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Notices of Rulemaking Intent

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

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

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

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 656. WATER POLLUTION CONTROL FACILITY CONSTRUCTION

[OAR Docket #05-1136]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Introduction [AMENDED]
Subchapter 3. Permit Procedures [AMENDED]
Subchapter 5. Sanitary Sewer Standards [AMENDED]
Subchapter 7. Pump Station Standards [AMENDED]
Subchapter 9. General Standards [AMENDED]
Subchapter 11. Lagoon Standards [AMENDED]
Subchapter 13. ~~Preliminary~~ Primary Treatment Standards [AMENDED]
Subchapter 15. Biological Treatment Standards [REVOKED]
Subchapter 16. Biological Treatment Standards [NEW]
Subchapter 17. Clarifier Standards [AMENDED]
Subchapter 19. Sludge Facility Standards [AMENDED]
Subchapter 21. Disinfection Standards [AMENDED]
Subchapter 23. Supplemental Treatment Standards [AMENDED]
Subchapter 25. Wastewater Land Application Systems [AMENDED]
Appendix A. Design Tables [REVOKED]
Appendix A. Design Tables [NEW]
Appendix B. Settling Tank Minimum Criteria [REVOKED]
Appendix B. Settling Tank Minimum Design Criteria [NEW]

SUMMARY:

This rulemaking is to revise and clarify the water pollution control facility construction rules. These rules amend existing procedures and requirements for the construction of wastewater treatment and collection systems. New provisions include clarification of requirements for submittal of engineering reports, plans and specifications, and construction standards for sanitary sewers, pump stations, and wastewater treatment facilities.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and Water Quality, 27A O.S. § 2-6-101 *et seq.*

COMMENT PERIOD:

Written comments on the proposed rulemaking will be accepted prior to and at the Water Quality Management Advisory Council hearing on August 2, 2005. To be thoroughly considered by staff prior to the hearing, written comments should be submitted to the contact person by July 31, 2005. Oral comments may be made at the August 2, 2005 hearing and the August 23, 2005 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council at 1:00 p.m. on Tuesday, August 2, 2005 at the offices of the Oklahoma Department of Environmental Quality, Room 101, 707 North Robinson, Oklahoma City, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on August 23, 2005, in Pryor, Oklahoma.

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 Water Quality Division of DEQ and on the DEQ website (www.deq.state.ok.us), Water Quality Division, What's New, or copies may be obtained from the contact person by calling (405) 702-7189.

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PERSONS WITH DISABILITIES:

Should you desire to attend but have a disability and need an accommodation, please notify Donald D. Maisch three (3) days in advance at (405) 702-7189.

[OAR Docket #05-1136; filed 6-10-05]

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

[OAR Docket #05-1123A]

RULEMAKING ACTION:
Submission for gubernatorial/legislative review

RULES:
40:25-1-3. Alcoholic breath simulators [AMENDED]

SUBMITTED TO GOVERNOR:
May 4, 2005

SUBMITTED TO HOUSE:
May 4, 2005

SUBMITTED TO SENATE:
May 4, 2005

[OAR Docket #05-1123A; filed 6-7-05]

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

[OAR Docket #05-1123B]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
40:25-1-3. Alcoholic breath simulators [AMENDED]
APPROVED BY GOVERNOR:
May 31, 2005

[OAR Docket #05-1123B; filed 6-7-05]

TITLE 420. OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD CHAPTER 1. ADMINISTRATIVE RULES OF PROCEDURE

[OAR Docket #05-1101]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
420:1-1-2. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-1101; filed 6-6-05]

TITLE 420. OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD CHAPTER 10. LIQUEFIED PETROLEUM GAS ADMINISTRATION

[OAR Docket #05-1102]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
420:10-1-5. [AMENDED]
420:10-1-14. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-1102; filed 6-6-05]

TITLE 565. OKLAHOMA BOARD OF PRIVATE VOCATIONAL SCHOOLS CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-1048]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
565:1-1-6. [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2005

[OAR Docket #05-1048; filed 5-31-05]

TITLE 565. OKLAHOMA BOARD OF PRIVATE VOCATIONAL SCHOOLS CHAPTER 10. LICENSURE AND REGULATION OF PRIVATE VOCATIONAL SCHOOLS AND REPRESENTATIVES

