~~7~~6) ~~teen~~ Teen panels~~;~~ ~~[~~per OAC 340:75-6-115.7~~]~~.

(~~8~~7) ~~special~~ Special IL funding~~;~~, ~~[~~per OAC 340:75-6-115.8~~] and~~.

(~~9~~8) ~~voluntary~~ Voluntary placement of youth after age 18~~;~~, ~~[~~per OAC 340:75-6-115.9~~]~~.

(9) IL specialized community homes, per OAC 340:75-6-115.10.

340:75-6-115.1. Community contracted services

(a) **Eligibility.** ~~Criteria for eligibility~~ Eligibility criteria for community contracted ~~Independent Living~~ independent living (IL) services ~~are~~ include youth:

(1) ~~youth~~ ages 16 to ~~21 years of age~~ 18 who are currently in ~~DHS~~ Oklahoma Department of Human Services (OKDHS) or tribal custody and ~~in~~ out-of-home placement;

(2) ~~youth~~ who were in ~~DHS~~ OKDHS or tribal custody and ~~in~~ out-of-home placement for nine months between ~~the~~ ages ~~of~~ 16 ~~and~~ to 18 and have not reached their 21st birthday;

(3) ~~DHS youth~~ in OKDHS or tribal custody who ~~elect to remain in~~ opt for "voluntary care after 18;" and

(4) ~~youth~~ ages 16 to 19 ~~years of age~~ in Office of Juvenile Affairs (OJA) custody~~,~~ and ~~in family~~ foster ~~homes~~ family or specialized community homes.

(b) **Services.** Services provided through community contracts ~~are~~ include:

(1) educational, vocational, and supplemental assistance~~,~~;

(2) resource materials, such as instructional tools or supplies needed for the youth's transition;

(3) IL teen conferences, ~~Fun Fest, IL~~ seminars, and activities;

(4) ~~Emancipation Station,~~ technical assistance~~,~~ to OKDHS and tribal Child Welfare (CW) staff and other contractors;

(5) training~~.~~ regarding the Oklahoma IL program and the preparation of youth for a successful transition to adulthood;

(6) processing requests for youth development funds; and

(7) issuing youth development fund payments for goods and services.

(c) **Assistance.** The IL program provides reimbursement for mileage, per diem, and lodging to specified IL activities and events for OKDHS and tribal CW staff and placement providers.

340:75-6-115.3. Independent ~~Living (IL)~~ living contingency funds

(a) ~~Contingency~~ Independent living (IL) contingency funds are a category of youth development funds, per Oklahoma Department of Human Services (OKDHS) Appendix C-19-A, Independent Living Youth Development Funds, designed ~~as supportive services for~~ to support the youth's IL case plan in preparation for living ~~on their own~~ independently and for emergencies encountered after leaving care while learning to live independently.

(1) The approval of IL contingency funds is contingent upon funding availability.

(2) IL contingency funds are not used to reimburse youth, OKDHS staff, or contractors for a purchase made on behalf of the youth.

(3) Exceptions to reimbursement and item cost limits, per OKDHS Appendix C-19-A, require approval by Children and Family Services Division (CFSD) IL Section.

(4) Requests for an item, per OKDHS Appendix C-19-A, is not split between two codes.

(b) ~~Criteria for eligibility~~ Eligibility criteria for IL contingency funds are listed in (1) through (~~3~~4) ~~of this subsection~~.

(1) ~~IL~~ **Preparation contingency funds.**

(A) Eligible youth are ~~between the~~ ages ~~of~~ 16 ~~and~~ to 18 ~~years and~~ currently in ~~DHS~~ OKDHS or tribal custody ~~in~~ and out-of-home placement or in Office of Juvenile Affairs (OJA) custody and residing in foster family or specialized community homes.

(B) ~~The contingency~~ These funds ~~can be~~ are used for ~~graduation,~~ education and work related expenses~~,~~

and ~~for purchased~~ miscellaneous services necessary to achieve the youth's IL plan.

(2) ~~IL~~ **Supportive Services contingency funds.**

(A) Eligible youth are ~~between the~~ ages ~~of~~ 18 ~~and~~ to 21 ~~years~~ and were in ~~DHS~~ OKDHS or tribal custody ~~in~~ and out-of-home placement for nine months between ages 16 ~~and~~ to 18.

(B) ~~The contingency~~ These funds ~~can be~~ are used for education related expenses, car repair, furniture, ~~and~~ appliances, public transportation, clothing, medical expenses, ~~graduation expenses,~~ purchased services, such as substance abuse counseling and mentors, and other miscellaneous services necessary to achieve the youth's IL plan.

(3) **Housing contingency funds.**

(A) Eligible youth are ~~DHS or tribal custody~~ youth who were in OKDHS or tribal custody and out-of-home placement on their 18th birthday and have not yet reached ~~the~~ age ~~of~~ 21 ~~years~~.

(B) These funds are:

(i) ~~not utilized to secure housing as a youth exits care, but are~~ designated to assist youth with housing in emergency situations ~~that arise, such as job loss and illness.~~; and

(ii) ~~The contingency funds are~~ used for living expenses, such as rent, utilities, deposits, and food.

(4) **One Time Only contingency funds.**

(A) Eligible youth are ages:

(i) 16 to 18 in OKDHS or tribal custody and out-of-home placement;

(ii) 18 to 20 in OKDHS or tribal custody receiving voluntary services;

(iii) 18 to 21 who were in OKDHS or tribal custody for nine months between ages 16 to 18; and

(iv) 16 to 19 in OJA custody.

(B) These funds are used to purchase goods and services the youth needs to access on a one time only basis.

340:75-6-115.4. Independent ~~Living (IL)~~ living incentive payments

The independent living (IL) incentive payment is another category of youth development funds that is a one-time monetary payment for youth exiting ~~DHS~~ Oklahoma Department of Human Services or tribal custody from out-of-home placement to reunification, adoption, guardianship, or independence. ~~The incentive payment is calculated~~ Incentive payments are contingent upon funding availability and based upon the youth's accomplishments between the time ~~when~~ IL services ~~were~~ are initiated at age 16 until the youth exits care. Activities for which the youth receives compensation include:

(1) educational attainment~~,~~;

(2) employment~~,~~;

(3) placement stability~~,~~;

(4) volunteerism~~,~~;

(5) life skills development~~,~~; and

(6) planning for the future.

340:75-6-115.5. Educational and scholarship assistance

A continuum of educational services is available for ~~DHS custody~~ youth in Oklahoma Department of Human Services (OKDHS) custody for post secondary education at ~~junior~~ colleges, universities, secondary vocational-technical schools, or trade schools~~.~~, ~~[~~per OAC 340:75-6-115.1 and 340:75-6-115.3~~]~~. Scholarships and independent living (IL) services are available that ~~can~~ assist the youth in completing education and training, including:

(1) **Oklahoma Higher Learning Access program (OHLAP).**

(A) Section 2601 et seq. of Title 70 of the Oklahoma Statutes (70 O.S. § 2601 et seq.) sets forth a scholarship program for students between the eighth and tenth grade that pays for tuition at an Oklahoma public two-year college or four-year university.

(B) Children and Family Services Division (CFSD) makes application for youth in OKDHS custody.

(~~1~~2) ~~**tuition**~~ **Tuition waiver.** ~~Section~~ 70 O.S. § 3230 ~~of Title 70 of the Oklahoma Statutes~~ provides tuition waivers for eligible ~~DHS custody or tribal~~ youth in OKDHS or tribal custody for undergraduate resident tuition at institutions within the Oklahoma State System of Higher Education and resident tuition for enrollment in post secondary programs of area vocational-technical districts.

(A) ~~Students~~ Youth are eligible until they:

(i) earn a baccalaureate degree or program certificate; or

(ii) ~~until age~~ reach 26 years of age, whichever comes first.

(B) To receive a tuition waiver, the youth must:

(~~A~~i) have been in the custody of ~~DHS~~ OKDHS or a federally recognized Indian tribe ~~as a deprived child~~ for any nine of the 24 months ~~after~~ between his or her 16th ~~birthday~~ and ~~before his or her~~ 18th birthday;

(~~B~~ii) be a resident of Oklahoma;

(~~C~~iii) have graduated from a high school accredited by the State Board of Education, ~~the~~ Oklahoma School of Science and Mathematics, or, with approval, from a public high school in states bordering Oklahoma, or completed General Educational Development (GED) requirements;

(~~D~~iv) have satisfied admission standards determined by Oklahoma State Regents for Higher Education for first time students;

(~~E~~v) have secured admission to and enrolled in a post secondary vocational-technical program that has a cooperative agreement with the Oklahoma State System of Higher Education;

(~~F~~vi) have graduated from high school or completed the GED during the 1999 - 2000 school year or ~~after~~ thereafter; and

(~~G~~vii) ~~begin to~~ utilize the tuition waiver within three years after reaching age 18~~; and~~.

(C) To access the tuition waiver:

(i) CFSD notifies Oklahoma State Regents for Higher Education of the youth's eligibility; and

(ii) Oklahoma State Regents for Higher Education provides a list of eligible youth to the colleges and universities.

(~~2~~3) **Lou Hartpence Scholarship.** Funding for post secondary education, either vocational training or college, is available, subject to funding, to assist eligible youth through a privately endowed trust fund established by Mary Louise Hartpence, a former ~~DHS~~ OKDHS employee.

(A) ~~These scholarships~~ Scholarships are available to youth who:

(i) are in the legal custody of ~~DHS~~ OKDHS; or

(ii) ~~who~~ have been released from ~~DHS~~ OKDHS custody within the past six months.

(B) ~~These funds can~~ The scholarship award:

(i) may be received in addition to other grants or scholarships and ~~have no~~ used without restriction ~~on how they are used.~~;

(ii) is not available for graduate studies, including additional vocational courses, once the youth graduates or completes initial training or certification;

(iii) ~~Scholarship awards continue~~ continues as long as the youth:

(I) maintains a 2.0 grade average~~.~~;

(II) enrolls in 12 hours or more per semester~~, and~~;

(III) submits verification of enrollment and copies of grades each term or semester to the scholarship committee; and

(IV) is in good standing with the educational institution~~. The youth must submit verification of enrollment and copies of grades each term or semester. The scholarship monies are not available for graduate studies, including additional vocational courses, once a youth has graduated or completed the initial training or certification.~~; and

(iv) ~~Scholarship awards~~ allotments are:

(~~A~~I) $1,000 per year for first and second year ~~recipient~~ recipients;

(~~B~~II) $2,000 per year for third year recipients; and

(~~C~~III) $3,000 per year for fourth or more year recipients.

(C) To apply for the Lou Hartpence Scholarship, the eligible youth and CW worker submit Form DCFS-5, Lou Hartpence Scholarship Application, and all required attachments to CFSD IL Section no later than six months after the date of the youth's 18th birthday, regardless whether the youth has graduated from high school.

(i) Form DCFS-5 and all required attachments are reviewed by a scholarship committee that recommends to the Commission for Human Services (Commission) the youth to receive the scholarship monies.

(ii) The Commission approves the recipients for the scholarship awards.

(4) **Education and Training Voucher (ETV) program.** The ETV program is a provision of the Independence Act of 1999, Public Law 106-169. This program makes funding available for post secondary education and training. Funding may be used for tuition, fees, books, supplies, room and board, transportation, and other miscellaneous and personal items. An eligible youth is one:

(A) eligible for services under the OKDHS IL program, including a youth who was likely to remain in out-of-home care but attained permanency through legal guardianship after age 16;

(B) adopted from out-of-home care after reaching age 16; and

(C) who participated in the ETV program on his or her 21st birthday until reaching age 23 and enrolled in a post secondary education or training program and has made satisfactory progress towards completion of that program.

340:75-6-115.10. Independent living specialized community homes

(a) Independent living (IL) specialized community homes provide an intensive, short-term IL curriculum for youth who are motivated to:

(1) reach an educational or vocational goal;

(2) obtain and maintain employment; and

(3) learn skills that prepare the youth to move to an IL situation within one year.

(b) This residential program is for youth preparing to transition to their first IL situation and youth who have exited care and are homeless or in an unsafe situation.

(c) Eligible youth are:

(1) ages 17.3 to 18 in Oklahoma Department of Human Services or tribal custody and out-of-home placement;

(2) age 18, receiving voluntary extended services to complete his or her high school education or General Educational Development (GED); and

(3) youth who exited care at age 18 who request an opportunity to participate in the program.

SUBCHAPTER 7. FOSTER HOME CARE

PART 2. DEVELOPMENT OF RESOURCES

340:75-7-15. Background investigation and assessment of results

(a) **Requirements.** A background investigation is conducted on all adults in the foster applicant's home as a safeguard for children placed in Oklahoma Department of Human Services (OKDHS) custody. Background investigations are

conducted at the time of application and include, but are not limited to:

(1) an Oklahoma State Bureau of Investigation (OSBI) name and records criminal history search, including the Department of Public Safety (DPS) and Sex Offenders Registry, of the applicant and any adult living in the applicant's household;

(2) a Federal Bureau of Investigation (FBI) national criminal history search, based on the fingerprints of the applicant and any adult members of the household;

(3) a search of any court involvement;

(~~3~~4) a search of all OKDHS records, including Child Welfare (CW) records, for past confirmation of child maltreatment involving the applicant and any adult living in the household; and

(~~4~~5) a search of Juvenile Justice Information System (JOLTS) records for any child older than 13 years of age in the applicant's household.

(b) **Criminal history search.** The applicant and adult household members ~~of the household~~ provide consent for an OSBI and FBI criminal history search by signing Form ADM-130, Request for Background Check.

(c) **Exception to fingerprinting.** The Director of OKDHS or designee may authorize an exception to the fingerprinting requirement for any person residing in the home who has a severe condition that precludes such person being fingerprinted.

(d) **Residence time frame.**

(1) If every person age 18 or older residing in the applicant's home has resided in Oklahoma for at least five consecutive years immediately preceding approval, the initial approval may occur upon completion of the entire home assessment process utilizing results per OAC 340:75-7-15(a).

(2) Fingerprints are submitted to the FBI for a national criminal history records search before initial approval. Final approval, per OAC 340:75-7-18(b)(3), is contingent upon receipt of the results of the national criminal history records search.

(e) **Occupancy of the household.** A criminal history search is completed for every adult who sleeps in the household more than 30 days per calendar year or engages in a pattern of overnight visitation that meets this test. Such persons are considered household members.

(f) **New occupants in the foster home.** The foster parent notifies OKDHS within 24 hours of any person taking up residence in the foster home. OKDHS completes a background investigation, per OAC 340:75-7-15, for persons age 18 years or older. The foster parent's child who reaches age 18 is considered in this category. Adults in this category have no provider responsibility until the background investigation is complete. A foster family's failure to notify OKDHS of a new household member or refusal of a household member to consent to a background check is grounds for cancellation of the foster care contract.

(g) **Kinship applicant criminal background records search after normal business hours or on a holiday.** When OKDHS considers placement of a child with a prospective kinship foster family in an emergency situation, after normal business hours or on a holiday, OKDHS requests that local law enforcement conduct a criminal history search. This is based upon submission of the name, race, gender, date of birth, and Social Security number of each person age 18 or older living in the household. Each person completes and signs Form ADM-130 to initiate the search.

(h) **Assessment of background investigation results.**

(1) **History of felony convictions.** OKDHS denies a resource home application if the applicant, or any person residing in the home of the applicant, has a criminal conviction record for any of the felony offenses listed in (A) through (E). The criminal conviction of an approved foster parent or any person residing in the foster home of any of the felony offenses listed in (A) through (E) requires the closure of the foster home, cancellation of the foster care contract, and removal of each child in OKDHS custody. The felony offenses are:

(A) physical assault, battery, or a drug-related offense within the five year period preceding the application date;

(B) child abuse or neglect;

(C) domestic abuse;

(D) a crime against a child, including, but not limited to, child pornography; or

(E) a crime involving violence, including, but not limited to, rape, sexual assault, or homicide, but excluding physical assault or battery. Homicide includes manslaughter.

(2) **Exceptions to history of felony convictions.**

(A) OKDHS does not grant exceptions regarding felony convictions, per OAC 340:75-7-15(h)(1), of a prospective or approved foster parent or of anyone residing in the foster home. Approval may be granted by the county director on a case-by-case basis, per OAC 340:75-7-15(h)(4), for any applicant who has, or is living with a person who has, a prior conviction or charges pending for any other felony or a relevant misdemeanor.

(B) A prospective adoptive parent or long-term placement provider for a specific child in OKDHS custody, who has not been approved as a placement provider due to a conviction of a felony offense specified in OAC 340:75-7-15(h)(1)(A) within five years preceding the application date, may be approved only by the court after:

(i) an evaluation is made and accepted by the court that considers the:

(I) nature and seriousness of the crime in relation to the long-term placement;

(II) time elapsed since the commission of the crime;

(III) circumstances under which the crime was committed;

(IV) degree of rehabilitation; and

(V) number of crimes committed by the person involved; and

(ii) a showing by clear and convincing evidence that the child will not be at risk by such placement.

(3) **Sex related crimes.** OKDHS denies the application of an applicant if the applicant, or any person residing in the applicant's home, has been convicted, whether upon a verdict or a plea of guilty or upon a plea of nolo contendere, for any crime specified per Section 582 of Title 57 of the Oklahoma Statutes. OKDHS denies the application of an applicant if the applicant is subject to, living with, or married to a person who is subject to the Oklahoma Sex Offenders Registration Act.

(4) **History of crimes, charges, or other convictions.** Approval of any applicant who has, or is living with a person who has, a history of arrests, charges, or convictions for any felony other than those listed in OAC 340:75-7-15(h)(1) or a relevant misdemeanor may be approved on a case-by-case basis. A relevant misdemeanor includes, but is not limited to, assault and battery, alcohol or drug related offenses, crimes involving domestic abuse, and other such offenses.

(5) **History of child abuse and neglect investigations.** OKDHS determines the approval of any applicant with a history of child abuse and neglect investigations on a case-by-case basis. The county director considers the:

(A) nature and seriousness of the CW history;
(B) time elapsed since the CW history;
(C) circumstances of the CW history;
(D) degree of rehabilitation; and
(E) risk, if any, to the child by such placement.

(6) **JOLTS information.** The information obtained from a JOLTS search on the child older than 13 years of age living in the applicant's home is used to determine whether that child poses a risk to a child in OKDHS custody.

SUBCHAPTER 8. THERAPEUTIC FOSTER CARE AND DEVELOPMENTAL DISABILITIES SERVICES DIVISION SERVICES

PART 3. DDSD SERVICES FOR ~~CUSTODY~~ CHILDREN

340:75-8-36. Identification, ~~and~~ application, ~~for DDSD services for children in DHS custody with a developmental disability~~ and needs assessment

(a) Children in ~~DHS~~ Oklahoma Department of Human Services (OKDHS) custody ~~are deemed to be in an emergency situation and are not subject to the general DDSD admission protocol in accordance with OAC 317:40-1-1~~ who have mental retardation may be eligible for Home and Community-Based Waiver Services (HCBWS), per OAC 317:40-1-1. Child Welfare workers have primary responsibility to make application for Developmental Disabilities Services Division (DDSD) services for children in OKDHS custody.

(b) A needs assessment for DDSD services ~~are~~ is initiated by the child's Child Welfare (CW) worker at the earliest possible ~~age~~ time for ~~custody children~~ the child age three years or older.

(1) DDSD area intake staff completes the needs assessment and identifies services necessary to meet the child's needs.

(2) DDSD services, when appropriate, may be provided in ~~a~~ the child's:

(A) own home~~,~~;
(B) ~~in~~ foster ~~care,~~ home;
(C) ~~in~~ adoptive ~~placement,~~ home; and
(D) ~~in~~ group home ~~care~~.

~~(c) DHS custody children are eligible to receive DDSD services when they are three years of age or older and have mental retardation.~~

~~(d) CW workers have a primary responsibility to make application for DDSD services for all custody children who are suspected to have mental retardation or similar conditions.~~

~~(e) Eligibility determination for DHS custody children begins with the DDSD application for services. The completed application includes:~~

~~(1) social history, including developmental milestones, sexual and physical abuse history, and history of any alleged delinquent behavioral problems;~~

~~(2) psychological assessment (within one year), which includes IQ score and adaptive functioning assessment;~~

~~(3) medical assessment (within 90 days) on Forms ABDM-80 or LTC-300;~~

~~(4) birth certificate or application for verification of birth record;~~

~~(5) current immunization record; and~~

~~(6) legal documents showing custody status, disposition order, last court review, and termination order, if applicable;~~

~~(7) Social Security card or application. Children who receive Social Security benefits, based on a primary diagnosis of mental retardation, are generally eligible to receive DDSD services.~~

(c) When the needs assessment determines that the child's needs require HCBWS, DDSD area staff forwards the completed DDSD application packet to the Oklahoma Health Care Authority (OHCA). The completed application packet includes Form DDS-1, Application for Developmental Disabilities Services, and all required attachments provided by the CW worker.

(d) OHCA reviews the completed application packet and makes a determination of eligibility for HCBWS.

340:75-8-37. Role and responsibilities of ~~the~~ Child Welfare worker for a ~~custody~~ child ~~with a developmental disability~~ receiving Home and Community-Based Waiver Services

The role and responsibilities of the Child Welfare (CW) worker for a child in ~~the Department's~~ Oklahoma Department of Human Services custody do not change when a child is eligible for or receives ~~DDSD services~~ Home and Community-Based Waiver Services (HCBWS). CW workers comply with ~~DHS policy as outlined in~~ OAC 340:75-~~6-48 or otherwise defined in Subchapter 75~~ and support the application for and

delivery of Developmental Disabilities Services Division (DDSD) services.

340:75-8-38. Role and responsibilities of DDSD case manager for a ~~custody~~ child ~~with a developmental disability~~ receiving Home and Community-Based Waiver Services

~~(a) Upon receipt of completed application, and verification of completed Supplemental Security Income (SSI) application or SSI approval, Developmental Disabilities Services Division (DDSD) provides case management services to the custody child. If a determination is made that a child is not eligible for DDSD services, case management services cease.~~

~~(b)~~ The Developmental Disabilities Services Division (DDSD) case ~~management staff~~ manager:

(1) provides services to ~~Department of Human Services (DHS) custody~~ children ~~consistent with OAC 317:30-5-1010.1, 1011, and 1012.~~ in Oklahoma Department of Human Services (OKDHS) custody receiving Home and Community-Based Waiver Services (HCBWS);

~~(c) DDSD area staff forwards completed DDSD application packet to the Oklahoma Health Care Authority for eligibility determination.~~

(~~d~~2) ~~DDSD area staff~~ identifies team members~~, including~~ and includes the referring and county of jurisdiction Child Welfare (CW) workers~~;~~, ~~schedules meetings; and develops the Plan of Care prescribing services for DHS custody children, and provides copies to all~~ if different, as team members~~.~~, in accordance with OAC 340:100-5-52;

(~~e~~3) ~~DDSD case management staff~~ submits copies of any progress reports or information requested for court reports to the CW county of jurisdiction worker~~.~~;

~~(f) DDSD area staff attends court hearings for DHS custody children.~~

(~~g~~4) ~~DDSD area staff~~ notifies the CW county of jurisdiction worker of ~~the~~ needed medical consents for pre-planned or emergency medical treatment for ~~DHS custody~~ children in OKDHS custody in DDSD placements; and

(5) attends court hearings for children in OKDHS custody when notified by the CW worker.

340:75-8-39. Shared roles and responsibilities of Child Welfare workers and DDSD ~~case management~~ staff for a ~~custody~~ child ~~with a developmental disability~~ receiving Home and Community-Based Waiver Services

(a) Child Welfare ~~field staff~~ (CW) and ~~case management staff in~~ Developmental Disabilities Services Division (DDSD) staff work together in identifying and developing the best long-term plan for a ~~DHS temporary or permanent custody~~ child ~~with a developmental disability~~ in Oklahoma Department of Human Services (OKDHS) custody who has mental retardation. Permanency planning begins immediately after a child enters ~~DHS~~ OKDHS custody, per OAC 340:75-6-31, and continues until the child returns home or an appropriate permanent plan is achieved.

(b) When a child in ~~DHS~~ OKDHS custody reaches ~~the~~ age ~~of~~ 16, the CW worker and ~~the~~ DDSD case manager review the permanency plan for transition to adulthood and complete a guardianship assessment in accordance with OAC 340:100-3-1. If guardianship is determined ~~to be~~ appropriate for a child who is transitioning from ~~DHS~~ OKDHS custody to independence, the CW worker coordinates with DDSD to identify and establish a guardianship relationship for the child.

340:75-8-40. Accessing DDSD services for a ~~custody~~ child with a developmental disability

(a) An array of services, support options, and placement settings, designed to meet individual needs exist for a child in Oklahoma Department of Human Services (~~DHS~~ OKDHS) custody ~~child~~ who has a developmental disability. ~~In accordance with the Developmental Disabilities Services Division (DDSD) mission~~ Per OAC 340:75-8-36, the child ~~lives~~ may live with a family or in another community-based setting while receiving Developmental Disabilities Services Division (DDSD) services.

(1) The Child Welfare (CW) county of jurisdiction worker pursues all appropriate placement resources for a child in OKDHS custody consistent with OAC 340:75-6-40.

(~~1~~2) ~~Home or~~ Home and Community-Based Waiver ~~services~~ Services, ~~as~~ arranged by DDSD staff, are available to meet the child's identified needs and ~~can~~ may be provided in most placement settings.

(~~2~~3) Early identification, expedient application, and joint planning between ~~Child Welfare (~~CW~~)~~ and DDSD staff, and timely service delivery, ~~as described in this Subchapter~~ per Part 2 of OAC 340:75-8, facilitate appropriate referrals and service plan development for a ~~custody~~ child with a developmental disability.

(b) When a ~~custody~~ child's needs can no longer be met in less restrictive forms of care, such as own home, relative home, adoptive home, or any type of foster family care, the child is assessed and referred for grand staffing.

(c) The grand staffing process is a monthly meeting conducted by DDSD and Children and Family Services Division (CFSD) to review, assess, and determine service and placement needs for ~~difficult to serve custody~~ children who present significant challenges that prevent services in a family setting.

(1) The DDSD case manager or the CW worker makes a referral for grand staffing.

(~~1~~2) Children staffed in grand staffing:

(A) require:

(i) 24-hour supervision by trained staff;

(ii) professional crisis management; and

(iii) intensive support services to establish and maintain life in a community-based setting~~.~~; and

(~~2~~B) ~~Children staffed in grand staffing~~ have ongoing severe and persistent emotional and behavioral disturbances.

(3) Children in emergency shelter settings are grand staffed when DDSD area staff or CW ~~field~~ staff are unable

to identify appropriate placement or service resources. The CW county of jurisdiction worker immediately requests a grand staffing for any child in an OKDHS operated emergency shelter who meets or is suspected to meet DDSD eligibility criteria.

(4) Referrals to provider agencies for residential service options are initiated through grand staffing.

(d) The DDSD programs manager or designee for Residential Services must authorize all pre-placement visits and all placements of children in OKDHS custody with any DDSD contracted provider.

SUBCHAPTER 11. CHILD WELFARE COMMUNITY-BASED RESIDENTIAL CARE

PART 17. CONTRACTED COMMUNITY-BASED RESIDENTIAL CARE PROVIDERS

340:75-11-230. Purpose, legal base, and definitions

(a) **Purpose.**

(1) The ~~purpose of the~~ Community-Based Residential Care (CBRC) ~~Program is to serve~~ program serves children in Oklahoma Department of Human Services ~~(DHS)~~ (OKDHS) custody ~~children who require a non-family level of care for out of home placement. CBRC placements are designed to meet the treatment needs of custody children~~ whose treatment needs cannot be met in a family setting but whose treatment needs do not require inpatient psychiatric care.

(2) ~~The Department~~ OKDHS contracts for different levels of care of CBRC placements that vary according to the level of restriction and intensity of treatment in order to meet the different treatment needs of ~~custody~~ children. ~~Each level of care of CBRC placement is described in the rules in this Subchapter.~~

(b) **Legal base.**

(1) Section 7004-1.1 of Title 10 of the Oklahoma Statutes (10 O.S. § 7004-1.1) requires OKDHS review and assess each child in OKDHS custody to determine the type of placement consistent with the child's treatment needs in the nearest geographical proximity to the child's home.

(2) 10 O.S. § 7004-2.1 requires OKDHS take all necessary steps, subject to the availability of funds, to develop and implement a diversity of community-based residential care, as needed, to provide for adequate and appropriate community-based treatment or rehabilitation of each child in a:

(A) foster home;

(B) group home;

(C) community residential center; or

(D) non-secure facility consistent with the child's individualized treatment needs and, when possible, in or near the child's home community.

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

(1) **"Absent without leave (AWOL)"** means the child in OKDHS custody is not present in a placement, such as foster care, therapeutic foster care, group home, or specialized community home, and does not have permission to be absent.

(2) **"Group home"** means a residential facility housing no more than 12 children who are supervised by adults other than their parents or relatives.

(3) **"Intensive treatment services (ITS)"** means a contracted eight-bed program that provides 72-hour crisis intervention services for children in OKDHS custody to prevent inpatient admission.

340:75-11-231. Legal base and authority [REVOKED]

~~The rules in this Subchapter are issued in compliance with Section 7004-1.1 of Title 10 of the Oklahoma Statutes, which mandates the Department to review and assess each child in the Department's custody to determine the type of placement consistent with the treatment needs of the child in the nearest geographical proximity to the home of the child; and Section 7004-2.1 of Title 10 of the Oklahoma Statutes which mandates the Department to take all necessary steps to develop and implement a diversity of community-based residential care as needed to provide for adequate and appropriate community-based care, treatment or rehabilitation of children in the Department's custody. Community-based care is in a foster home, group home, community residential center or similar non-secure facility consistent with the individualized treatment needs of the child and provided, whenever possible, in or near the child's home community.~~

340:75-11-232. Definitions [REVOKED]

~~The following words and terms, when used in this Subchapter, have the following meaning, unless the context clearly indicates otherwise.~~

~~**"AWOL"** means absent without leave.~~

~~**"Group Home"** means a residential facility housing no more than 12 children.~~

~~**"ITS"** means Intensive Treatment Services.~~

~~**"Institution"** means a residential facility offering care and treatment for more than 20 residents.~~

~~**"Residential child care center"** means a 24 hours a day residential group care facility at which a specified number of children, normally unrelated, reside with adults other than their parents.~~

~~**"Residential D & E"** means residential diagnosis and evaluation.~~

~~**"SCH"** means a Specialized Community Home.~~

340:75-11-233. Placement of ~~custody~~ children into more restrictive community-based residential care placements

(a) ~~Child Welfare (CW) is required by~~ Section 7004-1.1 of Title 10 of the Oklahoma Statutes ~~to serve custody~~ requires children in Oklahoma Department of Human Services (OKDHS) custody be served in the least restrictive setting that meets the treatment needs of ~~the~~ each child in the closest geographic proximity to the child's home, per OAC 340:75-6-85.

(b) Community-based residential care (CBRC) placements are more restrictive placement settings than ~~placement in~~ the child's own home, ~~a~~ relative's home, or ~~any kind of~~ foster family care ~~setting~~. ~~Because CBRC placements are more restrictive placements for custody children, the~~ The request ~~for a custody child to be placed,~~ and ~~the~~ referral for the placement of a ~~custody~~ child~~,~~ in OKDHS custody in a CBRC placement ~~setting~~ is made through ~~the Department of Human Services Division of~~ Children and Family Services ~~(DCFS)~~ Division (CFSD) Placement Section.

(c) Children younger than ten years of age in OKDHS custody are not placed in CBRC placements, except when maintaining sibling groups together in non-funded and funded Level B and non-funded Level C CBRC placements.

(~~c~~d) A ~~custody~~ child ~~placed~~ in OKDHS custody residing in a CBRC placement on his or her 18th birthday may receive voluntary care in his or her CBRC placement after age 18 per OAC ~~340:75-7-45~~ 340:75-6-115.9.

(~~d~~e) The child's primary case assignment remains in the county of jurisdiction.

(~~e~~f) CBRC placements must ~~meet the general requirements listed in (1) - (7) of this subsection.~~:

(1) ~~A CW custody child is not placed into a CBRC placement unless the placement is~~ be licensed by ~~DHS~~ OKDHS, or another approved licensing body, and ~~is~~ are either operated by, or under formal contract with ~~DHS.~~ OKDHS; and ~~DHS operates two group homes, contracts with public and private licensed child placing agencies or licensed residential child care facilities, and private individuals for CBRC to broaden the continuum of CBRC placement alternatives for custody children.~~

(2) ~~The goal of all DHS operated and contracted CBRC placements is to~~ provide appropriate treatment interventions for ~~custody~~ children that improve the level of functioning of ~~custody~~ children, resulting in a successful discharge to a less restrictive placement, such as own home, relative home, foster family home, adoptive home, or independent living. ~~A custody child's length of stay in a CBRC placement is as brief as is required to accomplish this successful discharge.~~

~~(3) A CW custody child is not placed in a residential facility prior to adjudication as a deprived child except when it is in the child's best interest and necessary to assure the child's safety. When it is in the child's best interest and necessary to assure the child's safety, a child in emergency custody of the Department may be placed in the more restrictive setting provided in a residential facility with the prior approval of the court.~~

~~(4) Children in the custody of the Department are not placed in institutions operated by the Department.~~

~~(5) Children in the custody of the Department, under ten years of age, are not placed in institutions, except in situations of maintaining sibling groups together in a Level B community-based residential care placement.~~

~~(6) Multiple CBRC placements of a custody child are avoided to achieve placement stability.~~

~~(7) CBRC placements are provided, whenever possible, in small, non-secure, homelike, community-based facilities of 12 beds or less, and not in larger, self contained units, to assure that the children in placement are involved in community activities. Private providers under contract with DHS are encouraged to develop small, homelike, community-based programs in place of large group residential facilities.~~

(g) Sufficient CBRC placements are subject to the availability of funds in the OKDHS budget. CFSD Placement Section maintains the waiting list for children requiring CBRC placements.

340:75-11-233.1. Placement ~~Services~~ services

(a) The purpose of Children and Family Services Division (CFSD) Placement ~~Services~~ Section is to:

(1) ensure that ~~custody~~ children in Oklahoma Department of Human Services (OKDHS) custody are placed in the least restrictive community-based residential care (CBRC) placement that most appropriately meets their treatment needs~~,~~;

(2) ~~to~~ ensure equal access to CBRC placement resources by ~~custody~~ children in OKDHS custody statewide~~,~~; and

(3) ~~to~~ maintain the waiting list of ~~custody~~ children in OKDHS custody who need CBRC placements when the need for CBRC placements exceeds the availability of CBRC placements.

(b) In order to respond expediently to the volume of placement requests for ~~custody~~ children ~~in an expedient manner~~, the Placement ~~Services processes placement requests for the placement of custody children according to (1) through (8) of this subsection.~~ Section:

(1) ~~Placement Services~~ completes a daily review of children's cases received in the ~~Division of Children and Family Services (DCFS) Resource~~ CFSD Residential, Placement, and Behavioral Health Services Unit KIDS In-box~~.~~;

(2) ~~Placement Services~~ assesses each placement request and notifies the Child Welfare (CW) county of jurisdiction worker and supervisor of secondary case assignment to the Placement ~~Services.~~ Section;

(3) ~~Placement Services~~ completes a daily review of the facility bed vacancy reports submitted ~~to Placement Services~~ daily by CW contract liaisons and CBRC ~~facilities.~~ providers;

(4) ~~As~~ as beds in CBRC facilities become vacant, ~~Placement Services~~ evaluates the treatment and behavioral needs of children on the waiting list and identifies

each child for referral to the appropriate CBRC placement vacancy~~.~~;

(5) ~~When Placement Services identifies~~ when an appropriate CBRC facility ~~for placement~~ is identified, ~~Placement Services~~ makes the referral for placement to the CW worker assigned as the liaison to the designated CBRC facility~~. Placement Services~~ and notifies the child's CW county of jurisdiction worker and supervisor of the referral, and, when requested, the county director and ~~Child Welfare~~ CW field liaison (CWFL)~~.~~;

(6) ~~Placement Services~~ documents, on ~~the placement authorization~~ KIDS Placement Authorization screen, information used in reaching the placement recommendation and documents compliance with applicable laws and policies~~.~~;

(7) ~~Placement Services~~ end-dates the secondary case assignment and completes documentation related to the placement episode when notified by the contract liaison that the child is placed~~.~~; and ~~Documentation of the placement episode is maintained in the working placement case.~~

(8) ~~Placement Services~~ maintains a working placement case ~~file~~ record until the end of the year the ~~custody~~ child reaches majority. ~~The working placement case file is available to DCFS Independent Living (IL) program staff for children who receive IL services past majority.~~

(c) Placement of ~~custody~~ children prior to adjudication only occurs as ~~defined~~ described in OAC 340:75-11-233~~(e)(3)~~.

(d) Placement of ~~custody children~~ a child in an acute psychiatric ~~facilities~~ facility or a psychiatric residential treatment ~~centers~~ center (RTC) is made by the CW county of jurisdiction worker following the ~~gatekeeping~~ Oklahoma Foundation for Medical Quality (OFMQ) referral process and ~~the civil~~ commitment process defined in OAC ~~Chapter 75, Subchapter~~ 340:75-16.

(1) The Placement ~~Services~~ Section provides consultation to the ~~custody~~ child's CW county of jurisdiction worker and supervisor regarding the identification of appropriate placement resources for a child ~~being~~ discharged from inpatient psychiatric care.

(2) Discharge planning and the identification of an appropriate placement following discharge from inpatient psychiatric care begins when the ~~custody~~ child enters inpatient psychiatric care or immediately following ~~civil~~ commitment for monitoring purposes.

(e) A ~~custody~~ child who is ~~also~~ adjudicated ~~as~~ deprived and in need of supervision (INS) or delinquent is placed ~~according to guidelines (1) and (2) of this subsection~~ in accordance with OAC 340:75-6-46.

~~(1) When a DHS custody child is also adjudicated as in need of supervision (INS) or delinquent but custody is not granted to the Office of Juvenile Affairs (OJA), DHS retains responsibility for placement of the child.~~

~~(2) When a DHS custody child is also adjudicated INS or delinquent and placed in the custody of OJA, OJA is responsible for placement and services to the child.~~

340:75-11-234. ~~Contracting for community-based~~ Community-based residential care ~~placements~~ placement contracts

(a) Contracts for the provision of community-based residential care (CBRC) placements are issued according to ~~the~~ rules and procedures found in OAC 340:2-13-10 through 340:2-13-14.18, established by statutory requirements found in Section 85.1 et seq. of Title 74 of the Oklahoma Statutes.

(b) Contracts are monitored on-site at least annually in order to ensure:

(1) the contractor's compliance with all contract terms;

(2) services provided are in compliance with contract terms; and

(3) clients receive the maximum benefit from the contractual services, per OAC 340:2-13-14.14.

340:75-11-235. Monitoring of contracts [REVOKED]

~~Contracts are monitored on-site at least annually in order to assure the contractor's compliance with all contract terms, to assure that services provided are in compliance with contract terms, and to assure that clients receive the maximum benefit from the contractual services per OAC 340:2-13-14.14.~~

340:75-11-236. Contract liaisons

A Child Welfare (CW) worker, in the county where the contracted community-based residential care (CBRC) ~~provider~~ facility is located, is assigned to each CBRC contract as the liaison to the contractor. Duties of the contract liaison are ~~described~~ in ~~the rules for each~~ accordance with the type of CBRC provider ~~in this Subchapter~~ per OAC 340:75-11.

340:75-11-237. Rights of ~~custody~~ children in community-based residential care ~~placements~~

(a) All community-based residential care (CBRC) programs, whether operated by ~~the~~ Oklahoma Department of Human Services ~~(DHS)~~ (OKDHS) or under contract with ~~DHS~~ OKDHS, must comply with ~~Section~~ Sections 7004-3.2 and ~~Section~~ 7004-3.3 of Title 10 of the Oklahoma Statutes.

(1) A child:

(A) is not punished by:

(i) physical force~~,~~;

(ii) deprivation of nutritious meals~~,~~;

(iii) deprivation of family visits; or

(iv) solitary confinement~~.~~;

(~~2~~B) ~~A child~~ has the opportunity to participate in physical exercise daily~~.~~;

(~~3~~C) ~~A child~~ is allowed daily access to showers and his or her own clothing or individualized clothing that is clean~~.~~;

(~~4~~D) ~~A child~~ has constant access to writing material and is allowed to send mail without limitation, censorship, or prior reading~~.~~;

(~~5~~E) ~~A child~~ is allowed to receive mail without prior reading, except that mail may be opened in the presence of the child, without being read, to inspect for contraband~~.~~;

(~~6~~F) ~~A child~~ has reasonable opportunity to communicate and to visit with his or her family on a regular basis and to communicate with persons in the community~~.~~;

(~~7~~G) ~~A child~~ has immediate access to medical care as needed and receives necessary psychological and psychiatric services~~.~~;

(~~8~~H) ~~A child~~ is provided access to educational programs, including teaching, educational materials, and books~~, which~~ that emphasize reading, writing, mathematics, science, vocational-technical education, and other sources of instruction~~.~~;

(~~9~~I) ~~A child~~ has reasonable access to an attorney upon request in addition to the mandated contact~~.~~, ~~[~~per OAC 340:75-6-48.1~~]~~; and

(~~10~~J) ~~A child~~ has access to ~~a~~ grievance ~~procedure~~ procedures per OAC 340:2-3-45 through 340:2-3-49.

(~~11~~2) A child's mental health needs and mental well-being are met, protected, and served through the provision of guidance, counseling, and treatment programs staffed by competent, professionally qualified persons, serving under the supervision of a ~~qualified~~ licensed mental health professional.

(~~12~~3) The use of mechanical restraints and ~~the use of~~ medication for behavior management are prohibited in ~~DHS~~ OKDHS operated and ~~in DHS~~ contracted programs. The use of physical force is permitted when it is necessary for the protection of the child or others consistent with an approved passive physical restraint curriculum. The passive physical ~~restraints~~ restraint curriculum includes:

(A) graded alternatives using a combination of psychological and physical techniques with emphasis toward:

(i) the reduction of injury;

(ii) de-escalation of the situation; and

(iii) elimination of abuse to persons with acting out behavior; and

(B) ~~the~~ physical contact aspects ~~of the system are~~ utilized only when the child's behavior poses an immediate danger or threat of danger to self or others and other methods have been exhausted.

(~~13~~4) CBRC placements providing care and treatment for ~~DHS custody~~ children in OKDHS custody are not ~~to be~~ locked for the purpose of deprivation of liberty or for disciplinary purposes. CBRC placements may be locked for the purpose of security from external forces.

(b) The child's visitation with family is not contingent upon the child's behavior and family visitation is not denied as a consequence for acting out behavior.

(c) Denial of visitation, mail, or ~~telephone~~ phone contact with family members ~~exists~~ occurs only by order of the court, when it is determined visitation, mail, or ~~telephone~~ phone contact with a specifically identified family member is not in the child's best ~~interest of the child.~~ interests, per ~~[~~OAC 340:75-6-30~~]~~.

340:75-11-238. Child Welfare ~~(CW)~~ county of jurisdiction worker's general responsibilities for ~~custody~~ children placed in community-based residential care ~~(CBRC) placements~~

~~(a)~~ The ~~CW~~ Child Welfare county of jurisdiction worker has general responsibilities for ~~custody~~ children in Oklahoma Department of Human Services custody placed in any CBRC placement.

~~(b) The CW county of jurisdiction worker has additional responsibilities for custody children placed in a specific level of care CBRC placements defined in this Subchapter.~~

340:75-11-239. Contract liaison's general responsibilities for ~~all custody~~ children placed in community-based residential care ~~(CBRC) placements~~ and ~~for all~~ CBRC placement providers

~~(a)~~ Contract liaisons have general responsibilities for ~~custody~~ children in Oklahoma Department of Human Services Division custody placed in community-based residential care (CBRC) placements and for all CBRC placement providers.

~~(b) Contract liaisons have additional responsibilities for custody children placed in specific level of care CBRC placements and specific level of care CBRC placement providers defined in this Subchapter.~~

340:75-11-240. General requirements for ~~all~~ contracted community-based residential care ~~(CBRC)~~ placement providers

All contracted community-based residential care (CBRC) providers ~~described in this Subchapter~~ must:

(1) maintain a written case record on each child that documents all services provided or obtained for the child while in placement;

(2) implement and review an individualized treatment plan for each ~~custody~~ child in placement, with documented input of the child's Child Welfare (CW) county of jurisdiction worker, according to the ~~guidelines defined~~ requirements set forth in the Oklahoma Department of Human Services (OKDHS) contract;

(3) assume responsibility for basic needs maintenance of each child placed;

(4) accept responsibility for a reasonable knowledge of the child's whereabouts at all times.

(A) ~~In the event~~ When a child:

(i) is removed by anyone without authorization~~,~~;

(ii) is taken into custody by law enforcement officials~~,~~;

(iii) runs away; or

(iv) otherwise cannot be accounted for, the ~~contractors notify~~ provider notifies by phone the:

(I) CW county of jurisdiction worker~~,~~;

(II) liaison; and

(III) police ~~by telephone~~.

(B) ~~and submit~~ The provider submits a written report to the child's CW county of jurisdiction worker describing the circumstances surrounding the incident and ~~file~~ files a copy in the child's case record;

(5) ensure that the child timely receives all needed routine, specialized, and emergency medical care ~~in a timely manner~~ provided by a medical provider who accepts Medicaid payment.

(A) Prior consultation and consent from ~~DHS~~ OKDHS and the child's ~~parents~~ parent(s), if ~~appropriate~~ applicable, are required for:

(i) emergency medical care. ~~If~~ When appropriate ~~DHS~~ OKDHS staff cannot be located and the situation is life-threatening, the ~~contractor has the authorization to obtain~~ provider obtains emergency care and treatment ~~but is to notify DHS~~ and notifies OKDHS at the earliest possible time~~.~~; and

(ii) ~~Prior consultation and consent from DHS and the child's parents, if appropriate, is required for~~ any extraordinary medical procedure, such as surgery and invasive procedures.

(B) Prior consultation and consent from ~~DHS~~ OKDHS and the child's ~~parents~~ parent(s), if applicable, is not required for ordinary medical care. Provision of all medical or dental care is documented in the ~~contractor's~~ provider's case record, including notification and attempts of notification in emergency situations;

(6) notify the CW county of jurisdiction worker and the contract liaison of any accidental or non-accidental injuries sustained by the child;

(7) ensure that the religious and cultural observations of the child comply with OAC ~~340:75-7-39~~ 340:75-6-49.

(A) ~~Arrange~~ The provider arranges transportation to the nearest place of worship of the child's choice. On-site voluntary religious services are acceptable.

(B) Exceptions to this requirement are made for non-funded contracts with faith-based ~~community-based residential care placement~~ CBRC providers that require the child's and ~~parent's~~ parent(s)' agreement for the child to attend a specific ~~church~~ place of worship as a requirement for admission;

(8) develop and implement written policy and procedures regarding each child's access to legal counsel, court-appointed special advocate (CASA) ~~worker~~, ~~the Department of Human Services (DHS)~~ OKDHS staff, ~~telephone~~ phone, mail, and visitation, ~~in compliance with~~ per OAC 340:75-11-237 and 340:75-6-30;

(9) develop and implement written policy and ~~procedure~~ procedures regarding securing and safeguarding each child's property and funds, the disbursement of allowances, and ~~guidelines regarding~~ items allowed ~~to be brought~~ and not allowed into the placement ~~and those not allowed~~;

(10) ensure each ~~custody~~ child is discharged with all ~~of his or her clothing and~~ personal items and clothing;

(11) obtain prior approval from the CW county of jurisdiction worker any time the child travels overnight outside of the county of placement ~~or outside the state~~ per OAC 340:75-6-89;

(12) develop and implement written policy and ~~procedure~~ procedures defining situations in which any ~~individual~~ person, other than family members previously approved by the CW county of jurisdiction worker, may take the child away from the placement on a day pass, not to exceed six hours, without supervision of the ~~placement~~ provider. The ~~contractor's policy and procedures comply with the requirements in (A) - (C) of this paragraph.~~ provider:

(A) ~~The contractor~~ does not allow a child any overnight visitation, except with peers per OAC ~~340:75-7-66(b)~~ 340:75-7-37, without ~~the~~ prior planning and documented written approval of the child's CW county of jurisdiction worker. A home study is:

(i) completed on the overnight visitation resource, either by a CW worker in the county where the ~~overnight visitation~~ resource is located or by the ~~provider~~ contractor if the ~~provider~~ contractor is a licensed child-placing agency~~,~~; and

(ii) ~~the home study is~~ approved by the CW county of jurisdiction worker and supervisor prior to the child's overnight visitation~~.~~;

(B) ~~The contractor~~ does not secure any placement without ~~the~~ prior planning and documented written approval of the CW county of jurisdiction worker~~.~~; and

(C) ~~If the contractor utilizes~~ when utilizing volunteers, ensures the ~~contractor's~~ provider's policy for approval and utilization of volunteers complies with ~~the CW requirements for approval and utilization of volunteers~~ OAC 340:2-35-4;

(13) develop and implement written policy and procedures that prohibit the utilization of ~~custody~~ children for ~~advertising~~ commercial purposes;

(14) submit written reports to the child's CW county of jurisdiction worker describing the child's stay in placement, progress toward meeting identified treatment goals, education, and medical care on a quarterly basis, or more frequently if requested for court hearings, and file a copy of the reports in the child's case record;

(15) develop and implement written policy and procedures for discipline that comply with ~~DHS discipline policy per~~ OAC 340:75-7-38, ~~DHS licensing standards, Section~~ and Sections 7004-3.2 and ~~Section~~ 7004-3.3 of Title 10 of the Oklahoma Statutes (10 O.S. § 7004-3.2 and 7004-3.3), ~~which prohibits~~ that prohibit the use of solitary confinement, separation programs, use of mechanical restraints, and administration of medicine as discipline.

(A) Room restriction may be utilized in the child's own room for a cooling off period not to exceed 60 minutes.

(B) The duration of the restriction is specified at the time of the assignment;

(16) ensure all employees are trained in an approved passive physical restraint curriculum ~~defined in~~ per OAC 340:75-11-237~~(12)~~;

(17) develop and implement written policy and procedures that require the contractor, and all employees of the contractor, having reason to believe any child in placement has been subjected to physical abuse, ~~or~~ neglect, or both, to report the matter to the ~~DHS~~ OKDHS Office of Client Advocacy ~~or the Child Abuse Hotline after hours~~ and ~~if an emergency exists~~ the child abuse hotline.

(A) The ~~contractor~~ provider makes the report to the Office of Client Advocacy the same day of the incident or the next working day if an incident occurs evenings, weekends, or holidays.

(B) Failure to report is a misdemeanor offense and upon conviction punishable by law per ~~Section~~ 10 O.S. § 7103 ~~of Title 10 of the Oklahoma Statutes~~;

(18) develop and implement written policy that prohibits:

(A) possession of or ~~the~~ use of tobacco and tobacco products by children in placement~~,~~; and

(B) ~~prohibits the~~ use of tobacco or tobacco products by ~~contractor~~ the provider, ~~or~~ employees of the ~~contractor~~ provider, or visitors in the presence of children in placement, and designates clearly marked smoking areas ~~for the contractor, employees of contractor and visitors~~ outside of the children's placement and treatment areas;

(19) develop and implement written policy ~~for a system~~ for the resolution of grievances by recipients of the services provided under the contract regarding the substance or application of any written or unwritten policy or rule of the contractor, or any decision, act, or omission of the contractor, or employees or agents of the contractor. The contractor:

(A) ~~The~~ utilizes a grievance system ~~used by the contractor complies~~ in compliance with OAC 340:2-3-45 through 340:2-3-47 and 340:2-3-61 through 340:2-3-64~~.~~; and

(B) ~~The contractor~~ submits ~~its~~ policy regarding the resolution of grievances, and any subsequent revisions ~~to its policy~~, ~~for the resolution of grievances~~ to the ~~DHS~~ Office of Client Advocacy for approval prior to the placement of any ~~children~~ child, per OAC 340:2-3-45~~(d)(2)~~;

(20) develop and implement written policy and procedures in ~~accord~~ accordance with ~~DHS Communicable Disease Policy. [~~OAC 340:75-1-120~~] The contractor's policy requires the use of universal precautions and infection control procedures and addresses issues in regard to HIV serologically positive children~~;

(21) develop and implement written policy and procedures that certify compliance in providing or continuing to provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988;

(22) develop and implement written policy and procedures to maintain strict standards of confidentiality ~~with regard to the~~ regarding children in placement in compliance with ~~DHS~~ OKDHS requirements regarding the absolute protection, use ~~of~~, and release of personal client information consistent with ~~Section~~ 10 O.S. § 7005-1.4 ~~of Title 10 of the Oklahoma Statutes~~ and OAC 340:75-1-42 through 340:75-1-46, and professional standards. ~~Contractor~~ The contractor agrees to hold confidential all personal information about ~~clients~~ children served ~~under the contract~~, including lists of names, addresses, photographs, records of evaluation, and all other records about ~~the client~~ each child;

(23) submit monthly and annual reports to the ~~Division of~~ Children and Family Services ~~(DCFS)~~ Division (CFSD) CBRC programs manager to provide an overview of the ~~contractor's~~ provider's activities.

(A) The monthly report includes:

(i) information on each child's progress toward goals and objectives;

(ii) significant behavior events, including descriptions of delinquent acts committed ~~by custody children~~ and the legal and judicial consequences of the delinquent acts committed by ~~custody children~~ each child;

(iii) ~~AWOLs~~ each child's absent without leave (AWOL) days;

(iv) total bed days utilized;

(v) each child's leave days utilized;

(vi) total number of ~~custody~~ children served during the month, the number of ~~custody~~ children served ~~that~~ who are also adjudicated delinquent, and the total number of ~~custody~~ children served ~~that~~ who are adjudicated delinquent and in the custody of ~~the~~ Office of Juvenile Affairs;

(vii) number of ~~custody~~ children admitted during the month;

(viii) number of ~~custody~~ children discharged during the month and the reasons for those discharges; and

(ix) vacancies in contract mandated staffing requirements, and other significant program events.