[OAR Docket #05-1049]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Requirements for Licensure as Private Vocational School
565:10-3-1. [AMENDED]
Subchapter 5. Fees
565:10-5-1. [AMENDED]
Subchapter 11. School Operation
565:10-11-1. [AMENDED]
Subchapter 19. Penalty
565:10-19-1. [AMENDED]
Subchapter 27. Financial Statements and Financial Stability
565:10-27-1. [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2005

[OAR Docket #05-1049; filed 5-31-05]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 15. EDUCATIONAL OUTREACH

[OAR Docket #05-1087]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Use of Towers, Facilities, and Communications Services
610:15-1-1. Purpose [AMENDED]
610:15-1-2. Towers and facilities use [AMENDED]
610:15-1-3. Communications services use [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-1087; filed 6-2-05]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #05-1088]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 23. Oklahoma Higher Learning Access Program (OHLAP)
610:25-23-2. Eligibility of participants [AMENDED]
610:25-23-4. Program requirements [AMENDED]
610:25-23-5. Securing OHLAP benefits [AMENDED]
Subchapter 27. Teacher Shortage Employment Incentive Program
610:25-27-3. Application Procedure [AMENDED]
Subchapter 35. Oklahoma Money Matters AmeriCorps Education Award Program [NEW]
610:25-35-1. Purpose [NEW]
610:25-35-2. Definitions [NEW]
610:25-35-3. Program Information [NEW]
610:25-35-4. Field Site Selection [NEW]
610:25-35-5. Member Candidacy [NEW]
610:25-35-6. Grievance Procedures [NEW]
610:25-35-7. Program Capacity [NEW]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-1088; filed 6-2-05]

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 2. FEES

[OAR Docket #05-1056]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Fee Schedules
35:2-3-13. [AMENDED]
35:2-3-18. [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), (20) and (29); House Bill 2402 (2004); Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
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Failure of the Legislature to disapprove the rules resulted in approval on May 25, 2005
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May 25, 2005
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July 11, 2005
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules update the Department's listing of fees charged for certain pesticide and seed regulatory activities. These rules do not propose new fees. In 2004, the Oklahoma Legislature amended the statutory references to these fees in House Bill 2402, and these proposed rules mirror the statutory changes.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

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 11, 2005:

SUBCHAPTER 3. FEE SCHEDULES

35:2-3-13. Schedule of combined pesticide program fees

(a) The fees for issuance or ~~annual~~ renewal of pesticide applicators licenses shall be as follows:

(1) Commercial applicator - ~~Fifty~~ One Hundred Dollars ~~($50.00)~~ ($100.00) per category~~: Two~~, Five Hundred ~~and Fifty~~ Dollars ~~($250.00)~~ ($500.00) maximum for each location.

(2) Non-commercial applicator - ~~Twenty~~ Fifty Dollars ~~($20.00)~~ ($50.00)~~each~~ per category, Two Hundred Fifty Dollars ($250.00) maximum for each location.

(3) Government agencies or their employees - No charge for commercial or non-commercial applicator.

(4) Duplicate issue - ~~Five~~ Ten Dollars ~~($5.00)~~ ($10.00) each.

(5) Private applicator - Twenty Dollars ($20.00) each.

(6) Failure to remit a commercial or non-commercial applicator license renewal fee by the 1st day of January shall result in a penalty of twice the amount of the license renewal fee, and after the 1st day of February shall also result in a new examination being required.

~~(b) The fee for issuance or five (5) year renewal of pesticide applicators licenses for Private applicator shall be Five Dollars ($5.00) each. Duplicate issue of Private applicator licenses shall be Five Dollars ($5.00) each.~~

~~(c) Failure to remit a license renewal fee by the 1st day of January will result in a penalty of twice the amount of the license renewal fee shall be charged for renewal of the license. After the 1st day of February, in addition to the penalty, a reexamination shall be required.~~

(~~d~~ b) The issuance and annual registration fees for ~~pesticides~~ each pesticide and ~~devices~~ device label shall be as follows:

(1) Pesticide - One Hundred Sixty Dollars ($160.00) each.

(2) Device - One Hundred Sixty Dollars ($160.00) each.

(3) Failure to remit the registration fees for pesticides and devices by the 15th of the month following the month of expiration shall result in a penalty of twice the amount of the renewal fee.

~~(e) Failure to remit the registration fees for pesticides and devices by the 15th of the month following the month of expiration shall result in a penalty of twice the amount of the renewal fee shall be charged for renewal of the pesticide or device registration.~~

(~~f~~c) The annual permit ~~fees~~ fee for a restricted use pesticide ~~dealers~~ dealer shall be ~~as follows: Restricted Use Pesticide Dealers - Twenty~~ Fifty Dollars ~~($20.00)~~ ($50.00) for each location. Failure to remit the permit fee by the 15th of the month following the month of expiration shall result in a penalty of twice the amount of the renewal fee.

(~~g~~d) The fee for each written examination or practical conducted for the combined pesticide program shall be as follows:

(1) ~~Certified applicator's written - Twenty~~ Written examination - Fifty Dollars ~~($20.00)~~ ($50.00) ~~for each category~~.

(2) ~~Certified applicator's practical - Twenty~~ Practical conducted - Fifty Dollars ~~($20.00)~~ ($50.00) ~~for each category~~.

(3) ~~Private applicator's practical (fumigation only) - Twenty Dollars ($20.00) each.~~

~~(4)~~ Government agencies or their employees - No charge.

(~~h~~e) Applicator certification fees shall be as follows:

(1) Re-certification procedure - ~~Twenty~~ Fifty Dollars ~~($20.00)~~ ($50.00) for each.

(2) Reciprocal certification procedure - ~~Twenty~~ One Hundred Dollars ~~($20.00)~~ ($100.00) for each.

(3) Government agencies or their employees - No charge.

(~~i~~f) Identification card fees shall be as follows:

(1) Service technician - ~~Ten~~ Forty Dollars ~~($10.00)~~ ($40.00) each.

(2) Certified applicator - No charge.

(3) Duplicate issue or transfers - ~~Five~~ Ten Dollars ~~($5.00)~~ ($10.00) each.

(g) The annual permit fee for pesticide producing facilities, including facilities that produce pesticidal devices, shall be One Hundred Dollars ($100.00) for each location.

(1) All permits for pesticide producer establishments shall be issued for a period of one (1) year and shall be renewed annually.

(2) All permits shall expire on June 30 each year and may be renewed without penalty upon filing of a properly completed application not later than the fifteenth day of the month first following the date of expiration.

(3) If the application is not received by that date, a penalty of twice the amount of the renewal fee shall be charged for renewal of the permit.

(~~j~~h) All fees and monies collected under this program shall be paid to the Oklahoma Department of Agriculture, Food, and Forestry.

35:2-3-18. Schedule of seed program fees

(a) The annual license fee shall be Twenty Five Dollars ~~($5.00)~~ ($25.00) for each retail seed dealer and ~~Twenty Five~~ One Hundred Dollars ~~($25.00)~~ ($100.00) for each retail-wholesale seed dealer. ~~A combination license shall be issued for Thirty Dollars ($30.00).~~ Each license shall expire on June 30 of each year.

(b) An inspection fee of eight cents ($0.08) per hundred pounds shall be paid by every person responsible for labeling and distributing seed to a retail seed licensee in Oklahoma, or each retail seed licensee who processes and sells seed to the consumer on which the inspection fee has not been paid. ~~A semi-annual affidavit, stating forth the number of pounds of seed sold for the preceding six (6) calendar months; shall be filed not later than the last day of January and July and upon filing the statement shall pay the inspection. An inspection fee penalty of ten percent (10%) of the amount due or Ten Dollars ($10.00), whichever is greater, shall be assessed if the semi-annual statement is not submitted when due.~~

(1) A semi-annual affidavit, stating the number of pounds of seed sold for the preceding six (6) months, shall be filed no later than the last day of January and July and the inspection fee shall be paid upon filing of the affidavit.

(2) Failure to submit the semi-annual statement on time shall result in an inspection fee penalty of ten percent (10%) of the amount due or Ten Dollars ($10.00), whichever is greater.

(c) If the State Board of Agriculture finds any deficient inspection fees due~~,~~ as a result of an audit of the records of any person subject to the provisions of Sections 8-21 through 8-28 of Title 2 of the Oklahoma Statutes, the Board shall assess a penalty fee of ten percent (10%), ~~maximum~~ not to exceed Two Thousand Dollars ($2,000.00) of the amount due, or One Hundred Dollars ($100.00), whichever is greater. The audit penalty shall be added to the deficient inspection fees due and payment of the entire amount shall be made within thirty (30) calendar days of notice of the deficiency.