(B) The annual report, due within 60 days after the end of the contract year, includes the information listed in ~~(i) through (ix) above~~ OAC 340:75-11-240 (23)(A) for the ~~total~~ contract year;

(24) plan and coordinate each child's discharge with the child's CW county of jurisdiction worker and provide a minimum of 48 hours notice to discharge, except in medical or psychiatric emergency situations. Contractor's recommendation for discharge is approved by the child's CW county of jurisdiction worker prior to the ~~contractor's~~ provider's implementation of the discharge plan;

(25) submit a written discharge summary to the child's CW county of jurisdiction worker within 30 days of discharge and file a copy in the child's case record~~.~~, ~~The discharge summary includes~~ including a summary of treatment services, child's progress on treatment goals, reason for discharge, and recommendations for future placements and services for the child's treatment needs;

(26) ensure all staff ~~complies~~ comply, as applicable, with the minimum licensing standards defined in the Division of Child ~~Care's~~ Care licensing standards for child-placing agencies or OKDHS Publication No. 86-78, Licensing Requirements for Residential Child Care Facilities, or ~~the DCFS rules for foster homes for specialized community home contractors~~ OAC 340:75-11-286;

(27) ensure all staff ~~complies~~ comply with the staffing requirements mandated in the ~~CBRC~~ contract that are in addition to the minimum staffing requirements ~~found~~ in ~~the Division of Child Care minimum licensing standards~~ OKDHS Publication No. 86-78.

(A) If the ~~contractor's~~ provider's actual staffing pattern differs from the ~~guidelines described~~ requirements set forth in the contract, the ~~contractor~~ provider submits a written plan to the ~~DCFS~~ CBRC programs manager that defines the proposed staffing pattern of the contractor and clearly illustrates how each of the staffing ~~guideline~~ functions are provided.

(B) The ~~contractor's~~ provider's proposed staffing pattern requires written approval of the ~~DCFS~~ CBRC programs manager prior to ~~the~~ implementation of the ~~contractor's~~ provider's proposed staffing pattern;

(28) fill vacant positions required by the OKDHS contract within 30 days of the position becoming vacant. The contractor notifies the ~~DCFS~~ CBRC programs manager in writing:

(A) when contractually required positions are vacant ~~when the position is expected to be filled, steps taken by the contractor to fill the position, and when the position is filled~~;

(B) of updates during the selection process; and

(C) of the effective hiring date for these positions;

(29) develop and implement written policy regarding corrective discipline procedures for employees;

(30) notify the ~~DCFS~~ CBRC programs manager immediately by ~~telephone~~ phone, and in writing within two working days, of any critical incidents that may have grave consequences~~.~~, ~~Examples of critical incidents are~~ such as:

(A) the death of a child or employee caused by murder, suicide, or ~~an~~ accident;

(B) severe injury to a child~~; severe~~ as a result of abuse, neglect, or ~~mistreatment of a child~~ maltreatment by a service provider, employee, or another child;

(C) misappropriation of state or federal funds by an employee of a private or public service agency that receives these funds;

(D) a violent crime committed by a child against another ~~individual~~ person; or

(E) any event that occurs in the facility that ~~has gained~~ gains or is likely to gain media attention;

(31) if ~~a residential contractor~~ required by terms of the OKDHS contract to provide an on-site educational program, provide 60-day notice to the local school board prior to the opening of the facility per ~~Section~~ 70 O.S. § 1-113 ~~(F)(2) of Title 70 of the Oklahoma Statutes~~; and

(32) maintain a current Life Book, in a format separate from the provider's case record, for each ~~custody~~ child placed, regardless of the child's age, that documents the child's stay in care and provides continuity throughout the child's life, per OAC 340:75-7-37 ~~and 340:75-7-46(a)(5)~~. The provider:

(A) ~~If no~~ when the child's Life Book is not provided ~~for the child~~ by the CW county of jurisdiction worker, ~~the contractor maintains~~ initiates and ~~keeps~~ maintains a Life Book with current information about the child while in placement~~. The information includes~~ including, but ~~is~~ not limited to~~,~~:

(i) placement name and address~~,~~;

(ii) date of admission and ~~date of~~ discharge~~,~~;

(iii) educational history~~,~~;

(iv) medical history~~,~~;

(v) awards and achievements~~,~~;

(vi) photographs~~,~~; and

(vii) family information~~.~~; and

(B) ~~The contractor maintains this information in a format that is separate from the contractor's case record and~~ gives ~~this information~~ the Life Book to the child and ~~to the~~ CW county of jurisdiction worker when the child is discharged.

PART 19. RESIDENTIAL DIAGNOSTIC AND EVALUATION SERVICES

340:75-11-250. Contracted residential diagnostic and evaluation services

(a) A residential diagnostic and evaluation facility that offers a 20-day admission program for children in Oklahoma Department of Human Services (OKDHS) custody, six to 18 years of age, is available to provide a comprehensive assessment of ~~Department of Human Services (DHS) custody children~~ each child admitted. The comprehensive evaluation includes:

(1) a psychological evaluation that addresses the child's:

(A) level of emotional development~~,~~;

(B) capacity for self-control ~~and~~;

(C) need for supervision~~,~~;

(D) specific therapy needs~~,~~; and

(E) risk to self, others, and the community;

(2) a family and social history evaluation;

(3) an educational evaluation;

(4) a substance abuse evaluation;

(5) a behavioral evaluation;

(6) a speech and hearing evaluation;

(7) a recreational evaluation; and

(8) a medical evaluation, including psychiatric ~~as~~ if appropriate.

(b) All evaluations are completed by professional staff who are licensed or credentialed in their respective professions. The contractor ~~may choose to either employ~~ employs such staff or ~~contract~~ contracts for professional services.

(c) The time frame for the completion of the comprehensive assessment of ~~custody children~~ the child is limited to calendar 20 days.

(1) Upon ~~client~~ the child's admission, an interdisciplinary staffing that includes the Child Welfare (CW) county of jurisdiction worker is scheduled to be held prior to the ~~twentieth~~ 20th day to produce the summary of treatment and placement recommendations.

(2) The ~~contractor~~ provider submits this summary and the individual evaluation reports to the child's CW county of jurisdiction worker and the contract liaison.

(d) Psychological or psychiatric intervention is available for children through direct contact with a psychologist or psychiatric consultant. Individual counseling or therapy is provided, as needed, for each child by the contractor's designated social work or counseling staff ~~making use of psychological or psychiatric case consultation~~.

~~(e) Recreation services are directed by a recreation therapist. Recreation is made available through a wide range of planned activities, both indoors and outdoors. Children have recreational activities on a daily basis.~~

(~~f~~e) The ~~contractor~~ provider:

(1) receives referrals of children from the contract liaison;

(2) considers the age, gender, and presenting behaviors of each child in determining which children share bedrooms to ensure the safety of all children;

(3) provides a ~~twelve~~ 12-month school on campus. Curriculum provided in the educational setting conforms ~~with~~ to the course of instruction approved by ~~the~~ Oklahoma State ~~Board~~ Department of Education. ~~Each child has training and education available to meet his or her abilities.~~ The contractor ~~assures~~ ensures that educational opportunities are available ~~which satisfy~~ that meet the child's special educational requirements~~.~~;

(~~g~~4) ~~After initial placement of a DHS custody child, the contractor~~ provides clothing, after initial placement of a child. Emergency funds for clothing may be accessed ~~as~~ per ~~Department policy~~ OAC 340:75-13-45~~.~~;

(~~h~~5) ~~The contractor's staff~~ provides 24-hour on-call and on-site crisis intervention and behavior management services to each child, as needed ~~to children~~. Emergency or crisis intervention services include face-to-face encounters with the child ~~of an emergency nature~~ to resolve acute emotional dysfunction by providing intervention resolution and stabilizing functions ~~of the individual. This includes~~ through triage screening, planning, and documentation~~.~~;

(6) provides recreation opportunities, directed by a recreation therapist, for each child on a daily basis through a wide range of planned activities, both indoors and outdoors;

(~~i~~7) ~~An~~ completes a written incident report ~~is written~~ describing any extreme behavioral incident or major rule violation and includes the contractor's response to the incident. The incident report is maintained in the child's case record and included in the ~~Behavioral Evaluation.~~ child's behavioral evaluation;

(~~j~~8) ~~Contracted residential diagnostic and evaluation centers meet~~ meets the staffing guidelines defined in the OKDHS contract~~.~~;

(~~k~~9) ~~The contractor~~ complies with children's rights per OAC 340:75-11-237~~.~~;

(~~l~~10) ~~The contractor~~ complies with all ~~generic~~ general requirements per OAC ~~340:75-11-238.~~ 340:75-11-240;

(~~m~~11) ~~The contractor~~ complies with ~~the Oklahoma Health Care Authority rules~~ Part 105 of OAC 317:30-5 for residential behavior management services in group settings and non-secure diagnostic and evaluation centers ~~per of OAC 317:30-5-1040 though 317:30-5-1047.~~;

(~~n~~12) ~~The contractor~~ is reimbursed by ~~DHS~~ OKDHS at a fixed daily rate. The fixed daily rate is a blend of Title IV-E and Title XIX federal funds, per eligibility of each child served, and state funds~~.~~; and

(13) ~~The contractor~~ submits Form DCYS-S-2, ~~DCFS~~ CFSD Claim for Purchase of Residential Care, for reimbursement to the ~~DCFS~~ Children and Family Services Division Administrative Services Unit.

340:75-11-251. Custody children served in contracted residential diagnostic and evaluation services [REVOKED]

~~(a) Custody children served are ages 6 to 18, male and female.~~

~~(b) Because the age range served varies by a span of 12 years and because both genders are served in one setting, the contractor considers the age, gender and presenting behaviors in determining which children share bedrooms to assure the safety of all custody children.~~

~~(c) The contractor receives referrals of custody children to receive residential diagnostic and evaluation services from the contract liaison.~~

340:75-11-252. Responsibilities of Child Welfare (CW) county of jurisdiction worker for custody children placed in contracted residential diagnostic and evaluation services [REVOKED]

~~The CW county of jurisdiction worker has responsibilities for custody children receiving contracted residential diagnostic and evaluation services.~~

340:75-11-253. Responsibilities of the liaison to contracted residential diagnostic and evaluation services [REVOKED]

~~The CW worker assigned as the liaison to contracted residential diagnostic and evaluation services has specific duties and responsibilities.~~

PART 21. RESIDENTIAL INTENSIVE TREATMENT SERVICES

340:75-11-265. Contracted residential intensive treatment services ~~(ITS)~~

(a) Contracted residential intensive treatment services (ITS) are available to provide crisis stabilization interventions to ~~custody~~ children in Oklahoma Department of Human Services (OKDHS) custody, eight to 18 years of age, who are experiencing a mental health or psychiatric crisis to prevent admission to psychiatric care ~~to~~ and enable the ~~child to~~ return to ~~his or her~~ a community-based placement.

(b) Children served by ITS are:

(1) seriously emotionally disturbed and at imminent risk of admission to acute psychiatric care or a psychiatric residential treatment center (RTC);

(2) seriously emotionally disturbed with development disabilities and certified for services through Developmental Disabilities Services Division (DDSD); or

(3) in need of crisis stabilization to avoid inpatient psychiatric treatment and maintain community-based placement.

(~~b~~c) Contracted residential ITS are ~~a package of~~ intensive, short-term, individualized mental health treatment services for ~~custody~~ children used as an alternative to admission to an inpatient acute psychiatric setting or ~~psychiatric residential treatment center.~~ RTC, and

~~(c)~~ ~~Contracted residential ITS~~ include:

(1) an initial ~~up to 72 hour~~ period, maximum of 72 hours, of crisis stabilization in a crisis residential bed provided by a licensed child-placing agency or a licensed residential child care facility;

(2) crisis stabilization mental health services, ~~as defined in Oklahoma Health Care Authority rules~~ per Part 105 of OAC 317:30-5~~-1040 through 317:30-5-1047~~, available 24 hours a day, seven days a week;

(3) 24 ~~hour~~ hours, seven days per week access by ~~telephone~~ phone to ~~the live voice of~~ an employee of the contractor so that referrals are made and services provided in emergency situations;

(4) development of a safety plan ~~to be implemented~~ for implementation by the child's placement provider upon discharge from ~~residential individualized therapeutic services~~ ITS;

(5) consultation with a psychiatrist or doctoral-level licensed mental health professional 24 hours a day, seven days per week; and

(6) 24-hour on-call and on-site crisis intervention and behavior management services with the child, as needed ~~to children~~. Emergency or crisis intervention services include face-to-face encounters with the child ~~of an emergency nature~~ to resolve acute emotional dysfunction by providing intervention resolution and stabilizing functions ~~of the individual. This includes~~ through triage screening, planning, and documentation.

~~(d)~~ ~~Contracted residential ITS are short-term crisis stabilization services for up to 72 hours.~~

(~~e~~d) The crisis residential beds are provided in a setting licensed as a ~~Child Placing Agency Group Home~~ child-placing agency group home or ~~Residential Child Care Facility~~ residential child care facility that is not located in:

(1) a residential facility already under contract with ~~the Department of Human Services (DHS)~~ OKDHS for the placement of ~~DHS custody~~ children in OKDHS custody;

(2) a residential facility already under contract with ~~the~~ Office of Juvenile Affairs (OJA) for the placement of ~~OJA custody~~ children in OJA custody;

(3) a hospital, either medical or psychiatric; or

(4) a psychiatric residential treatment center RTC.

(e) The provider:

(1) receives referrals of children from the contract liaison, CW workers, and Children and Family Services Division (CFSD) programs staff;

(2) considers the age, gender, and presenting behaviors of each child in determining which children share bedrooms to ensure the safety of all children;

(3) completes a written incident report describing any extreme behavioral incident or major rule violation, including the provider's response, submits the copy to the child's CW county of jurisdiction worker, and files the original in the child's case record;

(~~g~~4) ~~The contractor~~ meets the staffing guidelines defined in the contract~~.~~;

(~~h~~5) ~~The contractor~~ complies with children's rights per OAC 340:75-11-237~~.~~;

(~~i~~6) ~~The contractor~~ complies with all ~~generic~~ general requirements per OAC ~~340:75-11-238.~~ 340:75-11-240;

(~~j~~7) ~~The contractor~~ complies with ~~the Oklahoma Health Care Authority rules~~ Part 105 of OAC 317:30-5 for residential behavior management services in group settings and non-secure diagnostic and evaluation centers ~~per OAC 317:30-5-1040 though 317:30-5-1047.~~;

(~~k~~8) ~~The contractor~~ submits monthly and annual reports to the ~~Division of Children and Family Services (DCFS)~~ CFSD Community-Based Residential Care (CBRC) programs manager ~~for CBRC~~ to provide an overview of the contractor's activities.

(~~1~~A) The monthly report includes:

(~~A~~i) significant behavior events of each child;

(~~B~~ii) ~~AWOLs~~ each child's absent without leave (AWOL) days;

(~~C~~iii) total bed days utilized;

(~~D~~iv) total bed days not utilized;

(~~E~~v) total number of ~~custody~~ children served during the month;

(~~F~~vi) number of ~~custody~~ children served:

(I) who are also ~~Developmental Disabilities Services Division (DDSD)~~ certified for DDSD services;

(~~G~~II) ~~number of custody children served~~ by county of jurisdiction;

(~~H~~III) ~~number of custody children served~~ by age;

(~~I~~IV) ~~number of custody children served~~ by gender;

(~~J~~V) ~~number of custody children served~~ by ethnicity;

(~~K~~VI) ~~the number of clients served~~ who were admitted to psychiatric care;

(~~L~~VII) ~~the number of custody children~~ in placement for seven days or less and the average length of stay ~~of these custody children~~; and

(~~M~~VIII) ~~the number of custody children~~ in placement for more than seven days and the average length of stay ~~of these custody children~~; and

(~~N~~vii) vacancies in contract mandated staffing requirements~~,~~ and other significant program events.

(~~2~~B) The annual report, due within 60 days after the end of the contract year, includes the information listed in OAC 340:75-11-265(e)(8)(A) ~~through (N) of subparagraph (1)~~ for the total contract year~~.~~;

(~~1~~9) ~~The contractor~~ is reimbursed by ~~DHS~~ OKDHS at a fixed daily rate. The fixed daily rate is a blend of Title IV-E and Title XIX federal funds, per eligibility of each child served, and state funds~~.~~; and

(10) ~~The contractor submits~~ Form DCYS-S-2, ~~DCFS~~ CFSD Claim for Purchase of Residential Care, for reimbursement to ~~the DCFS~~ CFSD Administrative Services Unit.

340:75-11-266. Custody children served in contracted residential intensive treatment services (ITS) [REVOKED]

~~(a) Custody children served are ages 8 to 18, male and female who are:~~

~~(1) seriously emotionally disturbed and at imminent risk of admission to acute psychiatric care or residential psychiatric treatment;~~

~~(2) seriously emotionally disturbed with developmental disabilities, and are certified as eligible Developmental Disabilities Services clients; or~~

~~(3) in need of crisis stabilization to avoid inpatient psychiatric treatment and maintain community based placement.~~

~~(b) Because the age range served varies by a span of 10 years and because both genders are served in one setting, the contractor considers the age, gender and presenting behaviors in determining which children share bedrooms to assure the safety of all custody children.~~

~~(c) The contractor receives referrals of custody children for residential individualized therapeutic services from the contract liaison.~~

340:75-11-267. Responsibilities of Child Welfare (CW) county of jurisdiction worker for custody children placed in contracted residential intensive treatment services (ITS) [REVOKED]

~~The CW county of jurisdiction worker has responsibilities for custody children receiving contracted residential ITS.~~

340:75-11-268. Responsibilities of the liaison to contracted residential intensive treatment services (ITS) [REVOKED]

~~The Child Welfare (CW) worker assigned as the liaison to contracted residential ITS has specific duties and responsibilities.~~

PART 23. SPECIALIZED COMMUNITY HOMES

340:75-11-285. Definition [REVOKED]

~~A specialized community home (SCH) is a community-based residential care placement setting for four DHS custody children operated in the home of a contracted individual as a full-time endeavor. Each SCH contract serves a specifically defined target population of four custody children. The SCH contractor provides or obtains individually focused therapeutic interventions to meet the treatment needs of the specifically defined target population served. The SCH contractor provides or obtains counseling, educational opportunity, employment opportunity, cultural enrichment, and independent living skills training consistent with each custody child's treatment plan.~~

340:75-11-286. Requirements for specialized community home ~~(SCH)~~ contractors

(a) Each specialized community home (SCH) contractor serves a specially defined target population of four children in Oklahoma Department of Human Services (OKDHS) custody.

(1) Children served:

(A) vary by age, gender, and behaviors exhibited; and

(B) do not require 24-hour awake supervision.

(2) The contractor provides or obtains:

(A) individually focused therapeutic interventions to meet the treatment needs of these children; and

(B) educational and employment opportunities, cultural enrichment, and independent living skills consistent with each child's treatment plan.

(b) The SCH contractor must comply with:

(1) children's rights per OAC 340:75-11-237;

(2) all general requirements per OAC 340:75-11-240; and

(3) any other requirements in the OKDHS contract.

(~~a~~c) ~~**Department of Human Services (DHS) foster home requirements.**~~ The SCH ~~contractor first meets~~ applicant must meet the requirements for ~~DHS~~ OKDHS foster homes, ~~defined in this subsection prior to being eligible for a SCH contract~~ per OAC 340:75-7. ~~Applicants eligible for approval as a DHS foster home:~~

~~(1) may be single or married;~~

~~(2) are at least 21 years of age;~~

~~(3) are able to manage their income to meet their own financial needs without including the foster care reimbursement;~~

~~(4) are able to provide a safe and nurturing environment with sufficient and appropriate bedrooms to offer privacy for the additional four custody children;~~

~~(5) assure that all members of the household are in sufficiently good physical and mental health to provide for the four custody children placed in the SCH program;~~

~~(6) demonstrate the ability to understand, love, care for, and accept a child to whom they did not give birth;~~

~~(7) assure that no member of the household has a prior conviction of any sexual offense and consents to a national criminal history records search;~~

~~(8) provide references;~~

~~(9) complete required training;~~

~~(10) complete the mutual home assessment; and~~

~~(11) complete the continuous quality assessment of the home.~~

(~~b~~d) **~~Additional requirements for SCH contractors.~~** The SCH contractor ~~also meets~~ must meet the ~~additional~~ requirements ~~defined in this subsection~~ described in (1) through (4).

(1) Education and experience. The SCH contractor meets one of the education and experience qualifications listed in (A) ~~-~~through (D) ~~of this subsection:~~.

(A) A ~~Master's~~ Master or Doctor of Philosophy ~~Degree~~ in Social Work degree or other related area of study and one year direct experience working with children with comparable treatment needs to those requiring treatment in the SCH~~;~~.

(B) A ~~Bachelor's Degree~~ Bachelor in Social Work degree or other related area of study and two years direct experience working with children with comparable treatment needs to those requiring treatment in the SCH;

(C) An ~~Associate's Degree~~ Associate degree in a social service field and four years direct experience working with children with comparable treatment needs to those requiring treatment in the SCH; or

(D) A high school diploma or ~~its equivalent~~ General Educational Development (GED) and six years of direct experience working with children with comparable treatment needs to those requiring treatment in the SCH plus training hours pertinent to residential child care.

(2) Outside employment. The SCH contractor is not allowed other employment outside of the operation of the SCH contract and is not eligible for paid day care.

(3) Respite care ~~resource~~ provider. During the mutual family assessment process, the SCH contractor identifies a Child Welfare approved respite care ~~resource~~ provider to provide alternative care when the SCH ~~contractor~~ provider takes leave from his or her SCH contract responsibilities.

(A) The SCH contractor identifies the respite care ~~resource~~ provider at the time of the initial assessment ~~and not when there is an emergency placement need identified~~. ~~(B)~~ The respite care ~~resource~~ provider:

(i) must be at least 21 years of age~~.~~; and

(~~C~~ii) ~~The respite care resource~~ is not ~~a Department of Human Services (DHS)~~ an OKDHS foster parent, a ~~Division of~~ Children and Family Services ~~(DCFS) or~~ Division (CFSD), Child Welfare (CW) ~~employee~~, or ~~an employee of the~~ Office of Juvenile Affairs ~~because~~ employee, as the respite care ~~resource is required to~~ provider must be available on short notice ~~to step in if~~ when the contractor ~~has to~~ takes leave ~~for an extended period of time~~.

(~~D~~B) When the SCH contractor takes leave ~~from the program~~, he or she ~~has~~ selects one of the three options ~~which are~~ listed in (i) ~~-~~through (iii) ~~of this paragraph~~.

(i) The approved respite care ~~resource comes into~~ provider utilizes the SCH to provide alternate care. ~~If~~ Prior to approving the respite care ~~resource comes into the home of the SCH contractor to provide care~~ provider, the CW worker in the county where the SCH home is located:

(I) makes personal contact with~~,~~ the respite care provider and conducts a personal assessment of~~,~~ the ~~respite care resource~~ provider to determine his or her ability and willingness to provide alternate care;

(II) ~~and to discuss~~ discusses SCH policy, ~~procedures~~ per OAC 340:75-11-285 through 340:75-11-292, and ~~discipline~~ foster care policy, per OAC 340:75-7, with the respite care ~~resource.~~ provider;

(III) ~~The CW worker~~ contacts two references for ~~the identified respite care resource~~ and completes the background investigation of the respite care provider, including Oklahoma State Bureau of Investigation (OSBI) name search, OSBI records search, and Federal Bureau of Investigation (FBI) ~~national crime history~~ records search~~, including~~ and fingerprinting per OAC 340:75-7-15; and

(IV) ~~340:75-7-17. The~~ files the personal assessment of the respite care ~~resource is maintained~~ provider in the ~~file of the~~ SCH ~~contractor's foster home assessment;~~ resource record.

(ii) The children go to the home of the approved respite care ~~resource~~ provider for alternate care. ~~If the children go to the respite care resource's home, then the CW worker follows the rules in OAC 340:75-11-286(a) in order to approve the respite care resource; or~~

(iii) The children ~~may~~ go to their own homes or relative homes on planned leave approved by the CW county of jurisdiction workers.

(~~E~~C) The SCH ~~contractors are~~ contractor is:

(i) encouraged to take two weeks planned time away from the home each year~~.~~;

(~~F~~ii) ~~SCH contractors are~~ responsible for reimbursing the respite care ~~resource~~ provider from his or her salary~~.~~; and

(~~G~~iii) ~~The SCH contractor is~~ responsible for training ~~his or her own~~ the respite care ~~resource~~ provider.

(4) Mandatory training for SCH contractors. All SCH contractors ~~comply with the following training requirements.~~ must:

(A) ~~Prior~~ prior to placement of ~~custody~~ children in the home, ~~the SCH contractor is required to~~ complete

all training requirements for ~~DHS~~ OKDHS foster parents~~.~~, per OAC 340:75-7-14;

(B) ~~All SCH contractors and their spouses have to~~ be certified in a behavior management system directed at managing aggressive and non-aggressive acting out behavior described in OAC 340:75-11-237~~(12)~~. Spouses or significant others must also be certified;

(C) ~~SCH contractors are required to~~ obtain 21 hours of training ~~annually~~ each calendar year geared toward working with the ~~type of~~ children served in the SCH contract~~.~~;

(D) ~~SCH contractors are required to~~ attend the annual mandatory meetings for SCH contractors scheduled by ~~DCFS~~ CFSD that provide training hours~~.~~; and

(E) ~~SCH contractors are also required to~~ participate in other training curricula required of ~~all~~ OKDHS foster parents.

(~~e~~e) ~~Individuals with whom DCFS does not contract. DCFS~~ CFSD does not enter into SCH contracts with any ~~individual who is~~ person related, either directly or through marriage, to:

(1) an OJA employee ~~of the Office of Juvenile Affairs,~~;

(2) a ~~DCFS employee~~ CFSD or CW employee in the county where the SCH home ~~would be~~ is located; or

(3) ~~with a DHS~~ an OKDHS employee who ~~has~~ substantially influenced the funding of the contract.

340:75-11-287. ~~Responsibilities~~ Rights and responsibilities of the specialized community home ~~(SCH)~~ contractor

(a) Specialized community home (SCH) contractors have rights as Oklahoma Department of Human Services (OKDHS) foster parents, per OAC 340:2-3-50 and Section 7206.1 of Title 10 of the Oklahoma Statutes.

(b)The SCH contractor provides a full range of social services including:

(1) ~~provision of~~ direct social services to the child on an individual and group basis that focuses on the child's individual treatment goals;

(2) ~~utilization of~~ community resources for the child, such as outpatient mental health treatment;

(3) ~~assurance that the child's~~ educational and vocational ~~needs are met~~ services and ~~the provision of~~ tutoring, as needed, for the child;

(4) ~~provision of~~ skills training to prepare the child for employment and ~~to~~ facilitate job placement retention, as appropriate per the child's age;

(5) ~~provision of~~ crisis intervention on a 24-hour basis for each child;

(6) ~~provision of~~ recreational activities and opportunities for each child to pursue his or her talents, hobbies, and chosen interests;

(7) ~~provision of~~ adequate clothing and shoes for each child;

(8) ~~provision of~~ skills training in personal hygiene and grooming for each child;

(9) ~~assurance of~~ medical and dental care for each child within the scope of ~~the Department's~~ OKDHS policy and contract mandates;

(10) ~~provision of~~ proper food and nutrition for ~~the~~ each child;

(11) ~~provision of skills training for~~ independent living skills training for eligible youth;

(12) establishment and maintenance of ~~a~~ grievance ~~procedure~~ procedures for each child consistent with OAC 340:2-3-45 and 340:2-3-47;

(13) ~~providing~~ positive role modeling for the child;

(14) ~~arranging for~~ respite ~~resource~~ care per OAC 340:75-11-286~~(b)(3)~~;

(15) ~~providing~~ written house rules and an orientation process ~~to the~~ for each child upon initial placement; and

(16) ~~participating in~~ discharge planning and preparing ~~the~~ each child for discharge~~;~~.

~~(17) complying with children's rights per OAC 340:75-11-237;~~

~~(18) complying with all general requirements per OAC 340:75-11-238; and~~

~~(19) complying with any other requirements in the contract.~~

340:75-11-288. Rights of the specialized community home (SCH) contractor [REVOKED]

~~SCH contractors have rights as Department of Human Services (DHS) foster parents per OAC 340:75-7-36, 340:2-3-50, and Section 7206.1 of Title 10 of the Oklahoma Statutes.~~

340:75-11-289. Specialized community home ~~(SCH)~~ contract reimbursement

(a) **Monthly allotment.** Specialized community home (SCH) contractors are reimbursed at an annual fixed rate of reimbursement, paid in 12 equal monthly allotments. The SCH contractor submits a monthly claim for the monthly allotment on Form ~~F-S-220, Proforma Invoice~~ DCYS-S-2, CFSD Claim for Purchase of Residential Care, to ~~DCFS~~ Children and Family Services Division (CFSD) Administrative Services Unit on the first day of each month.

(b) **Boarding home reimbursement.** In addition to monthly allotment reimbursement, the SCH contractor is reimbursed at the ~~Department's standard~~ daily OKDHS foster care reimbursement rate, per actual number of days in each month, according to the child's age. The SCH contractor signs the Fixed Rate Foster Home Contract for Specialized Community Homes at the same time the SCH contract is initiated, and ~~then~~ on a yearly basis thereafter. If the new SCH contractor is already ~~a DHS~~ an OKDHS approved foster home, the Fixed Rate Foster Home Contract is cancelled and a new Fixed Rate Foster Home Contract for Specialized Community Homes is initiated with the same effective date of the SCH contract.

(1) SCH contractors are reimbursed for up to a total of ten calendar days for planned treatment leave per child, per child placement year, for example, for ~~preplacement~~ pre-placement visitation or family reunification.

(2) A child's placement year begins on the date a child is placed in the home~~. It~~ and terminates 12 months later or on the date of discharge within that 12-month period. If a child is discharged, then readmitted to the same or another facility, a new child placement year begins.

(3) SCH contractors are reimbursed for a child who is absent without leave (AWOL) a total of five calendar days per child, per child placement year, when there is reasonable expectation the child will return to the SCH ~~upon return~~ from AWOL status.

(4) SCH contractors are reimbursed if a child is hospitalized for a period not to exceed ten calendar days if the contractor maintains daily contact with the child and the child returns to the ~~contractor's~~ SCH upon discharge.

(5) ~~All reimbursement for planned leave, hospital leave or AWOL status is approved by the~~ The SCH contract liaison and ~~his or her~~ supervisor approves all reimbursement for planned leave, hospital leave, or AWOL status.

(6) SCH contractors are not eligible for difficulty of care payments for ~~custody~~ children ~~placed~~ in ~~the~~ SCH ~~program~~ placements.

340:75-11-290. Custody children served in contracted specialized community homes (SCH) [REVOKED]

~~(a) Each SCH contractor serves a specifically defined target population of custody children.~~

~~(b) The target population served varies by age range, gender, and behaviors exhibited by custody children that are accepted and not accepted.~~

~~(c) Custody children served in SCH contracts do not require 24 hour awake supervision.~~

~~(d) The SCH contractor receives referrals for the placement of custody children from the DCFS Placement Section through the contract liaison.~~

340:75-11-291. Responsibilities of Child Welfare (CW) county of jurisdiction worker for custody children placed in contracted specialized community homes (SCH) [REVOKED]

~~The CW county of jurisdiction worker has responsibilities for custody children placed in contracted SCH.~~

340:75-11-292. Responsibilities of the liaison to contracted specialized community homes (SCH) [REVOKED]

~~The Child Welfare (CW) worker assigned as the liaison to a contracted SCH has specific duties and responsibilities.~~

PART 25. NON-FUNDED AND FUNDED CONTRACTED LEVEL B PLACEMENTS

340:75-11-300. Non-funded and funded contracted Level B placements

(a) Non-funded Level B placements are provided by faith-based residential agencies that provide the equivalent to foster home placements for children requiring a ~~large,~~ home-like environment with a full-time house parent couple.

(b) Funded contracted Level B placements are provided by the Murrow Indian Children's Home and meet the placement preferences required by the Indian Child Welfare Act (ICWA).

(~~b~~c) Non-funded and funded contracted Level B services include:

(1) group treatment for each child, as needed, that focuses on maintenance issues and daily living matters;

(2) individual treatment for each child, as needed;

(3) active teaching and redevelopment of the child's basic living and social skills, both on-site and in the community. At minimum, the focus is on the restoration of skills for:

(A) personal health and hygiene;

(B) maintenance of the living environment, including food preparation;

(C) money management;

(D) job skills readiness, acquisition, and retention;

(E) community awareness and mobility, including the use of community resources; and

(F) socialization skills and techniques, including communication;

(4) developing and implementing policy and procedures for delivery of independent living (IL) skills training to youth, using an approved curriculum for teaching IL skills;

(5) assisting in the provision of federally mandated IL services that include coordinating with the Child Welfare (CW) county of jurisdiction worker to ensure:

(A) ~~coordinating with the Child Welfare (CW) county of jurisdiction worker to ensure~~ the Daniel Memorial or Ansell-Casey Life Skills assessment is completed on each youth age 16 ~~years of age~~ or older and implementing the IL plan produced by this assessment; and

(B) ~~coordinating with the CW county of jurisdiction worker to ensure~~ each youth~~,~~ age 15.5 or older~~,~~ attends one community contractor IL seminar each year;

(6) ensuring the youth applies for Medicaid upon his or her 18th birthday, if the youth remains in placement in voluntary care to complete his or her secondary education per OAC 340:75-6-115.9; and

(7) providing 24-hour on-call and on-site crisis intervention and behavior management services to each child, as needed.

(~~c~~d) Contracted Level B placements are provided in a setting licensed as a child-placing agency group home or residential child care facility that is not located in a hospital, either medical or psychiatric, or a psychiatric residential treatment center.

(~~d~~e) The contractor:

(1) does not provide 24-hour awake supervision of children;

(2) may provide clothing for the child in Oklahoma Department of Human Services (OKDHS) custody. Emergency clothing authorizations may be accessed per OAC 340:75-13-45;

(3) completes a written incident report describing any extreme behavioral incident or major rule violation, including the contractor's response, submits the original to the Children and Family Services Division (CFSD) Community-Based Residential Services programs manager and a copy to the child's CW county of jurisdiction worker, and files a copy in the child's case record;

(4) meets the staffing guidelines defined in the OKDHS contract;

(5) complies with children's rights per OAC 340:75-11-237;

(6) complies with all general requirements per OAC ~~340:75-11-238~~ 340:75-11-240; ~~and~~

(7) provides placements of children at no cost to OKDHS~~.~~ for non-funded contracted Level B services;

(8) maintains documentation of each child's absent without leave (AWOL) and leave days set forth in the funded Level B contract and reports leave days on Form DCYS-S-2, CFSD Claim for Purchase of Residential care; and

(9) is reimbursed by OKDHS at a fixed daily rate for funded Level B services. The fixed daily rate is a blend of Title IV-E funds, per eligibility of each child served, and state funds. The contractor submits Form DCYS-S-2 for reimbursement to CFSD Administrative Services Unit.

340:75-11-301. ~~Custody children~~ Children served in non-funded and funded contracted Level B placements

(a) ~~The major treatment need of custody children served is~~ Children in Oklahoma Department of Human Services custody are provided a structured and supportive living environment that provides direction and guidance. ~~Custody children~~ Children appropriate for placement:

(1) demonstrate the ability to positively interact with adult caregivers~~,~~ and have limited failed placements;

(2) agree to the placement;

(3) agree to attend the placement provider's identified ~~church~~ place of worship in non-funded group homes; and

(4) demonstrate the ability to attend public school~~.~~; and

(5) exhibit minimal behavioral or emotional problems.

(b) In general, children served are ~~custody children, males~~ male or ~~females~~ female, ~~ages 10~~ ten to 18 years of age. Exceptions to the age range ~~can~~ may be made for sibling groups or ~~for~~ younger children, as appropriate, with the agreement of the contractor and ~~the~~ Children and Family Services Division (CFSD) ~~community-based residential care (CBRC)~~ Community-Based Residential Care programs manager and are documented by the contract liaison. Children served in the funded Level B group home are Native American.

(c) Each non-funded and funded Level B contractor serves a different target population.

(d) ~~Referrals for the placement of custody children are screened for appropriateness by the~~ The placement provider and contract liaison screen referrals for appropriateness for the placement of children to non-funded Level B group homes.

(e) Referrals to funded Level B group homes are made by CFSD Placement Section though the contract liaison.

340:75-11-302. Responsibilities of Child Welfare (CW) county of jurisdiction worker for custody children placed in non-funded contracted Level B placements [REVOKED]

~~The CW county of jurisdiction worker has responsibilities for custody children placed in non-funded contracted Level B facilities.~~

340:75-11-303. Responsibilities of the liaison to non-funded contracted Level B placement providers [REVOKED]

~~The Child Welfare (CW) worker assigned as the liaison to non-funded contracted Level B facilities has specific duties and responsibilities.~~

340:75-11-304. Funded contracted Level B placements [REVOKED]

~~(a) Funded contracted Level B placements are provided by the Murrow Indian Children's Home and meet the placement preferences required by the Indian Child Welfare Act.~~

~~(b) Funded contracted Level B services include:~~

~~(1) group treatment for each child, as needed, that focuses on maintenance issues and daily living matters;~~

~~(2) individual treatment for each child, as needed;~~

~~(3) active teaching and redevelopment of the child's basic living and social skills, both on-site and in the community. At minimum, the focus is on the restoration of skills for:~~

~~(A) personal health and hygiene;~~

~~(B) maintenance of the living environment, including food preparation;~~

~~(C) money management;~~

~~(D) job skills readiness, acquisition, and retention;~~

~~(E) community awareness and mobility, including the use of community resources; and~~

~~(F) socialization skills and techniques, including communication;~~

~~(4) developing and implementing policy and procedure for the delivery of independent living (IL) skills training to youth, using an approved curriculum for teaching IL skills;~~

~~(5) assisting in the provision of federally mandated IL services that include:~~

~~(A) coordinating with the Child Welfare (CW) county of jurisdiction worker to ensure the Daniel Memorial or Ansell Casey Life Skills assessment is completed on each youth 16 years of age or older and implementing the IL plan produced by this assessment; and~~

~~(B) coordinating with the CW county of jurisdiction worker to ensure each youth, age 15.5 or older,~~

~~attends one community contractor IL seminar each year;~~

~~(6) ensuring the youth applies for Medicaid upon his or her 18th birthday, if the youth remains in placement in voluntary care to complete his or her secondary education per OAC 340:75-6-115.9; and~~

~~(7) providing 24-hour on-call and on-site crisis intervention and behavior management services to each child, as needed.~~

~~(c) Contracted Level B placements are provided in a setting licensed as a child placing agency group home or residential child care facility that is not located in a hospital, either medical or psychiatric, or a psychiatric residential treatment center.~~

~~(d) The contractor:~~

~~(1) does not provide 24-hour awake supervision of children in placement;~~

~~(2) provides clothing, after initial placement of a child in Oklahoma Department of Human Services (OKDHS) custody. Emergency funds for clothing may be accessed per OAC 340:75-13-45;~~

~~(3) completes a written incident report describing any extreme behavioral incident or major rule violation, including the contractor's response, submits the original to the Children and Family Services Division (CFSD) Community-Based Residential Services programs manager and a copy to the child's CW county of jurisdiction worker, and files a copy in the child's case record;~~

~~(4) meets the staffing guidelines defined in the OKDHS contract;~~

~~(5) complies with children's rights per OAC 340:75-11-237;~~

~~(6) complies with all general requirements per OAC 340:75-11-238;~~

~~(7) maintains documentation of each child's absent without leave (AWOL) and leave days defined in the contract and reports leave days on Form DCYS-S-2, CFSD Claim for Purchase of Residential Care; and~~

~~(8) is reimbursed by OKDHS at a fixed daily rate. The fixed daily rate is a blend of Title IV-E funds, per eligibility of each child served, and state funds. The contractor submits Form DCYS-S-2 for reimbursement to CFSD Administrative Services Unit.~~

340:75-11-305. Custody children served in funded contracted Level B placements [REVOKED]

~~(a) Custody children served are Native American children, ages 10 to 18, male or female.~~

~~(b) The major treatment need of custody children served is a structured and supportive living environment that provides direction and guidance.~~

~~(c) Custody children served exhibit minimal behavioral or emotional problems.~~

~~(d) The contractor receives referrals of custody children for placement from the DCFS Placement Section through the contract liaison.~~

340:75-11-306. Responsibilities of Child Welfare (CW) county of jurisdiction worker for custody children placed in funded contracted Level B placements [REVOKED]

~~The CW county of jurisdiction worker has responsibilities for custody children placed in funded contracted Level B placements.~~

340:75-11-307. Responsibilities of the liaison to funded contracted Level B placement providers [REVOKED]

~~The Child Welfare (CW) worker assigned as the liaison to funded contracted Level B placement providers has specific duties and responsibilities.~~

PART 27. RESIDENTIAL MATERNITY SERVICES

340:75-11-320. ~~Funded~~ Non-funded and funded contracted residential maternity services placements

(a) Contracted residential maternity services placements provide residential care and treatment for pregnant youth in Oklahoma Department of Human Services (OKDHS) custody, regardless of age. The youth may return to the residential maternity services placement postpartum not to exceed 45 days, except with the approval of the Children and Family Services Division (CFSD) Community-Based Residential Services (CBRC) programs manager.

(b) Children served are pregnant youth in OKDHS custody, regardless of age, who require a supportive living environment with direction and guidance but are not appropriate for foster family care due to difficulty in sustaining relationships with parental figures.

(c) Youth not appropriate for placement are violent, aggressive, destructive to self, others, or property, engage in criminal or delinquent behaviors, or require intensive supervision and services.

(d) ~~Funded~~ Non-funded and funded contracted residential maternity services for pregnant youth include:

(1) group therapy, as needed, that focuses on maintenance issues and daily living matters;

(2) individual treatment, as needed;

(3) parenting skills training to enhance the youth's capability to function as a parent. A specific plan for the delivery of those services is delineated in the contractor's written policy;

(4) active teaching and redevelopment of the youth's basic living and social skills. At minimum, the focus is on the restoration of skills for:

(A) personal health and hygiene;

(B) maintenance of the living environment, including food preparation;

(C) money management;

(D) job skills readiness, acquisition, and retention;

(E) community awareness and mobility, including the use of community resources; and

(F) socialization skills and techniques, including communication;

(5) developing and implementing policy and ~~procedure~~ procedures for the delivery of independent living (IL) skills training, using an approved curriculum for teaching IL skills;

(6) assisting in the provision of federally mandated IL services that include coordinating with the Child Welfare (CW) county of jurisdiction worker to ensure:

(A) ~~coordinating with the Child Welfare (CW) county of jurisdiction worker to ensure~~ the Daniel Memorial or Ansell-Casey Life Skills assessment is completed on each youth age 16 ~~years of age~~ or older and implementing the IL plan produced by this assessment; and

(B) ~~coordinating with the CW county of jurisdiction worker to ensure~~ each youth~~,~~ age 15.5 or older~~,~~ attends one community contractor IL seminar each year;

(7) ensuring the youth applies for Medicaid upon her 18th birthday, if the youth remains in placement in voluntary care to complete her secondary education per OAC 340:75-6-115.9;

(8) providing 24-hour on-call and on-site crisis intervention and behavior management services, as needed;

(9) arranging prenatal, delivery, and postpartum care for the youth by a local physician or clinic; and

(10) ensuring a licensed dietitian or nutritionist is on staff or available as a consultant in menu planning that meets the United States Department of Agriculture (USDA) or Oklahoma State Department of Health standards for pregnant teenagers or adult women.

(e) The youth is eligible for an emergency clothing authorization for maternity clothing after initial placement in a funded maternity residential services placement and quarterly emergency clothing authorizations when the youth is placed in a non-funded maternity residential services placement, per OAC 340:75-13-45.

(f) When the youth is in the Home Bound educational program, the contractor provides additional educational services at a minimum of two hours per day during the school term.

(g) Contracted residential maternity services placements are provided in a setting licensed as a child-placing agency group home or residential child care facility that is not located in a hospital, either medical or psychiatric, or a psychiatric residential treatment center.

(h) The contractor:

(1) does not provide 24-hour awake supervision of children in placement;

(2) completes a written incident report describing any extreme behavioral incident or major rule violation, including the contractor's response, submits the original to the ~~Community Based Residential Services~~ CBRC programs manager and a copy to the child's CW county of jurisdiction worker, and files a copy in the child's case record;

(3) meets the staffing guidelines defined in the OKDHS contract;

(4) complies with children's rights per OAC 340:75-11-237;

(5) complies with all general requirements per OAC ~~340:75-11-238~~ 340:75-11-240;

(6) maintains documentation for funded programs of each child's absent without leave (AWOL) and leave days ~~defined~~ set forth in the contract and reports leave days on Form DCYS-S-2, CFSD Claim for Purchase of Residential Care;

(7) is reimbursed by OKDHS for funded programs at a fixed daily rate, based upon actual utilization. The fixed daily rate is a blend of Title IV-E funds, per eligibility of each child served, and state funds. The contractor submits Form DCYS-S-2 for reimbursement to CFSD Administrative Services Unit; and

(8) receives referrals for the placement of youth from the contract liaison.

340:75-11-321. Placements for infants of ~~custody~~ ~~pregnant females~~ youth in non-funded and funded contracted residential maternity services

(a) Infants served are the newborn infants whose mothers are in Oklahoma Department of Human Services (OKDHS) custody and served in the residential maternity services placement.

(b) The infant is accompanied in care by his or her mother and the length of stay does not exceed 45 days, except with the approval of the ~~Division of~~ Children and Family Services ~~(DCFS) community-based residential services (CBRC)~~ Division (CFSD) Community-Based Residential Services programs manager.

(c) ~~Residential~~ The contractor provides residential maternity services for ~~the~~ infants in ~~placement~~ care that include:

(1) ~~the infant shares a room with his or her mother and the contractor provides~~ a separate, suitable bed in a room shared with his or her mother. No other adults or children share the room with the mother and infant;

(2) child care equipment ~~is provided by the contractor~~, including bedding, high chairs, if needed, car seats, appropriate toys, and furniture;

(3) ~~the contractor provides~~ clothing ~~for infants~~;

(4) all food, formula, diapers, and personal hygiene items ~~are provided by the contractor~~; and

(5) ~~the contractor arranges with a local physician or clinic to provide postpartum~~ pediatric care~~;~~. Prior consultation and consent from infant's mother is required for any medical procedure.

(~~6~~d) ~~the~~ The contractor documents the interaction between the mother and the infant in the child's case record~~; and~~.

~~(7) prior consultation and consent from infant's mother is required for any medical procedure.~~

(~~d~~e) The funded contractor is:

(1) reimbursed by ~~the Department of Human Services (DHS)~~ OKDHS at a fixed daily rate, based upon actual utilization. The fixed daily rate is a blend of Title IV-E funds, per eligibility of each child served, and state funds~~.~~; and

(2) ~~The contractor~~ submits Form DCYS-S-2, ~~DCFS~~ CFSD Claim for Purchase of Residential Care, for reimbursement to ~~the DCFS~~ CFSD Administrative Services Unit.

340:75-11-322. Responsibilities of the Child Welfare ~~(CW)~~ county of jurisdiction worker and contract liaison for ~~custody~~ children ~~placed~~ in contracted residential maternity services placements

(a) The Child Welfare (CW) county of jurisdiction worker has responsibilities for ~~custody~~ children in Oklahoma Department of Human Services (OKDHS) custody placed in contracted residential maternity services placements.

(b) The Child Welfare (CW) worker assigned as the liaison to contracted residential maternity services placement providers has specific duties and responsibilities.

340:75-11-323. Responsibilities of the liaison to contracted residential maternity services placement providers [REVOKED]

~~The Child Welfare (CW) worker assigned as the liaison to contracted residential maternity services placement providers has specific duties and responsibilities.~~

PART 29. NON-FUNDED AND FUNDED LEVEL C PLACEMENTS

340:75-11-330. Non-funded and funded Level C placements and children served

(a) ~~Non-funded Level C placements are provided by faith-based residential agencies that provide the~~ Placements equivalent to foster home placements for children requiring a ~~large,~~ home-like environment with a full-time house parent couple~~.~~ are contracted by:

(1) faith-based residential agencies for non-funded Level C placements; and

(2) non-faith-based residential agencies for funded Level C placements.

(b) Non-funded and funded contracted Level C services include:

(1) structured group treatment, a minimum of one hour per week for each child;

(2) individual treatment for each child, as needed;

(3) family visitation, when the case plan is reunification;

(4) family treatment, when deemed appropriate by the contractor and the Child Welfare (CW) county of jurisdiction worker;

(5) active teaching and redevelopment of the child's basic living and social skills, both on-site and in the community. At minimum, the focus is on the restoration of skills for:

(A) personal health and hygiene;

(B) maintenance of the living environment, including food preparation;

(C) money management;

(D) job skills readiness, acquisition, and retention;

(E) community awareness and mobility, including the use of community resources; and

(F) socialization skills and techniques, including communication;

(6) developing and implementing policy and procedures for delivery of independent living (IL) skills training to youth, using an approved curriculum for teaching IL skills;

(7) assisting in the provision of federally mandated IL services that include coordinating with the CW county of jurisdiction worker to ensure:

(A) ~~coordinating with the CW county of jurisdiction worker to ensure~~ the Daniel Memorial or Ansell-Casey Life Skills assessment is completed on each youth age 16 ~~years of age~~ or older and implementing the IL plan produced by this assessment; and

(B) ~~coordinating with the CW county of jurisdiction worker to ensure~~ each youth~~,~~ age 15.5 or older~~,~~ attends one community contractor IL seminar each year;

(8) ensuring the youth applies for Medicaid upon his or her 18th birthday, if the youth remains in placement in voluntary care to complete his or her secondary education per OAC 340:75-6-115.9; and

(9) providing 24-hour on-call and on-site crisis intervention and behavior management services to each child, as needed.

(c) In addition, funded Level C services include:

(1) substance abuse or chemical dependency therapy within a group or individual counseling or therapy sessions for each child, as needed;

(2) behavior redirection 24 hours a day, seven days a week to meet the goals and objectives of the treatment plan and respond to any behavioral crisis of the child. The contractor ensures staff are available to respond in a crisis to stabilize the child's behavior and prevent placement disruption; and

(3) 24-hour on-call and on-site crisis intervention and behavior management services to each child, as needed. Emergency or crisis intervention services include face-to-face encounters with the child to resolve acute emotional dysfunction by providing intervention resolution and stabilizing functions through triage screening, planning, and documentation.

(~~c~~d) Non-funded and funded contracted Level C placements are provided in a setting licensed as a child-placing agency group home or residential child care facility that is not located in a hospital, either medical or psychiatric, or ~~a~~ psychiatric residential treatment center.

(~~d~~e) The non-funded contractor:

(1) does not provide 24-hour awake supervision of children;

(2) is not required to provide clothing for the child in Oklahoma Department of Human Services (OKDHS) custody. Emergency clothing authorizations may be accessed per OAC 340:75-13-45;

(3) completes a written incident report describing any extreme behavioral incident or major rule violation, including the contractor's response, submits the original to the Children and Family Services Division, Community-Based Residential Services programs manager and a copy to the child's CW county of jurisdiction worker, and files a copy in the child's case record;

(4) meets the staffing guidelines defined in the OKDHS contract;

(5) complies with children's rights per OAC 340:75-11-237;

(6) complies with all general requirements per OAC ~~340:75-11-238~~ 340:75-11-240; and

(7) provides placements of children at no cost to OKDHS.

(f) The funded contractor:

(1) provides clothing after initial placement of a child. Emergency clothing authorizations may be accessed per OAC 340:75-13-45;

(2) maintains documentation of each child's absent without leave (AWOL) and leave days defined in the contract and reports leave days on Form DCYS-S-2, CFSD Claim for Purchase of Residential Care;

(3) is reimbursed by OKDHS at a fixed daily rate. The fixed daily rate is a blend of Title IV-E per eligibility of each child served and state funds; and

(4) submits Form DCYS-S-2 for reimbursement to CFSD Administrative Services Unit.

(g) Children served in non-funded and funded Level C placements.

(1) The primary goal of services is the remediation of mild to moderate behavior problems through a focus on daily living issues rather than clinical interventions.

(2) Non-funded contractors:

(A) provide services to children, male or female, ten to 18 years of age. Each contractor serves a different target population of children; and

(B) serve children whose typical behaviors include minor criminal offenses, difficulty in school, problems with authority figures, verbal aggression, peer difficulty, or infrequent runaway behavior with a few failed placements in a family setting.

(3) Funded contractors provide services to male children, 12 to 18 years of age, whose typical behaviors include impulse control problems and those behaviors listed in OAC 340:75-11-330(g)(2)(B).

(4) Children not appropriate for non-funded placement:

(A) have a history of setting fires or sexual perpetration;

(B) are chemically dependent or have used drugs in the last 30 days;

(C) are psychotic or on anti-psychotic medications;

(D) have lived on the streets for the prior six months; or

(E) are intellectually limited with an intelligence quotient (IQ) below 70 and have poor verbal skills.

(5) Both the non-funded and funded contractor receives referrals of children for placement from the CFSD Placement Section through the contract liaison.