[OAR Docket #05-1056; filed 6-1-05]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 3. FINE MATRICES

[OAR Docket #05-1057]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Fine Schedules
Part 15. Plant and Consumer Services Violations [AMENDED]
35:3-1-24. [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), 2-18, 3-501.1 et seq., 9-200 et seq., 10-9 et seq., and 10-9.16; Article 6, Section 31, Constitution of the State of Oklahoma
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July 11, 2005
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The primary purpose of the proposed rules is to create a fine matrix for the Agricultural Environmental Management Services Division and the Boll Weevil program to address the imposition of administrative penalties in relation to violations of the Oklahoma Agricultural Code and corresponding rules. The implementation of the fine matrices in the rules will provide guidance to the Department and to the public on potential fines for specific violations. Penalties for referenced violations will be more consistently applied, while still allowing the Department to make determinations on a case-by-case basis.
CONTACT PERSON:
Teena Gunter, (405) 522-4576

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 11, 2005:

SUBCHAPTER 1. FINE SCHEDULES

PART 15. PLANT AND CONSUMER SERVICES VIOLATIONS

35:3-1-24. Violations of the Boll Weevil Eradication Act

(a) **Gin violations:**
(1) Failure to maintain complete and accurate records or reports or failure to provide required reports to a producer, pursuant to 2 O.S. §3-50.9a.
(A) First violation - $100 to $500.
(B) Second violation - $500 to $1,000.
(C) Subsequent violations - $1,000 to $5,000.
(2) Failure to provide monthly assessment fee reports or failure to pay assessment fees on time, pursuant to 2 O.S. §3-50.9a.
(A) First violation - $100 to $500.
(B) Second violation - $500 to $1,000.
(C) Subsequent violations - $1,000 to $5,000.

(b) **Cotton producer violations:**
(1) Failure to certify or provide required information to the Board of Directors on time, pursuant to 2 O.S. §3-50.8 and 2 O.S. §3-50.9a(C)(3).
(A) First violation - $100 to $500.
(B) Second violation - $500 to $1,000.
(C) Subsequent violations - $1,000 to $2,500.
(2) Failure or refusal to pay assessment fees or any penalties authorized under the Boll Weevil Eradication Act pursuant to 2 O.S. §3-50.9a and 2 O.S. §3-50.11.
(A) First violation - $100 to $500.
(B) Second violation - $500 to $1,000.
(C) Subsequent violations - $1,000 to $5,000.
(3) Failure to carry out treatment or destruction of cotton plants pursuant to 2 O.S. 3-50.16, 2 O.S. §3-50.18(B), and OAC §35:30-14-7.
(A) First violation - $100 to $500.
(B) Second violation - $250 to $750.
(C) Subsequent violations - $500 to $1,000.

(c) **Miscellaneous violations:**
(1) Filing a false or fraudulent report to the Board of Directors pursuant to 2 O.S. §3-50.8 and 2 O.S. §3-50.9a.
(A) First violation - $100 to $500.
(B) Second violation - $250 to $750.
(C) Subsequent violations - $500 to $1,000.
(2) Any other violation of the Boll Weevil Eradication Act.
(A) First violation - $100 to $500.
(B) Second violation - $250 to $750.
(C) Subsequent violations - $500 to $1,000.

[OAR Docket #05-1057; filed 6-1-05]

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

[OAR Docket #05-1058]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 19. Poultry Regulations [AMENDED]
35:15-19-8. [NEW]
Subchapter 22. Swine Pseudorabies [AMENDED]
Part 1. General Provisions
35:15-22-1. [AMENDED]
35:15-22-2. [NEW]
Subchapter 40. Bovine Tuberculosis [AMENDED]
Part 1. Definitions
35:15-40-1. [AMENDED]
Part 7. ~~International~~ Import Requirements
35:15-40-90. [NEW]
35:15-40-91. [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4(2), (7), and (29), 6-2 and 6-141 et seq., Article 6, Section 31, Constitution of the State of Oklahoma
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Subchapter 40. Bovine Tuberculosis
Part 1. Definitions
35:15-40-1. [AMENDED]
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January 28, 2005
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22 Ok Reg 517
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05-165
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Subchapter 40. Bovine Tuberculosis
Part 7. ~~International~~ Import Requirements [AMENDED]
35:15-40-90. [NEW]
35:15-40-91. [AMENDED]
Gubernatorial approval:
May 11, 2004
Register publication:
21 Ok Reg 1959
Docket number:
04-974
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules update three areas of animal health regulations. The first rule provides new testing requirements for Avian Infectious Laryngotrachitis (ILT). The second rule incorporates new terminology established by USDA for classifications of swine herds. The final rule incorporates the emergency rule that updated definitions within the bovine tuberculosis rules.
CONTACT PERSON:
Dr. Becky Brewer-Walker, Director, Animal Industry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6134