340:75-11-331. Custody children served in non-funded Level C placements [REVOKED]

~~(a) The primary goal of services is the remediation of mild to moderate behavior problems through a primary focus on daily living issues rather than through a focus on clinical interventions.~~

~~(b) In general, custody children served are ages 10 to 18, male or female. Each contractor serves a different target population of custody children.~~

~~(c) The typical behavior of custody children served may include minor criminal offenses, difficulty in school, problems with authority figures, verbal aggression, peer difficulty, or infrequent runaway behavior, and a few failed placements in a family home setting.~~

~~(d) Custody children not appropriate for placement have a history of setting fires or sexual perpetration, are chemically dependent or has used drugs in the last thirty days, are psychotic or on anti-psychotic medications, have lived "on the streets" for the prior six months, or are intellectually limited with an IQ below 70 and have poor verbal skills.~~

~~(e) The contractor receives referrals of custody children for placement from the Division of Children and Family Services (DCFS) Placement Section through the contract liaison.~~

340:75-11-332. Responsibilities of Child Welfare (CW) county of jurisdiction worker for custody children placed in non-funded contracted Level C placements [REVOKED]

~~The CW county of jurisdiction worker has responsibilities for custody children placed in non-funded contracted Level C placements.~~

340:75-11-333. Responsibilities of the liaison to non-funded contracted Level C placement providers [REVOKED]

~~The CW worker assigned as the liaison to non-funded contracted Level C placement providers has specific duties and responsibilities.~~

340:75-11-334. Funded Level C placements [REVOKED]

~~(a) Funded contracted Level C services include:~~

~~(1) structured group therapy, a minimum of one hour per week for each child;~~

~~(2) individual therapy for each child, as needed;~~

~~(3) family visitation, when the case plan is reunification;~~

~~(4) family therapy, when deemed appropriate by the Child Welfare (CW) county of jurisdiction worker;~~

~~(5) substance abuse or chemical dependency therapy within a group or individual counseling or therapy session for each child, as needed;~~

~~(6) behavior redirection 24 hours a day, seven days a week to meet the goals and objectives of the treatment plan and respond to any behavioral crisis that may arise with the child. The contractor ensures staff are available to respond in a crisis to stabilize the child's behavior and prevent placement disruption;~~

~~(7) active teaching and redevelopment of the child's basic living and social skills, both on-site and in the community. At minimum, the focus is on the restoration of skills for:~~

~~(A) personal health and hygiene;~~

~~(B) maintenance of the living environment, including food preparation;~~

~~(C) money management;~~

~~(D) job skills readiness, acquisition, and retention;~~

~~(E) community awareness and mobility, including the use of community resources; and~~

~~(F) socialization skills and techniques, including communication;~~

~~(8) developing and implementing policy and procedures for delivery of independent living (IL) skills training to youth, using an approved curriculum for teaching IL skills;~~

~~(9) assisting in the provision of federally mandated IL services that include:~~

~~(A) coordinating with the CW county of jurisdiction worker to ensure the Daniel Memorial or Ansell-Casey Life Skills assessment is completed on each youth 16 years of age or older and implementing the IL plan produced by this assessment; and~~

~~(B) coordinating with the CW county of jurisdiction worker to ensure each youth, age 15.5 or older, attends one community contractor IL seminar each year;~~

~~(10) ensuring the youth applies for Medicaid upon his or her 18th birthday, if the youth remains in placement in voluntary care to complete his or her secondary education per OAC 340:75-6-115.9; and~~

~~(11) providing 24 hour on-call and on-site crisis intervention and behavior management services to each child, as needed. Emergency or crisis intervention services include face-to-face encounters with the child to resolve acute emotional dysfunction by providing intervention resolution and stabilizing functions through triage screening, planning, and documentation.~~

~~(b) Contracted Level C placements are provided in a setting licensed as a child placing agency group home or residential child care facility that is not located in a hospital, either medical or psychiatric, or a psychiatric residential treatment center.~~

~~(c) The contractor:~~

~~(1) does not provide 24-hour awake supervision of children;~~

~~(2) complies with the Oklahoma Health Care Authority rules for residential behavior management services in group settings and non-secure diagnostic and evaluation centers per OAC 317:30-5-1040 though 317:30-5-1047;~~

~~(3) provides clothing, after initial placement of a child. Emergency funds for clothing may be accessed per OAC 340:75-13-45;~~

~~(4) completes a written incident report describing any extreme behavioral incident or major rule violation, including the contractor's response, submits the original to the Children and Family Services Division (CFSD) Community-Based Residential Services programs manager and a copy to the child's CW county of jurisdiction worker, and files a copy in the child's case record;~~

~~(5) meets the staffing guidelines defined in the Oklahoma Department of Human Services (OKDHS) contract;~~

~~(6) complies with children's rights per OAC 340:75-11-237;~~

~~(7) complies with all general requirements per OAC 340:75-11-238;~~

~~(8) maintains documentation of each child's absent without leave (AWOL) and leave days defined in the contract and reports leave days on Form DCYS-S-2, CFSD Claim for Purchase of Residential Care; and~~

~~(9) is reimbursed by OKDHS at a fixed daily rate. The fixed daily rate is a blend of Title IV-E and Title XIX federal funds, per eligibility of each child served, and state funds. The contractor submits Form DCYS-S-2 for reimbursement to CFSD Administrative Services Unit.~~

340:75-11-335. Custody children served in funded Level C placements [REVOKED]

~~(a) The primary goal of services is the remediation of mild to moderate behavior problems through a primary focus on daily living issues rather than through a focus on clinical interventions.~~

~~(b) Custody children served are males, ages 12 to 18.~~

~~(c) The typical behavior of custody children served may include difficulty with impulse control, minor criminal offenses, difficulty in school, problems with authority figures, verbal aggression, peer difficulty, infrequent runaway behavior, or some failed placements in foster homes, or relative homes, or some private group home settings.~~

~~(d) The contractor receives referrals of custody children for placement from the DCFS Placement Section through the contract liaison.~~

340:75-11-336. Responsibilities of Child Welfare (CW) county of jurisdiction worker for custody children placed in funded contracted Level C placements [REVOKED]

~~The CW county of jurisdiction worker has responsibilities for custody children placed in funded contracted Level C placements.~~

340:75-11-337. Responsibilities of the liaison to funded contracted Level C placement providers [REVOKED]

~~The Child Welfare (CW) worker assigned as the liaison to funded contracted Level C placement providers has specific duties and responsibilities.~~

PART 31. CONTRACTED LEVEL D PLACEMENTS

340:75-11-350. Contracted Level D placements and children served

(a) Contracted Level D placements are designed to serve the special needs of ~~custody~~ children, male or female, 12 to 17 years of age, in Oklahoma Department of Human Services custody, who are emotionally disturbed and certified as developmentally disabled by ~~the Department's Developmentally Disabled~~ Developmental Disabilities Services Division (DDSD).

(b) The placement of children who are emotionally disturbed and developmentally disabled in Level D facilities is a joint decision made by the Children and Family Services Division (CFSD) programs manager or liaison to DDSD and DDSD programs manager for Residential Services.

(~~b~~c) Providers of contracted Level D placements are under contract with both ~~the Children and Family Services Division (~~CFSD~~)~~ and DDSD.

(d) Contractors receive referrals for children who are emotionally disturbed and developmentally disabled from DDSD programs staff.

(~~c~~e) Level D contracted services ~~under the CFSD contract~~ include:

(1) structured group therapy, a minimum of one hour per week for each child ~~by the contractor's designated therapy staff~~;

(2) individual therapy, a minimum of one hour per week for each child ~~and is provided by the contractor's designated therapy staff~~;

(3) family visitation, ~~if the Department's~~ when the case plan is reunification;

(4) family therapy, when deemed appropriate by the Child Welfare (CW) county of jurisdiction worker~~, provided by the contractor's designated therapy staff~~;

(5) substance abuse or chemical dependency therapy within a group or individual counseling or therapy session for each child, ~~if~~ as needed~~, by children in placement provided by the contractor's designated therapy staff~~;

(6) crisis intervention and behavior management services, as indicated in each child's DDSD Individualized Plan and in compliance with ~~DDSD behavior support rules~~ OAC 340:100-5-57. Emergency or crisis intervention services include face-to-face encounters ~~of an emergency nature~~ with the child to resolve acute emotional dysfunction by providing intervention resolution and stabilizing functions ~~of the individual. This includes~~ through triage screening, planning, and documentation;

(7) ~~assurance that~~ staff ~~are~~ available to respond in a crisis to stabilize a child's behavior and prevent placement disruption, 24 hours a day, seven days per week;

~~(8) redevelopment of basic living and social skills throughout the program with the goal of restoration of skills to enable the child to attain his or her most optimal level of functioning;~~

(~~9~~8) ~~provision of~~ active teaching and ~~skill~~ redevelopment of the child's basic living skills. At minimum, the focus is on the restoration of skills for:

(A) personal health and hygiene;

(B) maintenance of the living environment, including food preparation;

(C) money management;

(D) job skills readiness, acquisition, and retention;

(E) community awareness and mobility, including the use of community resources; and

(F) socialization skills and techniques, including communication;

(~~10~~9) ~~development~~ developing and ~~implementation of~~ implementing policy and procedures for ~~the~~ delivery of independent living (IL) skills training ~~skills~~ to ~~children~~ youth, using an approved ~~independent living training~~ curriculum for teaching ~~independent living~~ IL skills ~~and redevelopment of basic living skills to custody children in placement~~; and

(~~11~~10) ~~provision of~~ providing 24-hour awake supervision of children ~~in placement~~.

(~~d~~f) The contractor:

(1) complies with ~~the Oklahoma Health Care Authority rules~~ Part 105 of OAC 317:30-5 for residential behavior management services in group settings and non-secure diagnostic and evaluation centers ~~per OAC 317:30-5-1040 though 317:30-5-1047.~~;

(~~e~~2) ~~After initial placement of a DHS custody child, the contractor~~ provides clothing after initial placement of a child. Emergency funds for clothing may be accessed ~~as~~ per ~~Department policy~~ OAC 340:75-13-45~~.~~;

(~~f~~3) ~~Contracted Level D placements are provided in a setting that~~ complies with ~~DDSD policy for Group Home Regulations~~ group home regulations per OAC 340:100-6~~-1 through 340:100-6-98.~~;

(~~g~~4) ~~The contractor~~ completes a written incident report describing any extreme behavioral incident or major rule violation, including the contractor's response, submits a copy to the child's CW county of jurisdiction worker~~, the child's~~ and DDSD case manager, and files ~~a copy~~ the original in the child's case record~~.~~;

(~~h~~5) ~~The contractor~~ meets the staffing guidelines ~~defined~~ set forth in the ~~CFSD~~ OKDHS contract and ~~DDSD policy for Group Home Regulations per~~ OAC 340:100-6~~-1 through 340:100-6-98.~~;

(~~i~~6) ~~The contractor~~ complies with children's rights per OAC 340:75-11-237~~.~~;

(~~j~~7) ~~The contractor~~ complies with all ~~generic~~ general requirements per OAC ~~340:75-11-238.~~ 340:75-11-240;

~~(k) The contractor complies with all other requirements specified in the contract.~~

(~~l~~8) ~~The contractor~~ maintains documentation of ~~the use of~~ each child's absent without leave (AWOL) and leave days ~~defined~~ set forth in the contract and reports leave days on ~~the monthly claim for reimbursement.~~ Form DCYS-S-2, CFSD Claim for Purchase of Residential Care;

(~~m~~9) ~~Level D contractors are~~ is reimbursed guaranteed payment by ~~DCFS~~ CFSD for the total number of beds specified in the contract~~.~~;

(~~n~~10) ~~The contractor~~ is reimbursed by ~~DHS~~ OKDHS at a fixed daily rate. The fixed daily rate is a blend of Title IV-E and Title XIX federal funds, per eligibility of each child served, and state funds~~.~~; and

(11) ~~The contractor~~ submits Form DCYS-S-2~~, DCFS Claim for Purchase of Residential Care,~~ for reimbursement to ~~the DCFS~~ CFSD Administrative Services Unit.

340:75-11-351. Custody children served in contracted Level D placements [REVOKED]

~~(a) Custody children served are ages 12 to 17, male or female, who are emotionally disturbed and certified as developmentally disabled by the Department's Developmental Disabilities Services Division (DDSD).~~

~~(b) The placement of emotionally disturbed and developmentally disabled custody children in Level D facilities is a joint decision made by the Division of Children and Family Services (DCFS) Placement Section programs manager and the DDSD programs manager.~~

~~(c) Contractors receive referrals of emotionally disturbed and developmentally disabled custody children from DDSD State Office staff.~~

340:75-11-352. Responsibilities of Child Welfare (CW) county of jurisdiction worker for custody children placed in contracted Level D placements [REVOKED]

~~The CW county of jurisdiction worker has responsibilities for custody children placed in contracted Level D placements.~~

340:75-11-353. Responsibilities of the liaison to contracted Level D placement providers [REVOKED]

~~The Child Welfare (CW) worker assigned as the liaison to contracted Level D placement providers has specific duties and responsibilities.~~

PART 33. CONTRACTED LEVEL D PLUS AND LEVEL E PLACEMENTS

340:75-11-360. Contracted Level D plus (+) and Level E placements

(a) **Contracted Level D+ and Level E services include:**

(1) structured group therapy, a minimum of two hours per week for each child;

(2) individual therapy, a minimum of one hour per week for each child;

(3) family visitation, when the case plan is reunification;

(4) family therapy, when deemed appropriate by the Child Welfare (CW) county of jurisdiction worker;

(5) substance abuse or chemical dependency therapy within a group or individual counseling or therapy session for each child, as needed;

(6) psychological or psychiatric intervention for each child through direct contact with a psychologist or psychiatric consultant or the contractor's designated therapy counseling staff;

(7) behavior redirection 24 hours a day, seven days a week to meet the goals and objectives of the treatment plan and ~~to~~ respond to any behavioral crisis ~~that may arise with~~ of the child. The contractor ensures staff are available to respond in a crisis to stabilize the child's behavior and prevent placement disruption;

(8) active teaching and redevelopment of the child's basic living and social skills, both on-site and in the community. At minimum, the focus is on the restoration of skills for:

(A) personal health and hygiene;

(B) maintenance of the living environment, including food preparation;

(C) money management;

(D) job skills readiness, acquisition, and retention;

(E) community awareness and mobility, including the use of community resources; and

(F) socialization skills and techniques, including communication;

(9) developing and implementing policy and procedures for delivery of independent living (IL) skills training to youth, using an approved curriculum for teaching IL skills;

(10) assisting in the provision of federally mandated IL services that include coordinating with the CW county of jurisdiction worker to ensure:

(A) ~~coordinating with the CW county of jurisdiction worker to ensure~~ the Daniel Memorial or Ansell-Casey Life Skills assessment is completed on each youth age 16 ~~years of age~~ or older and implementing the IL plan produced by this assessment; and

(B) ~~coordinating with the CW county of jurisdiction worker to ensure~~ each youth~~,~~ age 15.5 or older~~,~~ attends one community contractor IL seminar each year;

(11) ensuring the youth applies for Medicaid upon his or her 18th birthday, if the youth remains in placement in voluntary care to complete his or her secondary education per OAC 340:75-6-115.9;

(12) providing 24-hour awake supervision of each child;

(13) providing 24-hour on-call and on-site crisis intervention and behavior management services to each child, as needed. Emergency or crisis intervention services include face-to-face encounters with the child to resolve acute emotional dysfunction by providing intervention resolution and stabilizing functions through triage screening, planning, and documentation; ~~and~~

(14) providing a nine-month on-site educational program for each child~~.~~ in a Level D+ placement;

(15) providing recreation services for each child in a Level E placement; and

(16) providing a 12-month on-site educational program for each child in a Level E placement.

(b) Contracted Level D+ and Level E placements are provided in a setting licensed as a child-placing agency group home or residential child care facility that is not located in a hospital, either medical or psychiatric, or ~~a~~ psychiatric residential treatment center.

(c) The contractor:

(1) complies with ~~the Oklahoma Health Care Authority rules~~ Part 105 of OAC 317:30-5 for residential behavior management services in group settings and non-secure diagnostic and evaluation centers ~~per OAC 317:30-5-1040 though 317:30-5-1047~~;

(2) provides clothing, after initial placement of a child. Emergency funds for clothing may be accessed per OAC 340:75-13-45;

(3) completes a written incident report describing any extreme behavioral incident or major rule violation, including the contractor's response, submits the original to the Children and Family Services Division (CFSD) Community-Based Residential Services programs manager and a copy to the child's CW county of jurisdiction worker, and files a copy in the child's case record;

(4) meets the staffing guidelines defined in the Oklahoma Department of Human Services (OKDHS) contract;

(5) complies with children's rights per OAC 340:75-11-237;

(6) complies with all general requirements per OAC ~~340:75-11-238~~ 340:75-11-240;

(7) maintains documentation of each child's absent without leave (AWOL) and leave days defined in the contract and reports leave days on Form DCYS-S-2, CFSD Claim for Purchase of Residential Care; ~~and~~

(8) is reimbursed by OKDHS at a fixed daily rate for the total number of beds specified in the OKDHS contract. The fixed daily rate is a blend of Title IV-E and Title XIX federal funds, per eligibility of each child served, and state funds~~.~~; and

(9) ~~The contractor~~ submits Form DCYS-S-2 for reimbursement to CFSD Administrative Services Unit.

(d) Children served in Level D+ and Level E placements.

(1) The primary goal of Level D+ and Level E services is the remediation of emotional disorders or behavioral problems through a focus on clinical interventions.

(2) Level D+ placements are less restrictive treatment intensive placements than Level E placements or psychiatric inpatient care and are available for children with severe emotional disorders or behavioral disorders.

(3) Children served in Level D+ placements exhibit a wide range of serious emotional disturbances and behavioral disorders, but are less physically or sexually aggressive than children served in Level E placements.

(4) Level E placements are the most restrictive treatment intensive placements available for children outside of a psychiatric facility.

(5) In general, children served are male or female:

(A) 12 to 18 years of age in Level D+ placements; and

(B) 13 to 18 years of age in Level E placements. Each contractor serves a specifically defined target population of children.

(6) The contractor receives referrals for the placement of children from CFSD Placement Section through the contract liaison.

340:75-11-361. Custody children served in contracted Level D+ placements [REVOKED]

~~(a) The primary goal of services is the remediation of emotional disorders or behavioral problems through a focus on clinical interventions.~~

~~(b) Level D+ placements are more restrictive and more treatment intensive placements available for deprived custody children except for Level E facilities or psychiatric facilities.~~

~~(c) Custody children served exhibit a wide range of serious emotional disturbance and behavioral disorders, but are less physically or sexually aggressive than custody children served in Level E placements.~~

~~(d) In general, custody children served are ages 12 to 18, male or female. Each contractor serves a specifically defined target population of custody children.~~

~~(e) The contractor receives referrals for the placement of custody children from the Division of Children and Family Services (DCFS) Placement Section through the contract liaison.~~

340:75-11-362. Responsibilities of Child Welfare (CW) county of jurisdiction worker for custody children placed in contracted Level D+ placements [REVOKED]

~~The CW county of jurisdiction worker has responsibilities for custody children placed in contracted Level D+ placements.~~

340:75-11-363. Responsibilities of the liaison to contracted Level D+ placement providers [REVOKED]

~~The Child Welfare (CW) worker assigned as the liaison to contracted Level D+ placement providers has specific duties and responsibilities.~~

PART 35. CONTRACTED LEVEL E PLACEMENTS [REVOKED]

340:75-11-370. Contracted Level E placements [REVOKED]

~~(a) Contracted Level E services include:~~

~~(1) structured group therapy, a minimum of two hours per week for each child;~~

~~(2) individual therapy, a minimum of one hour per week for each child;~~

~~(3) family visitation, when the case plan is reunification;~~

~~(4) family therapy, when deemed appropriate by the Child Welfare (CW) county of jurisdiction worker for each child;~~

~~(5) substance abuse or chemical dependency therapy within a group or individual counseling or therapy session for each child, as needed;~~

~~(6) psychological or psychiatric intervention for each child through direct contact with a psychologist or psychiatric consultant or the contractor's designated therapy counseling staff;~~

~~(7) behavior redirection 24 hours a day, seven days a week to meet the goals and objectives of the treatment plan and to respond to any behavioral crisis that may arise with the child. The contractor ensures staff are available to respond in a crisis to stabilize the child's behavior and prevent placement disruption;~~

~~(8) active teaching and redevelopment of the child's basic living and social skills, both on-site and in the community. At minimum, the focus is on the restoration of skills for:~~

~~(A) personal health and hygiene;~~

~~(B) maintenance of the living environment, including food preparation;~~

~~(C) money management;~~

~~(D) job skills readiness, acquisition, and retention;~~

~~(E) community awareness and mobility, including the use of community resources; and~~

~~(F) socialization skills and techniques, including communication;~~

~~(9) developing and implementing policy and procedures for delivery of independent living (IL) skills training to youth, using an approved curriculum for teaching IL skills;~~

~~(10) assisting in the provision of federally mandated IL services that include:~~

~~(A) coordinating with the CW county of jurisdiction worker to ensure the Daniel Memorial or Ansell-Casey Life Skills assessment is completed on each youth 16 years of age or older and implementing the IL plan produced by this assessment; and~~

~~(B) coordinating with the CW county of jurisdiction worker to ensure each youth, age 15.5 or older, attends one community contractor IL seminar each year;~~

~~(11) ensuring the youth applies for Medicaid upon his or her 18th birthday, if the youth remains in placement in voluntary care to complete his or her secondary education per OAC 340:75-6-115.9;~~

~~(12) providing 24-hour awake supervision of each child;~~

~~(13) providing 24-hour on-call and on-site crisis intervention and behavior management services to each child, as needed. Emergency or crisis intervention services include face-to-face encounters with the child to resolve acute emotional dysfunction by providing intervention resolution and stabilizing functions through triage screening, planning, and documentation;~~

~~(14) recreation services for each child; and~~

~~(15) providing a 12-month on-site educational program for each child.~~

~~(b) Contracted Level E placements are provided in a setting licensed as a child-placing agency group home or residential child care facility that is not located in a hospital, either medical or psychiatric, or a psychiatric residential treatment center.~~

~~(c)The contractor:~~

~~(1) complies with the Oklahoma Health Care Authority rules for residential behavior management services in group settings and non-secure diagnostic and evaluation centers per OAC 317:30-5-1040 though 317:30-5-1047;~~

~~(2) provides clothing, after initial placement of a child. Emergency funds for clothing may be accessed per OAC 340:75-13-45;~~

~~(3) completes a written incident report describing any extreme behavioral incident or major rule violation, including the contractor's response, submits the original to the Children and Family Services Division (CFSD) Community-Based Residential Services programs manager and a copy to the child's CW county of jurisdiction worker, and files a copy in the child's case record;~~

~~(4) meets the staffing guidelines defined in the Oklahoma Department of Human Services (OKDHS) contract;~~

~~(5) complies with children's rights per OAC 340:75-11-237;~~

~~(6) complies with all general requirements per OAC 340:75-11-238;~~

~~(7) maintains documentation of each child's absent without leave (AWOL) and leave days defined in the contract and reports leave days on Form DCYS-S-2, CFSD Claim for Purchase of Residential Care; and~~

~~(8) is reimbursed by OKDHS at a fixed daily rate for the total number of beds specified in the OKDHS contract. The fixed daily rate is a blend of Title IV-E and Title XIX federal funds, per eligibility of each child served, and state funds. The contractor submits Form DCYS-S-2 for reimbursement to CFSD Administrative Services Unit.~~

340:75-11-371. Custody children served in contracted Level E placements [REVOKED]

~~(a) Level E placements serve custody children with severe emotional disorders or behavioral disorders.~~

~~(b) Level E placements are the most restrictive and most treatment intensive placements available for Deprived custody children outside of a psychiatric facility.~~

~~(c) In general, custody children served are ages 13 to 18, male or female. Each contractor serves a specifically defined target population of custody children.~~

~~(d) The contractor receives referrals for the placement of custody children from the Division of Children and Family Services (DCFS) Placement Section through the contract liaison.~~

340:75-11-372. Responsibilities of Child Welfare (CW) county of jurisdiction worker for custody children placed in contracted Level E placements [REVOKED]

~~The CW county of jurisdiction worker has responsibilities for custody children placed in contracted Level E placements.~~

340:75-11-373. Responsibilities of the liaison to contracted Level E placement providers [REVOKED]

~~The Child Welfare (CW) worker assigned as the liaison to contracted Level E placement providers has specific duties and responsibilities.~~

SUBCHAPTER 13. OTHER CHILD WELFARE SERVICES AND MEDICAL SERVICES FOR CHILDREN IN ~~SUBSTITUTE~~ OUT-OF-HOME CARE

PART 2. TITLE IV-E ELIGIBILITY AND REIMBURSABILITY

340:75-13-11. Title IV-E of the Social Security Act

(a) **Legal base.** ~~Public Law 96-272, the Foster Care and~~ Title IV-E (IV-E) was originally enacted as part of the Adoption Assistance and Child Welfare Act of 1980, and ~~the subsequent amendment, Public Law 105-98,~~ later amended by the Adoption and Safe Families Act, ~~codified at 42 USC, Section 671, were~~ (ASFA) of 1997, Public Law 105-89, Sections 620 through 679 of Title 42 of the United States Code. ASFA was enacted to address the ~~phenomenon of "foster care drift" where millions~~ nationwide problem of children ~~were~~ remaining removed from their homes and ~~remained~~ in out-of-home care for many years with no permanent plan.

(1) These laws ~~promulgate the belief~~ require that a child ~~is~~ be removed from his or her home only when ~~continued placement~~ continuation in the home is contrary to the child's welfare ~~of the child~~ and, unless an emergency exists, reasonable efforts be made to prevent the child's removal.

(2) ~~In addition, the law requires that~~ When a child is removed, reasonable efforts must be made to ~~prevent removal unless a court has determined efforts are not required because of aggravated circumstances as defined in state law~~ finalize the permanency plan adopted by the court. ~~In all other cases reasonable efforts must be made to reunite the family unless reasonable efforts to reunite have been made and failed and are no longer feasible.~~

(3) Judicial determinations or findings must be made on a case-by-case basis and reflect the actions and efforts by the State. In those ~~specific situations~~ cases where reasonable efforts to prevent removal or reunify are not required, the ~~state~~ court must hold a permanency ~~planning~~ hearing within 30 days ~~and make reasonable efforts to place the child for adoption or other specified permanent plan~~ of such finding. ~~Those situations include cases in which a court has found that:~~

~~(1) a child has been subjected to "aggravated circumstances" as defined in state law, including, but not limited to, abandonment, torture, chronic abuse, and sexual abuse.~~

~~(2) a parent has been convicted of murder of any child, or manslaughter of another child of his or hers, or has committed a felony assault that results in serious bodily injury to the child.~~

~~(3) a parent's rights to a sibling of the child have been involuntarily terminated.~~

(b) **Purpose.** To assist states in compliance with ~~PL 96-272~~ federal law, funds were made available through ~~Title~~ IV-E of the federal Social Security Act to reimburse the states for a percentage of the cost of:

(1) certain administrative and training activities;

(2) room, board, and basic supervision for children in out-of-home care; and

(3) recurring and non-recurring adoption assistance ~~subsidies~~ for eligible children.

340:75-13-12. IV-E applications

Custody ~~Specialists~~ specialists accept applications for Title IV-E (IV-E) eligibility and determine IV-E eligibility, per DHS:10-1, for children ~~and youth~~ in the custody of ~~DHS, the Office of Juvenile Affairs (OJA) and~~ Oklahoma Department of Human Services (OKDHS) or Indian tribes with which ~~DHS~~ OKDHS has a contractual agreement for payment of foster care services.

340:75-13-13. IV-E eligibility criteria

Both criteria in (1) and (2) ~~of this Section~~ must be met for a child to be determined eligible for Title IV-E (IV-E).

(1) **Legal status.** The removal or placement ~~was~~ of the child is the result of a:

(A) ~~a~~ court order, made on a case-by-case basis, documenting ~~that~~:

(i) continuation in the home is contrary to the child's welfare ~~of the child~~, or that the placement ~~would be~~ is in the child's best ~~interest of the child.~~ interests, or language to that effect, per ~~[~~OAC 340:75-3-10.1~~]~~.

(I) This determination must be made in the first court order that sanctions the child's removal~~, even temporarily,~~ from the home.

(II) Failure to include this finding in the first court order results in ~~the child being ineligible~~ a determination of ineligibility for ~~Title~~ IV-E foster care ~~maintenance payments~~ reimbursement for the duration of the child's stay in ~~foster~~ out-of-home care; and

(ii) prior to the placement of ~~a~~ the child in ~~foster~~ out-of-home care, reasonable efforts ~~have been~~ were made to prevent the removal from the home, or reasonable efforts were not required~~.~~ due to an emergency, per ~~[~~OAC 340:75-1-18.4~~]~~.

(I) The determination must be made no later than 60 days from the date of the ~~child is removed~~ child's removal from the home~~; failure~~.

(II) Failure to include this finding within 60 days of the child's removal results in ~~the~~

~~child being ineligible~~ a determination of ineligibility for the duration of the child's stay in ~~foster~~ out-of-home care~~.~~; or

(B) ~~a~~ voluntary consent with a signed written agreement between ~~DHS, Office of Juvenile Affairs (OJA),~~ Oklahoma Department of Human Services (OKDHS) or a tribe and the ~~parent~~ parent(s) or legal guardian of the child ~~which~~ that is binding on the parties to the agreement and specifies the legal status of the child, the rights and obligations of the ~~parent~~ parent(s) or legal guardian, and the rights and responsibilities of OKDHS or the ~~Agency~~ tribe. A court order with required IV-E findings and custody to ~~DHS~~ OKDHS or the tribe is necessary when ~~care~~ the child is ~~beyond~~ in out-of-home care more than 90 days, per OAC 340:75-4-12.1. ~~[OAC 340:75-7-44] A court order with custody to OJA is necessary when care is beyond 180 days.~~

(2) **Relationship to AFDC.** In the initial ~~eligibility~~ month of IV-E eligibility consideration, the child must have been categorically related to the Aid to Families with Dependent Children (AFDC) program using the ~~Department's~~ AFDC rules in effect as of July 16, 1996, per DHS:10-1. To qualify for ~~Title~~ IV-E ~~payments~~, a child must be ~~living with and removed from the same AFDC specified relative, and would have met the requirements for AFDC in or for the month in which court proceedings were initiated.~~ either:

~~(A) A removal from the home must occur as a result of a judicial order.~~

(~~i~~A) ~~The child may be~~ physically and legally removed from the ~~parent~~ parent(s); or

(~~ii~~B) ~~The child may be~~ legally removed from the ~~parent, and~~ parent(s) while residing with ~~another~~ a specified relative~~;~~, per DHS:10-1-21, regardless whether the child ~~may or may not be~~ was physically moved from ~~that~~ the specified relative's home. ~~This allows a child to continue living with a relative caretaker, while treating the child as being physically and legally removed from the parent.~~

~~(B) To determine the requirements of living with a specified relative prior to removal, either of two situations must apply:~~

~~(i) the~~ The child ~~was~~ must have been living with the ~~parent~~ parent(s) or specified relative and ~~was~~ AFDC eligible in that home:

(i) in the month of the initiation of court proceedings; or

(ii) ~~the child had been living with the parent or specified relative~~ within six months of the initiation of court proceedings and would have been eligible in the month court proceedings were initiated if the child had still been living in that home.

340:75-13-15. Initial eligibility determination

Within 15 working days of ~~the~~ receipt of ~~the application~~ Form CWS-KIDS-4, Eligibility Determination, the custody specialist makes an initial eligibility determination ~~is made by the Custody Specialist~~ for Title IV-E and ~~is reported~~ reports the IV-E eligibility determination to the referring Child Welfare worker.

340:75-13-16. IV-E reimbursability

(a) Once a child has been determined eligible for Title IV-E (IV-E), ~~several~~ criteria in (1) and (2) are reviewed by the custody specialist at least every 12 months to determine ~~if~~ whether the ~~child's~~ cost of the child's out-of-home care ~~can be~~ is reimbursed by IV-E ~~federal~~ funds. ~~Criteria are:~~

(1) ~~legal~~ Legal responsibility, ~~[~~per OAC 340:75-1-16~~(a)]; and~~. There must be a court order authorizing legal responsibility for the child to Oklahoma Department of Human Services (OKDHS) or an Indian tribe.

(2) ~~qualifying~~ Child's placement. A qualifying placement is any placement ~~which~~ that is IV-E reimbursable~~.~~, such as:

(A) an OKDHS or tribally approved foster home;

(B) a private child care institution;

(C) a public child care group home; or

(D) child care facility licensed for no more than 25 children.

(b) ~~Title~~ IV-E funds are not available when a court assumes responsibility for ordering the placement of a child and orders ~~a placement~~ such with a specific ~~foster care~~ placement provider without consideration of the ~~agency's~~ recommendation~~; should~~ by OKDHS or the tribe. IV-E funds are available if the child is later ~~be~~ placed ~~by DHS, OJA, or a tribe~~ in ~~a qualified placement, payment may be resumed~~ accordance with OAC 340:75-13-16(a)(1) and (2).

(c) IV-E reimbursement payments may begin the date the child is determined eligible and upon entry into a qualified placement.

340:75-13-17. IV-E annual review

Each Title IV-E (IV-E) case is reviewed for continued ~~Title~~ IV-E eligibility at least every 12 months by the ~~Custody Specialist~~ custody specialist. Failure to do so results in the discontinuance of IV-E eligibility. There is no annual IV-E review required on adoption ~~subsidy~~ assistance cases, as the annual ~~subsidy contract renewal~~ review of the Adoption Assistance Agreement serves that purpose~~.~~, ~~[~~per OAC 340:75-15-128.2~~]~~.

(1) **AFDC eligibility.** Aid to Families with Dependent Children (AFDC) eligibility is redetermined based on information supplied by the Child Welfare (CW)~~, Office of Juvenile Affairs (OJA),~~ or tribal worker ~~in regard to~~ regarding the child's:

(A) continued out-of-home placement~~,~~;

(B) age~~, deprivation,~~;

(C) financial support by the parent(s);

(D) school attendance, if applicable;

(E) earned and unearned income ~~of the child~~. The child's income must be confirmed by the custody specialist; and

(F) ~~the child's~~ resources. ~~Financial need and deprivation of parental support must be confirmed.~~

(2) **Judicial determinations.**

(A) ~~Whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement, a~~ A judicial determination of reasonable efforts to finalize the permanency plan that is in effect must be made no later than ~~12~~:

(i) six months from the child's date of entry into ~~foster~~ out-of-home care; and

(ii) every ~~12~~ six months thereafter while the child is in ~~foster~~ out-of-home care.

(B) If a judicial determination is not made, the child becomes ineligible for IV-E from the end of the:

(i) 12th month following the child's date of entry into out-of-home care; or

(ii) month in which the most recent judicial determination of reasonable efforts to finalize a permanency plan was made, and remains ineligible until such a judicial determination is made.

340:75-13-19. IV-E adoption assistance

Application for Title IV-E adoption assistance may be approved for a child who meets the ~~definition of~~ eligibility criteria for special needs and ~~is AFDC eligible, is eligible for Supplemental Security Income (SSI), is eligible as a child of a minor parent who is in foster care and receiving IV-E foster care maintenance payments, or is eligible due to prior IV-E adoption assistance eligibility. The AFDC eligibility determination must be made both at the time of removal and in the month the adoption petition is initiated. Children adopted after October 1, 1997, who were initially eligible for IV-E adoption assistance and whose adoptions were dissolved, are able to continue their IV-E eligibility when adopted again. [OAC 340:75-15-128.1 through 340:75-15-128.7]~~ Aid to Families with Dependent Children, per DHS 10:1, OAC 340:75-15-128.2, and OAC 340:75-15-128.4.

340:75-13-20. Youth in the custody of OJA [REVOKED]

~~As the designated IV-E state agency, DHS makes timely IV-E eligibility determinations for children and youth in the custody of OJA based on the same standards as for children in the custody of DHS. DHS reimburses OJA the Federal share of allowable costs at the most current IV-E Federal Financial Participation rate.~~

~~(1) As a condition to receive IV-E funds, OJA administers a program for foster care that meets all the requirements of Title IV-B and Title IV-E of the Social Security Act and shares with DHS all relevant information including, but not limited to, eligibility and client information.~~

~~(2) By signing the application, OJA documents and certifies the validity of information as required by DHS to determine IV-E eligibility, including verification that the court order removing the youth from the home and all subsequent orders contain all federally required judicial findings.~~

~~(3) OJA is liable for any federal disallowance of IV-E funds resulting from the actions of OJA or the actions of DHS carrying out a written directive of OJA.~~

~~(4) OJA maintains documentation for any claims for IV-E funds filed by DHS on behalf of OJA and participates in all state and federal IV-E audits.~~

340:75-13-21. Children in the custody of an Indian tribe

When a state or tribal court awards custody of an Indian child to a tribe with which ~~DHS~~ Oklahoma Department of Human Services (OKDHS) has a contractual agreement for payment of foster care services and the ~~placement is made into~~ child is placed in a tribally approved foster home, ~~DHS pays the cost of the foster care maintenance payment and~~ OKDHS seeks ~~federal~~ Title IV-E (IV-E) reimbursement on any eligible ~~children~~ child. IV-E eligibility is determined by the ~~Custody Specialist~~ custody specialist utilizing the ~~same~~ criteria ~~as for a child in the custody of DHS or Office of Juvenile Affairs (OJA)~~ set forth in OAC 340:75-13-13. The tribe:

(1) ~~The tribe~~ is responsible for developing and implementing policies and practices ~~which assure~~ that ensure compliance with federal regulations related to Titles IV-B and IV-E of the Social Security Act. ~~DHS~~ Children and Family Services Division monitors tribal compliance with such regulations through on-site visits on an annual basis~~.~~, per OAC 340:75-19-32; and

(2) ~~Information~~ provides required information to determine IV-E eligibility ~~is provided by the tribe~~ to the ~~DHS~~ assigned Child Welfare (CW) tribal liaison utilizing Form DCFS-57, Indian Child Welfare Program Referral.

(A) The CW tribal liaison submits ~~to the Custody Specialist the~~ completed Form CWS-KIDS-4, Eligibility Determination, to the assigned custody specialist for the initial IV-E eligibility determination and ~~the~~ annual eligibility reviews. ~~[OAC 340:75-1-206]~~

(B) The custody specialist contacts the CW tribal liaison to request needed information for the annual review, per OAC 340:75-19-33.

340:75-13-22. Trial home visit

A ~~custody~~ child ~~may participate in~~ who is returned to the parent(s)' home and remains in Oklahoma Department of Human Services (OKDHS) custody is considered on a trial home visit~~,~~. ~~not to exceed six months, without having to re-establish~~ The child retains Title IV-E ~~(IV-E)~~ eligibility ~~if the child re-enters foster care, unless there is a court order extending the trial home placement beyond~~ for up to six months~~.~~, ~~If there is a~~ and longer if the court ~~order extending~~ extends the trial home visit ~~beyond six months, and the trial home visit does not exceed the time frame in the court order, the child retains IV-E eligibility upon returning to foster care following the trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period specified by the court, and the child is returned to foster care, that placement must then be determined as a new placement and IV-E eligibility must be newly established. Under these circumstances the~~

~~judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required~~.

PART 3. INCOME AND RESOURCES ~~TO~~ OF THE CHILD

340:75-13-30. Special needs trust

When a child in Oklahoma Department of Human Services (OKDHS) custody does not use all of the Supplemental Security Income (SSI) received, per OAC 340:75-13-29, the accrued funds may be transferred into a special needs trust (SNT), per OAC 317:35-5-41.

(1) The assets in an SNT do not count toward the Medicaid or SSI resource limits when:

(A) the trust established is irrevocable and may only be amended with the agreement of OKDHS;

(B) the beneficiary of the trust is disabled and younger than age 65 when the trust is created and funded;

(C) the trust beneficiary meets the SSI definition of a disabled person;

(D) the trust is created by the beneficiary's parent, grandparent, legal guardian, or a court; and

(E) Medicaid is reimbursed after the beneficiary dies, to the extent of Medicaid funds spent on the beneficiary.

(2) The Child Welfare (CW) worker notifies the child's attorney of the requirements for creating an SNT, as described in (A) through (F).

(A) Designate a trustee. The trustee is a bank or any adult who will take care of the child's money appropriately. Except for a bank, the trustee may not be an organization.

(B) Designate an attorney. The attorney fills out documents, customizes the trust, and submits to the court for approval. If the child's attorney cannot do the trust, the child's attorney or CW worker uses community contacts to locate an attorney. Payment for the attorney is made with the child's money or with money from the trust.

(C) Request assistance from OKDHS, if needed. Forms and samples of the SNT are available through OKDHS Legal Division.

(D) Secure an order from the juvenile judge. The attorney approaches the juvenile assistant district attorney before addressing the judge. The judge establishes the trust by signing an order or appoints someone to establish the trust.

(E) Apply for the trust employer identification number (EIN) required by the bank using Internal Revenue Service (IRS) Form SS-4, Employer Identification Number (EIN), available at www.irs.gov.

(F) Open a bank account, named "(trustee's name), Trustee of the (beneficiary's name) Irrevocable Trust."

[OAR Docket #05-694; filed 4-21-05

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

[OAR Docket #05-695]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 1. Licensing Services - Child Care
340:110-1-4. through 340:110-1-6. [AMENDED]
340:110-1-8. through 340:110-1-8.1. [AMENDED]
340:110-1-8.3. through 340:110-1-9.3. [AMENDED]
340:110-1-9.5. through 340:110-1-10. [AMENDED]
340:110-1-14. [AMENDED]
340:110-1-17. [AMENDED]
340:110-1-21. [AMENDED]
Part 3. Licensing Services - Residential Care and Agencies
340:110-1-43.1. [AMENDED]
340:110-1-45. through 340:110-1-47.2. [AMENDED]
340:110-1-51. [AMENDED]
340:110-1-54. [AMENDED]
Subchapter 3. Licensing Standards for Child Care Facilities
Part 1. Requirements for Child Care Centers
340:110-3-7.1. [AMENDED]
Part 9. Requirements for Residential Child Care Facilities
340:110-3-154. [AMENDED]
340:110-3-154.3. [AMENDED]
340:110-3-168. [AMENDED]
Subchapter 5. Requirements for Child-Placing Agencies
Part 5. Requirements for Foster Family Homes
340:110-5-60. [AMENDED]
(Reference APA WF 04-32)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Oklahoma Child Care Facilities Licensing Act, Sections 401 et seq. of Title 10 of the Oklahoma Statutes.
DATES:
Comment period:
January 18, 2005 through February 17, 2005
Public hearing:
None requested.
Adoption:
February 22, 2005
Submitted to Governor:
February 22, 2005
Submitted to House:
February 22, 2005
Submitted to Senate:
February 22, 2005
Gubernatorial approval:
April 8, 2005
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 19, 2005.
Final adoption:
April 19, 2005
Effective:
June 1, 2005
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 3. Licensing Standards for Child Care Facilities
Part 9. Requirements for Residential Child Care Facilities
340:110-3-154.3. [AMENDED]
Subchapter 5. Requirements for Child-Placing Agencies
Part 5. Requirements for Foster Family Homes
340:110-5-60. [AMENDED]
(Reference APA WF 04-11)
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22 Ok Reg 35

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04-1275
Superseded rules:
Subchapter 5. Requirements for Child-Placing Agencies
Part 5. Requirements for Foster Family Homes
340:110-5-60. [AMENDED]
(Reference APA WF 04-12)
Gubernatorial approval:
August 9, 2004
Register publication:
22 Ok Reg 28
Docket number:
04-1276
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The revisions to Subchapters 1, 3, and 5 of Chapter 110: (1) clarify current policy and procedure to provide direction to Oklahoma Department of Human Services (OKDHS) Division of Child Care (DCC) Licensing staff who regulate and consult with residential and child care facilities in meeting requirements for licensure; and (2) improve programs and services provided to children and their families at these facilities. The existing Licensing Requirements for Child Care Centers and Requirements for Residential Child Care Programs are updated.

340:110-1-4 is amended to provide clarification regarding open records.

340:110-1-4.1 is amended to delete a form listed twice and add two new forms.

340:110-1-5 is amended to move language from another section to more logically describe the inquiry process.

340:110-1-6 is amended to delete language that was moved to another section; clarify Licensing staff responsibility regarding an initial visit to a program when children are in care; and clarify identification and ownership documentation.

340:110-1-8 is amended to clarify the information required to issue a license, including background information.

340:110-1-8.1 is amended to list an additional form now used for waiver requests; and clarify the Licensing staff and State Office responsibility regarding notification of a waiver decision.

340:110-1-8.3 is amended to clarify the requirements for a child care center director, master teacher, and home provider to meet the criteria for the Reaching for the Stars program; change the program evaluation from two to four years; define which forms are used for application and the time frame for submitting the application; and clarify Licensing staff responsibility regarding Stars monitoring visits to parallel the required licensing monitoring visits.

340:110-1-9 is amended to reorganize the placement of information; and clarify Licensing staff responsibility regarding a change in director and processing a self-reported incident.

340:110-1-9.1 is amended to change annual consultation to annual conferences with a parent for the increased reimbursement rate for the care of children with disabilities; and clarify Licensing staff responsibilities.

340:110-1-9.2 is amended to clarify references to the licensing database and Licensing staff responsibility.

340:110-1-9.3 is amended to define "numerous, repeated, and serious non-compliance."

340:110-1-9.5 is amended to remove misleading language.

340:110-1-10 is amended to clarify the written notice sent to a licensee upon revocation of license.

340:110-1-14 is amended to clarify confidentiality of records.

340:110-1-17 is amended to remove obsolete language.

340:110-1-21 is amended to remove obsolete language.

340:110-1-43.1 is amended to delete obsolete forms and add new forms.

340:110-1-45 is amended to clarify the responsibilities of Licensing staff when a facility is placed on application status.

340:110-1-46 is amended to describe types of ownership.

340:110-1-47 is amended to clarify responsibilities of Licensing staff regarding a facility's name change and change in ownership; and procedures when a child's death is due to Sudden Infant Death Syndrome.

340:110-1-47.1 is amended to update policy references.

340:110-1-47.2 is amended to clarify notation of plans of correction for existing non-compliances.

340:110-1-51 is amended to clarify the responsibility of the programs manager regarding the waiver procedure.

340:110-1-54 is amended to clarify language.

340:110-3-7.1 is amended to update qualifications for a child care center director effective January 1, 2005.

340:110-3-154 is amended to add the resident's mental health history to the list of information required during the admission assessment; add the resident's medical care needs to the comprehensive service plan; and require the inclusion of the resident's individual health needs in the facility's medical plan.

340:110-3-154.3 supersedes the emergency adopted by the Commission July 27, 2004 and is amended to require that a facility have a medical plan to meet the individual medical needs of each resident based on the information obtained upon admission.

340:110-3-168 is amended to require that a health professional review and approve the admission assessment for a resident within 24 hours.

340:110-5-60 was amended as an emergency to include language to: (1) comply with 47 O.S. 11-1112 regarding transportation of children; and (2) restrict smoking and illegal drug use and paraphernalia. No substantive revisions were made during permanent rulemaking.

CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. LICENSING SERVICES - CHILD CARE

340:110-1-4. Roles and responsibilities

(a) The staff members responsible for licensing child care facilities are under the supervision of Licensing Services in the Division of Child Care. The licensing staff makes recommendations on all case actions to the licensing supervisor. The statewide licensing coordinator or designee is responsible for the final approval of all licensing recommendations.

(b) Official licensing records for child care programs are maintained in the licensing staff's office. These records are open to the public upon request and the procedures in 340:110-1-14 are followed.

(c) In addition to licensing child care facilities, licensing staff are responsible for:

(1) communicating with local fire, health, and city officials within their assigned area regarding licensing policy, requirements, inspections, and other issues related to a specific facility or child care in general;

(2) assisting parents in identifying child care options and providing information on choosing quality care;

(3) facilitating or sponsoring training for child care providers; and

(4) promoting the availability of quality, affordable child care within their assigned area.

(d) ~~A~~ When possible, a licensing staff member is not assigned to the facility where the staff member's child is in care.

340:110-1-4.1. Forms

Forms ~~which~~ that apply to this Part are described in this Section~~:~~.

(1) **ADM-123, Certification for Special Needs Child Care Rate.** Form ADM-123 is used to obtain information for determining eligibility for the special needs child care rate for children receiving Supplemental Security Income (SSI), SoonerStart, or special education services.

~~(2) **OCC-57, Physical Plant.** Form OCC-57 is used by the licensing staff to record a diagram of the indoor and outdoor space utilized by a child care facility.~~

(~~3~~2) **OCC-2, Child Care Center Staff Summary.** Form OCC-2 is used to document compliance with licensing requirements for all staff currently employed by the child care facility.

(~~4~~3) **OCC-3, Child Care Center Monitoring Report.** Form OCC-3 is used by the licensing staff to document compliance with requirements during a monitoring visit at a child care center and record any other information obtained.

(~~5~~4) **OCC-4, Application for License - Child Care Facility.** Form OCC-4 is used to make application for a license to operate a child care facility, including a child care center, school-age program, and part-day children's program.

(~~6~~5) **OCC-5, Transportation Information.** Form OCC-5 is used by a child care facility director to document compliance with licensing requirements on transportation.

(~~7~~6) **OCC-6, Equipment Inventory - Child Care Center.** Form OCC-6 is used to document the equipment available and items needed to comply with Licensing Requirements for Child Care Centers, OKDHS Publication no. 84-08.

(~~8~~7) **OCC-7, Documentation of Training - Family Child Care Home and Large Child Care Home.** Form OCC-7 is used by a family child care home provider to document annual training as required by Licensing Requirements for Family Child Care Homes and Large Child Care Homes, OKDHS Publication no. 86-104.

(~~9~~8) **OCC-7-A, Documentation of Required Training Topics - Family Child Care Home and Large Child Care Home.** Form OCC-7-A is used by a family child care home provider to document required training topics as required by Licensing Requirements for Family Child Care Homes and Large Child Care Homes, OKDHS Publication no. 86-104.

(~~10~~9) **OCC-8, Periodic Monitoring Report - Certification for Care of Children with Disabilities.** Form OCC-8 is used by the licensing staff to document ongoing compliance with certification requirements during monitoring visits.

(~~11~~10) **OCC-10, Part-Day Children's Program Monitoring Report.** Form OCC-10 is used by the licensing staff to document compliance with licensing requirements during a monitoring visit at a part-day children's program and to record any other information obtained.

(~~12~~11) **OCC-12, Complaint Report and Complaint Summary.** Form OCC-12 is used to record a complaint against a child care facility. Form OCC-12 is placed in the case record and includes the findings of the investigation in compliance with Section 406 of Title 10 of the Oklahoma Statutes.

(~~13~~12) **OCC-14, Family Child Care Home Monitoring Report.** Form OCC-14 is used to document compliance with requirements during a monitoring visit to a family child care home and record other information obtained.

(~~14~~13) **OCC-17, Six-Month Permit.** Form OCC-17 is a six-month temporary authorization for an applicant to operate a child care facility until a license has been issued or a formal denial notice is given to the applicant.

(~~15~~14) **OCC-18, Notice of Issuance of License for a Child Care Facility.** Form OCC-18 is a notice to the child care facility that it has complied with licensing requirements and is being issued a license.

(~~16~~15) **OCC-20, Equipment Inventory - Part-day Children's Program.** Form OCC-20 is used to document the equipment available or needed to comply with Licensing Requirements for Part-day Children's Programs, OKDHS Publication no. 95-12.

(~~17~~16) **OCC-21, Comments and Recommendations RE. Licensing Requirements and Policy.** Form OCC-21 is used to make comments and recommendations pertaining to licensing requirements and policy.

(~~18~~17) **OCC-23, School-Age Program Monitoring Report.** Form OCC-23 is used to document compliance with licensing requirements for school-age programs during a monitoring visit and record any other information obtained.

(~~19~~18) **OCC-24, School-Age Program - Equipment Inventory.** Form OCC-24 is used to document the equipment available or needed to comply with Licensing Requirements for School-Age Programs, OKDHS Publication no. 97-10.

(~~20~~19) **OCC-25, Request for Child Care Center Star Certification.** Form OCC-25 is used by a child care center owner or director to request star certification.

(~~21~~20) **OCC-26, Periodic Certification Review - Center Star Certification.** Form OCC-26 is used to document compliance with criteria for star certification and to establish a plan to correct violations in a child care center.

(~~22~~21) **OCC-27, Request for Family Child Care Home Star Certification.** Form OCC-27 is used by a family child care home provider to request star certification.

(~~23~~22) **OCC-28, Periodic Certification Review - Home Star Certification.** Form OCC-28 is used to document ongoing compliance with criteria for star certification and to establish a plan to correct violations in a family child care home.

(~~24~~23) **OCC-37, Notice to Comply.** Form OCC-37 is used by a child care facility to document a plan of correction when there is serious or repeated non-compliance with licensing requirements.

(~~25~~24) **OCC-38, Child Information.** Form OCC-38 is used by the child care facility to record enrollment information for a child.

(~~26~~25) **OCC-41, Child Care Staff Information.** Form OCC-41 is used to record information regarding child care facility staff persons as required by licensing requirements.

(~~27~~26) **OCC-42, Application for License - Family Child Care Home and Large Child Care Home.** Form OCC-42 is used to make application for license to operate a family child care home or large child care home.

(~~28~~27) **OCC-57, Physical Plant.** Form OCC-57 is used by licensing staff to document the floor plan, including indoor and outdoor square footage and numbers of toilets and sinks.

(~~29~~28) **OCC-61, Alternative Compliance Request.** Form OCC-61 is used by a child care facility to request an alternative method of complying with licensing requirements.

(~~30~~29) **OCC-61-A, Notice of Alternative Compliance.** Form OCC-61-A is used by Oklahoma Department of Human Services (OKDHS) to notify a facility of an approved request for alternative method of compliance.

(~~31~~30) **OCC-63, One Star Plus Certification Expiration.** Form OCC-63 is used by licensing staff when a one star plus facility fails to reapply for certification at 12 or 24 months.

(31) **OCC-69, Child Care Center Compliance Review.** Form OCC-69 is used by child care center directors to verify their knowledge of the licensing requirements.

(32) **OCC-71, Child Care Waiver Request.** Form OCC-71 is used by licensing staff when submitting a waiver request to State Office.

340:110-1-5. Inquiries

(a) Inquiries regarding the licensing of child care facilities are referred to the Division of Child Care (DCC) licensing staff in whose geographical area the inquirer is located. The referral includes the name, address, telephone number, and type of care the facility is giving or planning to give. Upon receipt of an inquiry, the licensing staff provides the inquirer with a copy of the applicable requirements and, when appropriate, makes referrals to other agencies involved in ~~licensing~~ regulating child care facilities, such as the fire department, health department, and local city regulatory offices.

(b) Child care facilities on Indian tribal land do not require a state license but may request licensure. Facilities that are licensed by a tribe with whom the Oklahoma Department of Human Services (OKDHS) has a cooperative licensing agreement and that care only for Indian children do not require a state license, but may request licensure.

(~~b~~c) Inquiry records are maintained in the licensing staff's office. Inquiry information is sent to the supervisor on request. When the inquirer indicates an interest in becoming licensed, the licensing staff:

(1) determines the necessity for a license according to Section 403 of Title 10 of the Oklahoma Statutes;

(2) reviews the requirements with the individual to help him or her decide if these can be met;

(3) ascertains the qualifications of the inquirer to operate a facility; and

(4) provides consultation to assist in the development of a child care facility which can provide quality care.

340:110-1-6. Application process

(a) **Application.** The Division of Child Care (DCC) licensing staff provides the appropriate application to persons interested in licensure. ~~Child care facilities on Indian tribal land do not require a state license but may request licensure. Facilities that are licensed by a tribe with whom the Oklahoma Department of Human Services (OKDHS) has a cooperative licensing agreement and that care only for Indian children do not require a state license, but may request licensure.~~ If requested, a family child care home application is filed and a license issued to ~~two people, one of whom must live in the home~~ a caregiver and spouse. References must be obtained for both persons, and both must demonstrate compliance with requirements.

(1) **Child care provider contract.** The licensing staff advises the child care facility of the opportunity to contract with OKDHS for the care of children whose families receive child care assistance. The licensing staff documents that a child care contract promotional flyer is provided to the facility with contact information for the county child care liaison. OKDHS may contract with a child care facility in another state when a client residing near the Oklahoma border elects to use an out-of-state facility. The licensing staff responsible for the county in which the client resides verifies the facility is licensed or registered and in compliance with the Civil Rights Act by contacting the state agency responsible for licensing.

(2) **Reopening a family child care home case.** If a family child care home has been closed for less than a year and had a record of compliance prior to closure, the licensing staff may recommend license issuance after one compliant monitoring visit, utilizing previous references. Criminal history investigations must have been obtained within the last year.