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 11, 2005:

SUBCHAPTER 19. POULTRY REGULATIONS

35:15-19-8. Infectious Laryngo Trachietis (ILT)

(a) Tissue culture vaccine for Infectious Laryngo Trachietis shall only be used in primary breeding flocks with the permission of the State Veterinarian.

(1) Permission shall be in the form of a Memorandum of Understanding between the State Veterinarian and the primary breeder.

(2) The Memorandum shall be effective for five (5) years and may include an option for renewal.

(b) Chick Egg Embryo vaccine for Infectious Laryngo Trachietis shall only be used in broilers with the permission of the State Veterinarian by a signed Memorandum of Understanding in specific outbreak situations.

(c) The conditions of any Memorandum of Understanding shall be at the sole discretion of the State Veterinarian.

SUBCHAPTER 22. SWINE PSEUDORABIES

PART 1. GENERAL PROVISIONS

35:15-22-1. Definitions

The following words and terms when used in this Subchapter shall have the following meaning unless the context clearly indicates otherwise.

"Accredited veterinarian" means a veterinarian licensed by the Oklahoma Board of Veterinary Medical Examiners and approved by the Deputy Administrator of the United States Department of Agriculture ("USDA") to perform functions required for state or cooperative state and federal animal disease control and eradication programs.

"Approved market" means a stockyard, livestock market, or other premises approved by the State Board of Agriculture ("Board") where swine are assembled for sale.

"Approved slaughtering establishment" means a slaughtering establishment operated under the provisions of the Federal Meat Inspection Act (21 U.S.C. § 601 et seq.), a state-inspected slaughtering establishment, or any other facility approved by the Board.

"Breeding swine" means all swine six (6) months of age or older being kept for reproduction. An accredited veterinarian shall determine the age of the swine.

"Certificate of veterinary inspection" means an official document issued by an accredited veterinarian at the point of origin of a shipment of swine. It shall include the name and address of the consignor; the name and address of the consignee; the entry permit number, if applicable; the age, sex, number, and breed of the swine; sufficient identifying marks or tags to positively identify each pig; and the results of all required tests. It shall also include a record of a physical examination of the swine verifying that each pig is free from visible evidence of any contagious, infectious, or communicable diseases and that the swine do not originate from an area of quarantine, infestation, or infection. A certificate of veterinary inspection is valid for thirty (30) days after the date of issuance.

"Commercial production swine" means swine that are continuously managed and have adequate facilities and practices to prevent exposure to either transitional production or feral swine.

"Commuter herd" means two or more groups of swine under common ownership or supervision that are located on more than one premise in more than one state and that have an interchange or movement of swine between the premises in those states as part of the normal feeding, breeding, or growing operation without a change of ownership. A commuter herd agreement shall be completed and approved prior to any interchange or movement of swine between the states.

"Commuter herd agreement" means a written herd management and testing agreement made by the chief animal health officials of all states where the commuter herd resides and the herd owner. A commuter herd agreement shall be completed and approved prior to any interchange or movement of swine between the states.

"Designated epidemiologist" means an epidemiologist who has been designated to perform those functions necessary for the classification of livestock suspected to be infected with pseudorabies, based on an evaluation of test results and consideration of the animal and herd history, as well as other epidemiological factors. The State Veterinarian shall select the designated epidemiologist.

"Direct consignment" means the shipment of swine from the point of origin to the destination point without diversion of any type, unloading the swine enroute, or permitting contact with other animals, including other swine.

"Entry permit" means official permission from the State Veterinarian obtained prior to moving swine into Oklahoma. An entry permit shall be obtained by providing the State Veterinarian the following information: name and address of the consignor; name and address of the consignee; and the number, age, sex, and breed of the swine to be imported. An entry permit may be obtained by telephone and is valid for thirty (30) days after the date of issuance.

"Exposed swine" means swine that have been in contact with, associated with, or adjacent to any animal known to be pseudorabies positive.

"Farm of origin" means the farm where the swine were born or where the swine have resided for at least the previous ninety (90) consecutive days.