(3) **Reopening a child care center, part-day children's program, or school-age program.** If a child care center has been closed and the same owner wishes to reopen, a new application must be completed.

(4) **Computer checks on license applicants.** Computer checks to identify prior involvement with OKDHS are completed on all adults who sign the application for a family child care home license and on the owner of a child care center, part-day children's program, or school-age program. When there has been prior involvement with Child Welfare, the licensing staff reviews the case for information regarding the person's ability to meet licensing requirements. Other cases are reviewed only if concerns exist. If the provider's medical information is confidential, the licensing staff may request the information from the provider. If concerns exist, the provider is asked to sign OKDHS Form HIPAA-3, Authorization to Disclose Medical Records.

(5) **Family child care homes certified to provide foster care.** A caregiver certified to provide foster care may be licensed as a family child care home. The approval

for dual service is made by the licensing supervisor, based upon the recommendation of the licensing staff and foster care worker of the child-placing agency. The decision for approval is:

(A) based upon the number, ages, and specific needs of potential child care children and foster care children;

(B) documented in the case record; and

(C) reviewed with the provider and foster care worker at least once per year or more often if concerns exist.

(6) **Status.** The facility may be granted temporary authorization to operate on application status or on a six-month permit. The licensing staff may recommend a six-month permit when the conditions required for issuance of a six-month permit described in OAC 340:110-1-8(a) are met. If the licensing staff determines that the conditions have not been met but the non-compliance does not place children at risk of immediate harm, the facility may be allowed to operate on application status. While a child care facility is on application status:

(A) if an application has been filed and licensing staff are aware that children are in care, an initial visit must be made within two weeks;

(~~A~~B) the licensing staff conducts a monitoring visit at least every two months when children are in care;

(~~B~~C) contact is made by phone every two months and documented on Form OCC-3, Child Care Center Monitoring Report, page 4, when children have not been accepted into care;

(~~C~~D) the procedures found in OAC 340:110-1-9.3 are followed if non-compliance with licensing requirements is observed during the monitoring visit. A plan of correction, including an agreed-upon time period for correction of the non-compliance, is documented; and

(~~D~~E) the licensing staff consults with the licensing supervisor if the facility is unable or unwilling to meet licensing requirements after operating on application status for six months.

(b) **Withdrawal of application.** If a child care facility applicant wishes to withdraw the application prior to issuance of a license and the licensing staff confirms that no children are in care, the licensing staff closes the case.

340:110-1-8. Types of issuance

(a) **Six-month permit.** New child care centers, part-day children's programs, school-age programs, and family child care homes may be issued a six-month permit as a temporary authorization to operate. The primary purpose of a permit is to provide an opportunity for the Oklahoma Department of Human Services (OKDHS) Division of Child Care (DCC) licensing staff to evaluate the facility's ability to comply with minimum licensing requirements on an ongoing basis, and to provide a legal basis to contract with OKDHS and receive Child Care Food Program funding. The licensing staff may recommend a permit when the facility is in compliance with critical requirements regarding criminal history investigations, required number of qualified staff, hazards indoors or outdoors, adequate equipment, fencing, playground safety, fire safety, or other areas affecting children's safety. The owner's previous history of licensing compliance is considered. The licensing staff observes and documents criminal history investigation reports, pet vaccinations, and other required items. Copies of these items are not needed for the file, with the exception of a criminal history report reflecting a record. A complete monitoring visit documenting compliance with critical requirements must be made ~~within~~ not longer than 60 days prior to issuance of the six-month permit.

(1) **Child care centers, part-day children's programs, and school-age programs.** Items required to be on file for issuance of a six-month permit are:

(A) copy of licensing staff recommendation, Lis-Req;

(B) Application for License - Child Care Facility, Form OCC-4;

(C) Child Care Center Staff Summary, Form OCC-2;

(D) Child Care Staff Information for each staff person, Form OCC-41;

(E) physical plant drawing and calculation, Form OCC-57;

(F) verification of adequate equipment for the recommended capacity;

(G) documentation of fire department approval within the previous 12 months;

(H) documentation of Oklahoma State Department of Health approval within the previous 12 months if meals are prepared and served; and

(I) Child Care Center Monitoring Report, Form OCC-3; Part-Day Children's Program Monitoring Report, Form OCC-10; or School-Age Program Monitoring Report, Form OCC-23.

(2) **Family child care homes.** The items required to be on file for issuance of a six-month permit for a family child care home are:

(A) copy of licensing staff recommendation, Lis-Req;

(B) Application for License - Family Child Care Home and Large Child Care Home, Form OCC-42;

(C) Family Child Care Home Monitoring Report, Form OCC-14; and

(D) documentation of fire department approval within the previous 12 months for a large family child care home operating in a mobile home.

(3) **Second and subsequent six-month permits.** If additional six-month permits are recommended, the procedures in (A) through (G) of this paragraph are followed.

(A) The licensing staff consults with the licensing supervisor prior to recommending a second permit.

(B) The licensing supervisor consults with the licensing regional programs manager before recommending the issuance of a third permit.

(C) The licensing regional programs manager consults with the statewide licensing coordinator

or designee before recommending the issuance of a fourth or subsequent permit.

(D) The licensing staff sends a letter to the applicant notifying him or her of the recommendation each time a second or subsequent permit is recommended. The reason for the recommendation is clearly stated in the letter, with each area of non-compliance listed separately.

(E) If the permit is due to numerous, repeated, or serious non-compliance with requirements, the licensing staff visits the facility at least monthly and is accompanied, when possible, by a witness. If at any point the non-compliance indicates the facility is unable or unwilling to meet licensing requirements, the statewide licensing coordinator or designee is consulted to discuss negative sanctions.

(F) If requirements are met before the expiration of the six-month permit, the issuance of a license may be recommended.

(G) If children have not been in care on a regular basis during the previous year, the applicant is asked to withdraw his or her application.

(b) **Issuance of license.** A license is issued after the Oklahoma Department of Human Services (OKDHS) has investigated the activities and standards of care of the applicant and has determined that the applicant meets all critical requirements identified in (a) of this Section and has demonstrated substantial compliance with all other requirements, including entry level training requirements for child care center employees. Prior to recommending issuance of a license, the licensing staff completes a minimum of three monitoring visits, and in child care centers, part-day children's programs, and school-age programs, an equipment inventory. Children in care must be observed during at least one visit. A monitoring visit must be made within 60 days of the issuance date. A license is in effect unless it is revoked or the facility voluntarily closes.

(1) **Child care centers.** In addition to the items listed in (a)(1) of this Section for issuance of a six-month permit, items required to be on file before a license is issued to a child care center are:

(A) copy of licensing staff recommendation, Lis-Req;

(B) daily program schedule;

(C) updated Child Care Center Staff Summary, Form OCC-2;

(D) outdoor play schedule, if applicable;

(E) Equipment Inventory - Child Care Center, Form OCC-6;

(F) statement of completed compliance review, if applicable;

(G) director's references;

(H) one-week sample menu;

(I) documentation of Fire Department approval within the previous 24 months;

(J) documentation of Health Department approval within the previous 24 months if meals are prepared and served; and

(K) Child Care Center Monitoring Report, Form OCC-3.

(2) **Part-day children's programs and school-age programs.** In addition to the items listed in (a)(1) of this Section for issuance of a six-month permit, the items required to be on file before a license is issued to a part-day children's program or school-age program are:

(A) copy of licensing staff recommendation, Lis-Req;

(B) outdoor play schedule, if applicable;

(C) daily program schedule for school-age programs;

(D) updated Child Care Center Staff Summary, Form OCC-2;

(E) Equipment Inventory, Form OCC-20 or OCC-24 as applicable;

(F) statement of completed compliance review, if applicable;

(G) director's references for school-age programs;

(H) one-week sample menu of foods provided by the program; and

(I) Part-Day Children's Program Monitoring Report, Form OCC-10, or School-Age Program Monitoring Report, Form OCC-23.

(3) **Family child care homes.** In addition to the items listed in (a)(2) of this Section for issuance of a six-month permit, the items required to be on file before a license is issued to a family child care home are:

(A) copy of licensing staff recommendation, Lis-Req;

(B) one-week sample menu;

(C) references;

(D) Family Child Care Home Monitoring Report, Form OCC-14; and

(E) statement of water test results if not on public water supply.

(i) If the test indicates the level of bacteria, nitrates, or lead is too high for safe use, the caregiver may sign a statement agreeing to use bottled water for drinking and cooking.

(ii) If there is a high level of bacteria or a high level of lead, boiled or bottled water must also be used for hand washing and dish washing.

(iii) If bacteria and lead are at safe levels, but the level of nitrates is too high, the water may be safely used for hand washing and dish washing.

(c) **One-year provisional license.** A provisional license may be issued for a period of one year. A subsequent provisional license may be issued at the discretion of OKDHS if an emergency exists. If the facility complies with all requirements prior to expiration of the provisional license, the licensing staff documents compliance with all requirements and submits a recommendation for issuance of a full license. A provisional license is recommended when:

(1) an applicant is temporarily unable to comply with all licensing requirements but the services are needed;

(A) the facility operator submits a written request for a provisional license, which contains the reason for the request and a time frame for compliance;

(B) the statewide licensing coordinator or designee sends a letter to the operator approving or denying the request; and

(C) a minimum of three monitoring visits are made during the provisional license period; or

(2) ~~the license cannot be issued but~~ the level of non-compliance does not support license issuance or a denial of the license;

(A) the licensing staff submits a recommendation for a provisional license, including the documentation to support the recommendation;

(B) the statewide licensing coordinator or designee sends a letter to the operator stating the reason for the provisional license; and

(C) monitoring visits are conducted at least monthly and, when possible, with a witness.

(d) **Evaluation and disposition.**

(1) The licensing supervisor reviews the licensing staff's recommendation for case action before forwarding it to the statewide licensing coordinator or designee.

(2) The statewide licensing coordinator or designee approves all recommendations for case actions. If a license or permit is approved, notification is made to the operator on Form OCC-17, Six-month Permit or Form OCC-18, Notice of Issuance of License for a Child Care Facility.

340:110-1-8.1. Criminal history investigations

(a) **Provider.** Section 404.1 et seq. of Title 10 of the Oklahoma Statutes requires that every child care facility arrange, prior to employment, for a criminal history investigation for:

(1) any person making application to establish or operate a child care facility;

(2) any person to be employed by a child care facility, including all caregivers, auxiliary staff, and substitute or assistant caregivers;

(3) others who have unsupervised access to children, such as lab students, Work Experience Program (WEP) workers, contracted staff, volunteers, or custodians; and

(4) adults, including providers' spouses or adult children, who live in the child care facility.

(b) **Exceptions.** Criminal history investigations are not required for:

(1) new staff who have documentation of a criminal history investigation within the last 12 months;

(2) staff who move to a center or program operated by the same organization;

(3) contracted staff who provide transportation, lessons, or other services if facility staff are present with children at all times;

(4) parent volunteers who transport children on an irregular basis; and

(5) providers' children who become adults (age 18) during continuous residence at the licensed facility.

(c) **Children residing in a child care facility.** A criminal history investigation may be requested on a child over 13 years of age residing in a child care facility if criminal activity is reported to Licensing.

(d) **Authorized agencies.** Criminal history investigations are acceptable only when conducted by:

(1) the Oklahoma State Bureau of Investigation (OSBI); and

(2) the authorized agency in the previous state of residence if the individual has resided in Oklahoma for less than one year.

(e) **Sex Offenders Registry.** The OSBI report must include a search of the Department of Corrections' files maintained by the OSBI pursuant to the Sex Offenders Registration Act. According to Section 404.1 of Title 10 of the Oklahoma Statutes, it is unlawful for any person who is required to register pursuant to the Sex Offenders Registration Act to work with or provide services to children, to live in a child care facility, or to be employed or contracted by the facility to care for children. If it is determined that a facility has violated this Statute, the Department may pursue:

(1) an emergency order;

(2) revocation of the license or denial of the application for license;

(3) an injunction;

(4) an administrative penalty not to exceed Ten Thousand Dollars ($10,000); or

(5) referral for criminal proceedings.

(f) **Documentation and procedure.** The licensing staff provides information and the criminal history investigation request forms to licensees and persons interested in becoming licensed. ~~Criminal history investigation documentation and procedure are contained in the Instructions to Staff of this subsection.~~

(g) **Convictions.** The licensing staff reviews each criminal history report.

(1) If a report includes a charge without a disposition for an offense listed in licensing requirements or which could affect contract eligibility, a copy of the disposition is obtained.

(2) If a report includes a conviction for an offense listed in licensing requirements, the licensing staff:

(A) advises the owner, director, or family child care home provider that the individual does not meet licensing requirements;

(B) informs the owner, director, or family child care home provider that he or she may request a waiver from the statewide licensing coordinator or designee unless the individual was convicted of a crime pursuant to the Sex Offenders Registration Act. See (e) of this Section;

(C) provides the owner, director, or home provider with a copy of the items considered for a waiver as listed in (h) of this Section; and

(D) documents assurance from the owner, director, or home provider that the person in question will not be employed, work with children, or be present in the home when children are in care until a decision has been made regarding the request for a waiver. See (h) of this Section.

(3) If the owner, director, or family child care home provider's criminal history report includes a conviction of fiscal mismanagement, such as embezzlement or fraud, or if there are repeated convictions that indicate a pattern of criminal activity, a copy of the report is sent to the county day care liaison.

(4) If the report contains information regarding behavior that may endanger children, a copy of police reports may be requested whether or not a conviction resulted.

(h) **Waiver.** The prohibition to employ a person with criminal history may be waived if requested in writing by the facility's owner, director, or home provider. However, a waiver is not granted to any person who is required to register pursuant to the Sex Offenders Registration Act. When submitting a waiver request, licensing staff complete Form OCC-71, Child Care Waiver Request, and submit it to Division of Child Care (DCC) State Office. The decision to grant a waiver is made by the statewide licensing coordinator or designee. The decision is based on documentation indicating that the health, safety, and well-being of children will not be endangered. DCC State Office notifies the provider of the decision in writing. Licensing staff monitor any additional instructions made to the provider and verify that the waiver notice is posted in the facility. Criteria considered include the:

(1) type of crime or offense for which the individual was convicted or a finding made;

(2) nature of the offense(s);

(3) age of the individual at the time of the offense(s);

(4) circumstances surrounding commission of the offense(s) that demonstrate whether it is likely that the person will re-offend;

(5) number of offenses for which the individual was convicted or findings made;

(6) length of time that has elapsed since the last conviction or finding;

(7) relationship of the offense(s) ~~and~~ to the ability to care for children;

(8) evidence of rehabilitation or education activities, such as counseling, since the offense was committed;

(9) statement from the individual with the criminal history; and

(10) opinions of reliable community members concerning the individual in question.

340:110-1-8.3. Certification of facilities to receive a differential quality rate

(a) **Purpose.** Certification is required for a provider to receive a differential quality rate for children whose families are receiving child care assistance through the Oklahoma Department of Human Services (OKDHS).

(b) **Criteria for child care center certification levels.** The levels of certification for child care centers are contained in this subsection.

(1) **Criteria for one star centers.** A center operating on a permit, license, or provisional license is designated as a one star center.

(2) **Criteria for one star plus centers.** A center can operate on one star plus status for a total of 24 months; these months are not required to run consecutively. To be approved as a one star plus center, a center must complete and submit Form OCC-25, Request for Child Care Center Star Certification, and meet all the requirements in (A) through (E) of this paragraph. At the end of two years, the center must be approved as a two star center or return to one star status. If the new criteria cannot be met at 24 months, a facility may request an extension of time to comply as set forth in (g) of this Section.

(A) **Licensing status.** The program must have a license, provisional license, or permit and must not have a history of numerous, repeated, or serious non-compliance with applicable licensing requirements. For the purposes of star certification the definitions of numerous, repeated, or serious non-compliance listed in (i) through (iii) of this paragraph apply.

(i) Numerous non-compliance is any monitoring visit with six or more items documented as non-compliant on the monitoring report for a facility with a licensed capacity of less than 60 or seven or more items for a facility with a licensed capacity of 60 or more.

(ii) Repeated non-compliance is three or more documented incidents of non-compliance with the same requirement within the last 12 months. For missing immunizations to be considered a repeat non-compliance, they must be regarding the same child.

(iii) Serious non-compliance is a non-compliance with licensing requirements which exposes children to conditions which present an imminent risk of harm. Some examples of serious non-compliance are violations of requirements for:

(I) staff-child ratio;

(II) supervision of children;

(III) sleep position;

(IV) prohibited disciplinary actions;

(V) licensed capacity;

(VI) use of passenger restraints;

(VII) water activities,

(VIII) pools and other water hazards;

(IX) multiple hazards;

(X) weapons;

(XI) reporting child abuse;

(XII) prohibiting access to children by a person with a criminal record or health or behavior risk;

(XIII) administering medication to children;

(XIV) room temperatures; and

(XV) heat sources.

(B) **Director qualifications.**

(i) At initial star approval the director meets director qualifications as set forth by the applicable licensing requirements and must have documentation of 40 hours of training, within the last 12 months. At least 20 of those hours must be Tier II

or Tier III training in administration and management.

(ii) If a new director is hired, the director must have documentation of 40 hours of training, within the last 12 months. At least 20 of those hours must be Tier II or Tier III training in administration and management.

(iii) In subsequent years, directors must have documentation of 30 hours of Tier I, Tier II, or Tier III job-related training per employment year.

(iv) In-service training such as videos and on-site staff training is counted for a maximum of six hours per year. Reading does not count for stars training.

(v) An individual may not be considered as the director of more than one facility certified as one star plus, two star, or three star unless the facilities are programs that do not operate concurrently at any given time. For an exception to this rule to be considered, a written request ~~is~~ must be submitted by the provider and approved by the stars program manager or designee.

(C) **Learning environment.** The center has current weekly lesson plans appropriate for the developmental needs of all groups of children~~, including 12 months and older~~. Space for children ~~12 months~~ two years of age and older is arranged in a minimum of five well-defined and equipped interest areas in each classroom to facilitate a variety of activities, which must include block building, dramatic play, manipulative play, art, and book reading. Teachers read to children a minimum of 15 minutes each day.

(D) **Staff training.**

(i) At initial application, center staff employed at the facility for at least 12 months and counted toward meeting the staff-child ratio must have 20 hours of Tier I, II, or III training per employment year. At application, training may be counted if training was obtained within the last 12 months or within the staff's employment year.

(ii) After initial approval for certification, the training criteria must be met within the staff's employment year.

(iii) The training requirement applies to part-time staff and permanent substitutes who have worked at the child care center more than 40 hours. Staff used for the sole purpose of performing auxiliary duties, such as cooking, transportation, or maintenance are exempt from this training requirement.

(iv) In-service training such as videos and on-site staff training is counted for a maximum of six hours per year. Reading does not count for stars training.

(v) Training may be counted to meet minimum licensing requirements.

(vi) The director assists teachers in selecting training that enhances their overall professional growth based upon a review of the teacher's training record.

(E) **Parent involvement.** The center involves parents in the activities described in (i) through (vii) of this subparagraph.

(i) A written system is established and maintained daily for sharing happenings and changes in a child's physical or emotional state. This is provided to parents at least once per week. When a child enters kindergarten, a verbal system may be used.

(ii) Parents are welcomed into the center at all times, for example, to observe, eat lunch with a child, or volunteer in the classroom.

(iii) Individual ~~Parent~~ parent conferences are arranged for and documented at least annually and at other times as needed to discuss ~~their child's~~ children's progress, accomplishments, and ~~difficulties~~ challenges and set goals together.

(iv) There is a parent resource area with books, pamphlets, and articles on parenting.

(v) Parent meetings with guest speakers or special events are held at least twice per year, for example, open house, brown bag lunch, family pot-luck dinners, and children's programs.

(vi) Parents are informed of the center's program by two of three methods: parent's bulletin board, newsletter, or parent handbook.

(vii) Parents participate in program and policy development through board involvement, planning meetings, or questionnaires.

(3) **Criteria for two star centers.** To be approved as a two star center, a center must complete Form OCC-25, be accredited by an approved national accrediting body, and not have numerous, repeated, or serious non-compliance with licensing requirements, or meet all one star plus criteria, and the criteria described in (A) through (G)~~,~~ of this paragraph.

(A) **Master teacher responsibilities.** Master teachers support other teaching staff with responsibilities such as program development, weekly lesson plans, use of space and equipment, interactions with parents, and program evaluation.

(B) **Master teachers required.** There is a master teacher for every 30 children of the licensed capacity. During the second and subsequent year as a two or three star center, there must be a master teacher for every 20 children. This number does not include school-age children if the majority of children in care are younger than five years of age. Centers licensed as school-age programs or programs where the majority of children are school-age must have a master teacher for every 40 children of the licensed capacity.

(C) **Director as master teacher.** The director may only be counted as a master teacher if the licensed capacity minus school-age children is 30 or less. The director may be counted as a master teacher in centers licensed as school-age programs or programs where the majority of children are school-age.

(D) **Master teacher qualification.** Master teachers must be at least 18 years of age and employed and on-site on a full-time basis. A person is not counted as a master teacher in more than one facility or ~~be~~ considered a master teacher in one facility and a director of another facility unless the facilities are programs that do not operate concurrently at any given time. For an exception to this rule to be considered, a written request must be submitted by the provider and approved by the stars program manager or designee. Master teachers meet Level III or higher on the Early Childhood Education Professional Development Ladder or meet one of the requirements in (i) through (vi) of this subparagraph. Master teachers must currently meet and maintain one of these qualifications:

(i) an occupational child care competency certificate ~~for lead teacher~~ through an Oklahoma technology center and three months of satisfactory full-time experience in a licensed or legally exempt child care setting;

(ii) a current Child Development Associate (CDA) or Certified Childcare Professional (CCP) credential;

(iii) a two year college Certificate of Mastery in early childhood education or child development from an accredited Oklahoma college;

(iv) 30 credit hours ~~of Tier III training~~ from an accredited college or university, including 12 credit hours in early childhood education, child development, or an approved related subject;

(v) a four year degree from an accredited college or university with six college credit hours ~~of Tier III training~~ in child development, early childhood education, or an approved related subject; or

(vi) a two or four year degree from an accredited college or university in early childhood education or child development.

(E) **School-age master teacher.** In centers licensed as school-age programs or programs where the majority of children are school-age, the master teacher must be employed and on-site at least 50% of the weekly operating hours. The master teacher must currently meet and maintain either:

(i) one of the qualifications in (D); however, a degree or coursework in (iv) through (vi) may also be in elementary education, recreation, or other coursework that supports working with the school-age child; or

(ii) 120 clock hours of school-age related Tier I, II, or III training within the last five years, one year of full-time experience in a licensed school-age child care program or legally exempt school-age child care program, and every two years a minimum score of 5.0 on the School-Age Environment Rating Scale in a classroom where the master teacher is the lead teacher.

(F) **Staff compensation.** The program must have a salary scale with increments based on level of education, credentials, and years of early childhood experience. The director evaluates staff, in writing, at least annually. Compensation is based upon consideration of education, experience, and performance.

(G) **Program evaluation.** All methods of program evaluation as described in (i) through (v) of this paragraph are scheduled or completed within the first six months of two star certification. ~~Items (iii) through (v) are repeated every two years.~~

(i) The director or staff person from the facility attends approved training on program evaluation.

(ii) An approved self-assessment tool is completed every two years.

(iii) Staff and parents are surveyed every two years to identify strengths and weaknesses of the program and evaluate the program's effectiveness in meeting the needs of children, parents, and staff.

(iv) The program is assessed ~~by an independent evaluator~~ every four years using ~~a rating scale~~ an assessment tool approved by OKDHS to determine the day-to-day quality of care provided to children. This assessment is not required for programs accredited through an approved national accrediting body.

(v) Program goals are established and updated every two years based on information gathered from (i) through (iv).

(4) **Criteria for three star centers.** To be approved as a three star center, a center must meet all two star center criteria, except for the assessment in (b)(3)(G)(iv) of this Section, and be accredited through an approved national accrediting body. When an existing two star facility becomes accredited, the provider completes Form OCC-25 with proof of accreditation and documentation reflecting any changes in the previous two star certification criteria.

(c) **Criteria for family child care home certification levels.** The levels of certification for family child care homes are contained in this subsection.

(1) **Criteria for one star homes.** A home operating on a permit, license, or provisional license is designated as a one star home.

(2) **Criteria for one star plus homes.** A home may operate on one star plus status for a total of 24 months; these months are not required to run consecutively. To be approved as a one star plus family child care home or large family child care home, a home must complete and submit Form OCC-27, Request for Family Child Care Home Star Certification, and meet the requirements in (A) through (D) of this paragraph. At the end of two years, the home must be approved as a two star home or return to one star status. If the new criteria cannot be met at 24 months, a

facility may request an extension of time to comply as set forth in (g) of this Section.

(A) **Licensing status.** The home must have a license, provisional license, or permit and must not have a history of numerous, repeated, or serious non-compliance with applicable licensing requirements. For the purposes of star certification the definitions of numerous, repeated, or serious non-compliance listed in (i) through (iii) of this paragraph apply.

(i) Numerous non-compliance is any monitoring visit with five or more items documented as non-compliant on the monitoring report.

(ii) Repeated non-compliance is three or more documented incidents of non-compliance with the same requirement within the last 12 months. For missing immunizations to be considered a repeat non-compliance, they must be regarding the same child.

(iii) Serious non-compliance is non-compliance with licensing requirements which exposes children to conditions that present an imminent risk of harm. Some examples of serious non-compliance are violations of requirements for: (I) staff-child ratio;

(II) supervision of children;

(III) sleep position;

(IV) prohibited disciplinary actions;

(V) licensed capacity;

(VI) use of passenger restraints;

(VII) water activities,

(VIII) pools and other water hazards;

(IX) multiple hazards;

(X) weapons;

(XI) reporting child abuse;

(XII) prohibiting access to children by a person with a criminal record or health or behavior risk;

(XIII) administering medication to children;

(XIV) room temperatures; and

(XV) heat sources.

(B) **Home provider training.** At initial application, the family child care home provider must have documentation of 20 clock hours of Tier I, II, or III training. At application, the training may be counted if training was obtained within the last 12 months or within the provider's employment year. After initial approval for certification, the training criteria must be met within the provider's employment year.

(i) After being employed 12 months, any assistant caregiver required to meet the staff-child ratio must have documentation of 20 clock hours of Tier I, II, or III training per employment year.

(ii) In-service training such as videos, on-site, and home association training is counted for a maximum of six hours per year. Reading does not count for stars training.

(iii) Training ~~must be within the last 12 months and~~ may also be counted to meet licensing training requirements.

(C) **Learning environment.** The family child care home provider follows a daily schedule and reads to ~~the~~ children a minimum of 15 minutes each day.

(D) **Parent involvement.** The family child care home must provide the methods of parent communication contained in this subparagraph.

(i) Written policies are given to parents upon enrollment, and the provider has signed contracts with each family.

(ii) The provider encourages parents to visit any time their children are present, and provides access to all parts of the home used for child care.

(iii) The provider arranges for and documents, at least once per year, a conference with each child's parents. They discuss the child's current ~~interests~~ progress, accomplishments, and challenges, and set goals together.

(iv) The provider makes opportunities available for parents to be involved in the program's activities.

(v) The provider has information available about resources that provide services to parents and children and makes referrals as needed.

(3) **Criteria for two star homes.** To be approved as a two star home the licensed provider must be accredited by the National Association of Family Child Care and not have numerous, repeated, or serious non-compliance with requirements or meet all one star plus criteria and the criteria described in (A) and (B) of this paragraph.

(A) **Provider qualifications.** The provider must meet Level III or higher on the Early Childhood Education Professional Development Ladder or one of the provider qualifications requirements listed in (i) through (vi) of this subparagraph. In a facility licensed as a large family child care home, the licensed provider or full-time assistant must meet the qualifications and be on-site for at least 30 hours per week. The qualifying person is not counted as a center master teacher, director, or qualifying star home provider at more than one facility unless the facilities are programs that do not operate concurrently at any given time. For an exception to this rule to be considered, a written request must be submitted by the provider and approved by the stars program manager or designee. When the license is issued to two people, one full-time caregiver must meet the qualifications. The provider or large family child care home assistant must currently meet and maintain one of these qualifications:

(i) if approved prior to June 1, 2004, 120 hours of job-related Tier I, II, or III training within the last five years, five years of full-time experience in a licensed or legally exempt child care setting, and every two years a minimum score of 5.0 on the Family Day Care Rating Scale;

(ii) an occupational child care competency certificate ~~for lead teacher~~ through an Oklahoma technology center and three months of satisfactory full-time experience in a licensed or legally exempt child care setting;

(iii) a current Child Development Associate (CDA) or Certified Childcare Professional (CCP) credential;

(iv) a two year college Certificate of Mastery in early childhood education or child development from an accredited Oklahoma college or university;

(v) 30 credit hours ~~of Tier III training~~ from an accredited college or university including 12 credit hours in early childhood education, child development, or an approved related subject;

(vi) a four year degree from an accredited college or university with six college credit hours ~~of Tier III training~~ in early childhood education, child development, or an approved related subject; or

(vii) a two or four year degree from an accredited college or university in early childhood education or child development.

(B) **Program evaluation.** All methods of program evaluation as described in (i) through (v) of this paragraph are scheduled or completed within the first six months of receiving the two star certification. ~~Items (iii) through (v) are repeated every two years.~~

(i) The licensed provider or full-time assistant attends approved training on program evaluation.

(ii) An approved self-assessment tool is completed every two years.

(iii) Parents are surveyed every two years to identify strengths and weaknesses of the program and evaluate the program's effectiveness in meeting the needs of children and parents.

(iv) The program is assessed every four years ~~by an independent evaluator~~ using ~~a rating scale~~ an assessment tool approved by OKDHS to determine the day-to-day quality of care provided to children. This assessment is not required for programs accredited through the National Association of Family Child Care.

(v) Program goals are established and updated every two years based on information gathered from (i) through (iv).

(4) **Criteria for three star homes.** To be approved as a three star home, a home must meet all two star home criteria, except for the assessment in (c)(3)(B)(iv) of this Section, and be accredited through the National Association of Family Child Care. When an existing two star facility becomes accredited, the provider completes Form OCC-27 with proof of accreditation and documentation reflecting any changes in the previous two star certification criteria.

(d) **Approval for certification for homes and centers.** The procedures contained in this subsection are followed for initial approval for certification and requests for higher certification level.

(1) The facility submits Form OCC-25 or Form OCC-27~~,~~ and required documentation to the stars outreach specialist.

(2) Within 30 days of receipt of the facility request, the stars outreach specialist determines whether the certification criteria have been met by reviewing the case record and the documentation submitted by the facility. If it has been four months since the last monitoring visit, the stars outreach specialist requests licensing staff to make a monitoring visit. The stars outreach specialist reviews all information and consults with the licensing staff and stars program manager as needed prior to approval.

(A) The monitoring visits and substantiated complaints for the last 12 months of operation are reviewed to determine whether the facility meets the compliance criteria. The 12-month history includes the licensing record from the provider's previous licenses, if any. If, within the last 12 months, there are two or more incidents of numerous, repeated, or serious non-compliance as defined in (b)(2)(A) and (c)(2)(A) of this Section or one serious incident resulting in injury or imminent risk to a child, the request may be denied.

(B) If the facility meets the criteria, the stars outreach specialist updates the licensing database. The effective date is the first day of the next month, and the expiration date is two years later for one star plus facilities. The stars outreach specialist sends a letter to the provider confirming the approval and the effective date. If numerous, repeated, or serious non-compliance was identified during review of the case for the star certification, the letter includes a statement that these non-compliances will be considered if there are future non-compliances within a 12 month period and may result in reduction of the star certification.

(C) If the facility fails to meet the criteria, the stars outreach specialist sends a letter to the provider identifying all the criteria that have not been met. The application is also reviewed by the stars outreach specialist to determine if another certification level can be met.

(i) If a one star plus facility fails to submit Form OCC-25 or OCC-27 with supporting documentation~~,~~ at least 30 days prior to the end of the certification period, the star status expires and is reduced. ~~this~~ This does not constitute a reduction in certification level as set forth in (h) of this Section. ~~If a reduction is warranted for this purpose, the~~ The stars outreach specialist sends a letter~~, Form OCC-63, One Star Plus Certification Expiration,~~ documenting the reduction in certification level to one star.

(ii) If a one star plus facility is denied at 24 months for failure to meet additional quality criteria, the procedures in (h) of this Section are followed.

(D) The provider may reapply at any time the criteria are met. If the request for a higher certification level is denied due to numerous, repeated, or serious non-compliance with licensing requirements, the provider is not approved for a higher certification level for six months after the date of the denial of the request. The six-month waiting period may only be reduced by the regional programs manager upon evaluation of the facility's 12-month history, written documentation of corrective actions taken, and observation and documentation by licensing staff of substantial improvement in compliance. The regional programs manager notifies the provider in writing of the decision.

(E) The provider may withdraw the application prior to certification denial.

(e) **Complaint investigations.** Pending complaint investigations do not impact the decision to approve the stars application.

(f) **Ongoing monitoring.** The procedures contained in this subsection are followed for ongoing monitoring.

(1) **Written notice.** The facility notifies the licensing staff in writing within five working days of any change in the information provided on Forms OCC-25 or OCC-27. Providers may use Forms OCC-26, Periodic Certification Review - Center Star Certification, or OCC-28, Periodic Certification Review - Home Star Certification, to submit this information.

(2) **Periodic monitoring visits.** During a minimum of three periodic monitoring visits annually, the licensing staff completes Form OCC-26 or OCC-28 and verifies that certification documentation is still current and accurate and that the facility has not developed a history of numerous, repeated, or serious non-compliance with licensing requirements.

(A) ~~Licensing~~ Only two periodic stars monitoring visits are required annually for licensing programs that

(i) operate less than a full year;

(ii) are approved for reduced visits according to OAC 340:110-1-9(a); or

(iii) have a cooperative licensing agreement with a tribal program ~~are only required to have two stars periodic monitoring visits annually~~.

(B) Licensing programs that are inactive according to OAC 340:110-1-9(n) have one periodic stars monitoring visit annually.

(3) **Non-compliance history.** Once the provider has been notified in writing that numerous, repeated, or serious non-compliance exists, any subsequent numerous, repeated, or serious non-compliance within a 12-month period is considered a history. Once the provider has developed a history of numerous, repeated, or serious non-compliance, certification may be reduced in accordance with (h) of this Section.

(~~3~~4) **Violations.** If violations of certification criteria are documented, or if the facility notifies the Division of Child Care (DCC) in writing of any change, the procedures in (A) through (C) are followed.

(A) The facility submits a written plan for correcting the violations within an agreed-upon time frame, not to exceed 90 days from the date the violation occurred or the date a facility is notified of a substantiated complaint.

(B) Licensing staff provides written notification to the operator documenting the violations and a statement that the certification level will be reduced if violations are not corrected within the agreed-upon time frame. The notification also states that future violations of this or other certification criteria may result in the reduction of certification level.

(C) If the facility has not notified the licensing staff of changes in the information provided on the certification request and certification requirements have not been met for over 90 days, the certification level is reduced according to (h) of this Section. If applicable, the provider is advised of the right to request an extension of time to comply.

(g) **Extension of time to comply.** When a center or home fails to maintain the criteria for the certification level, the provider has the right to request an extension of time to comply. The provider submits the request in writing to the ~~Director of Child Care Services~~ Stars Programs Manager or designee 30 days prior to the expiration of the one star plus certification or the agreed-upon time frame for the correction of the violations. One or more discretionary extensions of time to comply of one to six months may be granted. The applicant must demonstrate that the violation of the criteria was not foreseeable and was beyond the applicant's control. The provider is notified of the decision in writing.

(h) **Reduction in certification level.** The procedures in this subsection are followed when: a one star plus facility fails to meet the additional criteria at 24 months; violations are not corrected within the agreed-upon time frame; the facility has developed a history of numerous, repeated, or serious non-compliance with licensing requirements; a serious incident occurs resulting in injury or imminent risk to a child; OKDHS has issued an Emergency Order; a notice of proposed denial or revocation of license has been issued; or an injunction is obtained.

(1) The licensing staff reviews the case with the supervisor and regional programs manager. Referrals are made to the stars outreach specialist as needed. If the criteria not met includes numerous, repeated, or serious non-compliance, the stars outreach specialist obtains approval from the stars program manager before any action is taken.

(2) If a reduction is warranted and ~~supervisory~~ approval has been obtained from the Stars Programs Manager or designee, the stars outreach specialist sends a certified letter to the provider documenting the reduction in certification level. Certification is reduced to the level at which the provider meets criteria. In the letter, the provider is informed of the right to request an administrative review of the decision. The certified mail delivery receipt card is addressed to return to the Director of Child Care Services.

In order to receive an administrative review, the provider must submit a request in writing to the Director of Child Care Services within 15 calendar days of receipt of the OKDHS letter notifying the provider of the reduction. The request must include written documentation stating the provider's grounds for appeal.

(3) The stars outreach specialist enters the recommended reduction on the database and the stars program manager approves the action. State Office licensing staff update any changes in the star status level and star payment rate following verification of the provider's receipt of the certified letter and the administrative review, if requested.

(4) The procedures in (A) through (C) of this paragraph are followed when an administrative review is requested.

(A) Within 30 days of receipt of the request for an administrative review, a letter is sent notifying the provider of the date of the administrative review. The letter is sent to the provider's last known address. The provider is given at least two weeks written notice prior to the administrative review. Supporting documentation ~~which~~ OKDHS intends to use to support its decision is included with the letter. Additional documentation may be presented prior to or at the beginning of the administrative review, with copies provided to all representatives.

(B) The review is conducted by the stars review panel, which consists of three OKDHS staff who have not been involved in the decision to reduce the certification level. The provider may submit written documentation and is given an opportunity to appear at the administrative review. The standard of review applied by the panel is whether the decision of OKDHS to reduce the certification level is substantially supported by the evidence.

(C) When possible, the reviewing panel makes a determination to either affirm or reverse the OKDHS decision on the date of the administrative review and announces the decision at the conclusion of the review. Time constraints or the complexity of issues may require the panel to take a matter under advisement. Written findings are completed within ten calendar days from the date of the review.

(5) If there is evidence of extenuating or revised circumstances, the provider may propose alternative settlement options prior to the date of the review hearing by contacting the regional programs manager.

(6) The provider may reapply for a higher certification level at any time the criteria are met. If the certification level is reduced due to numerous, repeated, or serious non-compliance with licensing requirements, the provider is not approved for a higher certification level for six months after the receipt of the certified reduction letter.

(i) **Change in ownership.** If the ownership of a star facility changes, the new owner may apply for star status by submitting a new Form OCC-25 or OCC-27 and the required documentation to verify that the certification criteria continues to be met.

(j) **Change in location.** If the location of a facility changes, the licensing staff verifies compliance with the criteria at the new location.

(k) **Record-keeping.** Periodic review forms, certification request forms, and supporting documentation are maintained in the official licensing file or in a separate file that is part of the open record, with the exception of page 5 of Form OCC-25, staff salary report, which is maintained in a confidential manner. If maintained, pay stubs and photos that include children are also kept confidential.

340:110-1-9. Case management

(a) **Periodic monitoring visits.** The Division of Child Care (DCC) licensing staff makes a minimum of three unannounced monitoring visits to facilities that operate a full-year program and two unannounced monitoring visits annually to facilities that operate less than a full year. Licensing staff varies the time of monitoring visits to include lunch observation and an evening visit to child care centers with extended hours. Weekend monitoring visits are required only when there has been a complaint specific to weekend care.

(b) **Ongoing monitoring.** During each monitoring visit, the licensing staff observes the entire facility, including outdoor play space and vehicles used for transportation, if available. The following are checked at or subsequent to each visit:

(1) compliance with licensing regulations;

(2) records for new staff;

(3) staff training records;

(4) Oklahoma Department of Human Services (OKDHS) computer checks on applicable persons; and

(5) fire and health inspections within the last 24 months, if applicable.

(c) **Technical assistance and consultation.** Licensing staff provides:

(1) technical assistance to licensees to assist them in meeting minimum requirements; and

(2) consultation on various aspects of quality child care~~; and~~.

~~(3) consultation to persons interested in becoming licensed and, upon request, to in-home caregivers.~~

(d) **In-home caregivers.** The Family Support Services Division (FSSD) day care assistance worker notifies the licensing staff on Form K-13, Information/Referral - Social Services, of the approval of a child care plan involving an in-home caregiver. In-home care is provided by a person in the child's own home.

(1) Within 30 calendar days of receipt of Form K-13, the licensing staff mails a packet of information to the caregiver. The packet includes information on child growth and development, health and safety issues, training opportunities, and other resources.

(2) Upon request, licensing staff provides consultation to in-home caregivers.

(~~2~~3) Completion of six clock hours of training by the caregiver within 90 days of his or her approval is verified by the FSSD day care assistance worker.

(e) **Agreements with tribal licensing programs and other monitoring agencies.** OKDHS may enter into a cooperative

licensing agreement with a tribal licensing program or other monitoring agency.

(f) **Equipment inventory.** Licensing staff completes the appropriate Equipment Inventory, Form OCC-6, OCC-20, or OCC-24, prior to a license being issued. The licensing staff or the facility may complete the appropriate Equipment Inventory prior to a change in facility class and prior to an increase in licensed capacity in a child care center, part-day children's program, and school-age program. The purpose of the inventory is to document the equipment available and items needed to comply with the equipment requirements. The licensing staff may conduct a complete inventory any time concern exists about the availability of required equipment.

(g) **Change of address.** When a facility moves to a new address, the procedures contained in this subsection are followed.

(1) **Family child care home.** If a family child care home provider moves to another location within the licensing staff's area, the licensing staff conducts a monitoring visit and completes a monitoring report. If a family child care home provider moves outside of the licensing staff's area, the case is transferred to the appropriate licensing staff who conducts the monitoring visit.

(2) **Child care centers, part-day children's programs, and school-age programs.** If a child care center, part-day children's program, or school-age program moves, the case is closed and a new application is obtained. A license may be issued promptly if the facility meets licensing requirements and the only change to the facility is the location.

(h) **Change in name.** If the licensing staff verifies there is a change in name but no change in ownership, the change is documented in the case record and the database is updated.

(i) **Change in director.** When there is a change in director, licensing staff:

(1) verifies director qualifications are met;

(2) completes Form OCC-69, Child Care Center Compliance Review, if the director has no previous director experience;

(3) notifies the new director of current employees that have been granted a waiver; and

(4) documents the information on Form OCC-3, Child Care Center Monitoring Report, page 4.

(~~i~~j) **Change in household.** If there is a new spouse or other head of household in a family child care home or large child care home, a new Form OCC-42, Application for License - Family Child Care Home and Large Child Care Home, and criminal background check are required and OKDHS computer checks are completed. Other changes in household members are documented on the monitoring report and criminal background checks are completed if necessary.

(~~j~~k) **Change in ownership.** When there is a change in ownership or change in form of business organization of a child care center, part-day program, or school-age program, the case is closed and a new application is obtained.

(~~k~~l) **Change in facility class.** A new application is required when a family child care home converts to a child care center, part-day program, or school-age program, or when a child care center, part-day program, or school-age program converts to a family child care home. Any other request for change in class requires:

(1) a request in writing from the provider;

(2) documentation that the facility meets the requirements for the requested class type;

(3) an Equipment Inventory, if applicable;

(4) a current approved fire inspection, if applicable;

(5) a current approved health inspection, if applicable; and

(6) database updates to the appropriate class and monitoring frequency plan.

(~~l~~m) **Procedure for increasing or decreasing capacity.** When a facility requests an increase or decrease in licensed capacity it is documented on Form OCC-3, Child Care Center Monitoring Report, page 4, and must be approved by the licensing supervisor. If the request to increase capacity is due to additional physical space, the facility must not have a history of numerous, repeated, or serious non-compliance, and must provide:

(1) the reason for the increase;

(2) an updated floor plan on Form OCC-57, Physical Plant, that reflects adequate indoor and outdoor space, toilets, and sinks for the increase and any changes;

(3) fire department approval of any space not previously inspected;

(4) Oklahoma State Department of Health approval of any space not previously inspected; and

(5) updated Equipment Inventory that reflects adequate equipment for the increase.

(~~m~~n) **Inactive cases.** If children have not been in care on a regular basis during the previous year, the option of voluntary closure is discussed with the provider.

(1) A provider who wants his or her case to remain open submits a request in writing including a statement that the provider will notify Division of Child Care, Licensing, when care is resumed.

(2) The provider is contacted periodically by licensing staff by telephone or letter to update the provider's status, and visited at least once a year to verify and document compliance with licensing requirements.

(~~n~~o) **Response to a sudden infant death syndrome (SIDS) death.** When notified of a death assumed to be SIDS, the licensing staff visits the facility as soon as possible, unless advised otherwise by law enforcement.

(~~o~~p) **Serious incident reports.** The licensing supervisor submits to the licensing regional programs manager, county director, and statewide licensing coordinator a report of any serious incident.

(q) **Self-reported incidents.** When a provider self-reports a non-compliance incident, Form OCC-3, page 4 is completed, a copy is sent to the provider, and the data system is updated.

340:110-1-9.1. Certification of child care facilities to receive increased reimbursement rate for the care of children with disabilities

(a) **Purpose.** Certification is the process through which Division of Child Care (DCC) licensing staff documents that a

child care facility meets certification requirements for a child with disabilities.

(1) Certification is required for a provider to receive the child care rate for a child with disabilities.

(2) To qualify for the higher rate the:

(A) facility must be licensed, have a provider contract, and be certified to care for the child;

(B) child's family must be eligible for Oklahoma Department of Human Services (OKDHS) subsidized child care services; and

(C) child must be receiving benefits from at least one of the following sources:

(i) Supplemental Security Income (SSI) benefits;

(ii) SoonerStart, early intervention program for children birth to age three; or

(iii) Special Education Services, public school program for children ages three and older.

(b) **Initial approval for certification.** For initial approval for certification the procedures contained in this subsection are followed.

(1) Upon receipt of Form ADM-123, Certification for Special Needs Child Care Rate, the licensing staff visits the child care facility within ten working days. If the facility is currently certified to care for at least three children with disabilities and has consistently met certification requirements or if a compliant monitoring visit has been made to the facility in the last 30 days, the licensing staff may approve certification for a new child without making a monitoring visit. A visit is made within three months. Although observation of the child in care is preferable, certification may be approved if the child has not yet enrolled or is absent during the visit.

(2) If a child who qualifies for the higher rate and is living in Oklahoma is approved for care in another state, the facility may be certified if:

(A) the facility provides documentation of monitoring visits for the last year to demonstrate compliance with the applicable child care requirements;

(B) upon receipt of Form ADM-123, an announced visit is made by Oklahoma licensing staff within 30 working days to verify compliance with certification criteria; and

(C) to verify that certification requirements are met, three times per year the Oklahoma licensing staff:

(i) completes by phone Form OCC-8, Periodic Monitoring Report; and

(ii) obtains a copy of the most recent monitoring report from the other state.

(3) Approval for certification is based upon verification that:

(A) the facility director or family child care home provider has completed Section III of Form ADM-123, agreeing to meet the individual needs of the child;

(B) the facility has a previous record of compliance with minimum licensing requirements. Although full compliance with licensing requirements is not required, if the facility has had numerous, repeated, or serious non-compliance with licensing requirements that adversely impact the care of a child with disabilities, such as staff-child ratios, health practices, or hazards, the facility is not certified. A facility on a six-month permit may be certified if currently in compliance with licensing requirements;

(C) facility staff currently trained in first aid and cardiopulmonary resuscitation (CPR), including infant and child, are present at all times when the child with disabilities is in care. The licensing staff checks training documentation to obtain the effective dates of training. Only training that is approved by the Oklahoma Department of Human Services (OKDHS), such as Red Cross, American Heart Association, or First Care, is accepted. The licensing staff recommends that more than one caregiver be trained to ensure that trained staff is always present when the child is in care;

(D) the facility staff who work with the child have received on-site consultation regarding the nature of the child's disability and the development of a child care plan, to include staffing, equipment, and specialized training needs. The consultant provides resource materials to the facility for future reference. ~~For a child designated severe, consultation is obtained at least annually~~ After initial certification, the facility staff who work with the child must conduct and document annual conferences with the child's parent or guardian to review the needs of the child. If the child's needs have changed, the procedures in (5) of this subsection are followed; and

(E) within six months of certification, appropriate staff obtain six hours of training in areas that address the care of children with disabilities.

(i) The center director and at least one person who works directly with the child must receive training. It is preferable that all staff who work with the child are trained.

(ii) As staff changes occur, a new director or new staff who work directly with the child must obtain training within six months of that assignment.

(iii) First aid, CPR, or informal training is not counted to meet the special training requirement.

(iv) Recommended training includes Special Care's Unique Environments, Child Care Careers' Helping Children with Special Needs, SoonerStart training, formal training from the OKDHS approved sponsor training list or specialized workshops or conferences addressing the care of children with special needs.

(4) Upon completion of Section IV of Form ADM-123, the licensing staff sends the original to the appropriate county staff responsible for child care assistance. Copies of Form ADM-123 and the monitoring report are sent to

the licensing supervisor, and copies are maintained in the facility's file.

(5) When Form ADM-123 is completed and Family Support Services Division (FSSD) has determined the child is eligible for one of the special needs rates, a new Form ADM-123 is completed when:

(A) the needs of the child change; or

(B) the child stops attending the facility for more than six months.

(~~5~~6) If the licensing staff documents that certification requirements have not been met, the ~~documentation is reviewed and the denial approved by the~~ licensing supervisor reviews the documentation and approves the denial. The provider is informed in writing within 30 days of the initial receipt of Form ADM-123 of the requirements for certification and the right to request an administrative review.

(~~6~~7) A request for an administrative review must be submitted in writing to the statewide licensing coordinator or designee within ten calendar days of notification. An administrative review is conducted within ten calendar days of receipt of the request.

(~~7~~8) The administrative review committee consists of the statewide licensing coordinator or designee and two staff from DCC.

(~~8~~9) The facility and FSSD are notified in writing of the decision by the statewide licensing coordinator.

(c) **Ongoing monitoring.** The procedure for ongoing monitoring contained in this subsection is followed.

(1) **Periodic monitoring visits.** During periodic monitoring visits, the licensing staff completes Form OCC-8 and verifies that certification requirements are met, including:

(A) the enrollment status of the child;

(B) staff present with first aid and CPR training;

(C) annual on-site consultation for a child designated severe;

(D) director and staff training relative to care of children with disabilities; and

(E) observations that indicate that the program is meeting the individual needs of the child as recorded on Form ADM-123.

(2) **Violations.** All violations observed are documented on page 4 of the monitoring report, and a plan of correction is developed with agreed-upon time frames for correction of violations. If there are serious or ongoing violations of certification requirements, a letter is sent to the operator documenting the violations and plan of correction, and a copy is sent to the parent(s) of the child with special needs who is affected by the violation(s).

(d) **Withdrawal of certification.** Certification continues unless there is documentation of serious or ongoing violations of certification requirements. Violations of certification requirements are different from non-compliance with licensing requirements, although they may involve the same issue, for example, understaffing. If violations are not corrected and represent a potential risk to the child, such as serious understaffing in the child's room or staff without first aid training, the procedure in this subsection is followed.

(1) The licensing staff reviews the case with his or her supervisor.

(2) An office conference is held with the provider at which time he or she is notified that certification is being withdrawn and the provider has the right to request an administrative review of the decision.

(3) A letter is sent to the provider documenting withdrawal of certification and the right to request an administrative review of the decision. If the provider did not attend the office conference, the letter is sent by certified mail. A copy of the letter is sent to the appropriate county office staff responsible for child care assistance who is responsible for notifying the parent and provider of the rate change and its effective date.

(4) A request for an administrative review must be submitted in writing by the facility to the statewide licensing coordinator or designee within seven calendar days of receipt of the letter. An administrative review is conducted within ten calendar days of receipt of the request.

(5) The administrative review committee consists of the statewide licensing coordinator or designee and two staff from DCC.

(6) The facility and FSSD are notified in writing of the decision by the statewide licensing coordinator.

(7) A provider may reapply for certification when compliance with certification requirements has been reestablished.

340:110-1-9.2. Complaint investigations

(a) **Legal basis.** The Child Care Facilities Licensing Act (Act) [10 O.S. § 406] mandates that the Oklahoma Department of Human Services (OKDHS) conduct a full investigation of a complaint alleging a violation against the Act or any licensing requirement.

(b) **Receipt of the complaint.** Complaints may be made to Division of Child Care, Licensing in writing, in person, or by telephone.

(c) **Complaint information.** The licensing staff obtains as much relevant information as possible from the complainant.

(d) **Screening complaints.** The licensing staff accepts a complaint for investigation when it alleges:

(1) non-compliance with licensing requirements;

(2) operation of an unlicensed facility in violation of the Act; or

(3) abuse or neglect of a child in care.

(e) **Complaint risk levels.** Risk levels are determined by the licensing staff based upon the degree of harm or danger to children in care. Risk levels are used to ensure that investigations occur in a timely manner and to track types of complaints.

(1) **Risk level I complaints.** Risk level I complaints indicate a child is in imminent danger of serious physical injury. The level of risk is not influenced by the removal of a child from the facility if other children remain in care. Investigations are initiated immediately or no later than 24 hours after receipt of the complaint by the licensing staff

unless awaiting investigation by Child Welfare (CW) or law enforcement. This does not include weekends and holidays if the facility is closed. Examples of risk level I complaints include:

(A) alleged physical or sexual abuse;
(B) use of illegal drugs while children are in care;
(C) distribution of drugs;
(D) children left alone in the facility or in a vehicle;
(E) extreme facility temperatures;
(F) an infant placed on its stomach for sleeping;
(G) threatening or impaired behavior of a caregiver; or
(H) severe understaffing or over-capacity.

(2) **Risk level II complaints.** Risk level II complaints do not indicate that there is imminent danger of injury. However, without intervention, it is likely that a child may not be safe. Investigations are initiated within 15 calendar days of receipt of the complaint by the licensing staff, or sooner depending on the degree of risk, unless advised by CW or law enforcement to delay the investigation. Examples include:

(A) leaving children with an underage staff person;
(B) alleged physical abuse from a staff person no longer working in a facility;
(C) inappropriate discipline where no injury is reported;
(D) broken playground equipment;
(E) injury caused by lack of supervision; or
(F) minor understaffing.

(3) **Risk level III complaints.** Risk level III complaints do not indicate imminent danger and there are no injuries alleged. Investigations are initiated within 30 calendar days of the date of receipt of the complaint by the licensing staff or immediately if a telephone investigation is appropriate. Examples include:

(A) inadequate meal service;
(B) lack of play equipment;
(C) inappropriate use of television or videos; or
(D) inadequate cleanliness of the facility.

(f) **The investigation.** The licensing staff conducts a full investigation, obtaining sufficient information to make a finding.