"Feeder swine" means swine intended to be fed to a finished slaughter weight and not intended for breeding or exhibition.

"Feral swine" or "wild swine" means swine that are free roaming.

"Herd" means one or more swine maintained on common ground and includes all swine under common ownership or supervision that are geographically separated but have an interchange or movement of swine between the groups.

"Identification device" means a permanent ear tag or other method approved by the Oklahoma Department of Agriculture, Food, and Forestry ("Department") that provides unique identification for each animal.

"Infected livestock" means any livestock determined by the designated epidemiologist to be infected with pseudorabies using an official pseudorabies test or diagnosed as having pseudorabies by an accredited veterinarian.

"Isolation" means separation of swine by a physical barrier in such a manner that other swine do not have access to the isolated swine's body, excrement, or discharges. Swine kept in isolation shall not share a building with a common ventilation system with other swine and shall be kept at a distance to be determined by the designated epidemiologist from other swine.

"Known infected herd" means a herd in which an animal has been determined by the designated epidemiologist to be infected with pseudorabies using an official pseudorabies test or diagnosed as having pseudorabies by an accredited veterinarian. A herd of livestock, other than swine, shall no longer be classified as a known infected herd ten (10) days following the disposition of the last clinical case of pseudorabies in the herd.

"Official pseudorabies test" means a test approved by the USDA to be conducted on swine for the diagnosis of pseudorabies and performed in a laboratory as listed in a Veterinary Services Notice listing such laboratories. The G-1 deletion test is not approved by the Department as an official pseudorabies test for Oklahoma, except for use by the Oklahoma designated epidemiologist.

"Official 95/10 random sample test" means a sampling protocol utilizing official pseudorabies tests that provide a ninety-five (95) percent probability of detecting infection in a herd in which at least ten (10) percent of the swine are seropositive for pseudorabies. Each segregated group of swine must be considered a separate herd and sampled as follows:

(A) less than 100 head - test 25
(B) 100-200 head - test 27
(C) 201 - 999 head - test 28
(D) 1,000 head and over - test 29.

"Owner-shipper statement" means a statement signed by the owner or shipper of swine which includes the number of swine to be moved; the points of origin and destination; the names of the consignor and consignee; and any additional information required by this Subchapter.

"Pseudorabies" means the infectious and communicable disease of livestock and other animals also known as Aujeszky's disease, mad itch, or infectious bulbar paralysis.

"Pseudorabies monitored herd" means a swine herd that has negative test results from an official pseudorabies serologic test during the last twelve (12) months at the following rate:

(A) 10 head - test all
(B) 11-35 head - test 10
(C) 36 or more - test thirty (30) percent or thirty (30) swine, whichever is less.

"Quarantine feedlot" means a confined area under official state quarantine and approved by the State Veterinarian. The quarantine feedlot shall be maintained for feeding of swine in ~~drylot~~ dry lot with no provisions for pasturing or grazing. No breeding swine shall be allowed in a quarantine feedlot. No pregnant sows, bred gilts, or sows with pigs at side shall be eligible for placement in a quarantine feedlot. Boars shall not be maintained jointly with sows or gilts in the feedlot. All swine leaving a quarantine feedlot must go directly to an approved slaughter establishment, to another quarantine feedlot, or to an approved assembly point for sale to an approved slaughter establishment or quarantine feedlot. All movements of swine from a quarantine feedlot must be accompanied by an approved shipping permit issued by an accredited veterinarian or a state or federal animal health official. Records of the origin and disposition of all swine handled by the feedlot must be on file and maintained for a twenty-four (24) month period. These records must be available for inspection or copying by any state or federal animal health official during normal business hours.

"Quarantined herd" means a herd containing pseudorabies infected or exposed swine and quarantined by the State Veterinarian.

"Qualified pseudorabies negative herd" means a herd where all swine over six (6) months of age have been tested using an official pseudorabies test and all swine tested negative. The herd shall not have been a known infected herd within the

past thirty (30) days. A minimum of ninety (90) percent of the swine in the herd shall have been on the premises and a part of the herd for at least ninety (90) days prior to the qualifying official pseudorabies tests or have entered directly from another qualified pseudorabies negative herd. All requirements in Part 5 of this Subchapter shall be met in order to maintain qualified pseudorabies negative status.