(g) **Telephone investigation.** With supervisory approval, the licensing staff may investigate a complaint by telephone. The discussion, and, if necessary, an agreed-upon plan of correction, is documented on page 4 of Form OCC-3, Child Care Center Monitoring Report. A copy is sent to the operator. A complaint may be investigated by telephone only when:

(1) the alleged non-compliance does not place children at risk, for example, the facility did not serve milk one day or children have head lice;
(2) the facility has not had numerous, repeated, or serious non-compliance; and
(3) a monitoring visit has been made in the last three months during which substantial compliance was documented.

(h) **Procedure for investigating an allegation of operating an unlicensed facility.** When a complaint alleging operation of an unlicensed facility is received, the procedure contained in OAC 340:110-1-13(b) is followed.

(i) **Child abuse and neglect complaints.** Upon receipt of a complaint alleging abuse of a child in care, the licensing staff immediately notifies the licensing supervisor and makes a referral to CW. If the allegation involves a Priority I child abuse or neglect complaint, for example, a report indicating that a child is in imminent danger of serious physical injury, the licensing regional programs manager is also notified.

(j) **Findings.** After the investigation is completed, the licensing staff, in consultation with the licensing supervisor, as appropriate, makes a finding as to whether the complaint is substantiated or unsubstantiated.

(1) **Substantiated.** A finding of substantiated is made when a weighing of the information obtained during the investigation clearly indicates that the facility violated any licensing requirement or the Act.

(2) **Unsubstantiated.** A finding of unsubstantiated is made when the allegation is found to be uncertain or ruled out.

(A) It is found to be uncertain when the information does not lead to a definite conclusion, for example:

(i) there is insufficient or conflicting information on which to conclude that a violation occurred; or
(ii) information needed to make a finding is unavailable.

(B) It is ruled out when a weighing of the information clearly indicates that there was not a violation of any licensing requirement or the Act.

(k) **Documentation of findings.** Upon completion of the investigation, the licensing staff:

(1) documents the findings;
(2) notifies the provider in writing of the findings;
(3) enters the complaint information on the ~~OCC screen,~~ licensing database~~,~~ using complaint key words; and
(4) updates and closes the ~~Licensing Information Complaint Updates (LICU)~~ complaint tracking screen.

(l) **Use of Notice to Comply, Form OCC-37.** When a serious complaint has been substantiated, the licensing staff advises the facility to correct the violations immediately and requests that the facility complete Form OCC-37, Notice to Comply, following the procedure in OAC 340:110-1-9.3(c)(7).

340:110-1-9.3. Non-compliance with requirements

(a) **Documentation of non-compliance.** The Division of Child Care (DCC) licensing staff clearly and concisely documents on the monitoring report areas of non-compliance and the discussion with the operator.

(1) A plan of correction, including a specific agreed-upon time period for correction of the non-compliance, is documented for each non-compliance on the monitoring report.
(2) Immediate correction is required when the non-compliance has a direct impact on the heath, safety, or well-being of one or more children in care.

(3) The licensing staff requests that the operator sign the monitoring report, and explains that the operator's signature indicates acknowledgment of information recorded.

(4) If the person in charge refuses to sign, the refusal is documented on the report.

(5) The operator is given a copy of the completed monitoring report.

(b) **Referrals to fire and health officials.** If non-compliance regarding fire or health requirements places children at risk or remains uncorrected, the licensing staff requests an inspection by a fire, health, or Department of Environmental Quality (DEQ) official. If there is non-compliance regarding smoke detectors, the child care provider is given a copy of the Smoke Detector Law, Section 324.11A of Title 74 of the Oklahoma Statutes. If the non-compliance is not corrected by the third monitoring visit or is frequently repeated, copies of the monitoring reports are sent with a cover letter to the appropriate fire official for enforcement of the law.

(c) **Numerous, repeated, and serious non-compliance.**

(1) Numerous non-compliance is any monitoring visit with:

(A) six or more items documented as non-compliant on the monitoring report for a facility with a licensed capacity of less than 60; or

(B) seven or more items for a facility with a licensed capacity of 60 or more.

(2) Repeated non-compliance is three or more documented incidents of non-compliance with the same requirement within the last 12 months. For missing immunizations to be considered a repeat non-compliance, they must be regarding the same child.

(3) Serious non-compliance is a non-compliance with licensing requirements that exposes children to conditions that present an imminent risk of harm. Some examples of serious non-compliance are violations of requirements for:

(A) staff-child ratio;

(B) supervision of children;

(C) sleep position;

(D) prohibited disciplinary actions;

(E) licensed capacity;

(F) use of passenger restraints;

(G) water activities,

(H) pools and other water hazards;

(I) multiple hazards;

(J) weapons;

(K) reporting child abuse;

(L) prohibiting access to children by a person with a criminal record or health or behavior risk;

(M) administering medication to children;

(N) room temperatures; and

(O) heat sources.

(~~c~~d) **Case management responses to non-compliant facilities.** When there is numerous, repeated, or serious non-compliance, one or more of the actions in (1) through (11) is taken.

(1) **Technical assistance.** Technical assistance is offered along with referrals to consultants or training resources, if necessary, to assist the operator in meeting and maintaining licensing requirements.

(2) **Follow-up phone call.** Follow-up phone calls are made, and documented on page 4 of Form OCC-3, Child Care Center Monitoring Report. A copy of the documentation is mailed to the facility.

(3) **Non-compliance letters.** A non-compliance letter may be written to the operator. The licensing staff sends a copy of the monitoring report and non-compliance letter to the governing board or owner, if applicable.

(4) **Return monitoring visit.** A return monitoring visit may be made if there is numerous, repeated, or serious non-compliance with licensing requirements or when non-compliance places children at imminent risk of harm. If the non-compliance is associated with a specific time of day, such as understaffing after school or a lack of early morning supervision, the return visit is made at that approximate time.

(5) **Use of witnesses.** The licensing staff may be accompanied by a witness during monitoring visits if the facility has had numerous, repeated, or serious non-compliances or if denial or revocation of the license is under consideration. The witness may be an Oklahoma Department of Human Services (OKDHS) employee or a representative from the health or fire department. The witness signs the monitoring report in the space provided.

(6) **Increased monitoring visits.** Licensing staff may increase the frequency of monitoring when there has been numerous, repeated, or serious non-compliance or when the need for additional technical assistance is indicated.

(7) **Notice to comply.** The licensing staff provides the facility with Form OCC-37, Notice to Comply, on which the facility documents the plan of correction. Immediate correction may be required if the non-compliance places the health, safety, or well-being of one or more children in care at risk. If the plan submitted by the operator is unacceptable to the licensing staff, the staff negotiates and documents a revised plan. If the Notice to Comply is not submitted within the specified time period, the licensing staff contacts the operator and documents the conversation. If concerns exist or the operator is uncooperative, the licensing staff sends a letter stating that failure to complete a Notice to Comply may result in revocation of license, denial of the application, or filing of an injunction or emergency order.

(8) **Office conference.** The licensing staff may schedule an office conference with the operator of the facility. The supervisor is present at the office conference. The licensing regional programs manager is informed of the office conference and may be present, if necessary. Areas of non-compliance and progress toward meeting the plan(s) of correction are reviewed and technical assistance is offered. The conference is documented on Form OCC-3, page 4 which is signed by the licensing staff, the operator, and any witnesses present. A Notice to Comply

is completed if one addressing these issues has not been completed recently.

(9) **Consent agreement.** OKDHS and the operator of the facility may enter into a consent agreement whereby the facility agrees to specific conditions in lieu of license denial or revocation, per OAC 340:110-1-9.5.

(10) **Revocation.** The licensing staff recommends that the license be denied or revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children, per OAC 340:110-1-10.

(11) **Voluntary closure.** The operator is asked to voluntarily close the facility.

(~~d~~e) **Case management responses when children are at risk.** If the licensing staff documents non-compliance with requirements or is investigating a complaint that may place the health, safety, or well-being of children at imminent risk of harm, options to consider during consultation with the operator and the licensing supervisor are outlined in this subsection. If any of options (2) through (7) are utilized, the local resource and referral agency is notified.

(1) The operator is asked to immediately correct the non-compliance, for example, the staff person will not work at the facility pending the outcome of an investigation.

(2) The operator is asked to discontinue child care until the non-compliance is corrected or the investigation is complete.

(3) The operator is asked to voluntarily close the facility.

(4) The licensing staff requests an emergency order when immediate action is needed to protect children in a child care facility that is on permit, licensed, on notice of revocation or denial, or operating during an appeal following revocation or denial. Refer to OAC 340:110-1-9.4.

(5) The operator agrees to enter into a consent agreement whereby the facility agrees to specific conditions in lieu of license denial, revocation, or refusal to renew. Refer to OAC 340:110-1-9.5.

(6) The licensing staff recommends that the license be denied or revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children. Refer to OAC 340:110-1-10.

(7) An injunction may be requested when a child care facility is:

(A) unlicensed;

(B) on application status;

(C) licensed;

(D) violating an emergency order;

(E) operating during an appeal following revocation or denial and children are at risk; or

(F) violating the notice to cease care following revocation or denial of license.

(~~e~~f) **Notification to supervisor when children are at risk.** If during a monitoring visit the licensing staff is concerned that the health, safety, or well-being of children is at imminent risk, the licensing supervisor or DCC staff is contacted immediately for an appropriate response.

(~~f~~g) **Alternative method of compliance.** DCC may approve an alternative method of compliance to a minimum licensing requirement. An alternative method of compliance may be authorized if DCC determines that the alternative method of compliance offers equal protection of health, safety, and welfare to children, meets the basic intent of the requirements for which the alternative compliance was requested, and does not violate statutory requirements. An applicant or licensee may submit a written request on Form OCC-61, Alternative Compliance Request, for authorization to the statewide licensing coordinator or designee. A separate request is submitted for each requirement for which an alternative method of compliance is requested. Approval of an alternative method of compliance does not set a precedent, and is independently evaluated on the merits of each request. The facility's record of compliance is taken into consideration in determining whether to approve the request. An alternative method of compliance is not authorized for critical items affecting the health and safety of a child, such as exceeding licensed capacity or staff-child ratios, fire safety violations, or behavior and guidance violations. Written notice from OKDHS, Form OCC-61-A, Notice of Alternative Compliance, which states the nature of the exception, is posted with the license.

340:110-1-9.5. Consent agreement

(a) **Purpose.** The Oklahoma Department of Human Services (OKDHS) may offer to enter into a consent agreement with a facility in lieu of license denial or revocation. If such action has already taken place, a consent agreement may be used during the appeal process if the facility comes into compliance with licensing requirements. The use of a consent agreement is not required prior to denying or revoking a license.

(b) **Process.** When the documented evidence reflects that the facility operator is unable or unwilling to comply with minimum requirements, the Division of Child Care (DCC) licensing staff discusses the use and terms of a consent agreement with the licensing supervisor. If the licensing regional programs manager and the statewide licensing coordinator or designee concur with this action, a meeting is scheduled with the operator.

(1) The operator is asked to provide the names and addresses of all children currently enrolled at the facility.

(2) During the meeting, areas of non-compliance and the terms of the agreement are discussed. The meeting is documented on Form OCC-3, Child Care Center Monitoring Report, page 4, and is signed by the operator, licensing staff, and any witness present. A copy is provided to the operator.

(3) An agreement is written by the statewide licensing coordinator or designee. Terms and time frames of the agreement are based upon the nature and severity of the non-compliance. The agreement may include ~~emergency~~ voluntary restrictions, such as a ban on future admissions of children to the facility, a restriction on the ages of children cared for in the facility, a reduction in the number of children attending the facility or the number of hours the

facility may operate each day, specific staff training, drug testing, and medical or psychological evaluation. Time frames to initiate and conclude the terms of the agreement are established and may be extended upon approval of the statewide licensing coordinator or designee and the OKDHS Legal Division.

(4) The operator is advised to prominently post a copy of the consent agreement in the child care facility. During the next monitoring visit, the licensing staff verifies that the consent agreement is posted. If it is not posted, the licensing staff documents it as a violation of the terms of the consent agreement.

(5) The licensing staff mails a copy of the consent agreement, with a cover letter, to parents of children currently enrolled at the facility. Upon enrollment of new children, the facility must provide those names and addresses to licensing staff. Licensing staff mails a copy of the consent agreement and cover letter upon receipt of this information. If the operator has not provided children's names and addresses, the licensing staff records the information from the children's records during the next monitoring visit.

(c) **Violations of the terms of the consent agreement.** Any violation of the terms of the consent agreement is considered grounds for proceeding with license denial, revocation, or refusal to renew.

(d) **Appeals.** The child care facility is not entitled to an appeal of the terms of the consent agreement, as participation in the agreement is voluntary.

340:110-1-10. Revocation or denial of license

(a) **Failure to meet requirements.** When numerous, repeated, or serious non-compliance with licensing requirements is observed and documented or the facility fails to adequately protect the health and safety of children, the Oklahoma Department of Human Services (OKDHS) may deny the application for license or revoke the license.

(1) **Denial of application for license.** If a facility has filed an application for an initial license, OKDHS may deny the application.

(2) **Revocation of license.** If a license or provisional license is currently in effect, the licensing staff may recommend that the license be revoked.

(b) **Licensing staff recommendation.** The Division of Child Care (DCC) licensing staff consults with the licensing supervisor regarding his or her recommendation for revocation or denial. If the licensing supervisor concurs with the recommendation, the decision is discussed with the licensing regional programs manager and the statewide licensing coordinator. If they concur with the decision, the licensing staff prepares a detailed summary of monitoring visits, complaints, correspondence, and any other relevant documents. The licensing staff submits the complete case record and the summary, including the recommendation, to the licensing supervisor and notifies the facility in writing that the case has been referred to the statewide licensing coordinator.

(c) **Approval of recommendation and notification.** The case record and summary are reviewed by the statewide licensing coordinator or designee. The licensing staff's recommendation of revocation or denial is either approved, disapproved, or the decision delayed pending further investigation.

(1) When the recommendation is approved by the statewide licensing coordinator, it is submitted to the OKDHS Legal Division for review of the legal adequacy of the notice of pending action that is mailed to the operator. The Director of Child CareServices or designee has final approval of the revocation or denial.

(2) The statewide licensing coordinator sends a written notice of the pending action to the operator by certified mail at least 30 days prior to the effective date of the action. The notice includes:

(A) a copy of the summary;

(B) a statement regarding the operator's right to appeal the decision;

(C) a statement that the law requires written notification to parents of the action taken, and instruction to the operator to submit the names and addresses of currently enrolled children; ~~and~~

(D) a sign providing notice of proposed revocation or denial that is required to be prominently posted in the facility~~.~~; and

(E) a statement regarding the facility's reduction in Stars status, if applicable.

(3) During the next monitoring visit, the licensing staff and a witness verify that the sign providing notice of proposed revocation or denial is posted. If the sign is not posted, the licensing staff sends a letter to the operator documenting the violation of the legal notice.

(4) If the operator does not provide children's names and addresses, the licensing staff records the information from the children's records during the next monitoring visit.

(5) Questions from the operator regarding the action and appeal process are referred to the statewide licensing coordinator or designee.

(6) If the operator does not appeal the decision within the designated time period, the statewide licensing coordinator sends a letter to the operator giving notice of the denial or revocation and stating the effective date. The closure date is entered into the database by the statewide licensing coordinator or designee. A copy of the correspondence is sent to the licensing staff.

(7) The licensing staff conducts a follow-up visit to confirm that child care has been discontinued. The statewide licensing coordinator or designee is notified of the visit.

(8) If the operator continues to maintain and operate the facility for child care after a final decision revoking or denying licensure, the statewide licensing coordinator may request that the Attorney General or the appropriate district attorney secure a civil injunction or initiate criminal proceedings.

(d) **Appeal process.** The appeal process regarding denial of application or revocation of license is described in this subsection.

(1) The appeal is submitted to the Oklahoma Commission for Human Services by the operator within 30 days of receipt of the notice.

(2) If the operator appeals, a hearing is scheduled by the OKDHS Appeals Unit.

(3) The facility may continue to operate during any appeal process unless an emergency order is in effect. The licensing staff conducts monitoring visits at least once a month, unless advised otherwise ~~in writing~~ by the statewide licensing coordinator or designee, and is accompanied by the same witness whenever possible. If at any time during the appeal process OKDHS believes that the health, safety, or welfare of children cannot be assured:

(A) an emergency order is requested; or

(B) following consultation with the statewide licensing coordinator or designee, the licensing supervisor contacts the district attorney and requests that an injunction be filed.

(4) If the decision of OKDHS to revoke or deny a license is upheld during all appeals, the statewide licensing coordinator sends a letter to the operator that child care must immediately cease. The licensing staff conducts a follow-up visit to confirm that child care has been discontinued. If the operator continues to operate the child care facility, the licensing field staff, in consultation with the statewide licensing coordinator or designee, may request that the local district attorney pursue an injunction or initiate criminal proceedings, or the statewide licensing coordinator may pursue legal action through the Attorney General.

(5) If the decision of OKDHS to revoke or deny a license is not upheld, OKDHS takes action to implement the decision within ten calendar days.

(6) When OKDHS denies or revokes a facility's license, the responsible agent may not make application for a new child care facility license within the state:

(A) following notification of the agent of the proposed denial or revocation;

(B) during an appeal process; and

(C) for five years following the effective date of closure.

(e) **Change in ownership during appeal process.** If there is a change in ownership during the appeal process, the operator must provide documentation verifying the change. The statewide licensing coordinator may proceed with the previous owner's denial or revocation.

340:110-1-14. Public inspection of licensing files

(a) **Legal basis.** The Oklahoma Department of Human Services (OKDHS) is subject to the Oklahoma Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes (O.S.), which mandates that public records are open for public inspection unless they are required by law to be kept confidential.

(b) **Licensing records.** All OKDHS records of facilities required to be licensed under 10 O.S. § 401 through 410 are considered public records and are open and available for public inspection during reasonable hours. This includes records pertaining to an investigation of an unlicensed facility and audit findings from the OKDHS Office of the Inspector General. Information obtained concerning a report of a violation of a licensing requirement is confidential pursuant to 10 O.S. § 406 with the exception of a summary of allegations and findings of an investigation involving a child care facility that does not disclose identities but that permits parents to evaluate the facility. In addition, 10 O.S. § 7005-1.2 mandates confidentiality of child abuse records.

(c) **Location of case records.** Child care facility licensing records are located in the office of the licensing staff and are inspected in the county office. If a parent resides in another county, the licensing staff makes the record available in that county.

(d) **Preparation of case files for inspection.** The licensing staff carefully reviews the entire record and removes confidential information.

(e) **Records of complaints.** To allow persons inspecting a licensing record to have access to information regarding complaints, page 1, the licensing complaint summary, of Form OCC-12, Complaint Report and Complaint Summary, is included in the file. Page 2 of Form OCC-12, the licensing complaint report, is removed from the file that is open for public inspection. If information regarding a complaint is requested prior to completion of the investigation, the licensing staff explains that information regarding the allegation and findings is released after the investigation is complete.

(f) **Supervision of files during inspection.** Facility records are inspected in the presence of OKDHS staff who are available to provide clarification on licensing policy and requirements.

(g) **Fees for photocopying.** For photocopy fee information refer to OAC 340:2-21-16.

(h) **Release of confidential information.** A complete case file that includes confidential information may be provided only to certain persons according to applicable laws and regulations, for example, Legal Division, Child Welfare, law enforcement officials, and upon order of a court of competent jurisdiction.

(i) **Computer licensing record.** A summary of the facility licensing record maintained on the LISVMENU computer database may be provided upon request at no charge. A cover letter is sent with the licensing summary that notes that the summary does not include the complete case record, and that the complete case record may be reviewed in the county office.

340:110-1-17. Child Care Advisory Committee bylaws

(a) **Purpose and function of the Child Care Advisory Committee.** The purpose and function of the Child Care Advisory Committee is described in this subsection.

(1) **Purpose.** The purpose of the Child Care Advisory Committee is to:

(A) carry out the provisions of the Oklahoma Child Care Facilities Licensing Act, Section 401 et. seq. of Title 10 of the Oklahoma Statutes;

(i) to ensure maintenance of minimum standards for the care and protection of children away from their homes that include:

(I) constructive programs and services to meet the needs of each child and family;

(II) staff of good moral character and ability to care for children;

(III) adequate and safe housing, sanitation, and equipment;

(IV) good health care;

(V) full educational and religious opportunities;

(VI) good community relationships;

(VII) essential records and administrative methods; and

(VIII) sufficient funds for sound operation;

(ii) to encourage and assist child care facilities toward maximum standards; and

(iii) to work for the development of sufficient and adequate services for child care through joint work with public and private agencies;

(B) prepare minimum requirements and recommend desirable standards for child care facilities for adoption by the Department of Human Services, hereinafter referred to as the Department;

(C) serve in an advisory capacity to the Department for developing quality child care programs and services; and

(D) educate the public and consumers regarding quality child care.

(2) **Function.** The function of the Child Care Advisory Committee is to:

(A) become informed on DHS programs and policies regarding children;

(B) express the needs and concerns of the community and the State of Oklahoma as they relate to the care and treatment of children;

(C) bring recommendations for change, including the adoption of minimum requirements and encouraging maximum standards for child care; and

(D) interpret and support the recommended policies.

~~(E) serve as a hearing board for revocation of licensure.~~

(b) **Membership.** The membership of the Child Care Advisory Committee is detailed in this subsection.

(1) **Representation.** The ~~Division of Child Care Administrator~~ Director of Child Care Services makes recommendations for membership to the director of the Department who appoints members. Members are invited to serve on the Child Care Advisory Committee based on their expertise, experience, and leadership in the field of child care.

(A) The Child Care Advisory Committee at a minimum consists of 18 members.

(B) The majority are representatives of child care organizations, services, and programs.

(C) Other members include at least one representative from:

(i) Oklahoma Department of Health;

(ii) Oklahoma Department of Education;

(iii) Office of the State Fire Marshal;

(iv) Division of Child Care; and

(v) other associations and agencies as recommended to the Director of the Department, such as Oklahoma Children's Agencies and Residential Enterprises Incorporated (OK-CARE), Oklahoma Department of Mental Health and Substance Abuse Services, Oklahoma Association of Youth Services, Office of Juvenile Affairs, Oklahoma Early Childhood Association, and Head Start.

(D) A representative from the Oklahoma Commission on Children and Youth serves as an ex-officio member.

(2) **Terms of office.**

(A) The terms of committee members are for three years.

(B) Members receive orientation to the goals and practices of the Committee.

(C) Members may be recommended for reappointment after completing their terms of office.

(3) **Officers.** The officers of the committee are chairperson, vice-chairperson, and secretary.

(A) **Chairperson.** The chairperson is responsible for:

(i) presiding over all meetings;

(ii) in coordination with the Division of Child Care, planning the meeting agenda at least two weeks in advance; and

(iii) with the ~~Director~~ director of Child Care Services or representative, appointing members of subcommittees.

(B) **Vice-Chairperson.** The vice-chairperson works closely with the chairperson and assumes the responsibilities of the chairperson in his or her absence.

(C) **Secretary.** The position of secretary is held by the Division of Child Care representative. The secretary is responsible for accurately recording the minutes of each meeting and making them available to the members prior to the next meeting. A permanent copy of the minutes is maintained by the Oklahoma Department of Human Services.

(D) The chairperson and vice-chairperson are elected by a majority vote of members present during the fourth quarterly meeting of even-numbered years. They take office on January 1.

(E) Terms of office are for two years. However, officers may be elected to serve in one office for a maximum of four terms.

(4) **Subcommittees.** The rules pertaining to subcommittees contained in this Paragraph are met.

(A) Subcommittees are appointed by the chairperson with consultation from the Division of Child Care and are designated to:

(i) draft licensing requirements for child care programs and services;

~~(ii) serve as a hearing board for license denials, revocations, and refusals to renew;~~

(ii) study committee concerns; and

(iii) address special issues of the Committee.

(B) The chairperson of the subcommittee is a member of the Child Care Advisory Committee.

(C) Subcommittee members include representatives of child care programs and services with experience and expertise in the field of child care and children's services.

(D) Subcommittees appointed to draft licensing requirements for child care programs:

(i) present their recommendations to the Child Care Advisory Committee for approval prior to being approved by the Commission for Human Services and the Governor;

(ii) have a majority of members that represent private child care programs affected by the requirements; and

(iii) include representatives from licensing, including supervisory and field staff.

~~(E) The Appeals Subcommittee is comprised of Child Care Advisory Committee members and serves as a hearing board for license denials, revocations, and refusals to renew.~~

(c) **Child Care Advisory Committee meetings.** The rules pertaining to the Child Care Advisory Committee meetings are contained in (1) – through (6) of this Subsection.

(1) **Frequency of meetings.** The Child Care Advisory Committee meets quarterly.

(2) **Quorum.** A minimum of one third plus one of the membership must be present for a quorum.

(3) **Voting.** Members or their designees shall vote only after completing orientation.

(4) **Attendance.** Committee members or their designees must attend at least two Child Care Advisory Committee meetings a year or may be removed from the committee.

(5) **Guidelines.** The Committee will adhere to established Guidelines for Organization and Function. The practices of the Committee will be compatible with the Child Care Facilities Licensing Act.

(6) **Rules of order.** Roberts Rules of Order, as amended, are used to govern the meetings.

(d) **Change of bylaws.** Bylaws may be altered, amended, or repealed only by a majority vote of the Child Care Advisory Committee, provided that written notice of the proposed action is given in the call to the meeting and a quorum is present.

340:110-1-21. Evaluation of the child care licensing services program

The Division of Child Care is responsible for the evaluation of the child care licensing services program. The evaluation includes quality assurance audits and provider satisfaction surveys. The audits:

(1) are performed to determine if the licensing requirements, policies, and procedures are being fully implemented and to evaluate the effectiveness of the program~~.~~; ~~The audits~~

(2) provide objective evidence to support the need for the reduction, elimination, and prevention of non-conformities~~.~~; and ~~The audits~~

(3) are conducted by the Division of Child Care lead auditor who is responsible for all activities associated with the evaluation of the program.

PART 3. LICENSING SERVICES - RESIDENTIAL CARE AND AGENCIES

340:110-1-43.1. Forms

Forms that apply to this Part are listed in ~~(1) through (18) of~~ this Subsection.

(1) **OCC-16, Recommendation for Licensing or Certification.** Form OCC-16 is used by licensing staff and supervisors to make recommendations on the licensing or certification of child care facilities.

(2) **OCC-17, Six-Month Permit.** Form OCC-17 is a six-month temporary authorization for an applicant for a license to operate a child care facility until a license has been issued or a formal denial notice is given to the applicant.

(3) **OCC-18, Notice of Issuance of License for a Child Care Facility.** Form OCC-18 is a notice to the child care facility that it has complied with licensing requirements and is being issued a license.

(4) **OCC-22, Foster Care File Review.** Form OCC-22 is used by ~~the~~ licensing staff to record the agency's compliance or non-compliance with licensing requirements for foster home care.

(5) **OCC-37, Notice to Comply.** Form OCC-37 is used by a facility to document a plan of correction when there is serious or repeated non-compliance with licensing requirements.

~~(6) **OCC-39, Child Care Staff Health Record.** Form OCC-39 is used by the examining physician to report findings of the physical examination that is required for child-placing agency staff and staff of child care institutions at the time of employment.~~

(~~7~~6) **OCC-40, Application for License.** Form OCC-40 is used by an agency or residential facility to make application for a child care facility license.

(~~8~~7) **OCC-41, Child Care Staff Information.** Form OCC-41 is used to record required information regarding child care facility staff ~~persons as required by licensing requirements~~.

(~~9~~8) **OCC-43, Child Placing Agency Compliance Review.** Form OCC-43 is used by ~~the~~ licensing staff to assess compliance with child-placing agency requirements.

(~~10~~9) **OCC-44, Adoption Services File Review.** Form OCC-44 is used by ~~the~~ licensing staff to record the agency's compliance or non-compliance with licensing requirements for placement of children for adoption.

(~~11~~10) **OCC-47, Agency Certification Report.** Form OCC-47 is completed by the child-placing agency staff to certify to the Oklahoma Department of Human Services that each foster home or Independent Living arrangement complies with the Licensing Requirements for Child-Placing Agencies.

(~~12~~11) **OCC-50, Personnel File Review.** Form OCC-50 is used by ~~the~~ licensing staff to document compliance with personnel record requirements in residential, shelter, and child-placing agency requirements.

(~~13~~12) **OCC-52, Declaration of Intent to Operate a Child Care facility.**

(~~14~~13) **OCC-53, Notice of Issuance of License Child Care Facility/Agency.** Form OCC-53 is used to notify operators of child-placing agencies and residential child care facilities of their licensing status. See also Form OCC-18.

(~~15~~14) **OCC-54, Release of Child.** Form OCC-54 is used by residential facilities to notify the Division of Child Care (DCC) when a child is no longer eligible for subsidy payment.

(~~16~~15) **OCC-55, Child Admission Report.** Form OCC-55 is used by residential facilities to notify ~~the Division of Child Care~~ DCC when a child is admitted and is eligible for subsidy payment.

(~~17~~16) **OCC-56, Residential Compliance Review.** Form OCC-56 is used by licensing staff to assess compliance with residential requirements.

(~~18~~17) **OCC-58, Residential Visit Sheet.** Form OCC-58 is used by ~~the~~ licensing staff to document compliance with requirements during a visit to a residential facility and record any other information obtained.

(~~19~~18) **OCC-59, Resident's File Review.** Form OCC-59 is used by ~~the~~ licensing staff as part of the licensing process to document compliance with residential facility requirements.

(~~20~~19) **OCC-60, Residential Child Care Policy and Records Check.** Form OCC-60 is used by licensing staff to document compliance with residential policy and procedure requirements.

(~~21~~20) **OCC-65, Independent Living File Review.** Form OCC-65 is used by licensing staff to record the agency's compliance with licensing requirements for independent living programs.

(21) **OCC-71, Child Care Waiver Request.** Form OCC-71 is used by licensing staff when submitting a waiver request to State Office.

340:110-1-45. Application process

(a) **Application packets.** Application packets, which include the appropriate licensing requirements and application forms, are ~~mailed~~ provided to potential licensees upon request. This packet includes:

(1) Application for License, Form OCC-40;

(2) Child Care Staff Information, Form OCC-41; and

~~(3) Child Care Staff Health Record, Form OCC-39; and~~

(~~4~~3) Compliance Review.

(b) **Receipt of application.** Upon receipt of the application packet in the Division of Child Care, the case is assigned a license number and a file is set up.

(c) **Reopening a residential child care facility or child-placing agency.** A new application must be completed when a residential facility or child-placing agency that has been closed is reopened.

(d) **Computer checks.** Computer checks to identify prior involvement with the Oklahoma Department of Human Services (OKDHS) are completed on all adults who sign the application for a residential facility and child-placing agency license.

(1) When there has been prior involvement with Child Welfare, the licensing staff reviews the case for information regarding the person's ability to meet licensing requirements.

(2) Other OKDHS cases are reviewed only if concerns exist. If the provider's medical information is confidential, the licensing staff may request the information from the provider. If concerns exist, the provider is asked to sign OKDHS Form HIPAA-3, Authorization to Disclose Medical Records.

(e) **Status.** The facility may be granted temporary authorization to operate on application status or on a six-month permit. The licensing staff may recommend a six-month permit when the conditions required for issuance of a six-month permit described in OAC 340:110-1-46(a) are met. If the licensing staff determines that the conditions have not been met but the non-compliance does not place children at risk of immediate harm, the facility may be allowed to operate on application status. While a child care facility is on application status:

(1) if an application has been filed and licensing staff are aware that children are in care, an initial visit must be made within two weeks;

(2) the licensing staff conducts a monitoring visit at least every two months when children are in care;

(3) contact is made by phone every two months and documented on Form OCC-3, Monitoring Report, page 4, when children have not been accepted into care;

(4) the procedures found in OAC 340:110-1-47.2 are followed if non-compliance with licensing requirements is observed during the monitoring visit. A plan of correction, including an agreed-upon time period for correction of the non-compliance, is documented; and

(5) the licensing staff consults with the licensing supervisor if the facility is unable or unwilling to meet licensing requirements after operating on application status for six months.

(~~e~~f) **Withdrawal of application.** If a residential child care facility or child-placing agency applicant wishes to withdraw the application prior to issuance of a license and the licensing staff confirms that no children are in care, the licensing staff closes the case.

340:110-1-46. Types of issuances

(a) **Six-month permit.** New residential child care facilities or child-placing agencies may be granted temporary authorization to operate on a six-month permit. If the facility was

previously licensed at another location and had a pattern of compliance, the six-month permit may be waived.

(1) The recommendation to issue a permit is made after all forms and inspections have been completed and the facility is in compliance with all requirements, including:

(A) criminal history investigations~~,~~;

(B) tuberculosis (TB) tests~~,~~; ~~and~~

(C) required number of qualified staff;

(D) hazards indoors or outdoors;

(E) fire safety; and

(F) other areas affecting children's safety.

(2) During the six-month permit period, a minimum of three monitoring visits are completed to document that all requirements are met and to observe child care, where applicable.

(3) The items required to be on file for issuance of a six-month permit include:

(A) Application for License, Form OCC-40;

(B) Proof of ownership;

(~~2~~C) list of current staff;

(~~3~~D) Child Care Staff Information, Form OCC-41;

(~~4~~E) TB test or chest x-ray results for direct care staff;

(~~5~~F) Fire Marshal's approval for residential facilities;

(~~6~~G) Health Department approval for residential facilities;

(~~7~~H) physical plant drawing for residential facilities;

(~~8~~I) compliance review questionnaire;

(~~9~~J) monitoring reports;

(~~10~~K) Residential Child Care Policy and Records Check, Form OCC-60; and

(~~11~~L) Recommendation for Licensing or Certification, Form OCC-16.

(b) **Second and subsequent six-month permits.** If additional six-month permits are recommended, the procedures in (1) through (5) of this paragraph are followed.

(1) The licensing staff consults with the programs manager prior to recommending a second or subsequent permit.

(2) The licensing staff sends a letter to the applicant notifying him or her of the recommendation each time a second or subsequent permit is recommended. The reason for the recommendation is clearly stated in the letter, with each area of non-compliance listed separately.

(3) If the permit is due to repeated, numerous, or serious non-compliance with requirements, the licensing staff visits the facility at least monthly and is accompanied, when possible, by a witness. If at any point the non-compliance indicates the facility is unable or unwilling to meet licensing requirements, the programs manager is consulted to discuss negative sanctions.

(4) If requirements are met before the expiration of the six-month permit, the issuance of a license may be recommended.

(5) If children have not been in care on a regular basis during the previous year, the applicant is asked to withdraw the application for license.

(c) **License issuance.** When the licensing staff determines that the facility or agency is operating in compliance with their own policy and procedures and in compliance with the licensing requirements, a recommendation is made to issue a license. Prior to recommending issuance of a license, the licensing staff completes a minimum of three monitoring visits. A monitoring visit must be made within 30 days of the issuance date. A license is in effect unless it is revoked or the facility voluntarily closes.

(d) **Provisional license.** A provisional license may be issued for a period of one year to any facility or agency whose services are needed but who is temporarily unable to meet all requirements. A subsequent provisional license may be issued at the discretion of the Oklahoma Department of Human Services if an emergency exists.

(1) A written statement from the operator requesting a provisional license and stating the reason for the request is submitted to the Division of Child Care.

(2) The licensing staff submits to the Division of Child Care Form OCC-16.

(3) If at any time during the year the operator complies with the requirements, the licensing staff may recommend the issuance of a license.

340:110-1-47. Case management

(a) **Periodic visits.** Licensing staff conduct two unannounced visits and one announced visit to residential facilities annually to document compliance with the requirements. Licensing staff conduct two announced visits yearly to ~~Child-placing~~ child-placing agencies ~~are visited twice a year~~.

(1) If caseloads prevent staff from fulfilling this task, the programs manager consults with them on case management, and the number of required visits may be reduced. This adjustment is approved and documented in the case record by the programs manager.

~~(2) Licensing staff varies the time of monitoring visits to include observation of a meal at residential facilities.~~

(~~3~~2) During each monitoring visit, the licensing staff observes the entire facility, including outdoor play space and vehicles used for transportation, if available.

~~(b) **Follow-up visits.** Repeated non-compliance requires additional visits that may include a witness. The witness may be the programs manager, another employee of the Oklahoma Department of Human Services, or an official of the health or fire department. The licensing staff and the witness sign the monitoring report.~~

~~(1) A non-compliance letter is written and sent to the operator when there is a serious or repeated non-compliance.~~

~~(2) The non-compliance letter lists the areas of non-compliance that were observed and a time frame for compliance.~~

(~~c~~b) **Consultation and technical assistance.** The licensing staff provides technical assistance to operators to meet and maintain minimum requirements. Consultation is provided

to parties interested in licensure and to licensed facilities, and includes suggestions for improving the quality of care and for exceeding the minimum requirements.

(~~d~~c) **Change of address.** When a facility moves to a new location, licensing staff follow specific procedures to document the move.

(d) **Change in name.** If the licensing staff verifies there is a change in name but no change in ownership, the change is documented in the case record and the database is updated.

(e) **Increase or decrease in licensed capacity.** When a facility requests an increase or decrease in licensed capacity, it is documented on Form OCC-3, ~~Child Care Center~~ Monitoring Report, page 4, and must be approved by the programs manager. If the request to increase capacity is due to additional physical space, the required documentation includes:

(1) reason for the increase;

(2) fire department approval;

(3) health department approval;

(4) physical plant drawing indicating the measurements, total square footage, and number of additional children that can be accommodated; and

(5) additional staff, if applicable.

(f) **Inactive cases.** If children have not been in care or services have not been provided on a regular basis within a 12 month period, the option of voluntary closure is discussed with the provider.

(1) A provider who wants his or her case to remain open must submit a request in writing including a statement that the provider will notify licensing staff when care is resumed.

(2) Licensing staff contact the provider by telephone or letter periodically to update the provider's status.

(3) Licensing staff visit the inactive facility at least once a year to verify and document compliance with licensing requirements.

(g) **Change in ownership.** If a residential program or child-placing agency assumes new ownership, the case file is closed, and the program must apply for new license under the new owner.

(h) **Response to a sudden infant death syndrome (SIDS) death.** When notified of a death assumed to be SIDS, the licensing staff visits the facility as soon as possible, unless advised otherwise by law enforcement.

(i) **Serious incident reports.** The licensing staff submits to the programs manager a report of any serious incident.

(j) **Coordination with state agencies.** Division of Child Care residential licensing staff works cooperatively with the OKDHS Office of Client Advocacy (OCA), the Oklahoma Commission on Children and Youth (OCCY), and the Oklahoma Health Care Authority (OHCA).

340:110-1-47.1. Complaint investigations

(a) **Legal basis.** The Child Care Facilities Licensing Act (Act), Sections 401 et seq. of Title 10 of the Oklahoma Statutes, mandates that the Oklahoma Department of Human Services (OKDHS) conduct a full investigation of a complaint alleging a violation against the Act or any licensing requirement.

(b) **Receipt of the complaint.** Complaints may be made to Division of Child Care, Licensing Services, in writing, in person, or by telephone.

(c) **Complaint information.** The licensing staff obtains as much relevant information as possible from the complainant.

(d) **Screening complaints.** The licensing staff accepts a complaint for investigation when it alleges:

(1) non-compliance with licensing requirements;

(2) operation of an unlicensed facility in violation of the Act; or

(3) abuse or neglect of a child in care.

(e) **Disposition of complaints.** Upon receipt of a complaint, the licensing staff determines a disposition.

(f) **The investigation.** The licensing staff conducts a full investigation obtaining sufficient information to make a finding.

(g) **Telephone investigation.** With supervisory approval, the licensing staff may investigate a complaint by telephone. The discussion and, if necessary, an agreed-upon plan of correction is documented on page 4 of Form OCC-3, Child Care Center Monitoring Report. A copy is sent to the operator. A complaint may be investigated by telephone only if:

(1) the alleged non-compliance does not place children at risk; for example, the facility did not serve milk one day or children have head lice;

(2) the facility has not had numerous, repeated, or serious non-compliance; and

(3) a monitoring visit has been made in the last three months during which substantial compliance was documented.

(h) **Procedure for investigating allegations of operating an unlicensed facility.** When allegations of operating an unlicensed facility are investigated, the procedure contained in this subsection is followed.

(1) When the report does not indicate that children are at immediate risk of harm, the procedure in this paragraph is followed.

(A) If a complaint is made in person or by telephone, the licensing staff obtains and records all relevant information on Form OCC-12, Complaint Report and Complaint Summary.

(B) When advertisements indicate a residential facility or child-placing agency is operating in violation of the Act, information is recorded with the advertisement attached.

(C) The licensing staff mails to the operator the licensing requirements and a letter which includes information about licensure and a request for a response within 14 days.

(D) If a response is not received within 14 days, a visit is made to the facility to:

(i) determine whether services are being provided;

(ii) explain the Act;

(iii) ask the operator to file an application for licensure or cease care; and

(iv) request the operator to advise the licensing staff of the decision within ten days.

(E) If a response is not received within ten days, several contacts are made or attempted to encourage the operator of an unlicensed facility to comply with the Act.

(F) If the operator fails to apply for licensure as required by the Act, the licensing staff consults with the programs manager and, when appropriate, makes a recommendation to the district attorney.

(2) When children may be at risk, the licensing staff obtains and records as much information as possible, notifies the programs manager, and verifies the validity of the complaint with a visit to the facility.

(A) If the complaint is substantiated and children are at risk, the licensing staff requests the caregiver cease operation immediately.

(B) If the operator refuses, the licensing staff informs the caregiver that legal action may be initiated.

(C) Prior to contacting the district attorney, the programs manager reviews the case with the licensing staff to determine whether legal action is indicated.

(3) When legal action is warranted, a request for criminal proceedings or an injunction is made to the local district attorney. The recommendation is made in writing and includes documentation of the facts of the case. The programs manager informs the OKDHS Legal Division of the request to the local district attorney for legal action.

(4) If a local district attorney will not take action against a facility, the OKDHS Legal Division is notified. A referral may be made to the attorney general by the programs manager.

(i) **Child abuse and neglect complaints.** Upon receipt of a complaint alleging abuse of a child in care, the licensing staff immediately notifies the programs manager and makes a referral to the Office of Client Advocacy.

(j) **Findings.** After the investigation is completed, the licensing staff, in consultation with the programs manager, as appropriate, makes a finding as to whether the complaint is substantiated or unsubstantiated.

(1) Substantiated. A finding of substantiated is made when a weighing of the information obtained during the investigation clearly indicates that the facility violated a licensing requirement or the Act.

(2) Unsubstantiated. A finding of unsubstantiated is made when the allegation is found to be uncertain or ruled out. A finding is:

(A) uncertain when the information does not lead to a definite conclusion. An example is when:

(i) there is insufficient or conflicting information on which to conclude that a violation occurred; or

(ii) information required to make a finding is unavailable; or

(B) ruled out when a weighing of the information clearly indicates there was not a violation of a licensing requirement or the Act.

(k) **Documentation of findings.** Upon completion of the investigation, the licensing staff documents the findings and notifies the provider in writing.

(l) **Notice to Comply.** When a serious complaint is substantiated, the licensing staff advises the facility to correct the violations immediately, using Form OCC-37, Notice to Comply. The facility must complete a plan of correction.

340:110-1-47.2. Non-compliance with requirements

(a) **Documentation of non-compliance.** The Division of Child Care licensing staff documents areas of non-compliance as well as the discussion with the operator clearly and concisely on the monitoring report.

(1) A plan of correction, including an agreed-upon time period for correction of the non-compliance, is documented for each non-compliance on the monitoring report. ~~The plan of correction includes, if applicable, how compliance will be maintained on an ongoing basis.~~

(2) Immediate correction is required when the non-compliance has a direct impact on the health, safety, or well-being of a child(ren) in care.

(3) The licensing staff requests that the operator sign the monitoring report, explaining that the operator's signature indicates acknowledgment of information recorded.

(4) If the person in charge refuses to sign, the refusal is documented on the report.

(5) The operator is given a copy of the completed monitoring report.

(b) **Referrals to fire and health officials.** If non-compliance regarding fire or health requirements places children at risk or remains uncorrected, the licensing staff requests an inspection by a fire, health, or Oklahoma Department of Environmental Quality (ODEQ) official.

(c) **Case management responses to non-compliant facilities.** The following additional responses may be used when there is repeated, numerous, or serious non-compliance.

(1) **Technical assistance.** Technical assistance is offered along with referrals to consultants or training resources, if necessary, to assist the operator in meeting and maintaining licensing requirements.

(2) **Follow-up phone call.** Phone calls are documented on page 4 of Form OCC-3, Monitoring Report, and a copy is mailed to the facility.

(3) **Non-compliance letters.** A non-compliance letter may be written to the operator. The licensing staff sends a copy of the monitoring report and non-compliance letter to the governing board or owner, if applicable.

(4) **Return monitoring visit.** A return monitoring visit may be made if there is repeated, numerous, or serious non-compliance with licensing requirements or when non-compliance places children at imminent risk of harm. If the non-compliance is associated with a specific time of day, such ~~an~~ as understaffing after school or a lack of early morning supervision, the return visit is made at that approximate time.

(5) **Use of witnesses.** The licensing staff may be accompanied by a witness during monitoring visits if the facility has had numerous, repeated, or serious non-compliances or if denial or revocation of the license is being

considered. The witness may be an Oklahoma Department of Human Services (OKDHS) employee or a representative from the health or fire department. The witness signs the monitoring report in the space provided.

(6) **Increased monitoring visits.** Licensing staff may increase the frequency of monitoring when there has been numerous, repeated, or serious non-compliance or when the need for additional technical assistance is indicated.

(7) **Notice to comply.** The licensing staff provides the facility with Form OCC-37, Notice to Comply, on which the facility documents the plan of correction. Immediate correction may be required if the non-compliance places the health, safety, or well-being of a child(ren) in care at risk.

(A) If the plan submitted by the operator is unacceptable to the licensing staff, the staff negotiates and documents a revised plan.

(B) If the operator does not submit the response to Form OCC-37 within the specified time period, the licensing staff contacts the operator and documents the conversation. If concerns exist or the operator is uncooperative, the licensing staff sends a letter stating that failure to complete Form OCC-37 may result in revocation of license, denial of the application, or the filing of an injunction or emergency order.

(8) **Office conference.** The licensing staff may schedule an office conference with the operator of the facility. The programs manager is present at the office conference. Areas of non-compliance and progress toward meeting the plan(s) of correction are reviewed and technical assistance is offered. The conference is documented on page 4 of Form OCC-3, which is signed by the licensing staff, the operator, and any witnesses present. Form OCC-37 is completed if one addressing these issues has not been completed recently.

(9) **Consent agreement.** OKDHS and the operator of the facility may enter into a consent agreement whereby the facility agrees to specific conditions in lieu of license denial or revocation.

(10) **Revocation.** The licensing staff recommends that the license be denied or revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children.

(11) **Voluntary closure.** The operator is asked to voluntarily close the facility.

(d) **Case management responses when children are at risk.** If the licensing staff documents non-compliance with requirements or is investigating a complaint that may place the health, safety, or well-being of children at imminent risk of harm, options to consider during consultation with the operator and the programs manager are outlined in this subsection.

(1) The operator is asked to immediately correct the non-compliance; for example, the staff person will not work at the facility pending the outcome of an investigation.

(2) The operator is asked to voluntarily close the facility.

(3) The licensing staff requests an emergency order when immediate action is needed to protect children in a child care facility that is on permit, licensed, on notice of revocation or denial, or operating during an appeal following revocation or denial.

(4) The operator agrees to enter into a consent agreement whereby the facility agrees to specific conditions in lieu of license denial or revocation.

(5) The licensing staff recommends that the license be denied or revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children.

(6) An injunction may be requested when the residential facility or child-placing agency is:

(A) unlicensed;

(B) on application status;

(C) licensed;

(D) violating an emergency order;

(E) operating during an appeal following revocation or denial and children are at risk; or

(F) violating the notice to cease care following revocation or denial of license.

340:110-1-51. Criminal background checks

(a) **Provider.** Section 404.1 et seq. of Title 10 of the Oklahoma Statutes requires that every child care facility arrange, prior to employment, for a criminal history investigation for:

(1) any person making application to establish or operate a residential child care facility and child-placing agency;

(2) any person to be employed by a child care facility or child-placing agency, including all caregivers, auxiliary staff, and substitute or assistant caregivers; and

(3) others who have unsupervised access to children, such as students, workers, contracted staff, volunteers, or custodians; and

(4) adults, including providers' spouses or adult children, who live in the child care facility.

(b) **Exceptions.** Criminal history investigations are not required for:

(1) new staff who have documentation of a criminal history investigation within the last 12 months;

(2) staff who move to a program operated by the same organization;

(3) contracted staff who provide transportation, lessons, or other services if facility staff are present with children at all times; and

~~(4) parent volunteers who transport children on an irregular basis; and~~

(~~5~~4) providers' children who become adults, age 18, during continuous residence at the licensed facility.

(c) **Authorized agencies.** Criminal history investigations are acceptable only when conducted by:

(1) the Oklahoma State Bureau of Investigation (OSBI); and

(2) the authorized agency in the previous state of residence if the person has resided in Oklahoma for less than one year.

(d) **Sex Offenders Registry.** The OSBI report must include a search of the Department of Corrections' files maintained by the OSBI pursuant to the Sex Offenders Registration Act. According to Section 404.1 of Title 10 of the Oklahoma Statutes, it is unlawful for any person who is required to register pursuant to the Sex Offenders Registration Act to work with or provide services to children, to live in a child care facility, or to be employed or contracted by the facility to care for children. If it is determined that a facility has violated this Statute, the Oklahoma Department of Human Services (OKDHS) may pursue:

(1) an emergency order;

(2) revocation of the license or denial of the application for license;

(3) an injunction; or

(4) referral for criminal proceedings.

(e) **Convictions.** The licensing staff reviews each criminal history report.

(1) If a report includes a charge without a disposition for an offense listed in licensing requirements or which could affect contract eligibility, a copy of the disposition is obtained.

(2) If a report includes a plea of guilty or nolo contendere, no contest, or conviction for an offense listed in licensing requirements, the licensing staff:

(A) advises the administrator or director of the facility that the person does not meet licensing requirements;

(B) informs the administrator or director of the facility that he or she may request a waiver from the Division of Child Care (DCC) programs manager unless the person was convicted of a crime pursuant to the Sex Offenders Registration Act, pursuant to OAC 340:110-1-51(d);

(C) provides the administrator or director of the facility with a copy of the items considered for a waiver as listed in OAC 340:110-1-51(h); and

(D) documents assurance from the administrator or director of the facility that the person in question will not be employed, work with children, or be present at the facility until a decision has been made regarding the request for a waiver, pursuant to OAC 340:110-1-51(h).

(3) If the facility administrator's or director's criminal history report includes a conviction of fiscal mismanagement, such as embezzlement or fraud, or if there are repeated convictions that indicate a pattern of criminal activity, a copy of the report is sent to the DCC programs manager.

(f) **Waiver.** The prohibition to employ a person with criminal history may be waived if requested in writing by the facility's owner~~,~~ or director~~, or home provider~~. ~~However, a~~ A waiver is not granted to any person who is required to register pursuant to the Sex Offenders Registration Act.

(1) Licensing staff submit completed Form OCC-71, Child Care Waiver Request, to the programs manager.

(2) The decision to grant a waiver is made by the programs manager~~.~~, ~~The decision is~~ based on documentation indicating ~~that~~ the health, safety, and well-being of children is not endangered. Criteria considered by the programs manager include the:

(~~1~~A) type of crime or offense for which the person was convicted or a finding made;

(~~2~~B) nature of the offense(s);

(~~3~~C) age of the person at the time of the offense(s);

(~~4~~D) circumstances surrounding commission of the offense(s) that demonstrate whether it is likely that the person will re-offend;

(~~5~~E) number of offenses for which the person was convicted or findings made;

(~~6~~F) length of time that has elapsed since the last conviction or finding;

(~~7~~G) relationship of the offense(s) and the person's ability to care for children;

(~~8~~H) evidence of rehabilitation or education activities such as counseling since the offense was committed;

(~~9~~I) statement from the person who has the criminal history; and

(~~10~~J) opinions of reliable community members concerning the person in question.

(3) The programs manager notifies the facility of the decision in writing.

(4) Licensing staff monitor any additional instructions made to the program and verify the waiver notice is posted in the facility.

340:110-1-54. Grievance and complaint policy and procedure

(a) **Grievance and complaint policy.** The owner, director, or administrator of a licensed child care facility may file a grievance or complaint regarding the ~~application~~ enforcement of any written or unwritten policy, rule, or regulation of the Oklahoma Department of Human Services (OKDHS), or any decision by an employee of OKDHS that affects the facility. A grievance or complaint is not accepted concerning the denial or revocation of a child care facility license. The procedure for appealing this action is provided for in the Oklahoma Child Care Facilities Licensing Act. [10 O.S. § 407]

(b) **Grievance or complaint procedure.** ~~Persons wishing~~ A person who wishes to file a grievance or complaint ~~are~~ is encouraged to seek informal resolution by contacting the programs manager, who will seek to resolve the matter. If a resolution is not reached at the supervisory level, the grievant is requested to file a written request with the Director of Child Care Services. The Director of Child Care Services responds to written grievances or complaints within 14 days after receipt. When the grievant or complainant is not satisfied with the proposed resolution, the grievance may be appealed to:

(1) the associate director for programs; and

(2) the Director of OKDHS.

SUBCHAPTER 3. LICENSING STANDARDS FOR CHILD CARE FACILITIES

PART 1. REQUIREMENTS FOR CHILD CARE CENTERS

340:110-3-7.1. Requirements for child care center employees

(a) **General.** All employees are required to be of good character and possess adequate education, training, and experience to provide them with the skills to perform the essential functions of the job with or without reasonable accommodation. Each employee:

(1) provides annual documentation that he or she meets the health and training requirements contained in "Licensing Requirements for Child Care Centers," OKDHS Publication no. ~~86-104~~ 84-108;

(2) demonstrates the ability to perform essential job functions;

(3) recognizes and acts to correct hazards to physical safety, both indoors and outdoors;

(4) works with children without recourse to physical punishment, mistreatment, or child abuse; and

(5) demonstrates good judgment as evidenced by prudent and responsible behavior that reasonably ensures the health and safety of children in care.

(b) **Criminal history investigations.** Requirements for centers pertaining to criminal history investigations are contained in this subsection.

(1) **Owner or director responsibility.** The center's owner or director arranges for a criminal history investigation for:

(A) any person making application to establish or operate a child care center;

(B) each applicant for employment prior to hiring, including all caregivers, substitutes, auxiliary staff, and any other person employed by the child care facility or program;

(C) others who have unsupervised access to children, such as lab students, Work Experience Program (WEP) workers, volunteers, contracted staff, or custodians; and

(D) adults, including providers' spouses or adult children, who live in the child care facility.