"Shipping Permit" means an official document issued by the State Veterinarian for the movement of pseudorabies infected, exposed, or vaccinated swine under this Subchapter. The permit shall be obtained prior to any movement of the swine and shall include the number of swine to be moved; the purpose for moving the swine; the points of origin and destination; the names and addresses of the consignor and the consignee; and any additional information required by this Subchapter.

"Slaughter swine" means swine intended for or consigned directly to a slaughter establishment.

"State animal health official" means the state animal health official, or designee, who is responsible for the livestock and poultry disease control and eradication programs in the state.

"State Veterinarian" means the person appointed by the Board pursuant to Title 2 Oklahoma Statutes, Section 6-1, or the State Veterinarian's designee.

"Transitional production swine" means feral swine that are captive or swine that have reasonable opportunities to be exposed to feral swine.

35:15-22-2. Import requirements for Stage IV and Stage V

(a) Certification for feedlots on premises where there are no breeding animals shall show:

(1) The feedlot is included in a down-the-road herd-testing program, or

(2) The herd is monitored by slaughter or first-point surveillance of butcher hogs, or

(3) During the period since the last case in the state was cleaned up, the herd:

(A) Tested negative to an official random-sample test (95/10), or

(B) Underwent a 30-day depopulation with appropriate cleaning and disinfection.

(4) Any feedlots not tested pursuant to this subsection shall be operated all-in and all-out by premises.

(b) Vaccination is prohibited except by permission of the State Veterinarian in high-risk herds or as part of an approved herd-cleanup plan.

(c) Swine import requirements shall be as follows:

(1) Slaughter swine:

(A) Infected or exposed swine may only be shipped through or into the state with prior written approval from the State Veterinarian and shall move directly to a recognized slaughter establishment. The swine shall be accompanied by a shipping permit, conveyed in sealed vehicles, and unloaded under the supervision of State or Federal officials to ensure that biosecurity measures are observed.

(B) Imports of slaughter swine from a state with Stage III status or less are permitted to a recognized slaughter establishment or an approved slaughter market only.

(2) Breeding swine:

(A) Direct shipment from a Stage IV or V state, or

(B) Direct shipment from a qualified pseudorabies-negative herd in any State/Area, or

(C) Negative official pseudorabies serologic test within 30 days prior to shipment with quarantine, isolation, and retest at destination in 30-60 days following importation.

(3) Feeder pigs:

(A) Direct shipment from a farm of origin or a market in a Stage IV or V state, or

(B) Direct shipment from a farm of origin in a Stage III state, or

(C) Direct shipment from a qualified pseudorabies-negative herd or qualified-negative gene-altered vaccinated herd, or

(D) Entry from feeder-pig-monitored herds in Stage II states or from approved feeder-pig markets shall occur only pursuant to the following conditions:

(i) The swine enter on permit directly to a designated feedlot;

(ii) The swine are restricted to the designated feedlot until sent to slaughter.

SUBCHAPTER 40. BOVINE TUBERCULOSIS

PART 1. DEFINITIONS

35:15-40-1. Definitions

The following words or terms when used in this Subchapter shall have the following meaning unless the context clearly indicates otherwise.

"Accredited Free State" means a state that maintains full compliance with all of the provisions of the USDA Uniform Methods and Rules for bovine tuberculosis eradication and where no evidence of bovine tuberculosis has been disclosed for five (5) or more years.

"Accredited Herd ~~(cattle, bison, or dairy goats)~~**"** means a herd of cattle, bison, or dairy goats that has passed at least two (2) consecutive negative caudal fold tuberculin tests at an interval of not less than ten (10) months nor more than fourteen (14) months, has no other evidence of bovine tuberculosis, and meets the standards of this Subchapter.

"Accredited Veterinarian" means a veterinarian licensed by the Oklahoma Board of Veterinary Medical Examiners and approved by the Deputy Administrator of APHIS to perform functions required for cooperative State/Federal animal disease control and eradication programs.

"Adjacent Herd" means a group or groups of animals sharing common pasture, or having other direct contact with ~~the~~ an affected herd, and herds containing previous purchases

from or exchanges with ~~the~~ an affected herd. Herds separated by a single fence are considered contact or adjacent herds.

"Affected Herd" means a herd of cattle, bison, or dairy goats that contains, or has recently contained, one (1) or more animals infected with Mycobacterium bovis and that has not passed the required tests necessary for release from quarantine.

"Annual Tests" means those tests conducted at intervals of not less than ten (10) months nor more than fourteen (14) months.