(2) **Exceptions.** Criminal history investigations are not required for:

(A) new staff who have documentation of criminal history investigations within the last 12 months;

(B) staff who move to a new center operated by the same organization;

(C) contracted staff who provide transportation, lessons, or other services if facility staff are present with children at all times;

(D) parent volunteers who transport children on an irregular basis; and

(E) providers' children who become adults, age 18, during continuous residence at the licensed facility.

(3) **Authorized agencies.** Criminal history investigations are acceptable only when:

(A) conducted by the Oklahoma State Bureau of Investigation (OSBI); and

(B) conducted by the authorized agency in the previous state of residence if the individual has resided in Oklahoma less than one year.

(4) **Sex Offenders Registry.** The OSBI report must include a search of Department of Corrections files maintained by the OSBI pursuant to the Sex Offenders Registration Act.

(c) **Restrictions.** Center requirements contained in this subsection restrict certain individuals from employment.

(1) The child care center is restricted from knowingly employing a person who:

(A) has pending charges, has entered a plea of guilty or nolo contendere (no contest), or been convicted of:

(i) any criminal activity involving violence against a person;

(ii) child abuse or neglect;

(iii) possession, sale, or distribution of illegal drugs;

(iv) sexual misconduct; or

(v) an act of gross irresponsibility or disregard for the safety of others or a pattern of criminal activity; or

(B) is required to register pursuant to the Sex Offenders Registration Act. [50 O.S. § 581 et seq.]

(2) The center director may request a waiver from the requirements in OAC 340:110-3-7.1(c)(1). A waiver may not be requested or granted to any person who has been convicted of a sex offense pursuant to the Sex Offenders Registration Act.

(A) The waiver request is made in writing to OKDHS and considered by the statewide licensing coordinator.

(B) The person for whom the waiver is requested cannot be employed until a decision has been made.

(3) Any person whose health or behavior could endanger the health, safety, or well-being of children is prohibited from the child care center premises and contact with children in care.

(4) An employee under the effects of alcohol, illegal drugs, or medication that impairs functioning is prohibited from providing child care services.

(d) **Child abuse.** The requirements pertaining to child abuse are contained in this subsection.

(1) Any caregiver who has reason to believe that a child has been abused is required to promptly contact the county office of OKDHS or the statewide toll-free Child Abuse Hot Line, 1-800-522-3511.

(2) Staff are required to cooperate fully in the investigation of any allegation.

(e) **Health.** Requirements pertaining to employees' health are contained in this subsection.

(1) **Tuberculosis testing.** The need for tuberculin skin testing of employees is based upon a local identified

tuberculosis exposure, the degree of risk of transmission of latent tuberculosis infection, the impact to public health and safety, and the specific recommendations of the Oklahoma State Department of Health.

(2) **Impairment of job performance.** OKDHS Division of Child Care, Licensing Services (Licensing) may require a report of a physical or psychological examination by a licensed physician or mental health professional if it is reported or observed that an employee has a physical, mental, or emotional condition that impairs the employee's ability to perform assigned job responsibilities.

(f) **Employee qualifications.** Requirements applicable to employee positions are contained in this subsection.

~~(1) **Director of a small center.** The director of a child care center licensed for less than 60 children is required to be at least 21 years of age and have one of the following:~~

~~(A) a high school diploma or General Educational Development (GED) and three years of satisfactory full-time experience in a related educational, early childhood, or child care setting;~~

~~(B) a high school diploma or GED and 12 college credit hours of Tier III training in early childhood education or an approved related subject, in accordance with OKDHS Appendix L-1, Oklahoma Training Approval System, and one year of satisfactory full-time experience in a related school-age, educational, or secondary child care setting;~~

~~(C) a Child Development Associate credential or Certified Childcare Professional credential and one year of satisfactory full-time experience in a child care setting;~~

~~(D) an associate or bachelor degree with at least 12 college credit hours of Tier III training in early childhood education or an approved related subject, in accordance with OKDHS Appendix L-1; or~~

~~(E) a high school diploma or GED and successful completion of a child care training program that meets the criteria approved by the Child Care Advisory Committee.~~

~~(2) **Director of a large center.** The director of a child care center licensed for 60 or more children must be at least 21 years of age. If employed after July 1, 1995, the director is required to have ten documented clock hours of Tier I or higher training in center administration and management, in accordance with OKDHS Appendix L-1, and have one of the following:~~

~~(A) a high school diploma or GED and five years of satisfactory full-time experience in a child care setting and 40 documented clock hours of Tier I or higher training, in accordance with OKDHS Appendix L-1, that includes child development, early childhood education, or a closely related subject;~~

~~(B) a high school diploma or GED, three years of satisfactory full-time experience in a child care setting, and 12 college credit hours of Tier III training in early childhood or an approved related subject, in accordance with OKDHS Appendix L-1;~~

~~(C) a Child Development Associate credential or Certified Childcare Professional credential and three years of satisfactory full-time experience in a child care setting;~~

~~(D) an associate degree with at least 12 college credit hours of Tier III training in early childhood education or an approved related subject, in accordance with OKDHS Appendix L-1, and two years of satisfactory full-time experience in a child care setting;~~

~~(E) an associate degree in child development, early childhood education, or a closely related subject and one year of satisfactory full-time experience in a child care setting;~~

~~(F) a bachelor degree with at least 12 college credit hours of Tier III training in early childhood education or an approved related subject, in accordance with OKDHS Appendix L-1, and one year of satisfactory full-time experience in a child care setting;~~

~~(G) a bachelor degree in child development, early childhood education, or a closely related subject that included a practicum placement or student teaching or at least 40 college credit hours in Tier III training in early childhood education or an approved related subject, in accordance with OKDHS Appendix L-1; or~~

~~(H) a high school diploma or GED and successful completion of a child care training program that meets the criteria approved by the Child Care Advisory Committee.~~

(~~3~~1) **Director qualifications.** Effective January 1, 2005, all directors of child care centers are required to be at least 21 years of age and have obtained and maintain the Bronze level, in accordance with OKDHS Appendix L-2, Oklahoma Director's Credential.

~~(4) **Master teacher.** Master teachers are required to be at least 18 years of age and have one of the following:~~

~~(A) a high school diploma or GED and two years of satisfactory full-time experience in a child care setting;~~

~~(B) a high school diploma or GED and 12 college credit hours of Tier III training in early childhood education or an approved related subject, in accordance with OKDHS Appendix L-1;~~

~~(C) a Child Development Associate credential or Certified Childcare Professional credential;~~

~~(D) an associate degree with at least six college credit hours in Tier III training in early childhood education or an approved related subject, in accordance with OKDHS Appendix L-1; or~~

~~(E) a high school diploma or GED and successful completion of a child care training program that meets the criteria approved by the Child Care Advisory Committee.~~

(~~5~~2) **Master teacher qualifications.** Effective January 1, 2005, all master teachers are required to:

(A) be at least 18 years of age and have obtained the qualifications at Level III or higher of OKDHS Appendix L-3, Professional Development Ladder; or

(B) in a program where the majority of children are school-age, the master teacher may have 120 clock hours of Tier II or higher school-age training within the last five years, in accordance with OKDHS Appendix L-1, 480 hours of experience in a program where the majority of children are school-age, and every two years a minimum score of 5.0 on the School-Age Environment Rating Scale in a classroom where the master teacher is the lead teacher.

(~~6~~3) **Teachers.** Teachers hired after July 1, 1995 are required to:

(A) be at least 18 years of age; and

(B) have a high school diploma or GED; or

(C) have completed the tenth grade and be in the process of obtaining a GED for a period not to exceed 12 months.

(~~7~~4) **Assistant teachers.** Assistant teachers are at least 16 years of age and required to:

(A) have a high school diploma or GED;

(B) have completed the tenth grade and be in the process of obtaining a GED; or

(C) be currently enrolled in secondary education or the equivalent.

(~~8~~5) **Permanent substitutes.** Permanent substitutes are required to meet minimum requirements for the position they are filling.

(~~9~~6) **Temporary substitutes.** Temporary substitutes must be at least 18 years of age.

(~~10~~7) **Teen aides.** Teen aides must be 13 through 15 years of age.

(g) **Responsibilities.** Responsibilities of employees and volunteers are described in this subsection.

(1) **Director.** The director, or teacher who meets director's qualifications, is present in the center at least 50 percent of operating hours or a minimum of 30 hours a week and is responsible for the day-to-day operation of the center.

(A) When four or more teachers are needed to meet minimum staff-child ratios, the director is free from direct care responsibilities at least three hours per day during operating hours to provide program oversight and staff supervision.

(B) The director, or teacher who meets director's qualifications, is responsible for:

(i) upon employment, providing three references to Licensing, including at least two from the director's most recent employers when applicable. The other reference(s) may be personal, excluding relatives;

(ii) appointing a staff member to take responsibility for the operation of the child care center in his or her absence and posting that person's name in a conspicuous place;

(iii) maintaining a child care center that meets the minimum requirements;

(iv) ensuring that a staff member trained to administer first aid including rescue-breathing and choke-saving measures is present at all times;

(v) arranging for criminal history investigations and obtaining dispositions on any charges shown on the report that lack dispositions;

(vi) prior to employing staff, obtaining and documenting three references including at least two from the applicant's most recent employers, when applicable. The other reference(s) may be personal, excluding relatives;

(vii) supervising the conduct of staff, volunteers, substitutes, and others who provide services in the facility; and

(viii) cooperating with licensing staff and other appropriate agencies in maintaining compliance with requirements and in improving the quality of care.

(2) **Master teachers.** At least one full-time master teacher is required for every 60 children for which the center is licensed. The director may be counted as a master teacher if the licensed capacity is 30 or less.

(3) **Teachers.** Teachers have primary responsibility for the direct care of children.

(4) **Assistant teachers.** Assistant teachers work under the on-site supervision of a qualified director or teacher who is readily available at all times.

(A) A director, master teacher, or teacher does not directly supervise more than two assistant teachers.

(B) Assistant teachers are not permitted to have sole responsibility for a group of children for more than three hours per day.

(5) **Auxiliary personnel.** Auxiliary personnel, for example, cooks, building custodians, or other personnel who provide indirect services to children:

(A) demonstrate knowledge and skills necessary to perform their job responsibilities;

(B) meet applicable requirements for staff caring for children as set forth in this Section if they are responsible for children for any part of the day;

(C) are not included in the staff-child ratio while performing auxiliary functions. Minimal cleaning and food service, for example, light cleaning, picking up toys, sweeping the classroom, and reheating and serving food, are not considered auxiliary functions as long as supervision and program are not adversely affected.

(6) **Volunteers.** Volunteers are required to meet all requirements in this paragraph.

(A) Volunteers and student interns are not included in the staff-child ratio unless they are assigned to the center for at least three consecutive months. Volunteers are permitted to serve as temporary or permanent substitutes.

(B) Volunteers counted in the staff-child ratio shall meet all requirements in this Part.

(C) Volunteers are under the direct supervision of the director or a designated staff member.

(D) Volunteers who have not met all requirements for teachers are not left in charge of children.

(7) **Substitutes.** Substitutes carry out the assigned responsibilities of the position they are filling.

(8) **Teen aides.** Teen aides:

(A) are not counted toward meeting the staff-child ratio and are not included in the licensed capacity;

(B) must be under the on-site supervision of a master teacher who is at least 18 years of age. One master teacher may supervise no more than two teen aides;

(C) are placed only in groups where at least one staff member is 18 years of age. No more than two teen aides may be assigned to a group of children;

(D) must be at least two years older than the children in the group to which they are assigned;

(E) must be visibly identifiable through means such as name tags or T-shirts; and

(F) are never left alone with children.

(h) **Professional development.** Requirements pertaining to professional development are contained in this subsection.

(1) **Orientation.** Within one week of employment and prior to having sole responsibility for a group of children, each staff member, including auxiliary staff and permanent substitutes who have been employed 40 hours, receives orientation.

(A) Orientation includes a review of:

(i) infection control;

(ii) injury prevention;

(iii) handling common childhood emergencies, including choking;

(iv) sudden infant death syndrome (SIDS);

(v) shaken baby syndrome;

(vi) the center's policy and procedure and staff responsibility for implementation;

(vii) licensing requirements;

(viii) employees' assigned duties and responsibilities;

(ix) emergency procedures in the event of injury, severe weather, or fire, including evacuation procedures and routes and location and use of fire extinguishers;

(x) the definition, identification, and mandatory reporting of child abuse and neglect;

(xi) the daily schedule;

(xii) the methods used to inform staff of any special health, nutritional, or developmental needs of children assigned to the caregiver;

(xiii) confidentiality of information regarding children and their families;

(xiv) appropriate use of discipline; and

(xv) transportation and car seat safety.

(B) Documentation includes a statement, signed by the employee and director, in each employee's personnel file attesting to the orientation and review.

(C) New staff have a probationary period of at least 30 days during which they are closely supervised.

(2) **Entry-level training.** Prior to or within three months of employment, staff counted to meet staff-child ratios participate in a Tier II entry-level training course that provides at least 20 hours of training, in accordance with OKDHS Appendix L-1. Directors are not required to have this training. Staff who have previously received this training are not required to repeat it unless there is a two year break in service.

(3) **Health and safety training.** Staff are required to comply with the health and safety training requirements contained in this paragraph.

(A) When children are in care on the center premises or on any center-sponsored field trip, staff are present who have current documentation of certification in age-appropriate first aid and cardiopulmonary resuscitation (CPR) that meets the criteria in (i) through (iii) of this subparagraph.

(i) CPR training must be conducted by an individual certified as an instructor through the American Red Cross or the American Heart Association.

(ii) First aid courses must be conducted by Emergency Medical Services for Children (EMSC) First Care, the American Red Cross, the National Safety Council, or approved as Tier II training, in accordance with OKDHS Appendix L-1.

(iii) Documentation of current completed training in CPR and first aid is maintained by the staff.

(B) The first aid training includes the emergency management of:

(i) bleeding;

(ii) burns;

(iii) poisoning;

(iv) choking;

(v) injuries, including insect, animal, and human bites;

(vi) shock;

(vii) convulsions or nonconvulsive seizures;

(viii) musculoskeletal injury, such as sprains and fractures;

(ix) dental emergencies;

(x) head injuries;

(xi) allergic reactions;

(xii) eye injuries;

(xiii) loss of consciousness;

(xiv) electric shock; and

(xv) drowning.

(4) **Ongoing training.** Requirements of staff for ongoing training are contained in this paragraph.

(A) **Director.** The director is required to obtain 20 clock hours per employment year of Tier I or higher training, such as professional conferences or from an accredited college, university, or vocational program, in accordance with OKDHS Appendix L-1.

(i) OKDHS approves training upon request.

(ii) Training is relevant to job responsibilities and includes center administration or management, age-appropriate childhood education, and infection control.

(B) **Staff with children.** Each person who is counted toward meeting the staff-child ratio is required to obtain 12 clock hours per employment year of Tier I training, in accordance with OKDHS Appendix L-1, that is relevant to job responsibilities and includes infection control. Formal training is from a source such as professional conferences or from an accredited college, university, or technical school.

(i) The director assists staff in identifying and selecting training that is varied, appropriate, and builds upon previous training.

(ii) No more than six hours of self-directed readings, use of videos, or informal on-site training is counted toward the required annual training hours.

(iii) Reports of self-directed reading are documented and submitted to the director.

(iv) Training repeated during the employment year is only counted once to meet the training requirement.

(5) **Food service training.** Prior to or within three months of employment, the person primarily responsible for food preparation is required to receive training in:

(A) nutrition planning;

(B) age-appropriate food selection;

(C) food preparation, service, and storage; and

(D) cleaning and sanitizing equipment and utensils.

(6) **Substitute and volunteer staff training.** Requirements for substitute and volunteer staff are listed in (A) through (C) of this paragraph.

(A) Temporary substitutes are required to be familiar with center policy and procedure before they are left in charge of a group of children.

(B) Permanent substitutes are required to meet the requirements for orientation and ongoing training in OAC 340:110-3-7.1(h)(1) and (4).

(C) Volunteers counted toward meeting the staff-child ratio are required to meet the requirements for orientation and ongoing training in OAC 340:110-3-7.1(h)(1) and (4).

(7) **Documentation of training.** Documentation of training for each staff member is required and includes the topic, source of training, date, and hours.

PART 9. REQUIREMENTS FOR RESIDENTIAL CHILD CARE FACILITIES

340:110-3-154. Social services

(a) **Admission.** The facility involves the resident and parents or custodian in the admission process.

(1) Upon admission, an admission assessment is completed for each resident indicating that the placement is appropriate for each resident's needs. The admission assessment is documented and available for licensing staff to review. An admission assessment includes:

(A) a description of the circumstances that led to the resident's referral;

(B) a description of the resident's family, relationship with family members, and relationships with other significant adults and children;

(C) a description of the resident's current and past behavior, including both appropriate and maladaptive behavior;

(D) the resident's medical and dental history, including any current medical problems;

(E) the resident's school history, including current educational level, special achievements, and any school problems;

(F) the resident's history of any other placements outside the home, including the reasons for placement; ~~and~~

(G) the resident's mental health history; and

(~~G~~H) documentation indicating efforts to obtain any of the identifying information in (A) – through (~~F~~G) of this paragraph, if any information is not obtainable.

(2) A facility does not accept children under age five except when maintaining a sibling group, maintaining a child with a parent, or when there is a need for special services, such as medical care or monitoring, awake supervision, or crisis intervention, assessment, or treatment. If a resident under five years of age is in care at the facility, the admission assessment and the service plan documents why this placement is in the resident's best interest.

(3) Persons 19 years of age and older are not admitted to the facility. A facility may continue to serve a person ~~that~~ who entered the program prior to his or her 19th birthday through the completion of his or her service plan.

(4) Upon admission, the facility obtains authorization, by the parents' or custodian's signature, of:

(A) authority to provide care;

(B) authority to provide medical care;

(C) financial agreement, if a charge is made for the resident's care; and

(D) authority to use the resident or the resident's picture in publicity, if applicable.

(5) Residents receive a medical examination by a health professional within 60 days prior to admission or within 30 days following admission. However, a documented medical exam performed within the 12 months prior to admission is acceptable when a resident is transferred from another licensed facility.

(6) Upon admission, the facility advises the resident of all rules and regulations of the facility.

(7) The facility documents, by the resident's and parents' or custodian's signatures, that the resident and parents or custodian have been provided written copies of the facility's policies, which includes, but is not limited to, resident's rights, grievance procedures, behavior management policies, trips away from the facility, use of volunteers, and frequency of reports to the parents or custodian.

(8) Acceptance of out-of-state residents is made according to the Interstate Compact on the Placement of Children.

(b) **Service planning.** The service plan is available for licensing staff to review.

(1) **Comprehensive service plan.** A written service plan is developed and documented for each resident within 30 days of admission.

(A) The facility involves the resident and parents or custodian in the development of the service plan. If the parents or custodian do not participate in the development of the service plan, the reason for non-participation is documented in the service plan.

(B) The service plan identifies and includes:

(i) the resident's needs, such as counseling, education, physical health, medical care, or recreation, in addition to basic needs for food, shelter, clothing, routine care and supervision;

(ii) strategies for meeting the resident's needs, including instructions to staff. Individual health needs must be addressed in the facility's medical plan. Refer to OAC 340:110-3-154.3;

(iii) the estimated length of stay;

(iv) goals and anticipated plans for discharge;

(v) the facility's plan to involve the residents parents or custodian, including visitation guidelines; and

(vi) the names and signatures, with the date, of those participating in developing the service plan.

(2) **Service plan review.** Service plan reviews are available for licensing staff to review.

(A) The service plan is reviewed within 90 days after it has been developed and at least every six months thereafter.

(B) The facility involves the resident and parents or custodian in the service plan review. If the parents or custodian do not participate in the service plan review, the reason for non-participation is documented in the service plan.

(C) The service plan review includes:

(i) an evaluation of progress toward meeting identified needs;

(ii) any new needs identified since the plan was developed or last reviewed and strategies to meet those needs, including instructions to staff;

(iii) an update of the estimated length of stay and discharge plans, if changed;

(iv) an assessment of the continued appropriateness of placement with the goal of determining whether the resident should be returned home, placed in a foster home, transferred to some other care better suited for the resident's development, or maintained for a longer period in the child care facility; and

(v) the names, and signatures, with the date, of those participating in the review.

(c) **Services.** The facility provides or facilitates the provision of services to meet the stated goals of the service plan.

(d) **Discharge procedures.** The facility involves the resident, parents or custodian, and staff in discharge planning.

(1) Except in an emergency, a resident is not discharged to anyone other than the resident's parents or custodian without written authorization.

(2) An emergency discharge occurs when a resident presents a danger to self or others. Upon emergency discharge of a resident, the facility informs the parents or custodian immediately.

(3) The person to whom the resident is discharged produces photographic identification and signs the discharge form before leaving with the resident.

(4) The date, time, destination, and circumstances of the resident's discharge are documented in the resident's record. The name, address, and relationship of the person to whom the resident is discharged are included in the documentation.

(e) **Resident's records.** The facility maintains a written record for each resident, which is retained for three years following the resident's discharge.

(1) The record includes:

(A) the resident's name, address, telephone number, Social Security number, sex, race, religion, birth date, and birth place;

(B) the admission assessment;

(C) required authorizations, as specified in OAC 340:110-3-154(a)(3);

(D) medical records;

(E) the comprehensive service plan and reviews;

(F) educational information;

(G) reports of serious incidents, which include, but are not limited to, suicide attempts, injuries requiring medical treatment, runaway attempts, commission of a crime and allegations of abuse, neglect, or abusive treatment. The report includes the date and time of the incidents, the names of all persons involved, the nature of the incidents, and the circumstances surrounding them;

(H) reports of separation, use of physical restraint, and other restrictions;

(I) discharge summary;

(J) signed documentation that the resident and parents or custodian have been provided written copies of the facility's policies on resident's rights, grievance procedures, behavior management policies, trips away from the facility, use of volunteers and frequency of reports to the parent or custodian; and

(K) grievance forms signed by the person filing the grievance, if grievances were filed.

(2) Resident's records are confidential as defined by federal and state laws.

340:110-3-154.3. Health and medical services

(a) **Medical plan.** The facility has an operational ~~medical~~ plan to meet the ~~total~~ individual medical needs of ~~the residents~~ each resident based on information obtained from the admission assessment, physical examination by a health care professional, and observation during placement.

(b) **Physical examination.** Each resident receives a physical examination annually, or at more frequent intervals as recommended by a health care professional.

(c) **Medical care.** Each resident receives proper medical and dental care. When a serious accident or illness occurs to a resident, the facility takes the necessary emergency action and notifies the parents or custodian immediately.

(d) **Immunizations.** Each resident is immunized against communicable diseases in accordance with the rules and regulations of the Oklahoma State Department of Health.

(e) **Medication.** The facility has current, written medication policy.

(1) On each shift, a staff member is designated to ensure compliance with the facility's medication policy.

(2) When any medication is administered to a resident, a precise record is kept ~~with~~ that includes:

(A) the resident's name~~,~~;

(B) the name of the medication~~,~~;

(C) the dosage, date and time given, and ~~the~~ signature of the person who administered it~~.~~;

(D) ~~The~~ reason ~~for~~ the medication is ~~noted~~ given; and

(E) any unusual reaction ~~is documented~~. The resident, the parents or custodian, and all staff members responsible for the resident are informed of the side effects of the medication prescribed for the resident.

(3) Prescription medications are administered by the designated staff member only as part of a prescribed therapeutic treatment.

(4) All medications are kept in a locked container and under the supervision of the designated staff member.

(f) **First aid supplies.** The facility maintains first aid supplies.

~~(g) **Tobacco use.** The facility prohibits the use of any tobacco product by residents. The facility prohibits staff members from using tobacco products in the presence of residents or in any rooms used by residents.~~

340:110-3-168. Requirements for residential treatment facilities

(a) **Residential treatment facilities.** A residential treatment facility (facility) ~~is a facility that~~ cares for children under 24-hour medical care who have emotional, psychological, or mental disorders.

(b) **Requirements.** ~~Residential treatment facilities comply~~ The facility complies with the rules contained in OAC 340:110-3-145 through 340:110-3-165, except as otherwise provided in this Section.

(c) **Personnel.** ~~Residential treatment facilities comply~~ The facility:

(1) complies with the rules regarding personnel contained in OAC 340:110-3-153.1~~.~~; and

(2) ~~The facility also~~ employs a psychiatrist and adequate medical staff to meet the medical needs of the residents.

(d) **Supervision of residents.** ~~Residential treatment facilities are~~ The facility is exempt from the rules contained in OAC 340:110-3-153.2 regarding supervision of residents.

(1) ~~Facilities, however, employ~~ The facility employs a sufficient number of staff as child care workers to adequately supervise and meet the needs of residents. Staff members are awake and accessible at all times.

(~~1~~2) The facility maintains a ratio of one staff person for:

(A) six residents (1:6) during awake hours~~.~~; and

(~~2~~B) ~~The facility maintains a ratio of one staff person for~~ eight residents (1:8) during sleeping hours.

(e) **Admission.** A health professional reviews and approves the admission assessment within 24 hours.

(~~e~~f) **Service planning.** ~~Residential treatment facilities are~~ The facility is exempt from the rules contained in OAC 340:110-3-154(b)(1) and (2) regarding service plans.

(1) ~~Facilities meet~~ The facility meets the requirements contained in:

(A 1) – and (2) of this subsection; ~~in addition to Section~~ and

(B) OAC 340:110-3-154(b)(1)(A) – and (B) and (b)(2)(B) – and (C).

(~~1~~2) A written service plan for each resident is:

(A) developed and documented within four working days after admission~~.~~; and

(~~2~~B) ~~The service plan is~~ reviewed within seven days after it has been developed and at least every seven days thereafter.

(~~f~~g) **Discharge procedures.** ~~Residential treatment facilities meet~~ The facility meets the rules contained in OAC 340:110-3-154(d) regarding discharge procedures. ~~Additionally, a residential treatment~~ The facility:

(1) supplies residents with a prescription for two weeks' worth of medication, if appropriate, upon discharge~~.~~; and

(2) ~~The facility also~~ documents in the resident's record at least one scheduled outpatient follow-up contact within two weeks of discharge.

(~~g~~h) **Visitation.** ~~Residential treatment facilities are~~ The facility is exempt from the rules contained in OAC 340:110-3-154.1(b)(2) regarding visitation restriction reviews. Reasons for visitation restrictions~~, however,~~ are:

(1) explained to the resident and parents or custodian~~,~~;

(2) documented in the resident's records~~,~~; and

(3) reviewed every seven days.

(~~h~~i) **Behavior management.** ~~Residential treatment facilities are~~ The facility is exempt from the rules contained in OAC 340:110-3-154.2(b)(7) and (11) regarding seclusion and mechanical restraint. ~~Facilities that use~~ If the facility uses mechanical restraint and seclusion, it must meet the requirements contained in (1) – through (4) of this subsection.

(1) **Seclusion.** Seclusion is used only to prevent self-injury, injury to others, destruction of property, or inciteful behavior that jeopardizes the security of the facility, and only after less restrictive methods of behavior management have failed.

(A) Seclusion is used only with specific verbal authorization of the attending psychiatrist. The authorization must be written and signed by the psychiatrist within 24 hours.

(B) While in seclusion, a staff member continuously monitors the resident, either in person or with audiovisual equipment, and personally checks the resident's well-being every 15 minutes. The resident receives appropriate medical and psychological services.

(C) The resident has reasonable access to toilet facilities and to all scheduled meals while in seclusion.

(D) As soon as the resident sufficiently gains control and is no longer a serious and immediate danger, the resident is released from seclusion.

(i) Residents age ten years and older do not remain in seclusion longer than two hours or a total of six non-consecutive hours within any 24-hour period.

(ii) Residents age nine years and ~~under~~ younger do not remain in seclusion longer than one hour within any 24-hour period.

(2) **Seclusion room.** A room used for seclusion includes:

(A) at least 60 square feet and a ceiling height of seven feet, six inches;

(B) a safety glass window, mirror, or camera that allows for full observation of the seclusion room;

(C) no hardware or furnishings that obstruct observing the child at all times;

(D) no hardware, equipment, or furnishings that present a physical hazard or suicide risk;

(E) means for natural or mechanical ventilation;

(F) means for maintaining a temperature between 65 and 85 degrees Fahrenheit;

(G) lighting for all areas of the room; and

(H) an automatic fire suppression system.

(3) **Mechanical restraint.** Mechanical restraint is used only to prevent self-injury, injury to others, destruction of property, inciteful behavior that jeopardizes the security of the facility, and only after less restrictive methods of behavior management have failed.

(A) Mechanical restraint is used only with specific verbal authorization of the attending psychiatrist. The authorization must be written and signed by the psychiatrist within 24 hours.

(B) As soon as the resident sufficiently gains control and is no longer a serious and immediate danger, the resident is released from mechanical restraint.

(i) Residents age ten years and older do not remain in mechanical restraint longer than two hours.

(ii) Residents age nine years and ~~under~~ younger do not remain in mechanical restraint longer than one hour.

(C) Mechanical restraint is used on the resident in a comfortable and humane manner.

(~~D~~i) Resident's hands are not restrained to his or her feet.

(~~E~~ii) Mechanical restraints are padded or cushioned.

(~~F~~D) A staff member continuously monitors, either in person or with audiovisual equipment, the resident and personally checks the resident's well-being every 15 minutes.

(E) The resident receives appropriate medical and psychological services.

(4) **Seclusion and mechanical restraint log.** A seclusion and mechanical restraint log is kept, and a report containing all information in the log is part of the resident's record. The log includes:

(A) ~~the~~ date and time of placement in seclusion or in mechanical restraint;

(B) ~~the~~ name of the psychiatrist authorizing the use of mechanical restraint or seclusion;

(C) ~~the~~ reason for the use of mechanical restraint or seclusion and other behavior management techniques attempted;

(D) observation times, including a description of the resident's activity at each observation, and the signature of the person observing the resident; and

(E) time the resident is released from seclusion or mechanical restraint.

SUBCHAPTER 5. REQUIREMENTS FOR CHILD-PLACING AGENCIES

PART 5. REQUIREMENTS FOR FOSTER FAMILY HOMES

340:110-5-60. Foster home requirements

(a) **General requirements.** A foster home shall be clean, safe, and in good repair.

(1) The home and the exterior around the home ~~must~~ shall be free from objects, materials, and conditions ~~which~~ that constitute a danger to the children served.

(2) The foster home shall be accessible to or ~~be~~ able to arrange transportation to school, church, recreational and health facilities, and other community resources, as needed.

(3) The home shall comply with all applicable fire, health, and safety laws, ordinances, and regulations.

(b) **Safety requirements.** ~~The foster home shall meet the safety requirements contained in this subsection.~~

(1) Clear glass doors shall be plainly marked to avoid accidental impact. ~~However, foster~~ Foster homes providing infant care only are exempt from this requirement.

(2) Children shall be protected from hazardous materials, such as flammable liquids~~,~~ and poisonous materials.

(3) All weapons and firearms shall be kept locked.

(4) The premises are free of illegal drugs and paraphernalia.

(5) When children are in care, smoking is prohibited inside the home and when transporting children.

(~~4~~6) Stairways~~, inside and outside,~~ over four steps, inside and outside, shall have railings. Safety gates at stairways shall be provided if infants and toddlers are in

care. ~~However, foster~~ Foster homes providing infant care only are exempt from this requirement.

(~~5~~7) Any play activity ~~which~~ that involves water shall be supervised constantly. Ponds or pools shall not be left accessible to children. Wading pools shall be emptied after each use.

(c) **Fire safety requirements.** ~~Each foster home shall meet the fire safety requirements contained in this subsection.~~

(1) A fire extinguisher rated for Class ABC fires shall be installed in the kitchen area.

(2) A foster home shall be equipped with at least one operable smoke detector in the vicinity of the sleeping areas or more as required by the child-placing agency.

(3) Each floor used as living space shall have at least two means of escape, at least one of which shall be a door leading to an unobstructed path to the outside. The second means of escape may be an unobstructed, operable window 20" X 24" minimum dimensions.

(4) All heating and air conditioning equipment shall be installed in accordance with state and local mechanical codes and manufacturer's instructions.

(d) **Health requirements.** Foster homes shall meet the health requirements contained in this subsection.

(1) Water supply, sewage disposal, and solid waste disposal shall meet local city ordinances and ~~state~~ Oklahoma Department of Environmental Quality regulations.

(2) Rooms used by children shall be well lighted and ventilated.

(3) Windows and doors used for ventilation shall be screened.

(4) The foster parents shall take measures to keep the house and grounds free of rodents, insects, and stray animals.

(5) One sink, one toilet, and one tub or shower to every six occupants living in the home shall be available.

(6) Each child shall be provided with individual combs, toothbrushes, wash cloths, and towels. There shall be individual eating and drinking utensils for each child.

(7) Linens shall be changed when needed.

(8) Animals or household pets are permitted provided that there is proof of annual rabies vaccinations for each animal. Pets or animals in the foster home, indoors or outdoors, shall be in good health, show no evidence of carrying disease, be friendly toward children, and present no threat to the health, safety, and well-being of children.

(e) **Sleeping arrangements.** A separate bed shall be provided for each child. ~~However, siblings under the age of~~ Siblings younger than six years old may share a bed if their history indicates that this is appropriate and the decision is made in consultation with the child-placing agency.

(1) It is preferable that no more than two children share a sleeping room. Consideration is given to related children according to age and emotional needs.

(2) Separate sleeping rooms shall be provided for children ~~over age~~ older than four years who are of different sex.

(3) Foster children over the age of one year shall not share sleeping quarters with adults in the household unless an emergency exists and the child-placing agency is informed.

(f) **Emergency plans.** Each foster home shall comply with the requirements pertaining to emergency plans contained in this subsection.

(1) There shall be a planned source of medical care available, such as a hospital emergency room, clinic, or physician known to the foster family.

(2) The home shall have a telephone with ~~the following~~ emergency numbers posted~~:~~ nearby for the physician or clinic, fire department, police department, ambulance service, and substitute caregiver.

(3) The foster parent shall have an emergency evacuation plan in the event of fires, tornadoes, floods, ~~etc~~ and other emergencies.

(4) First aid procedures and supplies shall be readily available.

(5) The foster parent shall ensure that each child, as appropriate to age and developmental level, knows how to evacuate from the home in the event of a fire ~~and~~. The foster parent conducts periodic evacuation drills.

(g) **Equipment.** Equipment and furniture shall be safe for children~~, and the~~. The foster home shall have child care equipment, such as bedding, high chairs, proper auto restraints, and toys appropriate for children placed in the home.

(h) **Transportation.** The foster family shall have emergency transportation available~~,~~. ~~and when~~ Foster children are transported~~, car seats or seat belts,~~ in ~~keeping with each child's size and age, shall be used~~ compliance with applicable state law. [47 O.S. § 11-1112]

(i) **Nutrition.** Each child ~~shall be assured of~~ is provided a balanced, nutritious, and developmentally appropriate diet.

(1) The food shall be wholesome in quality, ample in quantity, and of sufficient variety.

(2) Instructions for feeding infants, including the use of formula, recommended by the physician shall be followed.

[OAR Docket #05-695; filed 4-21-05]

TITLE 465. OKLAHOMA MOTOR VEHICLE COMMISSION
CHAPTER 15. ADVERTISING

[OAR Docket #05-628]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Specific Advertising Regulations
465:15-3-8. [AMENDED]
465:15-3-14. [AMENDED]
465:15-3-15. [NEW]
AUTHORITY:
Oklahoma Motor Vehicle Commission, Title 47, Section 563(F) and Title 75, Section 302(A)(2)
DATES:
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Public hearing:
No public hearing was scheduled. No request for public hearing was received.
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Submitted to House:
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Submitted to Senate:
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Gubernatorial approval:
March 9, 2005
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 8, 2005
Final adoption:
April 8, 2005
Effective:
May 26, 2005
ANALYSIS:
These Rule amendments will clean up language and provide clarity for dealers to assist them in understanding the law. Increased understanding and cooperation, results in fewer advertising violations.
CONTACT PERSON:
Marilyn Maxwell, Deputy Director, Oklahoma Motor Vehicle Commission, 4334 N.W. Expressway, Suite 183, Oklahoma City, OK 73116, (405) 607-8227, ext 101

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 3. SPECIFIC ADVERTISING REGULATIONS

465:15-3-8. Identification

(a) When the price, payment or savings claim of a vehicle is advertised, the following must be disclosed:

(1) model year;

(2) make;

(3) trade, brand or style name; and

(4) if other than a new vehicle, the vehicle must be identified as a used, demonstrator, ~~or a~~ factory executive/official vehicle, or a factory program vehicle.

(b) An illustration of a motor vehicle used in an advertisement must be that of the motor vehicle advertised. If an illustration of the advertised vehicle is not available then the dealer must clearly and conspicuously disclose the difference between the illustration and the vehicle being advertised.

465:15-3-14. Prohibited statements

The following statements are presumptively false and misleading, and the burden of proving otherwise shall be on the Advertiser/Licensee:

(1) Statements such as "everybody financed", "no credit rejected", ~~"we finance anyone",~~ "guaranteed approval", "you are pre-approved", and other similar statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit.

(2) Statements representing that no other dealer grants greater allowances for trade-ins, however stated, unless such is the case.

(3) Statements representing that because of its large sales volume a dealer is able to purchase vehicles for less than another dealer selling the same make of vehicles, unless such is the case.

(4) Statements such as "factory direct prices", "wholesale prices", "factory sale", and other similar statements that create the impression that the vehicle is being offered for sale by the manufacturer or distributor of the vehicle, are prohibited. Dealers may use terms such as "factory authorized sale" only in conjunction with factory-sponsored promotions and/or advertising campaigns. Statements such as "we have been selected", "we have been chosen", and other similar statements, which imply that the dealership has exclusive arrangements not available to other dealers, are prohibited.

(5) A savings claim or discount offer is prohibited except to advertise a new or demonstrator vehicle. Statements such as "up to", "as much as", "from", shall not be used in connection with savings or discount claims. Savings claims can only be offered from the bottom line MSRP sticker price. Discounts shown on the Monroney Sticker Label shall not be included in the advertised discount or savings claim. The featured savings claim or discount offer for a new motor vehicle, when advertised, must be the savings claim or discount which is available to any and all members of the buying public.

(6) The use of the term "Free" is prohibited if a consumer must make a purchase to obtain the "free" offer.

(7) The terms "dealer's cost", "invoice", "invoice price" or other reference to the cost of the vehicle to the dealer shall not be used.

(8) No trade-in amount or range of amounts shall be advertised.

(9) A used vehicle shall not be advertised in any manner that creates the impression it is new.

(10) Statements such as "we pay tag, tax and license", "we buy tag, tax and license", "we pay tag, title and tax" or statements with similar meaning shall not be used.

(11) The use of the ~~term "Liquidation"~~ terms "liquidation", "going out of business", or statements with similar meaning, ~~is~~ are prohibited unless a dealer is actually going out of business~~.~~ and ceasing its operations at the licensed location. ~~A~~ If a dealer ~~that~~ is going out of business, ~~may only use the term "liquidation" in advertising for a maximum of thirty (30) days.~~ these terms can only be advertised during the period between the execution of a buy-sell with the proposed buyer and written factory approval.

(12) An offer of a buy down rate is prohibited without the appropriate disclaimer: "This is a buy down rate. The amount of the buy down may affect the price of the vehicle".

(13) Terminology such as "we will pay off your trade no matter how much you owe"or statements with similar meaning shall not be used, unless accompanied by a disclaimer indicating that pay off is dependent upon approved credit.

465:15-3-15. Dealership name

All advertisements must conspicuously display the name of the new motor vehicle dealership.

[OAR Docket #05-628; filed 4-13-05

TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

[OAR Docket #05-659]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
485:10-1-3. [AMENDED]
AUTHORITY:
Oklahoma Board of Nursing, 59 O.S. §567.4F, §567.7D
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Failure of the Legislature to disapprove the Rules resulted in approval on March 31, 2005
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Availability:
8:00 a.m. to 4:30 p.m., Monday through Friday at Oklahoma Board of Nursing, 2915 N. Classen, Suite 524, Oklahoma City, Oklahoma 73106 (405) 962-1800.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule amends the fee schedule. The Board is a non-appropriated state agency, thus the income received from fees constitute the agency's financial support. Statute authority regarding fees is found in 59 O.S. §567.4F, §567.7D.
CONTACT PERSON:
Sandra Ellis, Oklahoma Board of Nursing, 2915 N. Classen, Suite 524, Oklahoma City, OK 73106 (405) 962-1800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

485:10-1-3. Fees

(a) **Fee schedule.**

(1) **Initial applications.** The following fees shall be charged by the Board of Nursing for initial applications:

(A) Registered Nurse/Licensed Practical Nurse
(i) Licensure examination fee - ~~$75.00~~ $85.00
(ii) Endorsement fee - ~~$75.00~~ $85.00
(iii) Education equivalence evaluation fee - $40.00
(iv) Cost of national examination
(v) R.N. examination challenge of results fee - $200.00
(vi) LPN examination challenge of results fee - $125.00
(vii) Examination review fee - $90.00
(viii) Temporary license fee - $10.00

(B) Advanced Unlicensed Assistive person
(i) Certification examination fee - $20.00
(ii) Cost of examination

(C) Advanced Practice Nurses
(i) Recognition fee - ~~$60.00~~ $70.00
(ii) Temporary recognition fee - $10.00
(iii) Prescriptive authority fee - ~~$75.00~~ $85.00
(iv) Authority to order, select, obtain and administer drugs - ~~$75.00~~ $85.00

(2) **Renewal.** The following fees shall be charged in accordance to the biennial licensure/certificate/recognition renewal schedule established by the Board:

(A) Registered Nurse/Licensed Practical Nurse license - $60.00; $75.00 effective January 1, 2006
(B) Advanced Unlicensed Assistive Person certificate - $20.00; $25.00 effective January 1, 2006
(C) Advanced Practice Nurse recognition - ~~$30.00~~ $40.00
(D) Prescriptive authority - ~~$30.00~~ $40.00
(E) Authority to order, select, obtain and administer drugs - ~~$30.00~~ $40.00
(F) Reinstatement of lapsed license/certificate/recognition - renewal fee(s) + $40.00
(G) Return to active - renewal fee(s) + $40.00

(3) **Miscellaneous fees.** The following miscellaneous fees shall be charged by the Board:

(A) Transcripts from closed schools of nursing - ~~$10.00~~ $15.00
(B) Duplication or modification of license/certificate/recognition - ~~$20.00~~ $25.00
(C) ~~Written~~ Certified verification of license/certificate/recognition - ~~$30.00~~ $40.00
(D) Written verification of status of license/certificate/recognition - $10.00 per name

(E) Supervisory Physician - $10.00 per name change

(F) Requested review of contact hours for Prescriptive Authority - $70.00

(~~D~~ G) Corporation certificate - ~~$10.00~~ $15.00

(~~E~~ H) Certificate for framing - ~~$10.00~~ $15.00

(~~F~~ I) ~~Returned check processing fee - $20.00~~ Insufficient funds processing fee - $25.00

(~~G~~ J) Facsimile (Fax) fee (per page) - $1.00

(~~H~~ K) Oklahoma Nursing Practice Act, Rules ~~and Regulations - $10.00~~ - $15.00

(4) **Public access, open records.** The following public access, open record fees shall be charged by the Board:

(A) Certification of public records (per page) - $1.00

(B) Duplication of public records (per page) - $0.25

~~(C) Rosters (per page) - $0.25~~

(~~D~~ C) Computer address list - $0.01/record + $4.50/1000 labels + postage, $40.00 minimum charge

(~~E~~ D) Staff research time, when available (per hour) - $20.00

(~~F~~ E) Computer research time, when available (per hour) - $100.00

(b) **Submission of fees.**

(1) All fees assessed by the Board as set out in the fee schedule in (a) of this section shall be received prior to processing an application for licensure, certification or recognition.

(2) All fees are non-refundable.

[OAR Docket #05-659; filed 4-15-05]

TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

[OAR Docket #05-660]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Regulations for Approved Nursing Education Programs
485:10-3-2. [AMENDED]
Subchapter 5. Minimum Standards for Approved Nursing Education Programs
485:10-5-2. [AMENDED]
485:10-5-3.2. [AMENDED]
485:10-5-7. [AMENDED]
485:10-5-11. [REVOKED]
485:10-5-12. [NEW]
Subchapter 7. Requirements for Registration and Licensure as a Registered Nurse
485:10-7-1. [AMENDED]
485:10-7-2. [AMENDED]
485:10-7-3. [AMENDED]
485:10-7-4. [AMENDED]
485:10-7-5. [AMENDED]
Subchapter 9. Requirements for Registration and Licensure as a Licensed Practical Nurse
485:10-9-1. [AMENDED]
485:10-9-2. [AMENDED]
485:10-9-3. [AMENDED]
485:10-9-4. [AMENDED]
485:10-9-5. [AMENDED]
Subchapter 15. Requirements for Practice as an Advanced Practice Nurse
485:10-15-7. [AMENDED]

AUTHORITY:
Oklahoma Board of Nursing 59 O.S. §567.2A.3, 567.3a.7, 567.4.F, 567.5.A, 567.5.B, 567.6.A, 567.6.B, 567.12.A, and 567.12.B.

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SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The rules in Subchapter 3 clarify requirements for application for a new nursing education program. The changes ensure that the application is received in adequate time to ensure that it meets the standards before being reviewed by the Board. A requirement that multiple copies be provided is deleted.

The rules for Subchapter 5 address standards for nursing education programs. The revisions address responsibilities of the nurse administrator, clarify expectations for tracking program outcomes, delete current requirements for advisory committee bylaws and minutes, and add requirements for out-of-state nursing education programs seeking to complete clinical experiences in Oklahoma. Responsibilities of the nurse administrator have been revised to allow better evaluation of the time available to the nurse administrator for completion of administrative duties, based on all responsibilities the nurse administrator may have. A requirement is added to ensure that programs incorporate evaluation of completion rate and NCLEX pass rate into their systematic program evaluation process. This change will ensure that programs continuously evaluate and identify promptly when there are problems in these areas that require action on their part. Requirements for advisory committees have been deleted because it is not necessary to require guidelines and minutes for an advisory committee, when there is no requirement that an advisory committee be in place. A new section is added to ensure that students who are enrolled in out-of-state programs but are completing clinical requirements in Oklahoma, are attending programs that are Board-approved in their state, have established a contract with the health care facility, and provide adequate supervision by faculty members licensed in the State of Oklahoma. These rules promote safe nursing care by ensuring that students completing clinical experiences in Oklahoma are enrolled in a program that meets minimum standards and are appropriately supervised.

The rule changes in Subchapter 7 and 9 add a time restriction that limits the time in which an individual may take the licensure examination after completion of a nursing education program and provide language clarifications to requirements for licensure. These requirements are necessary to ensure that individuals who are approved for licensure have current nursing knowledge and skills through recent updates on nursing practice and an evaluation of their clinical practice skills by a qualified faculty member. Applicants who completed their nursing education more than two years before submitting

an application for licensure by examination will have to complete additional education in a board approved refresher course or nursing education program at their own expense. Other revisions in these subchapters add the titles of the licensure examinations and clarify that re-applications may be approved based on the review of Board staff. In addition, clarifying language provides the option for the use of more than one method for completing additional qualifications for practice and ensures that endorsement application fees accompany the application, while deleting redundant language. Other language is clarified to identify that the Board may renew the license, which ensures that the Board may review reports of arrests, other disciplinary action, and judicial declaration of incompetence. Additional countries exempt from English language testing requirements for foreign-educated applicants are listed (Trinidad and Tobago), to ensure consistency with Commission on Graduates of Foreign Nursing School guidelines.

The rules in Subchapter 15 establish requirements for certifying examinations for Clinical Nurse Specialists. Identification of these requirements will assist Board staff in the evaluation of applications.

Statute authority for these Rule changes can be found in 59 O.S. §567.2A.3, 567.3a.7, 567.4.F, 567.5.A, 567.5.B, 567.6.A, 567.6.B, 567.12.A, and 567.12.B.

CONTACT PERSON:

Gayle McNish, Oklahoma Board of Nursing, 2915 N. Classen, Suite 524, Oklahoma City, OK 73106 (405) 962-1800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 3. REGULATIONS FOR APPROVED NURSING EDUCATION PROGRAMS

485:10-3-2. Establishment of new nursing education programs

(a) **Step I. Initial application.**

(1) An institution wishing to establish a new nursing education program shall advise the Board of its intent in writing, and shall seek Board consultation in the initial planning.

(2) ~~The Board shall send an application to the institution and the~~ The institution shall submit the Step I Initial Application to the Board office at least four weeks prior to a regularly-scheduled Board meeting, which provides the following information for the Board's consideration:

(A) mission and organization of the educational institution;

(B) accreditation status of the educational institution;

(C) type of nursing program to be established;

(D) relationship of nursing program to the educational institution;

(E) documentation of the rationale for the establishment of the nursing program in Oklahoma;

(F) potential effect on other nursing programs in the area;

(G) tentative time-table for program development and implementation;

(H) source of potential qualified Nurse Administrator and faculty, with projected times of employment;

(I) tentative budget plans including evidence of financial resources adequate for developing, implementing, and continuing the nursing program;

(J) source of anticipated student population;

(K) description of support staff for the proposed program;

(L) description of physical facilities;

(M) description of available clinical resources with letters from clinical resources supporting development of a new program in nursing.

(3) The application shall be signed by the controlling institution's administrative official with evidence that the institution is authorized to offer educational programs in Oklahoma. Regional accreditation is recommended for institutions offering programs in nursing education.

(4) The Board shall advise the institution in writing of its decision to:

(A) approve proceeding with development of the program-Step II; or

(B) defer approval pending a visit to the institution and/or receipt of further information; or

(C) deny approval specifying reasons for denial.

(b) **Step II. Application for Provisional Approval.**

(1) The institution shall employ a qualified Nurse Administrator ensuring adequate time is provided to develop Step II. It is recommended that consultation be sought with the Board staff during the planning stage.

(2) The Nurse Administrator shall prepare the following materials following the Guidelines for Provisional Approval for the Board's consideration:

(A) philosophy, program and course objectives;

(B) curriculum plan;

(C) policy statements;

(D) survey of clinical facilities;

(E) faculty qualifications, criteria and job descriptions;

(F) budget plan projected for a three (3) year period;

(G) learning resources; and

(H) institutional and program organizational plans.

(3) At least four months prior to the anticipated admission of students and at least four weeks prior to a regularly-scheduled Board meeting, the Nurse Administrator shall submit ~~twelve copies of~~ the "Application for Provisional Approval" for Board review.

(4) Nursing education and institutional representatives may be present during the Board meeting. The Board shall advise the institution in writing of its decision to:

(A) grant Provisional Approval, authorizing the institution to proceed with implementation of the nursing education program and admission of students; or

(B) defer Provisional Approval and program implementation pending further development; or

(C) deny Provisional Approval.

(5) The program cannot admit students until Provisional Approval is granted.

(6) Faculty qualification forms must be submitted to the Board and qualified faculty employed at least thirty days prior to the admission of students.

(7) Progress reports shall be made by the Nurse Administrator as requested by the Board while on Provisional Approval.

SUBCHAPTER 5. MINIMUM STANDARDS FOR APPROVED NURSING EDUCATION PROGRAMS

485:10-5-2. Administration and organization

(a) The nursing education program shall be an integral part of an educational institution authorized by the state to confer credentials in nursing. Regional and national accreditation are desirable.

(b) The nursing education program shall have comparable status with other programs in the institution and relationships shall be clearly delineated.

(c) The nursing education program shall be organized with the lines of authority, responsibility, and channels of communication clearly defined.

(d) Organization of the nursing education program shall assure faculty involvement in determining nursing program policies and procedures and faculty responsibility for planning, implementing, and evaluating the curriculum.

(e) Nursing education program policies and procedures shall be in written form, congruent with those of the controlling institution, and shall be reviewed periodically.

(f) The mission and philosophy of the nursing education program shall be consistent with the controlling institution's mission and philosophy and with the law governing the practice of nursing.

485:10-5-3.2. Nursing administrator for nursing education programs

(a) The nursing education program leading to registered nurse licensure shall be administered by a Registered Nurse currently licensed in Oklahoma with the following qualifications:

(1) a minimum of a master's degree in nursing, preferably an earned doctorate from a regionally accredited institution;

(2) two years full-time equivalent experience in clinical nursing as a Registered Nurse, within five years of first teaching position; and

(3) one year full-time teaching experience in a nursing education program leading to licensure.

(b) The administrator of the nursing education program, with institutional input, shall have the authority and responsibility for:

(1) the administration of the nursing program;

(2) preparation and administration of the budget for the nursing program;

(3) implementation of faculty development and performance review;

(4) recommendation of qualified faculty for appointment, promotion, tenure (if applicable), and retention;

(5) notification to the Board of faculty appointments, changes in the program or its administration, and reports as directed by the Board.

(c) If the Nurse Administrator ~~is required to teach, the teaching load should be minimal, allowing sufficient time~~ has teaching or other responsibilities, adequate time will be provided to fulfill administrative duties for the nursing education program.

(d) An acting Nurse Administrator may be appointed, after Board approval, to fill the position of the Nurse Administrator, for a period of time not to exceed one (1) calendar year.

485:10-5-7. Evaluation

(a) **Program.**

(1) There shall be a written systematic program evaluation plan that effectively supports the planning process for the program and specifies responsibilities, time-frames and procedures for evaluating each aspect of the program;

(2) Evaluation of the program shall include, but not be limited to, administration and organization, clinical facilities, physical facility, learning resources, student services, student and faculty policies and procedures, curriculum, methods of evaluation, and program outcomes (including data related to factors impacting completion rate and NCLEX pass rate).

(3) Opportunities shall be provided for input into the evaluation process by students, faculty, and clinical staff and/or employers of graduates.

(4) There shall be methodical documentation of the evaluation activity, including summaries of results of surveys and outcome measurements. Actions taken as a result of the evaluation activity will be documented and will reflect the evaluation findings.

(b) **Students.** Evaluation of student achievement shall be the responsibility of the faculty, and shall:

(1) be consistent with policies of controlling institution, with differences justified by the nature of the program;

(2) provide valid and reliable evidence of student's progress and achievement;

(3) adequately discriminate between students with differing levels of achievement;

(4) measure competencies essential for safe and effective nursing practice appropriate to type of nursing education program; and

(5) provide evidence that students are notified in a timely manner of their progress in the classroom and clinical area.

485:10-5-11. Advisory committee [REVOKED]

~~If a nursing education program has an advisory committee, there shall be written guidelines to govern its activities, regularly scheduled meetings; and minutes of the advisory committee meetings shall be on file.~~

485:10-5-12. Out-of-State nursing education programs conducting clinical experiences in Oklahoma

(a) Nursing education programs leading to initial licensure that wish to conduct clinical experiences in Oklahoma must obtain prior permission from the Board.

(b) To apply for permission from the Board, the program must submit a letter of request to the Board and provide evidence that the following standards will be met:

(1) The program must be on full approval status with the board of nursing in another member board jurisdiction;

(2) The program will provide for supervision of students while in the clinical area by a nursing faculty member licensed in Oklahoma;

(3) A written clinical affiliation agreement with the clinical facility will be in place; and

(4) If precepted clinical experiences are requested, the program will ensure they are conducted in accordance with the Board's policy.

SUBCHAPTER 7. REQUIREMENTS FOR REGISTRATION AND LICENSURE AS A REGISTERED NURSE

485:10-7-1. Licensure by examination

(a) **Qualifications.** An applicant for licensure by examination as a Registered Nurse must meet the following qualifications:

(1) Submits an application containing such information as the Board may prescribe.

(2) Submits proof satisfactory to the Board in such manner and upon such forms as the Board may require to show that the applicant has completed the basic professional curricula of a state Board-approved registered nursing education program conducted in a member board jurisdiction that meets the requirements of 485:10-5-6 (d-1, 2, and 3), and holds or is entitled to hold a diploma or degree therefrom.

(A) Applicants who are enrolled in a nursing education program leading to a masters degree in nursing who have a baccalaureate degree in another field, will be eligible to apply for licensure at the time that they have completed the basic professional curricula as approved by the Board for registered nurse licensure. The Board may accept a verification statement on such forms as prescribed by the Board from the nursing education program director as proof of completion of the approved basic professional curricula of the registered nursing education program.

(b) **Applications.**

(1) Applications for licensure by examination must be completed, notarized, and filed with the Board prior to the examination. If the application is not completed within one (1) year, a new application and new fee will be required.

(2) One (1) photograph signed by the applicant must be filed with the application.

(c) **Admission to the examination.** The candidate must register with the authorized testing service and submit required fee. An authorization to test will be issued allowing the candidate to schedule the examination.

(d) **Fee for examination.**

(1) The fee for writing the licensing examination adopted by the Board for Registered Nurse licensure shall be established by the Board in accordance with statutory guidelines and shall accompany the application.

(2) The fee for rewriting the licensing examination adopted by the Board for Registered Nurse licensure shall be the same as the fee established for the first-time writing.

(3) The fee for the examination is not refundable.

(e) **Policies for the examination.**

(1) Applicants must pass the ~~licensing examination adopted by the Board~~ the National Council Licensure Examination for Registered Nurses (NCLEX-RN).

(2) Applicants who fail the ~~examination~~ NCLEX-RN ~~shall~~ may be eligible to repeat the examination upon filing an application and fee meeting Board requirements.

(3) To be eligible to write or rewrite the NCLEX-RN, the applicant must submit a completed application, transcript, and fee to the Board and a completed registration form and fee to the authorized testing service within two years of completion of the nursing education program. If more than two years has elapsed, the applicant must complete additional education as follows:

(A) Successfully complete a Board-approved refresher course in accordance with the Board's policy; or

(B) Successfully complete nursing didactic coursework and faculty-supervised clinical experience in a board-approved nursing education program at the appropriate educational level, to include at least 80 hours in classroom and skills laboratory review and at least 160 hours participating in patient care activities in the clinical setting.

(4) After completion of the required additional education, the applicant will have two additional years to take and pass the NCLEX-RN.

485:10-7-2. Licensure by endorsement

(a) **Qualifications.**

(1) An applicant for licensure by endorsement as a Registered Nurse must meet the requirements of the Oklahoma Nursing Practice Act.

(2) An applicant licensed in another state since January 1, 1952 must have written the licensing examination adopted by the Board with a passing score as established by the Board. A license to practice nursing in Oklahoma will not be issued until this requirement is met.

(3) An applicant must submit evidence of either:

(A) successful completion of the National Council Licensure Examination for Registered Nurses since July 1, 1982; or

(B) passing the State Board Test Pool Examination for Registered Nurse licensure prior to July 1, 1982.

(4) In addition to meeting other requirements for endorsement established by the Board in these rules, effective January 1, 2005, each applicant for endorsement must demonstrate evidence of continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the application in the Board office:

(A) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy; ~~or~~

(B) Successfully pass the National Council Licensure Examination for Registered Nurses; ~~or~~

(C) Submission of an official transcript verifying successful completion of at least seven (7) academic semester credit hours of nursing courses which include classroom and clinical instruction; and/or

(D) Present evidence of licensure as a registered nurse in another state with employment in a position that requires nursing licensure with verification of at least 520 work hours during the past two (2) years.

(b) **Applications.**

(1) Applications must be completed, notarized and accompanied by a photograph signed by the applicant and filed with the Board.

(2) Endorsement may be accepted from the original state of licensure by examination.

(3) If the applicant has written the licensing examination adopted by the Board in a state other than the state of original licensure, an endorsement will be requested from that state, also.

(4) If the application is not completed within one (1) year after receipt of fee, the application must be refiled.

(c) **Fee for licensure by endorsement.**

(1) The fee shall accompany the application. ~~The fee submitted at the time of issuance of a temporary license will apply toward the application for licensure by endorsement~~.

(2) The fee is not refundable.

(3) If the application is not completed within one (1) year, a new application and new fee will be required for licensure.

(d) **Qualifications for applicants educated in foreign countries.** An applicant educated in a foreign country must meet the current educational requirements for licensure in Oklahoma.

(1) The applicant must present evidence of:

(A) graduation from a government-approved school of nursing;

(B) completion of formal courses including theory and clinical experience in nursing care of the adult, nursing care of children, maternal-infant nursing, psychiatric-mental health nursing as evidenced by:

(i) a translated transcript with certified proof of translation from original country of licensure, or

(ii) a certified copy of original transcript obtained directly from the Commission of Graduates of Foreign Nursing Schools

(C) licensure in country of graduation as evidenced by official verification received directly from:

(i) the Commission of Graduates of Foreign Nursing Schools, or

(ii) verification received directly from the licensing body of applicant's initial licensure from a US Territory;

(D) competence in oral and written English as evidenced by successful completion of:

(i) Test of English as a Foreign Language (TOEFL) and Test of Spoken English (TSE) and Test of Written English (TWE) of the Educational Testing Service, or

(ii) Test of English for International Communication (TOEIC) and Test of Spoken English and Test of Written English of the Educational Testing Service, or

(iii) International English Language Testing System (IELTS).

(E) An evaluation of educational credentials as evidenced by:

(i) CGFNS Certificate Status obtained within the five years immediately preceding the date of application for licensure by endorsement or

(ii) CGFNS Healthcare Profession and Science Course-by-Course Report

(F) Evidence of either:

(i) successful completion of the National Council Licensure Examination for Registered Nurses since July 1, 1982; or

(ii) passing the State Board Test Pool Examination for Registered Nurse licensure prior to July 1, 1981;

(2) The requirements for competence in spoken and written English are waived for applicants who are:

(A) Graduates of nursing education programs taught in English in Australia, Canada (except Quebec), Ireland New Zealand, the United Kingdom, Trinidad, Tobago, and the United States.

(B) Licensed in another US State or Territory and have successfully completed the licensure examination approved by the Board.

(3) Applicants must submit a completed application and the required fee.

(e) **Temporary license.**

(1) A temporary license may be issued to the applicant on proof of current licensure in another state and evidence of having written the licensure examination and payment of the fee for licensure by endorsement.

(2) The temporary license may not be issued for a period longer than ninety (90) days.

(3) The temporary license may be extended, ~~at the discretion of the Board,~~ but such period shall be no longer than one (1) year for any applicant.

485:10-7-3. Renewal of license

(a) All Registered Nurse licenses issued ~~shall~~ may be renewed in accordance with the schedule published by the Board.

(b) The application for renewal of license must be completed, signed and accompanied by the established fee before a new license is issued.
(c) The fee for renewal of license shall be established by the Board in accordance with statutory guidelines.

485:10-7-4. Reinstatement of license
(a) The Registered Nurse license is lapsed if not renewed by expiration date thereof.
(b) A completed application for reinstatement must be submitted to the Board office with the required fee. If the application is not completed within one (1) year, a new application and new fee will be required.
(c) The fee for reinstatement of license shall be established by the Board.
(d) An application for reinstatement for a license that has been suspended or surrendered must be in compliance with all terms and conditions of any Order entered with regard to the suspension or surrender and shall be considered by the Board.
(e) An application for reinstatement of a license that has been revoked by the Board shall be considered by the Board.
(f) An application for reinstatement for a license not previously revoked, suspended or surrendered ~~shall~~ may be granted on such terms and conditions as the Board may require.
(g) In addition to meeting other reinstatement requirements established by the Board in these rules, effective January 1, 2005, if the Oklahoma nursing license has ~~been lapsed~~ not been in an active licensure status for a period of two (2) years or more, the applicant for reinstatement must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the application in the Board office:
(1) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy; ~~or~~
(2) Successfully pass the National Council Licensure Examination for Registered Nurses; ~~or~~
(3) Submission of an official transcript verifying successful completion of at least seven (7) academic semester credit hours of nursing courses which include classroom and clinical instruction; and/or
(4) Present evidence of licensure as a registered nurse in another state with employment in a position that requires nursing licensure with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for reinstatement in the Board office.

485:10-7-5. Inactive status
(a) Any Registered Nurse licensee who desires to retire from the practice of nursing shall submit a written request to be placed on the Inactive List.
(b) The date of transfer to the inactive status will be the date of approval by the Board. The Board may delegate approval of the licensee's request to be placed on inactive status to the Board Staff.
(c) A licensee shall remain on the Inactive List unless otherwise indicated without the payment of the renewal fee.
(d) The return to active fee shall be due when the licensee desires to return to active practice.
(e) An application for return to active status for a license that has been placed on Inactive Status by Order of the Board shall be considered by the Board.
(f) In addition to meeting other requirements to return to active status as established by the Board in these rules, effective January 1, 2005, if the nursing license has been on the Inactive List for a period of two (2) years or more, the licensee must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the application in the Board office:
(1) Submission of an official transcript or certificate of completion verifying completion of a nursing refresher course with content consistent with Board policy; ~~or~~
(2) Successfully pass the National Council Licensure Examination for Registered Nurses; ~~or~~
(3) Submission of an official transcript verifying successful completion of at least seven (7) academic semester credit hours of nursing courses which include classroom and clinical instruction; and/or
(4) Present evidence of licensure as a nurse in another state with employment in a position that requires nursing licensure with verification of at least 520 work hours during the past two (2) years preceding receipt of the request for return to active status in the Board office.

SUBCHAPTER 9. REQUIREMENTS FOR REGISTRATION AND LICENSURE AS A LICENSED PRACTICAL NURSE

485:10-9-1. Licensure by examination
(a) **Qualifications.** An applicant for licensure by examination as a Licensed Practical Nurse must meet the following qualifications:
(1) has received a high school diploma or a high school equivalency certificate (GED), or meets criteria for an Adult High School Diploma;
(2) submits an application containing such information as the Board may prescribe;
(3) submits proof satisfactory to the Board in such manner and upon such forms as the Board may require to show that the applicant has completed the basic curricula of a state Board-approved practical nursing education program conducted in a member board jurisdiction that meets the requirements of 485:10-5-6 (e-1, 2), and holds or is entitled to hold a diploma or degree therefrom;
(4) has completed equivalent courses through one of the following methods:
(A) in a state approved program of nursing with a minimum overall grade point average of 2.0, and a grade of a "C" or higher in all nursing courses. Evidence must be provided that verifies successful completion of a minimum of one academic year of instruction in a registered nursing education program, including classroom instruction and clinical practice

in nursing care of the adult, nursing care of children, and maternal-infant nursing. Course content in anatomy and physiology, growth and development, mental health, pharmacology and nutrition also must have been successfully completed. Courses in external degree programs are not acceptable for PN equivalency; or

(B) has completed an equivalent level of training as a military medic. The following ~~level~~ levels of training have been evaluated and determined to be equivalent training:

(i) U.S.Army 91WM6 (previously known as 91C)

(ii) Air Force Medical Service Specialist 4NO51 (previously known as 90250) or 4NO71 (previously known as 90270); or

(C) has completed a registered nursing education program in a foreign country and meets the requirements of 485:10-7-2(d).

(5) Board-approved role transition learning packet related to legal and ethical aspects of practical nursing must be completed by all PN equivalency applicants prior to approval to write the examination for licensure.

(b) **Applications.**

(1) Applications for licensure by examination must be completed, notarized and filed with the Board prior to the examination. If the application is not completed within one (1) year, a new application and new fee will be required.

(2) One (1) photograph signed by the applicant must be filed with the application.

(c) **Admission to the examination.** The candidate must register with the authorized testing service and submit required fee. An authorization to test will be mailed to the candidate allowing them to schedule the exam.

(d) **Fee for examination.**

(1) The fee for writing the licensing examination adopted by the Board for practical nurse licensure shall be established by the Board in accordance with statutory guidelines and shall accompany the application.

(2) The fee for rewriting the licensing examination adopted by the Board for practical nurse licensure shall be the same as the fee established for the first-time writing.

(3) The fee for the examination (first time and rewrite) is not refundable.

(e) **Policies for the examination.**

(1) Applicants must pass the ~~licensing examination adopted by the Board~~ National Council Licensure Examination for Practical Nurses (NCLEX-PN).

(2) Applicants who fail the ~~examination~~ NCLEX-PN ~~shall~~ may be eligible to repeat the examination upon filing an application and fee meeting Board requirements.

(3) To be eligible to write or rewrite the NCLEX-PN, the applicant must submit a completed application, transcript, and fee to the Board and a completed registration form and fee to the authorized testing service within two years of completion of the nursing education program or the equivalent coursework and/or related experience. If more than two years has elapsed, the applicant must complete additional education as follows:

(A) Successfully complete a Board-approved refresher course in accordance with the Board's policy; or

(B) Successfully complete nursing didactic coursework and faculty-supervised clinical experience in a board-approved nursing education program at the appropriate educational level, to include at least 80 hours in classroom and skills laboratory review and at least 160 hours participating in patient care activities in the clinical setting.

(4) After completion of the required additional education, the applicant will have two additional years to take and pass the NCLEX-PN.

485:10-9-2. Licensure by endorsement

(a) **Qualifications.**

(1) An applicant for licensure by endorsement as a Licensed Practical Nurse shall meet the requirements of the Oklahoma Nursing Practice Act.

(2) An applicant licensed in another state since June 30, 1954 must have passed the licensing examination adopted by the Board. A license to practice practical nursing in Oklahoma will not be issued until this requirement is met.

(3) In addition to meeting other requirements for endorsement established by the Board in these rules, effective January 1, 2005, each applicant for endorsement must demonstrate evidence of continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the application in the Board office:

(A) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy; ~~or~~

(B) Successfully pass the National Council Licensure Examination for Practical Nurses; ~~or~~

(C) Submission of an official transcript verifying successful completion of at least seven (7) academic semester credit hours or 105 contact hours of nursing courses in a state-approved practical or registered nursing education program, which includes classroom and clinical instruction; and/or

(D) Present evidence of licensure as a practical nurse in another state with employment in a position that requires practical nursing licensure with verification of at least 520 work hours during the past two (2) years.

(b) **Applications.**

(1) Applications must be completed, certified and accompanied by a photograph signed by the applicant and filed with the Board.

(2) Endorsement may be accepted from the original state of licensure by examination.

(3) If the applicant has written the licensing examination adopted by the Board in a state other than the state of

original licensure, an endorsement will be requested from that state, also.

(4) If the application is not completed within one (1) year after receipt of fee, the application must be refiled.

(c) **Fee for licensure by endorsement.**

(1) The fee shall accompany the application. ~~The fee submitted at the time of issuance of a temporary license will apply toward the application for licensure by endorsement~~.

(2) The fee is not refundable.

(3) If the application is not completed within one (1) year, a new application and new fee will be required for licensure.

(d) **Qualifications for applicants educated in foreign countries.** An applicant educated in a foreign country must meet the current educational requirements for licensure in Oklahoma.

(1) The applicant must present evidence of:

(A) completion of a high school diploma or high school equivalency certificate (GED), or meet criteria for an Adult High School Diploma;

(B) competence in oral and written English as evidenced by successful completion of:

(i) Test of English as a Foreign Language (TOEFL), Test of Written English (TWE), and Test of Spoken English (TSE) of the Educational Testing Service; or

(ii) Test of English for International Communication (TOEIC) and Test of Spoken English and Test of Written English of the Educational Testing Service; or

(iii) International English Language Testing System (IELTS);

(C) graduation from a government approved school of practical nursing or equivalent courses in a government approved school of nursing;

(D) licensure in country of graduation;

(E) completion of formal courses including theory and clinical experience in nursing care of the adult, nursing care of children, and maternal-infant nursing in a government-approved school of nursing as evidenced by:

(i) a translated transcript from original country of licensure with certified proof of translation; or

(ii) a certified copy of the transcript received directly from the Commission on Graduates of Foreign Nursing Schools (CGFNS).

(F) An evaluation of educational credentials as evidenced by:

(i) Commission on Graduates of Foreign Nursing Schools (CGFNS) Healthcare Profession and Science Course-by-Course Report or

(ii) Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate status obtained within the five years immediately preceding the date of application for licensure by endorsement;

(2) The applicant must successfully complete the licensing examination adopted by the Oklahoma Board of Nursing.

(3) The requirements for competence in spoken and written English are waived for applicants who are:

(A) Graduates of nursing education programs taught in English in Australia, Canada (except Quebec), Ireland New Zealand, the United Kingdom, Trinidad, Tobago, and the United States or

(B) Licensed in another US State or Territory and have successfully completed the licensure examination approved by the Board.

(4) Applicants must submit a completed application with the required application and evaluation fees.

(e) **Temporary license.**

(1) A temporary license may be issued to the applicant on proof of current licensure in another state, evidence of having written the licensure examination and payment of the fee for licensure by endorsement.

(2) The temporary license may not be issued for a period longer than ninety (90) days.

(3) The temporary license may be extended, ~~at the discretion of the Board,~~ but such period shall be no longer than one (1) year.

485:10-9-3. Renewal of license

(a) All licenses issued ~~shall~~ may be renewed in accordance with a schedule published by the Board.

(b) The application for renewal of license must be completed and signed before a new license is issued.

(c) The fee for renewal of license shall be established by the Board in accordance with statutory guidelines.

485:10-9-4. Reinstatement of license

(a) The Licensed Practical Nurse license is lapsed if not renewed by expiration date thereof.

(b) A completed application for reinstatement must be submitted to the Board office with the required fee. If the application is not completed within one (1) year, a new application and new fee will be required.

(c) The fee for reinstatement of license shall be established by the Board.

(d) An application for reinstatement for a license that has been suspended or surrendered must be in compliance with all terms and conditions of any Order entered with regard to the suspension or surrender and shall be considered by the Board.

(e) An application for reinstatement of a license that has been revoked by the Board shall be considered by the Board.

(f) An application for reinstatement for a license not previously revoked, suspended or surrendered ~~shall~~ may be granted on such terms and conditions as the Board may require.

(g) In addition to meeting other reinstatement requirements established by the Board in these rules, effective January 1, 2005, if the Oklahoma practical nursing license has ~~been lapsed~~ not been in an active licensure status for a period of two (2) years or more, the applicant for reinstatement must demonstrate continued qualifications for practice through completion

of one or more of the following requirements within the last two (2) years prior to receipt of the application in the Board office:

(1) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy; ~~or~~

(2) Successfully pass the National Council Licensure Examination for Practical nurses; ~~or~~

(3) Submission of an official transcript verifying successful completion of at least seven (7) academic semester credit hours or 105 contact hours of nursing courses in a state-approved practical or registered nursing education program, which includes classroom and clinical instruction; and/or

(4) Present evidence of licensure as a practical nurse in another state with employment in a position that requires practical nursing licensure with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for reinstatement in the Board office.

485:10-9-5. Inactive status

(a) Any licensee who desires to retire from the practice of practical nursing shall submit a written request to be placed on the inactive list.

(b) The date of transfer to the inactive status will be the date of approval by the Board. The Board may delegate approval of the licensee's request to be placed on inactive status to the Board Staff.

(c) A licensee shall remain on the Inactive List unless otherwise indicated without the payment of the renewal fee.

(d) The return to active fee shall be due when the licensee desires to return to active practice.

(e) An application for return to active status for a license that has been placed on Inactive Status by Order of the Board shall be considered by the Board.

(f) In addition to meeting other requirements to return to active status as established by the Board in these rules, effective January 1, 2005, if the practical nursing license has been on the Inactive List for a period of two (2) years or more, the licensee must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the application in the Board office:

(1) Submission of an official transcript or certificate of completion verifying completion of a nursing refresher course with content consistent with Board policy; ~~or~~

(2) Successfully pass the National Council Licensure Examination for Practical Nurses; ~~or~~

(3) Submission of an official transcript verifying successful completion of at least seven (7) academic semester credit hours or 105 contact hours of nursing courses in a state-approved practical or registered nursing education program, which includes classroom and clinical instruction; and/or

(4) Present evidence of licensure as a practical nurse in another state with employment in a position that requires practical nursing licensure with certification of at least 520 work hours during the past two (2) years preceding receipt of the request for return to active status in the Board office.

SUBCHAPTER 15. REQUIREMENTS FOR PRACTICE AS AN ADVANCED PRACTICE NURSE

485:10-15-7. Practice as a Clinical Nurse Specialist

(a) **Education.** Any nurse graduating prior to September 1, 1991, may apply for recognition as a Clinical Nurse Specialist by submitting a transcript which verifies conferral of a Master's Degree in Nursing and documentation verifying the completion of a minimum of two semesters of course work in supervised advanced clinical practice.

(b) **Recognition.** Any nurse graduating with a Master's Degree in Nursing after September 1, 1991, may apply for recognition as a Clinical Nurse Specialist by submitting a transcript verifying conferral of a Master's Degree in Nursing and documentation verifying the completion of a minimum of two semesters of course work in which the major focus of study was a clinical nurse specialist track or pathway.

(c) **National certification.** The Board shall identify and keep on file the current list of recognized certifying bodies approved by the Board. A licensee may request that a certification program be considered for inclusion on the list by the Board for approval and official recognition by the Board as a certifying body. A certifying body examination shall meet the following requirements:

(1) Approved or accredited by a certification credentialing body approved by the Board. The certification credentialing body shall verify the certification examination meets the following requirements:

(A) measures theoretical and clinical content based on the scope of practice in the specialty area;

(B) is developed in accordance with generally accepted standards of validity and reliability;

(2) Open only to licensed or credentialed health care professionals;

(3) Based upon national standards of practice for the specialty area.

[OAR Docket #05-660; filed 4-15-05]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-698]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
590:1-1-2. System purpose and authority [AMENDED]
590:1-1-9. Designee Board members [NEW]

AUTHORITY:
Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S., §901, 905, 909; 20 O.S. §1101.1

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SUPERSEDED EMERGENCY ACTIONS:
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590:1-1-2. System purpose and authority [AMENDED]
590:1-1-9. Designee Board members [NEW]
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22 Ok Reg 125
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04-1337
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Senate Bill 1134 clarified the role of the OPERS Board of Trustees and set out several specific powers and duties it has in administering the Uniform Retirement Plan for Justices and Judges as set forth in 20 O.S. Section 1108. Amendments to 590:1-1-2 implement this new legislation, as well as update the current reference to "Deferred Compensation Plan" by changing it to the more accurate term, "Defined Contribution Plans." This includes the Savings Incentive Plan. The same bill also provides that certain OPERS Board members may designate others to serve in their place. A new rule was required to establish the procedure for making the designation. The new rule clarifies that a designation must be in writing and that designees represent the board member at committee meetings as well.
CONTACT PERSON:
Tom Spencer, Executive Director, Oklahoma Public Employees Retirement System, 5801 N. Broadway Extension, Suite 400, Oklahoma City, Oklahoma 73118, 405-858-6737

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

590:1-1-2. System purpose and authority

(a) This agency, known as the Oklahoma Public Employees Retirement System, was established to provide:

(1) an orderly means whereby employees, of participating employers, who are eligible as set by statute, may transfer to inactive service without undue hardship and without prejudice;

(2) for said employees to accumulate reserves adequate to provide for themselves and their dependents;

(3) to effectively and efficiently administer the programs necessary to attain these goals for public employees;

(4) to effectively and efficiently administer the programs necessary to attain these goals for Justices and Judges; and

(5) to effectively and efficiently administer the ~~Deferred Compensation Plan~~ Defined Contribution Plans for state employees.

(b) The System shall be vested with the powers and duties specified in Title 74 O.S. ~~1981, Sec. 903 and 905~~ Sections 901 to 935 and Title 20 O.S. Sections 1101 to 1112 and such other powers as may be necessary to enable it, its officers, employees, and agents to carry out fully and effectively the purpose and intent of ~~the Retirement Law~~ said retirement laws.

590:1-1-9. Designee Board members

(a) The Administrator of the Office of Personnel Management, the State Insurance Commissioner and the Director of State Finance are authorized to designate an individual to act in his or her place as a member of the Board of Trustees. This designation must be in writing, signed by the designating official and filed with the System. The designation must clearly indicate the identity of the designee and whether the designation is limited as to duration or is an on-going designation. The designation should also set forth instructions as to membership on any Committees where the official is a member. Absent specific instructions regarding committee attendance, it is assumed that the designee is authorized to appear at both Committee and Board meetings. Once a proper designation is filed, the designee may appear at meetings and may act on any items properly before the Board.

(b) The Corporation Commission and the Oklahoma Tax Commission shall each select a member of the respective Commission to serve on the Board of Trustees. Each Commission shall provide a notification of the selection in writing, signed by the Chairman of the respective Commission to be filed with the System.

[OAR Docket #05-698; filed 4-21-05]

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

[OAR Docket #05-699]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
590:10-1-1. Purpose [AMENDED]
590:10-1-7. Non-state agency contributions [AMENDED]
590:10-1-15. Hazardous Duty Members [AMENDED]
590:10-1-17. Offset and recovery [NEW]
590:10-1-18. Release of records [NEW]
590:10-1-19. Mailing lists [NEW]
Subchapter 3. Credited Service
590:10-3-12. Military service credit [AMENDED]

590:10-3-13. Credit for involuntary furlough [NEW]
Subchapter 7. Retirement Benefits
590:10-7-2. Involuntary furlough [AMENDED]
590:10-7-6. Failure to submit documents [AMENDED]
590:10-7-10. Final benefit [AMENDED]
Subchapter 8. Department of Corrections Benefits [NEW]
590:10-8-1. Department of Corrections Hazardous Duty Members [NEW]
590:10-8-2. Post-Hazardous Duty Members [NEW]
590:10-8-3. Continuation of Hazardous Duty benefits [NEW]
590:10-8-4. Maximum Participation as a Hazardous Duty Member [NEW]
590:10-8-5. Normal retirement date for Post-Hazardous Duty Members [NEW]
590:10-8-6. Employer Responsibility for Continuation of Hazardous Duty Benefits [NEW]
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590:10-10-1. Eligibility for Benefit [NEW]
590:10-10-2. Killed in Performance of Duty [NEW]
590:10-10-3. Mortally Wounded in Performance of Duty [NEW]
590:10-10-4. Exclusions [NEW]
590:10-10-5. Surviving Spouse Benefit [NEW]
590:10-10-6. Surviving Spouse Benefit Election [NEW]
590:10-10-7. Surviving Child Benefit [NEW]
590:10-10-8. Filing for Surviving Spouse and Surviving Child Benefits [NEW]
Subchapter 19. Medicare Gap Benefit Option [NEW]
590:10-19-1. Purpose and intent [NEW]
590:10-19-2. Definitions [NEW]
590:10-19-3. Medicare Gap Benefit option [NEW]
590:10-19-4. Irrevocable election of Medicare Gap Benefit option [NEW]
590:10-19-5. Medicare Gap Benefit formula [NEW]
590:10-19-6. Eligible Members [NEW]
590:10-19-7. Eligibility exclusions [NEW]
590:10-19-8. Calculation of the Medicare Gap Benefit [NEW]
590:10-19-9. Medicare Gap Benefit Inapplicable for joint annuitants [NEW]
590:10-19-10. Pop-up of the Medicare Gap Benefit [NEW]
590:10-19-11. Minimum benefit amount [NEW]
590:10-19-12. Calculation of Cost-of-Living Adjustments [NEW]
590:10-19-13. Medicare Gap benefits and post-retirement employment [NEW]
590:10-19-14. Payments to an alternate payee under a QDRO [NEW]

AUTHORITY:
Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S., §901, 902, 903, 909, 913, 915, 915.3, 916.3, 917, 919.1, 920B, 923, 932, 935, 1701, 1707; 20 O.S. §1101.1

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Superseded rules:
Subchapter 1. General Provisions
590:10-1-1. Purpose [AMENDED]
590:10-1-7. Non-state agency contributions [AMENDED]
590:10-1-15. Hazardous Duty Members [AMENDED]
590:10-1-17. Offset and recovery [NEW]
590:10-1-18. Release of records [NEW]
Subchapter 3. Credited Service
590:10-3-12. Military service credit [AMENDED]
590:10-3-13. Credit for involuntary furlough [NEW]
Subchapter 7. Retirement Benefits
590:10-7-2. Involuntary furlough [AMENDED]
590:10-7-10. Final benefit [AMENDED]
Subchapter 8. Department of Corrections Benefits [NEW]
590:10-8-1. Department of Corrections Hazardous Duty Members [NEW]
590:10-8-2. Post-Hazardous Duty Members [NEW]
590:10-8-3. Continuation of Hazardous Duty benefits [NEW]
590:10-8-4. Maximum Participation as a Hazardous Duty Member [NEW]
590:10-8-5. Normal retirement date for Post-Hazardous Duty Members [NEW]
590:10-8-6. Employer Responsibility for Continuation of Hazardous Duty Benefits [NEW]
Subchapter 10. Department of Corrections Death in Performance of Duty Benefits [NEW]
590:10-10-1. Eligibility for Benefit [NEW]
590:10-10-2. Killed in Performance of Duty [NEW]
590:10-10-3. Mortally Wounded in Performance of Duty [NEW]
590:10-10-4. Exclusions [NEW]
590:10-10-5. Surviving Spouse Benefit [NEW]
590:10-10-6. Surviving Spouse Benefit Election [NEW]
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N/A

ANALYSIS:
590:10-1-1 is being amended to clarify the Board's responsibility for all of the Plans that it administers, pursuant to the provisions of Senate Bill 1134. 590:10-1-7 is being amended to add circuit engineering districts as eligible employers pursuant to House Bill 2330 and to clarify the process for assessing late charges for unpaid contributions pursuant to Senate Bill 1134. The definition of Hazardous Duty Members in 590:10-1-15 is being amended to address a new class of members to be known as Post-Hazardous Duty Members pursuant to Senate Bill 1203. Senate Bill 1134 also permits offsetting benefits to recover improper payments or overpayments and a new rule to address this offset is at 590:10-1-17. 590:10-1-18 is a new rule to address the release of member records as a result of an amendment to 74 O.S. Section 932 contained in Senate Bill 1434. 590:10-1-19 is a new rule proposed to allow organizations, with membership limited to state employees, to send one general mailing to all retired members of OPERS annually as a result of 74 O.S. Section 935 contained in Senate Bill 1384. In Senate Bill 1434, the Legislature clarified the statutory provisions relating to grants and purchases of military service credit which necessitates the amendments to 590:10-3-12. The provisions for crediting periods of involuntary furloughs were expanded to include the District Attorneys Council in House Bill 2445, which form the basis for a new rule at 590:10-3-13 as well as the amendment to an existing rule determining base salary for furlough purposes at 590:10-7-2. 590:10-7-6 eliminates the penalty for failure to submit all necessary documents prior to retirement. The changes to 74 O.S. Section 917 contained in Senate Bill 1134 caused the amendments to 590:10-7-10 to reflect those statutory changes dealing with a final benefit payment upon the death of a member.

Senate Bill 1203 created a new class of membership for employees at the Department of Corrections. A new Subchapter 8 addresses the new Post-Hazardous Duty Members. Six new rules are contained in this new

Subchapter, defining the new class and establishing the requirements and procedures for membership, including mandatory participation requirements, maximum participation periods, normal retirement date and the employer's responsibilities. Senate Bill 1203 also contains provisions for payments of benefits due to death in performance of duty for employees of the Department of Corrections. A new Subchapter 10 speaks to this new benefit. Eight new rules address various issues associated with these new benefits including eligibility for benefits, definition of "Killed in Performance of Duty" and "Mortally Wounded in Performance of Duty", set out the exclusions for eligibility, definition of Surviving Spouse and Surviving Child, and the rules establish procedures for filing for benefits.

A new Subchapter 19 implements the "Medicare Gap" benefit option in SB 1226. Fourteen new rules provide a new option under which members can receive a higher retirement benefit before they reach Medicare age. It is an irrevocable option. It will be based, to a large extent, on the difference in the premium paid by a retiree prior to Medicare eligibility and the Medicare supplement premium, less the $105 subsidy. It may not be exactly enough to pay the increased cost of health care. There is a minimum benefit after calculation that must be paid of $200 per month. COLA's will be based on the actual benefit amount and retired members returning to work will accrue additional service credit in the same manner as a regular benefit.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

590:10-1-1. Purpose

The Rules of this Chapter have been adopted to establish policies and procedures for implementing and administering the Oklahoma Public Employees Retirement System. The procedures are also used to implement and administer the Uniform Retirement System for Justices and Judges, the Oklahoma State Employees Deferred Compensation Plan and the Oklahoma State Employees Savings Incentive Plan where specifically noted.

590:10-1-7. Non-state agency contributions

~~All~~ Any participating county, county hospital, city or town, conservation district, or circuit engineering district or trust shall contribute to the System all required retirement contributions due on a monthly basis. All required contributions and supporting documentation must be received by the System on or before the fifteenth (15th) day of the month following the month for which the contributions are due. Any non-state agency employer who remits contributions later than 30 days following the due date, will be assessed a late charge of 1.5%. The late charge will be calculated on the unpaid balance and will compound monthly until paid.

590:10-1-15. Hazardous Duty Members

Hazardous Duty Members are considered to be those members who participate in hazardous duty employment with a participating employer and who are authorized by law to participate in a special benefit structure within the System, wherein the Hazardous Duty Member makes a higher employee contribution than regular employee members and is eligible for specified retirement benefits after 20 years of service as a Hazardous Duty Member. Hazardous Duty Member shall also include any Post-Hazardous Duty Member who continues to make the higher required contributions following a promotion on or after July 1, 2004, to a non-hazardous duty position within the Department of Corrections as provided in Subchapter 8 of these rules.

590:10-1-17. Offset and recovery

In any circumstance involving an overpayment to any person or entity, to recover judgments or settlements relating to OPERS, or concerning a fraudulent or improper payment, OPERS has the right to utilize any monies available as an offset to recover the overpayment, judgment, settlement or improper payment. This right of offset and recovery has priority over any other claim to said monies, including, but not limited to, the right of any survivor or beneficiary. This right of offset and recovery may be utilized in any plan or account managed or administered by the Board.

590:10-1-18. Release of records

(a) Pursuant to 2004 amendments to Section 932, a retired, vested or active member's name, age, amount of contributions paid in, benefits being paid, amount of credited service and documents verifying credited service or benefits may be released. All other information in a member's retirement file remains confidential. The law specifically references members, therefore, no information or documents will be provided on joint annuitants or beneficiaries.

(b) The System will do everything it can to protect members' information but still comply with the law. Therefore, the System will only disclose information or records that are clearly required to be disclosed under the law. All requests for information must be in writing and state the specific information requested and the purpose for the request. The request must also specify the plan that it applies to. Requests which do not specify the plan name shall be presumed to apply to OPERS only. In addition, the request must provide sufficient information to easily identify the member. While a Social Security number may not be required, the date of birth, agency number, first and middle initial or other identifying information must be provided. Search and copy fees will be in accordance with OPERS adopted and published fee schedule.

(c) Information which does not currently exist does not have to be "created" nor does information have to be provided in a format or medium that does not currently exist.

(d) In order to comply with this provision, the following information may be supplied upon request:

(1) Member's name - OPERS, URSJJ and SoonerSave computer records maintain only first and middle initials, and not the full name.

(2) Member's age - In order to protect our members from potential identity theft, only the current age of the

member expressed in whole years shall be provided in response to a general request for the age of a member.

(3) Amount of contributions paid in - Contribution statements will show only employee contributions into OPERS and URSJJ. Employer contributions for individual employees are not complete. In response to a general request for a member's "contributions", only the employee contributions will be provided. If a specific request for employer contributions is made, we will provide a copy of the incomplete record with an explanation of the time period covered. For the SoonerSave accounts, the deferral amounts into the 457 Plan are not "contributions" and will not be disclosed. The employer contributions and the transfer of contributions to the Savings Incentive Plan will be provided if specifically requested, however, the amount of interest or earnings will not be released as it is not a "contribution". All account balances for the SoonerSave plans which reflect investment earnings will not be released.

(4) Benefits being paid - This information is available only for retired members of OPERS and URSJJ who are currently receiving benefits. SoonerSave does not pay "benefits", therefore, payments from the plan including any distribution amounts, hardship distributions or distribution schedules will not be released.

(5) Amount of credited service - This information may not be available for OPERS or URSJJ members who are active and have never had a benefit estimate completed. Therefore, general requests for credited service will be provided on retired or vested members only, and specific requests for credited service for active members will be provided only if the information exists in the file. Credited service is not relevant to or contained in the SoonerSave plans' records and cannot be provided.

(6) Any documents verifying credited service or benefits - This information will be provided only if specifically requested for OPERS and URSJJ. Determinations regarding whether a document is used to verify credited service or benefits is discretionary and any release of these documents will be approved by the Executive Director on a case-by-case basis. The documents must have all confidential information redacted prior to being released. SoonerSave accounts do not contain information on either credited service or benefits, therefore, documents will not be released from the SoonerSave files.

(e) Information that is released must always have all Social Security numbers, home addresses and all telephone, pager or cell phone numbers redacted from any records or documents released, pursuant to 74 O.S. Section 840-2.11. This will be done by removing or covering the confidential information to ensure that the information cannot be seen from either side of the page.

(f) Certain information contained in a member's file will remain confidential and will not be released without the member's permission. Examples of such information are:

(1) Change of address records
(2) Insurance information or documents
(3) Any health care information
(4) Any educational records
(5) Tax records
(6) Payroll deductions and withholdings
(7) Medical documents of any kind
(8) Copies of driver's license
(9) Social Security numbers or copies of cards
(10) Copies of birth certificates, death certificates or baptism documents
(11) Copies of military records
(12) Any bank account or banking information
(13) Copies of passports or other forms of identification
(14) Any unemployment information
(15) Any worker's compensation information

(g) OPERS policy is to notify each member when a third party has requested and received information that relates to his or her retirement file, including a copy of or identification of the provided information. However, this notification may not be practical and will not be made when information is provided as part of a group request and the information provided does not identify individual members.

(h) This policy applies to member/participant information only. It does not apply to requests for general information regarding operations of the agency under the Open Records Act.

(i) This rule is applicable to any plan or account managed or administered by the Board.

590:10-1-19. Mailing lists

The addresses of all OPERS members are confidential and will not be disclosed to any person or entity. Pursuant to Title 74 O.S. Section 935, any statewide organization of state employees with a minimum membership of 1,000 dues-paying members may annually send one general mailing to all retired members of OPERS and shall pay for the total cost. In order to preserve the confidentiality of the addresses and to comply with the provisions, the System shall not provide the list of retiree addresses directly to the organization. At the sole discretion of the System, the System may require the use of a third-party mailing service. Appropriate agreements shall be entered into between OPERS, the statewide organization, and the third-party mailing service to conduct the mailing, with provisions to protect the confidentiality of the addresses and to prohibit furnishing them to any other person or entity. All costs associated with the mailing or services of the third-party mailing service shall be paid entirely by the statewide organization. The organization shall file a copy of any such mailing with the System.

SUBCHAPTER 3. CREDITED SERVICE

590:10-3-12. Military service credit

(a) Any member who joined the System on or before June 30, 2000, can receive up to five (5) years of military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. As set forth in Section 913 of Title 74 of the Oklahoma Statutes, the service credit can be prior service or participating service or a combination of the

two, however, total military service credit cannot exceed five (5) years. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service. If eligible, a retired member shall receive an increase in his or her monthly benefit as a result of the addition of the military service credit effective with the month following the receipt of the documents and approval by the System.

(b) Any active member who joined the System on or after July 1, 2000, can purchase up to five (5) years of military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. As set forth in Section 913 of Title 74 of the Oklahoma Statutes, the service credit can be prior service or participating service or a combination of the two, however, total military service credit cannot exceed five (5) years. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service. The member must make payment in the amount determined by the Board pursuant to Section 913.5 of Title 74 of the Oklahoma Statutes and 590:10-3-8. This purchase may be amortized over sixty (60) months as provided for in 590:10-3-9.

(c) Military service credit will be credited or purchased in full months only. The initial month of military service will be accepted only if the service began on or before the 15th day of the month. The final month of military service will be accepted only if the service was completed on or after the 16th day of the month.

(d) Members who joined the System on or after July 1, 2003, can make the purchase set forth in paragraph (b) of this rule only if the member has not received credit for the same period of military service for retirement from another retirement system created pursuant to the Oklahoma Statutes. For such members, the military credit shall be granted or purchased in the retirement system from which the member retires first. In the event such a member fails to disclose a previous grant or purchase of military credit, the purchase will be voided, his or her service credit will be adjusted to remove the military service credit and only the purchase price shall be returned to the member.

(e) It is the responsibility of the member wishing to receive or purchase military service credit to complete the application provided by the System for this purpose and to provide all documentation necessary to support the application. Military service will not be credited until all required documentation is provided by the member to the System, the System has approved the grant or purchase and any required payments are made.

(f) Retired members who are not credited with military service prior to or at the time of retirement may make application for the credit at any time. After approval by the System, the military service credit will be added to the member's record and increased retirement benefits, if any, as a result of the addition of the military service credit, shall begin with the first month following said approval. Retroactive payments will not be made under any circumstances.

(g) Members who served in the Armed Forces of the United States during a war or combat military operation other than World War I, World War II, the Korean War, the Vietnam War or the Gulf War as provided in Section 902 (23) of Title 74 of the Oklahoma Statutes, may be eligible to purchase or receive military service credit for the period of time that he or she actually served in an area of responsibility for a war or combat military operation which lasted for a period of at least ninety (90) days. It is the responsibility of the member to provide sufficient documentation to support his or her eligibility for this credit as requested by the System, including, but not limited to, documents showing specific service areas and times.

(h) The provisions for granting or purchasing military service credit shall be in addition to any contributions, benefits and service credit with respect to qualified military service in accordance with Section 414 (u) of the Internal Revenue Code of 1986.

590:10-3-13. Credit for involuntary furlough

(a) A leave of absence as a result of an involuntary furlough established by the Office of Personnel Management under OPM Rule 530:10-15-48. *Involuntary leave without pay (furlough),* or as it may be amended, may be credited as participating service. It is the responsibility of the employer to provide a copy of the furlough plan approved by the Administrator of the Office of Personnel Management, a list of the affected employees and the dates, times and hours that each employee was placed on leave without pay.

(b) The employees of a district attorney may receive participating service credit for a leave of absence due to an involuntary furlough after July 1, 2004, provided the furlough was conducted in substantial compliance with OPM Rule 530:10-15-48. *Involuntary leave without pay (furlough),* or as it may be amended. It is the responsibility of the district attorney to provide a copy of the furlough plan approved by the District Attorneys Council, a list of the affected employees and the dates, times and hours that each employee was placed on leave without pay. The approved furlough plan must include a certification from the Council that the plan was in substantial compliance with the OPM rule.

SUBCHAPTER 7. RETIREMENT BENEFITS

590:10-7-2. Involuntary furlough

In computing the final average compensation, the monthly base salary will be used for each month a retiring member ~~was placed on~~ has leave without pay due to an involuntary furlough under ~~OPM Rule 530:10-15-48, Involuntary leave without pay (furlough)~~ 590:10-3-13. *Credit for involuntary furlough.*

590:10-7-6. Failure to submit documents

If all of a retired member's required documents have not been received by the fifteenth day of the month in which the first two retirement benefit payments are to be issued, the System will withhold payment of any benefit until all required documents have been received.~~the effective retirement date will be changed to the first day of the next month. The System shall continue to adjust the member's effective retirement date until all of the required documents have been received pursuant to this rule. If the effective retirement date is adjusted more than four (4) times by the System as a result of this rule, the retirement shall be cancelled and the member shall be required to re-apply for retirement in compliance with all plan provisions. Retirement benefits will be payable for the effective retirement month and no retroactive payments will be made back to the originally requested retirement date if that date is adjusted pursuant to this rule.~~

590:10-7-10. Final benefit

The retirement benefit payable for the month of death of a member, joint annuitant or survivor shall be payable to said member, joint annuitant, or surviving spouse. In the event the final benefit is returned to the System or is not otherwise paid, said benefit will be paid to the ~~named beneficiary~~ member's estate.

SUBCHAPTER 8. DEPARTMENT OF CORRECTIONS BENEFITS

590:10-8-1. Department of Corrections Hazardous Duty Members

Any correctional officer, probation and parole officer or fugitive apprehension agent employed by the Department of Corrections shall participate in the Hazardous Duty benefit provisions of the System.

590:10-8-2. Post-Hazardous Duty Members

Post-Hazardous Duty Members are considered to be those employees of the Department of Corrections who are required to continue participation in the special benefit structure within the System for Hazardous Duty Members and as provided in this Subchapter.

590:10-8-3. Continuation of Hazardous Duty benefits

(a) Any employee of the Department of Corrections who participated in the System as a Hazardous Duty Member as a result of employment as a correctional officer, probation and parole officer or fugitive apprehension agent shall be required to continue to participate as a hazardous duty employee for all future periods of employment with the Department of Corrections, provided that:

(1) the member was employed by the Department of Corrections as a correctional officer, probation and parole officer or fugitive apprehension agent on June 30, 2004, or was first hired by the Department of Corrections as a correctional officer, probation and parole officer or fugitive apprehension agent after June 30, 2004; and

(2) the member received a promotion or change in job classification after June 30, 2004; and

(3) the member has participated as a Hazardous Duty Member as a correctional officer, probation and parole officer or fugitive apprehension agent at least five (5) full years.

(b) For purposes of this rule, the requirement of five (5) full years of participation as a Hazardous Duty Member means five (5) years of full-time-equivalent employment as provided in 590:10-3-6 of these rules for which the required higher contribution for Hazardous Duty Members is paid.

(c) The requirements of this rule shall be applicable for all future employment with the Department of Corrections for any Post-Hazardous Duty Member. Breaks in service will not affect this requirement.

590:10-8-4. Maximum Participation as a Hazardous Duty Member

Hazardous Duty Members and Post-Hazardous Duty Members who are employed by the Department of Corrections shall pay the higher contribution rate set forth in Title 74 O. S. Section 919.1 (1)(c) and (d) for a maximum of twenty (20) full years. If the Hazardous Duty Members and Post-Hazardous Duty Members remain employed by the Department of Corrections after twenty (20) full years of payment of the higher contribution rate, the required employee contribution rate shall be as provided in 919.1 (1) (a) and (b).

590:10-8-5. Normal retirement date for Post-Hazardous Duty Members

In addition to normal retirement at age 62, under Rule of 80 or under Rule of 90, Post-Hazardous Duty Members who are employed by the Department of Corrections at the time of retirement are eligible to retire after completion of at least twenty (20) years of full-time-equivalent employment as provided in 590:10-3-6 of these rules; provided, the required higher contribution for Hazardous Duty Members is paid or the member was employed as a correctional officer or probation and parole officer at the Department of Corrections.

590:10-8-6. Employer Responsibility for Continuation of Hazardous Duty Benefits

It is the responsibility of the Department of Corrections to ensure that the correct employee contributions are withheld for all employees. It is also the responsibility of the Department of Corrections to provide any necessary documentation to confirm eligibility of any current or former employee for benefits under this Subchapter.

SUBCHAPTER 10. DEPARTMENT OF CORRECTIONS DEATH IN PERFORMANCE OF DUTY BENEFITS

590:10-10-1. Eligibility for Benefit

The Surviving Spouse and the Surviving Child or children of any correctional officer or probation and parole officer employed by the Department of Corrections who is killed or mortally wounded on or after January 1, 2000, and of any employee of the Department of Corrections who is killed or mortally wounded on or after July 1, 2004, shall be eligible for the benefits as set out in this Subchapter, provided said employee was a participating member of the Oklahoma Public Employees Retirement System at the time of his or her death and his or her death occurred as a direct result of the performance of his or her duties for the Department.

590:10-10-2. Killed in Performance of Duty

Killed in the performance of duty means an employee's death as a direct result of an action, whether felonious or accidental, occurring as a direct result of performing his or her assigned work-related functions for the Department of Corrections. Work-related function means action that the employee is authorized or obligated to perform by law, rule, regulation, or condition of employment or service, which is performed while on paid duty with the Department of Corrections.

590:10-10-3. Mortally Wounded in Performance of Duty

Mortally wounded means a personal injury where death occurs within one (1) year as a direct and proximate result of an injury which would have qualified for death benefits as provided in this Subchapter. Direct and proximate result means that the injury sustained in the performance of duty is the primary and substantial factor in the resulting death.

590:10-10-4. Exclusions

No benefits shall be paid under this subchapter:

(1) if the death was caused by the intentional misconduct of the employee or if the employee intended to bring about his or her death;

(2) if the death is an accidental death as a result of travel to and from work;

(3) if the employee was intoxicated with a blood alcohol level of .10 or greater at the time of death or injury;

(4) if the employee was under the influence of illegal drugs or improperly used prescription drugs at the time of death or injury; or

(5) if death is the natural death of the employee or death is the primary result of a disease or medical condition.

590:10-10-5. Surviving Spouse Benefit

The Surviving Spouse of an employee killed or mortally wounded in the performance of his or her duties with the Department of Corrections shall receive benefits as provided in Title 74 O.S. Section 916.3. Surviving Spouse means a person who was legally married to the employee at the time of the employee's death. The burden of proof regarding establishing and proving the existence of the marriage shall rest with the person claiming Surviving Spouse status.

590:10-10-6. Surviving Spouse Benefit Election

An otherwise eligible Surviving Spouse of an employee killed or mortally wounded in the performance of his or her duties with the Department of Corrections shall not receive benefits as provided in Title 74 O.S. Section 916.3 if he or she is receiving or elects to receive any type of survivor benefits from the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System or the Oklahoma Law Enforcement Retirement System on account of this or any spouse. The Surviving Spouse must make an irrevocable election of benefits within ninety (90) days of eligibility for benefits. The Surviving Spouse cannot receive surviving spouse benefits for more than one member of the specified retirement systems. Receipt of benefits from any such retirement system shall be presumed to constitute such an election. The Surviving Spouse must certify annually that he or she is not receiving any type of survivor benefits from another state retirement system.

590:10-10-7. Surviving Child Benefit

(a) A total monthly benefit amount as set by statute shall be paid where an employee of the Department of Corrections is killed or mortally wounded in the performance of his or her duty and leaves one or more Surviving Children. This benefit is paid in addition to the Surviving Spouse benefit.

(b) Surviving Child means a minor child under the age of eighteen (18) years or a child between the ages of eighteen (18) and twenty-two (22) who is attending school. Surviving Child further means a child who is the natural or legally adopted child of the deceased employee.

(c) Any child of any age who is or has been married is considered emancipated and is not considered to be a Surviving Child for purposes of payment of this benefit.

(d) Attending school means enrolled in and regularly attending on a full-time basis an accredited public or private secondary school or institution of higher education. Proof of attending school shall be provided by the person receiving the benefit at the beginning of each semester as well as a copy of grades received at the end of each semester. If there is more than one Surviving Child, proof of school attendance shall not be required unless that child is the sole basis for payment of the benefit or the sole basis for payment of a part of the benefit if the benefit is divided as provided in subsection (e) below. If the Surviving Child drops classes and becomes a part-time student or withdraws from the school or institution of higher education, then benefits shall cease the last day of the month in which the child becomes a part-time student or withdraws. It is the responsibility of both the Surviving Child and the person receiving the benefit payment to provide the proof of attendance and to notify the System of any change in student or marital status of the child.

(e) In the event that there is more than one Surviving Child and the children are in the care and custody of different individuals, the benefit shall be divided pro-rata for each child.

(f) The burden of proof of the relationship of the child to the deceased employee and to the person claiming payment shall be upon the person claiming entitlement to the payment. If a guardian has been named for a Surviving Child, the guardian

shall be entitled to receive the benefit payment. A certified copy of the Order must be provided to the System. A Surviving Spouse who is the natural parent of the Surviving Child shall be presumed to have care and custody of said child unless the System receives a claim containing information to the contrary.
(g) Benefits terminate the last day of the month in which the last Surviving Child becomes twenty-two (22) or becomes ineligible for benefits under this Subchapter. Any benefits paid on behalf of an ineligible Surviving Child must be repaid to the System immediately.

590:10-10-8. Filing for Surviving Spouse and Surviving Child Benefits

(a) Claims for Surviving Spouse and/or Surviving Child benefits should be made as soon as possible following the employee's date of death. Benefits shall be payable beginning with the month following the employee's date of death, however, benefit payments will not commence until all required documentation has been furnished and a final determination has been made by the System. Required documentation to be provided by the claimant include, but are not limited to, a completed application for benefits, a certified copy of the employee's death certificate, a certified copy of the public record of marriage and certified copies of birth certificates for Surviving Children.
(b) It is the responsibility of the Department of Corrections to assist the Surviving Spouse or the person with the care and custody of a Surviving Child with the completion of all necessary forms. It is also the responsibility of the Department of Corrections to provide any necessary documentation to confirm eligibility of any person for benefits under this Subchapter. Required documentation to be provided by the Department of Corrections include, but are not limited to, a completed report of death form which shall include a notarized statement from the deceased employer's supervisor describing in detail the duties being performed by the employee at the time and the circumstances under which death occurred, all workers' compensation claim information in the possession of the employer, a certified copy of the autopsy report, and any medical records in the possession of the employer.
(c) In addition to the information supplied by the claimant and the employer, the System may require a medical statement from a treating physician which includes a detailed analysis of the cause of death and the circumstances surrounding the death.
(d) Where the System feels that it is necessary or appropriate, it may, at its own expense, have the medical and other records reviewed and evaluated by an independent physician of its own choosing. The System may also use the services of law enforcement agencies or may contract for a licensed investigator for any situations that it deems necessary or appropriate.
(e) The System shall make a determination on all claims for benefits under this Subchapter within ninety (90) days following receipt of all required documentation and reviews and shall notify the employer and the claimant in writing.

SUBCHAPTER 19. MEDICARE GAP BENEFIT OPTION

590:10-19-1. Purpose and intent

By adoption of the rules set out in this Subchapter which implement a "Medicare Gap" benefit option, the Board intends to comply in all respects with IRS tax qualification requirements for governmental plans applicable to such benefit option payments. Specifically, the rules contained in the subchapter will not be fully implemented, and a member will not be eligible to select such a benefit option, until the Board "*receives official written notice that this alternative retirement benefit option satisfies the tax qualification requirements for governmental plans applicable to such benefit options as specified in the Internal Revenue Code of 1986, as amended from time to time and as applicable to governmental plans and the relevant regulatory provisions and guidance related thereto*." [74:915.3]

590:10-19-2. Definitions

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

"Board" means the Board of Trustees for the Oklahoma Public Employees Retirement System.

"Eligible Member" means a member of the System who retires on or after the Option Effective Date and who is not Medicare-eligible at the time of retirement, including Elected Officials, Hazardous Duty Members and the surviving spouse of a deceased Eligible Member, except as otherwise provided in this Subchapter.

"Medicare Gap Benefit" means an actuarially determined retirement benefit which is greater than the member or beneficiary's Regular Retirement Benefit for months of payments prior to becoming Medicare-eligible and less than the member or beneficiary's Regular Retirement Benefit for months of payments after becoming Medicare-eligible and for the remaining lifetime of the member and his or her joint annuitant.

"Medicare Gap Benefit Election" means an irrevocable election made by an Eligible Member prior to his or her effective date of retirement to receive the alternative benefit option payable pursuant to this Subchapter.

"Medicare-eligible" means age 65 or older, or such other age at which a member becomes eligible for Medicare benefits under federal law in effect at the time a member applies for an OPERS retirement benefit. For purposes of this Subchapter, age is calculated as of the first day of the month of birth. For example, a member born September 15, 1940, is considered to be 65 and Medicare-eligible on or after September 1, 2005.

"Minimum Medicare Gap Benefit" means a gross monthly benefit payment of $200.00 per month after all applicable actuarial reductions for either the Pre-Medicare benefit or the Post Medicare benefit.

"Option Effective Date" means the date when the System will make the Medicare Gap Benefit option available to Eligible Members. This date will be the first day of the third month following the System's receipt of written notice that the

benefits provided in this Subchapter satisfy the tax qualification requirements applicable to governmental plans.

"Post Medicare Benefit" means the actuarially reduced monthly benefit payment amount for all months of retirement after the member becomes Medicare-eligible.

"Pre-Medicare Benefit" means the actuarially increased monthly benefit payment amount for all months of retirement prior to the member becoming Medicare-eligible.

"Regular Retirement Benefit" means the monthly retirement benefit that the Eligible Member would receive absent the Medicare Gap Benefit Election, which includes the actuarial adjustments as a result of the member's election of early retirement and/or survivor benefit options. It does not include amounts refunded of additional contributions paid to a member in the form of a limited retirement benefit under Section 910.5 of Title 74.

"System" or "OPERS" means the Oklahoma Public Employees Retirement System.

590:10-19-3. Medicare Gap Benefit option

An alternate retirement benefit option is available to members of the Oklahoma Public Employees Retirement System provided an election form is properly completed and filed with the System after the Option Effective Date and prior to the member's effective retirement date. This alternate benefit option shall be called the Medicare Gap Benefit option. The Medicare Gap Benefit option is intended to permit certain members of the System to elect to receive an increased retirement benefit amount to help cover the cost of the health insurance premiums prior to the time that the member becomes Medicare-eligible, however, the Medicare Gap Benefit may not equal or cover the entire cost of the member's actual health insurance premiums.

590:10-19-4. Irrevocable election of Medicare Gap Benefit option

The Medicare Gap Benefit option election is an irrevocable election and is binding upon the member, his or her surviving spouse and/or joint annuitant.

590:10-19-5. Medicare Gap Benefit formula

(a) The Medicare Gap Benefit shall be calculated using a formula which is designed to be the actuarial equivalent of the member's Regular Retirement Benefit subject to the actuarial reductions otherwise applicable as a result of election of early retirement or a survivor benefit option.

(b) The Medicare Gap Benefit formula is not an individualized actuarial calculation. The formula for actuarial adjustment for the Medicare Gap Benefit shall be adopted annually by the Board prior to January 1 of each year based upon the difference between the average of the non-Medicare Supplement premiums and average of the Medicare Supplement premiums for all health insurance plans offered by the Oklahoma State and Education Employees Group Insurance Board to inactive or retired OPERS members. The formula shall use the average premium amounts for the member only and shall include as an offset the amount of the health insurance subsidy payment made by the System. The amount of the adjustment to a retiree's benefit prior to becoming eligible for Medicare, will not always equal the additional cost of the retiree's health insurance.

(c) The Medicare Gap Benefit formula shall be reviewed by the Board each year to ensure that the benefit option has a neutral actuarial cost to the System.

590:10-19-6. Eligible Members

Only Eligible Members may elect the Medicare Gap Benefit option. Any member or surviving spouse who has retired prior to the Option Effective Date of the Medicare Gap Benefit option is not eligible to make this election or change the type of retirement benefit previously selected. The Medicare Gap Benefit shall be paid only on a prospective basis.

590:10-19-7. Eligibility exclusions

Eligible Member specifically excludes any member or surviving spouse who receives retirement benefit payments for any months prior to the Option Effective Date, any member who is retiring under Disability Retirement, and any member or surviving spouse electing an Option C. Surviving spouses of an employee killed or mortally wounded in the performance of his or her duties for the Department of Corrections receiving benefits under Subchapter 10 of Chapter 10 of these rules are not eligible to elect the Medicare Gap Benefit option.

590:10-19-8. Calculation of the Medicare Gap Benefit

(a) The mortality tables used in the calculation of the Medicare Gap Benefit shall be the same tables adopted by the Board for other OPERS calculations.

(b) The Pre-Medicare and Post Medicare Benefit payment amounts shall be calculated at the time of retirement and shall not be re-calculated after the member's effective retirement date except to correct errors or as specifically provided in these rules.

(c) The Medicare Gap Benefit formula is applied after the calculation of the Eligible Member's Regular Retirement Benefit which includes any required actuarial reductions made for early retirement or selection of Option A or B. The formula shall be applied based upon the age of the member at time of retirement.

590:10-19-9. Medicare Gap Benefit Inapplicable for joint annuitants

(a) The Medicare Gap Benefit does not apply to the benefit amount of a joint annuitant or surviving spouse of a member when the member dies prior to his or her effective retirement date.

(b) Following the death of the member after retirement and election of the Medicare Gap Benefit option, the survivor benefit payments to a named joint annuitant under an Option A or to the surviving spouse of a deceased elected official shall be one-half or 50% of the Regular Retirement Benefit plus any necessary adjustments for COLA's.

(c) Following the death of the member after retirement and election of the Medicare Gap Benefit option, the survivor benefit payments to a named joint annuitant under an Option B shall be 100% of the Regular Retirement Benefit plus any necessary adjustments for COLA's.

590:10-19-10. Pop-up of the Medicare Gap Benefit

In the event of the death of the named joint annuitant after the member's retirement date and election of the Medicare Gap Benefit option, the member shall provide the System with a copy of the joint annuitant's death certificate as notice of said death. The member's benefit will "pop-up" to reflect the amount of the original unreduced benefit the member would have been entitled to for both the Pre-Medicare and Post Medicare Benefit payments absent the selection of an Option A or B. The "pop-up" increase becomes effective the first day of the month following the death of the joint annuitant, provided the member has given notice of said death. Retrospective "pop-up" benefits are limited to a maximum of six (6) months.

590:10-19-11. Minimum benefit amount

An Eligible Member may not elect the Medicare Gap Benefit option if the calculation of either the Pre-Medicare or Post Medicare Benefit amounts would result in a gross benefit payment amount of less than $200.00 per month calculated at the time of retirement.

590:10-19-12. Calculation of Cost-of-Living Adjustments

Unless otherwise specified by law, any cost-of-living adjustments to a member's Medicare Gap Benefit shall be calculated based upon the benefit the member is actually receiving at the time of the adjustment. Upon becoming Medicare-eligible, the Post Medicare benefit amounts shall be adjusted to receive the appropriate percentage equivalent of the cost-of-living adjustments granted during the Pre-Medicare Benefit payment period.

590:10-19-13. Medicare Gap benefits and post-retirement employment

(a) A retired member who returns to work with an OPERS participating employer and who has elected a Medicare Gap Benefit option shall have his or her post-retirement participation calculated in accordance with 590:10-7-15 of these rules. Any additional benefit from post-retirement employment will be calculated and paid without adjustment for either the Pre-Medicare Benefit or Post Medicare Benefit.

(b) A retired member who returns to work with an OPERS participating employer and who has elected a Medicare Gap Benefit option is not eligible to waive receipt of their monthly retirement benefit pursuant to 74 O.S. Section 914 (E) or to have retirement benefits recalculated upon termination of employment after completion of thirty-six (36) consecutive months of full-time-equivalent employment.

590:10-19-14. Payments to an alternate payee under a QDRO

(a) An Eligible Member for whom a qualified domestic relations order has been filed and previously accepted by the System prior to the effective date of these rules may elect a Medicare Gap Benefit only if the Pre-Medicare and/or Post Medicare Benefit amounts are sufficient to make the required payment to the alternate payee under the QDRO and result in a payment amount to the member of at least $100.00 per month.

(b) All qualified domestic relations orders filed with the System after the effective date of these rules will be accepted by the System only if it includes a provision requiring that the award will be made for members electing a Medicare Gap Benefit only if the member's Pre-Medicare and/or Post Medicare Benefit amounts are sufficient to make the required payment to the alternate payee under the QDRO and result in a payment amount to the member of at least $100.00 per month.

[OAR Docket #05-699; filed 4-21-05]

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

[OAR Docket #05-700]

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590:15-1-1. Purpose [AMENDED]
590:15-1-2. Administration [AMENDED]
590:15-1-4. ~~Final average~~ Average monthly salary and maximum compensation [AMENDED]
590:15-1-5. Final benefit and Death benefit [AMENDED]
590:15-1-17. Military service credit [AMENDED]
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590:15-1-1. Purpose [AMENDED]
590:15-1-2. Administration [AMENDED]

590:15-1-4. ~~Final average~~ Average monthly salary and maximum compensation [AMENDED]
590:15-1-5. Final benefit and Death benefit [AMENDED]
590:15-1-17. Military service credit [AMENDED]

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ANALYSIS:
The amendments to these rules clarify the role of the OPERS Board of Trustees and set out several specific powers and duties the Board has in administering the Uniform Retirement Plan for Justices and Judges. Other amendments reflect the process for assessing late charges for unpaid contributions, change the calculations for average monthly salary as a result of statutory changes, provide for the final check of a deceased member to go to the estate, and also clarify the statutory provisions relating to grants and purchases of military service credit.

CONTACT PERSON:
Tom Spencer, Executive Director, Oklahoma Public Employees Retirement System, 5801 N. Broadway Extension, Suite 400, Oklahoma City, Oklahoma 73118, 405-858-6737

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

590:15-1-1. Purpose

The rules of this Chapter have been adopted to establish policies and procedures for implementing and administering the Uniform Retirement System for Justices and Judges. The Board of Trustees of the Oklahoma Public Employees Retirement System shall be responsible for the general oversight of the Judicial System and shall generally manage the two Systems in the same manner, except where the statutes or rules specifically provide otherwise.

590:15-1-2. Administration

(a) The ~~Retirement Division of the~~ Oklahoma Public Employees Retirement System shall administer the Uniform Retirement System for Justices and Judges, in accordance with the provisions outlined in Title 20 O.S. ~~1981, Sec. 1108,~~ Section 1101 et seq., as amended, and will coordinate with the Administrative Director of the Courts in the administration of the Uniform Retirement System for Justices and Judges.

(b) The Administrative Director of the Courts shall remit all required court and employee contributions on a monthly basis. All required contributions and supporting documentation must be received by the System on or before the fifteenth (15th) day of the month following the month for which the contributions are due. The Administrative Director of the Courts will be assessed a late charge of 1.5% for any contributions remitted later than 30 days following the due date. The late charge will be calculated on the unpaid balance and will compound monthly until paid.

590:15-1-4. ~~Final average~~ Average monthly salary and maximum compensation

(a) For any Justice or Judge retiring prior to June 30, 2004, ~~Final Average~~ average ~~Salary~~ monthly salary shall be computed averaging the last thirty-six (36) consecutive months of salary received as an active Judge or Justice. Partial months will be included in the average.

(b) For any Justice or Judge retiring after June 30, 2004, average monthly salary shall be calculated as follows:

(1) The highest thirty-six (36) months of salary, excluding longevity payments, received as a Justice or Judge will be determined and totaled;

(2) If applicable, the three (3) highest annual longevity payments upon which retirement contributions have been paid will be added to the sum of the highest thirty-six (36) months of salary. If a Justice or Judge is scheduled to receive a prorated longevity payment at or near the effective date of retirement, the prorated longevity payment will be used only in the amount actually paid for which contributions are withheld and if it is one of the three (3) highest longevity payments;

(3) Average monthly salary will be determined by adding the total of the highest thirty-six (36) months of salary to the highest three (3) longevity payments if applicable, and dividing by thirty-six (36). This calculation is illustrated by the following formula: Total of Thirty-six Months of Highest Salaries + Three Highest Longevity Payments ÷ 36 = Average Monthly Salary;

(c) The monthly benefit amount shall be determined by multiplying four percent (4%) of the average monthly salary by the total number of years of credited service, provided the monthly benefit may not exceed one hundred percent (100%) of the average monthly salary calculated in subsection (b) of this rule.

(d) Except for errors in contribution or service, any amounts of compensation reported to the System as salary prior to June 30, 2004, and for which retirement contributions were paid may be used in the calculations provided in this rule.

(e) Effective for plan years beginning after December 31, 2001, the maximum compensation level for retirement purposes shall not exceed $200,000. This limit shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to compensation for the determination period that begins with or within such calendar year. The determination period is the plan year beginning July 1 through June 30. For retirement purposes in plan years beginning after December 31, 2001, the maximum compensation level for determination periods beginning before January 1, 2002, shall be $200,000 provided all required contributions have been made on that salary.

590:15-1-5. Final benefit and Death benefit

(a) The retirement benefit payable for the month of death of a member or survivor shall be payable to said member or surviving spouse. In the event the final benefit is returned to the System or is not otherwise paid, said benefit will be paid to the member's estate.

(b) The four thousand dollars ($4,000) death benefit available for any retired member who dies on or after July 20, 1987, shall be payable to the beneficiary listed by the member or to the member's estate. This beneficiary designation is not affected by any designation of joint-annuitant, deferred compensation beneficiary or insurance beneficiary, unless otherwise specifically designated in writing by member. For any retired member who died on or after July 1, 1999, the death benefit amount shall be five thousand dollars ($5,000).

590:15-1-17. Military service credit

(a) Any active member who joined the System on or before June 30, 2000, can receive up to five (5) years of prior military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service.

(b) Any active member who joined the System on or after July 1, 2000, can purchase up to five (5) years of prior military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service. The member must make payment in the amount determined by the Board pursuant to Section 1103G of Title 74 of the Oklahoma Statutes and 590:15-1-9. This purchase may be amortized over sixty (60) months as provided for in 590:15-1-10.

(c) Military service credit will be credited or purchased in full months only. The initial month of military service will be accepted only if the service began on or before the 15th day of the month. The final month of military service will be accepted only if the service was completed on or after the 16th day of the month.

(d) Members who joined the System on or after July 1, 2003, can make the purchase set forth in paragraph (b) of this rule only if the member has not received credit for the same period of military service for retirement from another retirement system created pursuant to the Oklahoma Statutes. For such members, the military credit shall be granted or purchased in the retirement system from which the member retires first. In the event such a member fails to disclose a previous grant or purchase of military credit, the purchase will be voided, his or her service credit will be adjusted to remove the military service credit and only the purchase price shall be returned to the member.

(e) It is the responsibility of the member wishing to receive or purchase military service credit to complete the application provided by the System for this purpose and to provide all documentation necessary to support the application. Military service will not be credited until all required documentation is provided by the member to the System, the System has approved the grant or purchase and any required payments are made.

(f) Retired members who are not credited with military service prior to or at the time of retirement may make application for the credit at any time. After approval by the System, the military service credit will be added to the member's record and increased retirement benefits, if any, as a result of the addition of the military service credit, shall begin with the first month following said approval. Retroactive payments will not be made under any circumstances.

(g) Members who served in the Armed Forces of the United States during a war or combat military operation other than World War I, World War II, the Korean War, the Vietnam War or the Gulf War as provided in Section 902 (23) of Title 74 of the Oklahoma Statutes, may be eligible to purchase or receive military service credit for the period of time that he or she actually served in an area of responsibility for a war or combat military operation which lasted for a period of at least ninety (90) days. It is the responsibility of the member to provide sufficient documentation to support his or her eligibility for this credit as requested by the System, including, but not limited to, documents showing specific service areas and times.

(h) The provisions for granting or purchasing military service credit shall be in addition to any contributions, benefits and service credit with respect to qualified military service in accordance with Section 414 (u) of the Internal Revenue Code of 1986.

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

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590:25-5-6 is being amended to address new legislation on the confidentiality of member records and the adoption of a new rule in a previous chapter, 590:10-1-18. The amendment in this chapter and new rule in Chapter 10 address the release of member records as a result of an amendment to 74 O.S. Section 932 contained in Senate Bill 1434.
CONTACT PERSON:
Tom Spencer, Executive Director, Oklahoma Public Employees Retirement System, 5801 N. Broadway Extension, Suite 400, Oklahoma City, Oklahoma 73118, 405-858-6737

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 5. ASSETS, CREDITS, ACCOUNTS AND REPORTS

590:25-5-6. Records

~~The records of the State Employees Deferred Compensation Plan shall be open to inspection during normal business hours by the Employer or a Participant, or their designated representative.~~ Subject to the provisions of 590:10-1-18 of these rules, all ~~All~~ information, documents and copies thereof contained in a Participant's Plan file shall be given confidential treatment and shall not be made public by the Plan without prior written consent of the Participant to which it pertains, but shall be subject to subpoena or court order.

[OAR Docket #05-701; filed 4-21-05]

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

[OAR Docket #05-702]

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590:35-19-8 is being amended to address new legislation on the confidentiality of member records and the adoption of a new rule in a previous chapter, 590:10-1-18. The amendment in this chapter and new rule in Chapter 10 address the release of member records as a result of an amendment to 74 O.S. Section 932 contained in Senate Bill 1434.
CONTACT PERSON:
Tom Spencer, Executive Director, Oklahoma Public Employees Retirement System, 5801 N. Broadway Extension, Suite 400, Oklahoma City, Oklahoma 73118, 405-858-6737

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 19. ADMINISTRATION OF PLAN

590:35-19-8. Records

~~The records of the Plan shall be open to inspection during normal business hours by the Employer or the Participant, or his designated representative.~~ Subject to the provisions of 590:10-1-18 of these rules, all ~~All~~ information, documents and copies thereof contained in a Participant's Plan file shall be given confidential treatment and shall not be made public by the Plan without prior written consent of the Participant

to which it pertains, but shall be subject to subpoena or court order.

[OAR Docket #05-702; filed 4-21-05]

TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 25. HIGHWAY CONTRACTORS

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Subchapter 3. Contractor Prequalifications and Proposals
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730:25-3-6. [AMENDED]
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200 N. E. 21st Street
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These rules are applicable to construction and maintenance contractors, subcontractors, material suppliers and equipment suppliers that have been conducting business in Oklahoma. The changes extend the time of debarment from bidding on Department projects when a contractor commits a serious act prohibited by state and federal laws. They provide regulations that insure that a contractor has adequate financial resources to maintain progress on Department projects and to pay sub-contractors and material suppliers in a timely manner. The amendment also clarifies that unless a different burden of proof is required by law or rule, the burden of proof shall be a preponderance of evidence. These rules are promulgated in accordance with the provisions of 69 O.S. §§ 4002 and 4005.
CONTACT PERSON:
Michael E. Mayberry, Assistant Director-Administration, ODOT, 200 N.E. 21st Street, Room 1B-7, Oklahoma City, OK 73105, 405-522-6000

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2005:

SUBCHAPTER 3. CONTRACTOR PREQUALIFICATIONS AND PROPOSALS

730:25-3-5. Debarments and suspensions

(a) **Debarment.** A contractor, any of its directors, officers, agents, or employees, any affiliate of a contractor, any sub-contractor, or any material supplier who commits a "bidding crime," defined as "any act prohibited by any state or federal law committed in any jurisdiction, such act involving fraud, conspiracy, collusion, perjury or material misrepresentation with respect to bidding on any contract, public or private," any such act in the performance of a contract awarded by the Commission, or for the reasons set forth in this section shall be subject to debarment proceedings.

(1) Debarment may occur for any of the following reasons:

(A) Conviction of a bidding crime resulting from a bench or jury trial, any plea of guilty or nolo contendere, any public admission of a bidding crime by any contractor, or any presentation of an unindicted co-conspirator admitting guilt of a bidding crime; or

(B) Conviction of any offense indicating a lack of moral and ethical integrity which may reasonably be perceived as relating to or reflecting upon the business practices of the company, its officers, or directors; or

(C) Any other cause of a serious and compelling nature affecting the responsibility of the contractor; or

(D) Disqualification or debarment by another state or an agency of this State, or an agency of the Federal Government.

(E) Failure or refusal to comply with the terms of the contract or state law.

(F) Failure to fulfill obligations imposed by or as a result of the contract with the state or by state law.

(2) No conviction, whether from bench or jury trial, nor any plea of guilty or nolo contendere which is more than five (5) years old at the time of discovery by the Department shall be used as the sole basis for a debarment.

(3) Upon preliminary determination by the Department that a contractor is subject to debarment under this subchapter, the Director shall cause the contractor or other entity or individual to be notified by certified mail that its prequalification has been suspended or its opportunity to participate in Department contracts is suspended pending determination of whether a debarment should be imposed, and that the contractor has the right to request a hearing.

(4) If the contractor desires a hearing, a Petition for Administrative Appeal shall be filed by certified mail with the Hearing Liaison Officer postmarked within ten (10) days after receipt of the notice of suspension pending debarment (weekends and holidays excluded). Filing may also be made in person by the contractor.

(5) The hearing shall be held no more than ninety (90) calendar days from the date the request for hearing is received by the Hearing Liaison Officer unless the hearing date is continued by the Presiding Officer at the request of the contractor or by agreement of the parties.

(6) Debarment by the Department for the reasons stated in (a)(1)(A), (a)(1)(B), or (a)(1)(C) of this section shall be for a period of not less than ~~three (3) months~~ thirty six (36) months. Debarment for the reasons stated in (a)(1)(E) and (a)(1)(F) of this section shall be for a period of not less than twelve (12) months.

(7) Debarment for the reason stated in (a)(1)(D) of this section shall be for the period of time assessed by the originating agency.

(8) The Director may lift or suspend a debarment at any time if it is in the public interest. The following mitigating circumstances may influence this decision:

(A) Degree of culpability.

(B) Restitution of damages to the State.

(C) Cooperation in the investigation of other bidding crimes.

(D) Disassociation with those involved in bidding crimes or other improper action.

(E) Whether lengthy disqualification and debarment is required for protection of the State.

(9) Debarment shall prohibit the debarred entity, all directors, officers, agents, employees and affiliates from acting as a subcontractor, materials supplier, equipment supplier or lessor, labor or services contractor, fee appraiser, contract broker, inspector, real estate agent or broker, consultant, architect, engineer, or attorney on any Department project, as well as denying the privilege of bidding as a prime contractor.

(10) Illegal or improper conduct of any individual may be fully imputed to the business firm with which the individual is or was associated, or by whom the individual was employed, where that conduct was engaged in within the course of the individual's employment, or with knowledge or approval of the business firm, or thereafter ratified by it.

(11) Debarment in no way affects the obligations of a contractor to the Department to complete services already under contract, however the Commission reserves the right to terminate the contracts of a debarred entity if termination is in the best interest of the State.

(12) The Director may, in the public's best interest, suspend or otherwise delay inquiry, review, or any debarment in the event such action may impede, hinder or delay federal or state investigations.

(13) Any contractor qualified to bid upon contracts to be awarded by the Commission shall have a duty to notify the Department if it is convicted of any bidding crime within thirty (30) days of such conviction. Failure to furnish this notification is a serious and compelling offense sufficient to result in debarment in and of itself.

(b) **Performance suspension.** A contractor, any of its directors, officers, agents, or employees, any affiliate of a contractor, any subcontractor, or material supplier may be suspended from doing work for the Department or participation in a project funded by the Department.

(1) Performance suspension may occur for any of the following reasons:

(A) If the contractor, person, or entity, including subcontractors, proposed for suspension fails or refuses to prosecute all of the work or any separable part thereof, with such diligence as will insure its completion within the time specified in the contract, including any extension, or fails to complete the work under any one of the contractor's contracts within the time specified; or

(B) A completed investigation or civil judgement evidences a serious lack of business integrity; the contractor exhibits willful disregard for lawful requirements; there is repeated noncompliance with rules, regulations, contract specifications or the terms of other agreements including failure to honor valid debts incurred in the performance of the project; or

(C) An indictment for crimes or a civil judgement which indicates a reckless disregard for safety of the traveling public or structural integrity of a highway, bridge or fixtures, so that continued involvement of the suspected offender creates a risk to public safety or a potential for structural failures; or

(D) A demonstrated lack of proficiency in performing work on Department projects evidenced by performance evaluations of "unsatisfactory" on two (2) ratings in one (1) year, or

(E) Three (3) reports of safety violations in which there were significant risk to the health or life of a person or significant damage to property or one (1) report of a safety violation in which gross neglect or reckless disregard for the health or life of a person occurred.

(2) The Director or his designee may impose performance suspension upon a contractor for a period of not less than twelve (12) months or more than sixty (60) months as may be specified in the final agency order upon:

(A) Failure by the contractor to timely file a Petition for Administrative Appeal after proper notification of proposed performance suspension by the Hearing Liaison Officer.

(B) Conclusion of an administrative review hearing in accordance with 730:25-3-6(e)(3).

(3) Upon preliminary determination by the Department that a contractor is subject to performance suspension under this subchapter, the Hearing Liaison Officer shall notify the contractor by certified mail that his prequalification has been temporarily suspended pending determination of whether a performance suspension should be imposed, and that the contractor has the right to request a hearing as set forth in this section.

(4) If the contractor desires a hearing, a Petition for Administrative Appeal shall be filed by certified mail with the Hearing Liaison Officer postmarked within ten (10) days after receipt of notice of temporary suspension (weekends and holidays excluded). Filing may also be made in person by the contractor.

(5) The hearing shall be held no more than ninety (90) calendar days from the date the request for hearing is received by the Hearing Liaison Officer unless continued by the Presiding Officer at the request of the contractor or

by mutual agreement of the parties. Except as otherwise ordered by the Presiding Officer or the Director, the proposed suspension shall be held in abeyance during the time the hearing is pending.

(6) Performance suspension shall prohibit the contractor, all directors, officers, employees of the contractor and affiliates from acting as a subcontractor, materials supplier, equipment supplier or lessor, labor or services contractor, fee appraiser, contract broker, inspector, real estate agent or broker, consultant, architect, engineer, or attorney of any Department project as well as denying the privilege of bidding as a prime contractor.

(7) Illegal or improper conduct of any individual may be fully imputed to the business firm with which the individual is or was associated, or by whom the individual was employed, where that conduct was engaged in within the course of the individual's employment, or with knowledge or approval of the business firm, or was thereafter ratified by it.

(8) Performance suspension in no way affects the obligations of a contractor to the Department to complete services already under contract, however the Commission reserves the right to terminate the contracts of a suspended entity if termination is in the best interests of the State.

(c) **Burden of proof.** A proper filing of a Petition for Administrative Appeal by a contractor who has been notified of debarment or performance suspension shall give effect to the notice of hearing and appeals procedures contained in 730:25-3-6. At such hearing on the merits it shall be the burden of the Department to establish by clear and convincing evidence that the contractor did or failed to do those acts or omissions which resulted in the notification of the contractor of debarment or performance suspension.

730:25-3-6. Notice, hearings, and appeals for debarments or suspensions

(a) **Definitions.** The following terms and procedures shall apply to the conduct of hearings for debarments and suspensions as set forth in this section and such other hearings as the Department may determine. The following words and terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise.

(1) **"Administrative appeal"** means the complete procedure that takes place, including the filing of a petition, to conduct an administrative review of a decision of the Department of Transportation when such decision is reviewable under this chapter or as otherwise provided.

(2) **"Administrative head"** means the Director of the Oklahoma Department of Transportation or a person officially designated by the Director to issue final agency orders in administrative appeals under this section.

(3) **"Affidavit"** mean a written statement of facts, made voluntarily, confirmed by the oath or affirmation of the party making such written statement and which is taken before a person with statutory authority to administer such oath or affirmation.

(4) **"Allegation"** means the claim of a party which that party expects to prove in the administrative hearing.

(5) **"Allege"** means to state, assert or charge; to make an allegation.

(6) **"Appellant"** means the party who files a petition for hearing.

(7) **"Burden of proof"** means the obligation of a party to establish alleged fact(s) by clear and convincing evidence.

(8) **"Continuance"** means a postponement of a status conference, prehearing or hearing to a future date. Continuances shall be granted at the discretion of the Presiding Officer for good cause shown.

(9) **"Cross-examination"** means the questioning of a witness by a party other than the party calling the witness. Cross-examination may only involve the issues covered in direct examination.

(10) **"Deposition"** means a form of discovery in which the testimony of a party or witness is taken and recorded prior to an administrative hearing. Depositions shall be taken before a court reporter in response to a subpoena unless otherwise taken by agreement of the parties.

(11) **"Direct examination"** means the questioning of a witness by a party calling the witness.

(12) **"Discovery"** means the process of determining relevant information for use at an administrative hearing. Discovery is conducted prior to an administrative hearing and upon order of the Presiding Officer unless otherwise agreed to by the parties.

(13) **"Dismiss"** means to close an administrative hearing without further consideration.

(14) **"Evidence"** means relevant documents or testimony that tends to prove or disprove the existence or non-existence of a fact.

(15) **"Ex parte communications"** means improper communication of a material nature between the Presiding Officer and only one party or a witness, concerning the factual or legal issues of an administrative hearing which could affect the outcome of the hearing.

(16) **"Director"** means the Chief Operating Official of the Oklahoma Department of Transportation.

(17) **"Exhibit"** means document(s) or other physical thing(s) formally introduced as evidence at an administrative hearing.

(18) **"Filing"** means the formal delivery of documents to the office of the Hearing Liaison Officer of the Oklahoma Department of Transportation.

(19) **"Final agency order"** means a written determination made by the Director or his designee to decide an individual proceeding.

(20) **"Hearing"** means an open, formal meeting conducted by a Presiding Officer to decide an appeal. The meeting is to provide each party with an opportunity to present evidence in support of the party's side of the case.

(21) **"Hearing examiner"** means a person appointed by the Director to hold hearings and as required render proposed orders.

(22) **"Hearing liaison officer"** means the person appointed by the Director to act as the official repository of

the records of all hearings conducted under this subchapter and to perform such other duties as may be set forth herein.

(23) **"Interrogatories"** means a form of discovery consisting of a set of written questions about the subject matter of the appeal which are submitted to the other party or a witness. Answers to interrogatories shall be made in writing under oath upon order of the Presiding Officer unless otherwise agreed to by the parties.

(24) **"Intervenor"** means a person or agency permitted to voluntarily enter an administrative appeal as a party.

(25) **"Issue"** means a disputed point or question on which the parties to an administrative appeal seek a resolution.

(26) **"Motion"** means a request from a party for a ruling or order to be made by the Presiding Officer.

(27) **"Notice"** means a written announcement of an action or proposed action.

(28) **"Order"** means a command or directive given by the Presiding Officer in an administrative appeal.

(29) **"Party"** means a person or agency by whom or against whom an administrative appeal is filed and includes a person or agency permitted to intervene in an administrative appeal.

(30) **"Petition for appeal"** means the formal document filed by a person with the Hearing Liaison Officer whereby the person requests a hearing and seeks a remedy.

(31) **"Petition for reconsideration or rehearing"** means a formal application filed after the final agency order has been made by the Presiding Officer requesting a rehearing or reconsideration of the case. A petition for reconsideration or rehearing shall state specifically each fact upon which the party relies to request reconsideration or rehearing and shall further state each legal theory citing specific authority which the party contends mandates rehearing or reconsideration.

(32) **"Prehearing conference"** means a meeting conducted by the Presiding Officer with the parties or their representatives to identify the issues for hearing, present final list of documents, final witness lists and to entertain motions not previously ruled upon. The Presiding Officer will issue a prehearing order which will guide the Presiding Officer and the parties in the conduct of the administrative hearing.

(33) **"Preponderance of evidence"** means information or evidence which is more convincing or believable than the information or evidence offered in opposition.

(34) **"Presiding officer"** means the Director, his designee to issue final agency orders, or Hearing Examiner who will actually conduct the administrative hearing.

(35) **"Proposed order"** means the order prepared by the Hearing Examiner at the conclusion of the hearing which is submitted to the parties for their consideration.

(36) **"Relevant"** means directly related to the issue or issues of the administrative appeal.

(37) **"Remedy"** means corrective action sought by the appellant, offered by the respondent, or ordered as a result of the hearing.

(38) **"Representative"** means an agent acting on behalf of a party.

(39) **"Respondent"** means the party to an administrative hearing against whom the petition for administrative hearing is filed.

(40) **"Status conference"** means a meeting conducted by the Presiding Officer with the parties to establish discovery schedules, motion and briefing schedules, resolve procedural issues and to expedite the hearing process.

(41) **"Stipulation"** means a voluntary agreement between the parties which establishes a fact.

(42) **"Subpoena and subpoena duces tecum"** means an order to appear at a certain time and place to give testimony. A Subpoena Duces Tecum additionally requires the person who is ordered to appear to produce books, papers and other documents or tangible things. A subpoena or subpoena duces tecum shall only issue, or be of any force and effect, when approved in writing by the Presiding Officer.

(43) **"Sustain"** means to grant a request or to grant the remedy requested in an administrative appeal.

(44) **"Testimony"** means statements given by a witness under oath or affirmation.

(b) **General provisions.**

(1) **Initiation of appeal.** The administrative hearing process conducted under this procedure begins with the filing of a petition for the administrative review of an action or proposed action by the Department under this subchapter. The petition shall be filed with the Department's designated Hearing Liaison Officer. The petition must be filed with the Hearing Liaison Officer within the time period provided in the section relating to the action or proposed action. Filing of a petition within the period provided is a jurisdictional prerequisite. Upon receipt of a petition for an administrative hearing, the Hearing Liaison Officer shall immediately notify the Director and the Office of the General Counsel and provide them with a copy of the petition. The Director shall file with the Hearing Liaison Officer a written designation of the Presiding Official for the administrative appeal. The Hearing Liaison Officer shall provide a copy of this designation to the Appellant and the Office of the General Counsel. The Office of the General Counsel shall file with the Hearing Liaison Officer a copy of the notice of the action or proposed action which is the subject of the appeal.

(2) **Form of petition.** The petition for an administrative appeal shall be in general conformance with the example provided as Appendix A to this chapter. The petition shall be notarized. The Hearing Liaison Officer shall not accept for filing an unnotarized petition.

(3) **Answer.** The Department shall, within twenty (20) days of the receipt of the petition by the Hearing Liaison Officer, file with the Hearing Liaison Officer an answer to the Appellants petition which states the basis upon which the Department proposes the appealed action. A copy of the Answer shall be mailed to the Appellant or its designated representative by the Hearing Liaison Officer.

(4) **Representation of parties.** Parties shall have the right to counsel at all stages in an administrative appeal so long as the person is willing and available to serve. Counsel must be duly licensed to practice law in the State of Oklahoma by the Oklahoma Supreme Court. The parties shall designate their representatives, if any, in the petition for appeal or response except as otherwise provided in this section. A change in representation must be submitted to the Hearing Liaison Officer in writing.

(5) **Ex parte communications.** Ex parte communications with the Presiding Officer are prohibited from the time the parties involved know that the administrative appeal will be scheduled for hearing until a final decision has been issued. This prohibition applies only to communications which involve the merits of the case or those which violate requirements for written communications. This provision does not apply to communications authorized or required by the law nor matters not related to the administrative appeal.

(6) **Intervenors.** Any person, having a valid demonstrable interest in the outcome of an administrative appeal proceeding may request permission to intervene in an administrative appeal. A motion to intervene and proposed order must be made in writing at the earliest possible time and must include a showing that the outcome of the administrative appeal would directly affect the person requesting leave to intervene. The motion with brief shall be filed with the Hearing Liaison Officer and copies shall be served on all parties to the administrative appeal. Intervenors will be considered full parties and will have the same rights and duties as an original party, except that intervenors do not have an independent right to an administrative hearing and may only participate on the issues affecting them as stated in the order granting intervention.

(7) **Dismissal and penalties.**

(A) The Presiding Officer may dismiss an appeal if;

(i) the appeal is clearly moot or is without merit; or

(ii) the Petitioner fails or refuses to appear for a scheduled hearing, a pre-hearing conference, or other conferences ordered by the Presiding Officer, or to accept a settlement offer which affords the relief the Petitioner could reasonably expect if he or she prevailed in the administrative hearing.

(iii) the Presiding Officer may dismiss an administrative appeal because it was not properly filed or is not within the scope of the Department's authority or jurisdiction.

(B) If the appeal has been scheduled for administrative hearing, the Presiding Officer will issue a notice of proposed dismissal including the basis for such decision to all parties. Responses from the parties must be received by the Hearing Liaison Officer within fifteen (15) calendar days. If the Presiding Officer is the Director or designee to issue final agency orders, and no responses are received, the proposed order becomes final on the date the proposed order of dismissal is issued. If the Presiding Officer is a Hearing Officer not designated to issue final agency orders, the record shall be forwarded to the Director with the response, if any, and the Director may issue the dismissal as a final agency order.

(C) The Director may issue orders, including dismissal of appeal or denial of relief, as may be warranted for failure or refusal to comply with an order.

(8) **Duties of the Hearing Examiner.** Hearing Examiners shall conduct fair and impartial hearings and take all necessary actions consistent with fairness to the parties to avoid delay in the disposition of the administrative appeal. The Hearing Examiner shall have all powers necessary to that end except as otherwise limited by law. A Hearing Examiner must withdraw from any case in which he or she cannot accord a fair and impartial administrative hearing. The Hearing Examiner shall state on the record the reasons for withdrawing and shall immediately notify the Director who shall appoint a new Hearing Examiner.

(9) **Conduct of hearings and burden of proof.** All administrative hearings shall be conducted by a Presiding Officer in accordance with the provisions of this section. Administrative appeals filed under this section will unless otherwise specified, be decided based on a preponderance of the evidence. No administrative hearing shall be held in closed or executive session; provided however, on motion of a party, the Presiding Officer may close parts of a hearing wherein evidence of a confidential nature, as determined under the Oklahoma Open Records Act, is to be introduced. In debarment and performance suspension proceedings the Department shall have the burden of proof and shall present its case first. In other matters the Petitioner shall have the burden of proof and must present his or her case first. The Respondent may respond. The burden of proof as to each material fact in an administrative hearing shall rest upon the Petitioner.

(c) **Status conferences and prehearing conferences.**

(1) **Status conferences.** The Presiding Officer may schedule one or more status conferences after the filing of a petition. At a status conference the Presiding Officer may establish a schedule for discovery and a discovery cut-off date, a schedule for briefing and motions and enter such additional orders as necessary to resolve procedural issues and expedite the administrative hearing process.

(2) **Prehearing conferences.** The Presiding Officer shall schedule a prehearing conference on any administrative appeal which has been set for hearing. The conference will serve to clarify, isolate and dispose of further procedural issues as well as factual and legal issues upon which the parties agree. The parties shall provide to the Presiding Officer and to each other a final list of witnesses which shall include a synopsis of the witnesses' testimony; a final list of proposed exhibits, and documents to be offered into evidence; a statement of stipulations agreed and proposed; and a statement of the factual and legal issues to be determined in the hearing. The prehearing conference will be conducted by the Presiding Officer, who shall take an active part in the conference. On his own initiative, or the request of a party, the Presiding Officer may disqualify any

representative for conflict of interest or other good cause shown. A request for disqualification must be submitted in writing to the Hearing Liaison Officer as soon as the party becomes aware of a reason that justifies the request.

(3) **Consolidation and joinder.**

(A) The Presiding Officer may order:

(i) the consolidation of administrative appeals and joinder of parties if to do so would expedite the processing of the administrative appeal and not adversely affect the interests of the parties;

(ii) an additional party joined as a party of record and to appear in a hearing; and

(iii) an administrative appeal dismissed as to one or more parties of record where such dismissal is supported by the relevant law and facts.

(B) On request of any party, the Presiding Officer may order the actions cited in (A) of this paragraph. Such orders will be served on the parties by certified mail or personal service.

(4) **Motions and applications for orders.** Motions and applications for orders must be in writing and must state the specific reasons for the request and the authority upon which the request is based. Unless otherwise provided in a status conference order all motions shall be filed prior to the prehearing conference. All motions shall be accompanied by a brief except for motions for extension of time, continuances, to amend or file supplemental pleadings to compel discovery, or to issue subpoenas. Each motion or application shall be accompanied by a proposed order. Motions and applications must be filed with the Hearing Liaison Officer with copies provided to the Presiding Officer and all other parties. Oral motions may be made during the hearing.

(5) **Witnesses.** Each party to an administrative appeal may call witnesses to testify and offer evidence in support of that parties' contentions.

(A) **Witness lists.** All parties shall submit a list of witnesses expected to be called during the hearing. The list must include a brief statement describing the testimony to be offered. This list shall be provided to the Presiding Officer and all parties at the prehearing conference or at least seven (7) working days prior to the hearing if no prehearing conference is held. A copy shall also be filed with the Hearing Liaison Officer.

(B) **Witnesses.** Employees of the Department appearing as witnesses pursuant to a subpoena shall be released from duty without loss of pay or time and without effect on their service ratings. The Presiding Officer or any party may request the attendance of employees or other persons as witnesses when their testimony will aid in establishing the facts in the proceeding. The cost of securing the attendance of witnesses who are not Department employees or employees of the Petitioner or any other party, shall be computed as provided for in civil cases in Oklahoma District Courts and shall be paid directly to the witness by the party producing the witness at the administrative hearing.

(6) **Subpoenas.** Any party may request the Presiding Officer to issue an order and subpoenas for the production of documents or attendance of witnesses. A Subpoena Duces Tecum may additionally require a witness to produce books, records, accounts, papers and other instruments and tangible objects, which shall be reasonably described.

(A) **Request for subpoena.** A motion for an order and subpoena must be submitted at the prehearing conference or, if no conference is held, no less than seven (7) working days before the administrative hearing. The motion must be supported by a showing of general relevance and reasonable scope and a statement of the facts expected to be proven. The motion shall be accompanied by a proposed order and proposed subpoenas to be issued.

(B) **Service of subpoena.** The service of a subpoena is the responsibility of the party who requests the subpoena. The subpoena may be served by any person who is eighteen (18) years of age or older. The person serving the subpoena shall provide a notarized, written statement showing the person served and the time and manner of service. (This may be satisfied by filling out an affidavit of service on the subpoena form.) Service may be made by personal service to the individual subpoenaed or by certified mail. In either case, a subpoena must be served at least (72) hours before the administrative hearing. The attendance of a witness shall not be required unless the original subpoena, with affidavit of service or notarized written statement of service, is on file with the Hearing Liaison Officer at the time of the administrative hearing.

(C) **Quashing or limiting subpoenas.** The Presiding Officer may quash or limit a subpoena on the motion of any party, or at the request of the witness, if:

(i) it appears the subpoena was used primarily as a means of harassment;

(ii) the testimony or documents sought are cumulative;

(iii) the testimony or documents sought are not relevant or material;

(iv) to respond to the subpoena would be unduly burdensome; or

(v) for other good cause shown, basic fairness dictates that the subpoena be quashed or limited.

(7) **Continuances.** Every continuance of an administrative hearing or a prehearing conference shall be to a day certain. Any continuances granted shall not exceed sixty (60) calendar days except for good cause shown. The Presiding Officer may continue or adjourn an administrative hearing for good cause at any time. The cause must be stated in the record and will become part of the official record of the administrative hearing.

(d) **Discovery.** Discovery is the process, apart from the administrative hearing itself, whereby a party may obtain

relevant information from another person or an agency. This information is obtained for the purpose of assisting the parties in developing, preparing and presenting their cases. Discovery may be undertaken when it is agreed to by the parties; required by law; or ordered by the Presiding Officer upon proper application of a party as set forth in this section.

(1) **Depositions.** The manner of taking depositions and the attendance of witnesses shall be governed by the laws relating to taking of depositions for use in the Oklahoma District Courts, except that, the attendance of a witness not a party or employee of a party for deposition shall be required only in the county of his or her residence. The order of the Presiding Officer authorizing the taking of a deposition and issuance of a subpoena shall state the time and place the deposition will be taken. The party requesting the deposition shall serve a copy of the order by regular mail on each party and on the witness to be deposed at least five (5) calendar days before the scheduled taking of the deposition. A deposition may be offered in evidence at the administrative hearing by any party.

(2) **Production of documents.** An order of the Presiding Officer may require a party or any person to produce documents or tangible objects for inspection by parties or to be offered into evidence. The order shall direct production at the hearing and/or prehearing conference, unless some other place is stated in the order.

(A) The party applying for the order shall serve a copy of the order on each party and any other person or agency ordered to produce documents at least ten (10) calendar days prior to the date upon which production is required.

(B) An order may require production of any document not privileged which constitutes or contains evidence relevant to the subject matter of the administrative appeal, or which may reasonably lead to such evidence. Business records are not privileged as such; however confidential business records and information will be protected from disclosure except where directly relevant to the issues in the appeal.

(C) The order shall identify the documents or objects to be produced individually or by categories, and shall include enough detail to permit easy identification by the party or person ordered to make production. Burdensome requests for records may be denied in full by the Presiding Official. An exact photographic copy of a document may be substituted for the original, if permitted by the Presiding Official.

(3) **Interrogatories (written questions).** An order of the Presiding Officer may require a party or other person to answer written questions attached to the order. The party or a person authorized to make the answer must answer the questions in writing under oath. Unless otherwise ordered, the answers shall be submitted at the prehearing conference. The party applying for the order shall serve a copy of the order, with interrogatories attached, on each party. The party applying for the order must deliver the order by mail or personal service at least ten (10) calendar days before the date on which answer is required. The party propounding the Interrogatories shall file a copy of the answers with the Hearing Liaison Officer.

(4) **Protective orders.** Protective orders relating to discovery may be issued by the Presiding Officer as necessary or appropriate for the protection of the parties and others, and to prevent hardship to and excessive burden on a party or other person. The orders may:

(A) limit the scope of questions;

(B) prohibit questions or subjects of inquiry;

(C) limit or excuse, in whole or in part, production of documents or answers to questions; and

(D) shorten or extend the time within which any act may be performed.

(5) **Admission of facts and genuineness of documents.** The Presiding Officer may order a party or any other person to respond to requests for admissions of the genuineness of any relevant documents or the truth of any matters of fact or application of law to the facts. Within ten (10) calendar days or in the time period ordered by the Presiding Officer, the party must submit a response to a request for Admissions to each party and file a copy with the Hearing Liaison Officer. The statement must specifically deny, admit or express a lack of knowledge about the matters on which an admission is requested; otherwise, the statement must include an objection to the request for admission in whole or in part because the admission requested is privileged, irrelevant or otherwise improper. Any admission or part of an admission not denied or properly objected to shall be deemed admitted for the purposes of the administrative hearing.

(6) **Stipulations.** The parties may stipulate or agree on any matter of fact. Such an agreement will satisfy a party's burden to prove the fact alleged. Stipulations shall be presented to the Presiding Officer at the prehearing conference and shall be filed with the Hearing Liaison Officer.

(7) **Enforcement of discovery.** Orders issued by the Presiding Officer shall be done in conformance with the provision of 75 O.S., Section 315 and may be enforced in accordance with that section. The Presiding Officer may additionally impose such sanctions including dismissal of the appeal as necessary to promote justice.

(e) **Appeal hearing.** The administrative hearing to appeal an action or proposed action of the Department shall be conducted in general conformance with the rules of evidence used in the Oklahoma district courts, and trial proceedings shall be conducted in general conformance with the rules and procedures governing non-jury civil trials.

(1) **Record.** The hearing record shall as a minimum include:

(A) Petitioner's petition for an administrative appeal; respondents response, and all pleadings, motions, and intermediate rulings;

(B) evidence received or considered at the individual proceeding;

(C) a statement of matters officially noticed;

(D) questions and offers of proof, objections, and rulings thereon;

(E) proposed findings and exceptions only if requested by the Presiding Officer; no proposed findings are required under this section;

(F) any decision, opinion, or report by the Presiding Officer conducting the hearing;

(G) all other evidence or data submitted to the Presiding Officer in connection with the consideration of the case provided all parties have access to such evidence.

(2) **Transcripts of hearings.** The Presiding Officer will make a record of all administrative hearings by audio tape recording or by use of a court reporter. If the administrative hearing record is taken by audio tape recording, no written transcript of the tape recording will be prepared except on written application to the Presiding Officer. The cost of transcribing the recording shall be charged to the party requesting the transcription. The Presiding Officer shall advise the parties at the prehearing conference if held or ten (10) days prior to the hearing if no prehearing conference is held whether the Department will provide a court reporter. Any party requesting that the administrative hearing be recorded by a court reporter in lieu of a tape recording must make the necessary arrangements for the service. The party requesting the recording services shall bear the expense and costs. The Presiding Official may designate the court reporter's transcript to be the official record of the hearing.

(3) **Issuance of decisions.** The record shall be closed when all parties have had an opportunity to be heard and to present evidence and argument.

(A) If the Presiding Officer at the hearing is the Director, or designee to issue final agency orders, the Presiding Officer will file the final decision with the Hearing Liaison Officer.

(B) The final decision shall include findings of fact and conclusions of law, separately stated. The Hearing Liaison Officer shall send the decision to the Petitioner, the Respondent, and all other parties, by certified mail or deliver the decision by personal service within five (5) calendar days after it is filed.

(C) The decision of the Director or designee to issue final orders, shall be the Final Agency Order and conclusive except as provided for in the Administrative Procedure Act and this chapter, concerning petitions to rehear or reconsider cases.

(D) If the Presiding Officer is a designated Hearing Examiner and the Director is to issue the Final Agency Order after reading the record of the individual proceeding, the Hearing Examiner shall make this known to the parties on the record at the beginning of the hearing. At the conclusion of the hearing the Hearing Examiner shall direct preparation of the transcript of the hearing, which when complete, shall be forwarded to the Director with the complete record of the individual proceeding. The Director shall issue the decision as set forth in this section.

(E) If the Presiding Officer is a designated Hearing Examiner and the Director has not heard the case nor will the Director read the record of the proceeding, the Hearing Examiner shall prepare a proposed order which shall be served upon the parties. The proposed order shall contain a statement of the reasons therefore and of each issue of fact or law necessary to the proposed order. The Hearing Examiner shall allow not less than fifteen (15) days for the parties to provide briefs concerning the proposed order. At the request of any party, the Hearing Examiner shall allow for oral argument concerning the proposed order.

(F) The Hearing Examiner shall, through the Hearing Liaison Officer, after full consideration of the law and facts and the arguments of the parties, issue to the parties and the Director the final proposed order of the Hearing Examiner. The final proposed order shall be served on the parties at least fifteen (15) days prior to the hearing at which the Director shall consider the proposed order. At the hearing the parties may present briefs and oral arguments. The Director may issue the final proposed order as the Final Agency Order or may take the matter under advisement and issue the Final Agency Order after further consideration.

(f) **Petitions to rehear or reconsider cases.**

(1) **Submission of petition.** A party adversely affected by Final Agency Order of the Department may petition for rehearing or reconsideration of the Final Agency Order. The party must file the petition with the Hearing Liaison Officer within ten (10) calendar days after the issue date of the Final Agency Order and shall serve copies of the petition on all other parties.

(A) The petition must be filed in accordance with the provisions of Section 317 of Title 75 of the Oklahoma Statutes (Oklahoma Administrative Procedures Act). It must identify the specific law or evidence which should be considered. The request must include any new evidence and verification that such evidence is true.

(B) Any party to the case may file a response in support of, or in opposition to, the petition. Written responses must be filed with the Hearing Liaison Officer within ten (10) calendar days after the petition is filed. Copies of the response must be served by the responding party on all other parties.

(C) Petitions will be scheduled for consideration by the Presiding Officer on the earliest possible date. All parties will be notified of the date, time and location of the hearing on the petition to rehear or reconsider.

(2) **Consideration of petition.**

(A) The petitioning party must be present when a petition for rehearing or reconsideration is considered. All other parties are encouraged to attend.

(B) The Director or designee to issue final orders will consider the petition and any response(s) to it. The Director or designee to issue final orders may permit oral arguments from the parties and may request information from any agency or person.

(C) When a petition is granted or denied, the Director or designee to issue final orders will state the

grounds upon which rehearing or reconsideration of the matter is granted or denied. If a rehearing or reconsideration is granted, the rehearing or reconsideration will be confined to those grounds upon which the petition was granted. An order granting rehearing or reconsideration is not a Final Agency Order.

(D) The filing of a petition pursuant to this section or a petition for judicial review does not automatically stay the original decision.

(3) **Final agency order.** If a petition for reconsideration or rehearing is denied, the Final Decision of the Director or designee to issue final orders and the decision to deny rehearing or reconsideration shall constitute the Final Agency Order.

(g) **Procedures generally applicable.** The procedures set forth herein shall be applicable to all hearings conducted in matters of debarment or performance suspension and may be applied in such other administrative hearings as may be conducted by the Department when such hearings require a full due process hearing.

[OAR Docket #05-716; filed 4-22-05]

Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code.*

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

TITLE 1. EXECUTIVE ORDERS

1:2005-13.

EXECUTIVE ORDER 2005-13

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Thursday, April 28, 2005, to honor Jim Barker, who died on Monday, April 25, 2005.

A native of Muskogee, Barker attended the Oklahoma Military Academy and received his undergraduate degree from Northeastern Oklahoma State University. He then served in the U.S. Army as commander of a tank company in the 1st Infantry Division. First elected to the Oklahoma House of Representatives in 1969, Barker served for sixteen (16) years and is the only House member in the history of Oklahoma to be elected House speaker four times.

Jim Barker made an indelible mark on the Oklahoma political scene, serving as one of the most influential House speakers in modern history. He will be missed, but his service and contributions will not be forgotten.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, the 26th day of April, 2005.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

BRAD HENRY

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #05-726; filed 4-27-05]