"Auction" means a public sale of cattle, bison or dairy goats to the highest bidder.

"Auctioneer" means a person who sells or makes a business of selling cattle, bison, or dairy goats at auction.

"Bison" means a bovine-like animal (genus Bison) commonly referred to as American buffalo or buffalo.

"Bovine Tuberculosis" means a disease in cattle, bison, or dairy goats caused by Mycobacterium bovis.

"Cattle" means all domestic bovine (genus Bos).

"Caudal Fold Tuberculin (CFT) Test" means the intradermal injection of 0.1 milliliters of USDA bovine purified protein derivative (PPD) tuberculin into either side of the caudal fold, with reading by visual observation and palpation seventy-two (72) hours (+ or - 6 hours) following injection. Animals or herds of unknown status ~~will~~ shall not be subjected to retest at intervals of less than sixty (60) days.

"Commission Firm" means a person, partnership, or corporation that buys ~~and/or~~ or sells livestock as a third party and reports to the seller ~~and/or~~ or to the buyer details of the transactions~~. This includes any such person or group regardless of~~ whether or not a fee is charged for the services.

"Commission Sales" means those sales that are conducted by a third party who reports to the seller ~~and/or~~ or to the buyer details of the transactions.

"Comparative Cervical Tuberculin (CCT) Test" means the intradermal injection of biologically balanced bovine PPD tuberculin and avian PPD tuberculin at separate sites in the cervical area and a determination as to the probable presence of bovine tuberculosis (M. bovis) by comparing the responses of the two (2) tuberculins seventy-two (72) hours (+ or - 6 hours) following injection.

"Dairy cattle" means any typical dairy framed animals as determined by the inspecting veterinarian.

"Dairy Goats" means domestic caprine (genus Capra) kept for the purpose of producing milk for human consumption.

"Dealer" means any person, firm, or partnership engaged in the business of buying or selling cattle, bison, or dairy goats in commerce, either on his or her own account or as the employee or agent of the vendor ~~and/or~~ or purchaser, or any person engaged in the business of buying or selling cattle, bison, swine, sheep, or dairy goats in commerce on a commission basis. The term shall not include a person who~~: (1)~~ buys or sells cattle, bison, or dairy goats as a part of his or her own bona fide breeding, feeding, or dairy operation; ~~(2)~~ is not engaged in negotiating the transfer of cattle, bison, or dairy goats; or~~, (3)~~ receives cattle, bison, or dairy goats exclusively for immediate slaughter on his or her own premise.

"Designated feedlot" means a feedlot under official state quarantine and approved by the State Veterinarian and federal animal health officials. The designated feedlot may include pens or pasture. All animals leaving the feedlot shall move directly to slaughter and shall be accompanied by permit.

"Designated pens" or "designated pastures" means pens or pastures associated with any feedlot that has a Memorandum of Understanding with the State Veterinarian to house cattle destined for slaughter.

"Direct Shipment to Slaughter" means the shipment of tuberculosis reactors, tuberculosis suspects, and tuberculosis exposed cattle, bison, or dairy goats from the premises of origin directly to a slaughter establishment without diversion to assembly points such as: auctions, dealers or commission firm premises, public stockyards, and feedlots.

"Eradication" means the complete elimination of bovine tuberculosis from cattle and bison in the state so that the disease does not appear unless introduced from another species or from outside the state.

"Exposed Animals" means cattle, bison, or dairy goats that have been exposed to bovine tuberculosis by reason of associating with known tuberculous animals.

"Feedlot" means a confined dry lot area for the finish feeding of animals on a concentrated feed with no facilities for pasturing or grazing.

"Group" means one or more animals.

"Herd" means a group of cattle, bison, or dairy goats maintained on common ground or two (2) or more groups of cattle, bison, or dairy goats under common ownership or supervision that are geographically separated but can have an interchange or movement without regard to health status.~~ (A group is construed to mean one (1) or more animals.)~~

"Herd Depopulation" means the removal of all cattle, bison, swine, and dairy goats exposed to bovine tuberculosis in a herd directly to slaughter prior to any restocking of the premises with cattle or bison.

"Herd Plan" means a herd management and testing plan designed by a state or federal regulatory veterinarian and the ~~herdowner~~ herd owner that will control and eventually eradicate bovine tuberculosis from an affected, adjacent, or exposed herd.

"Modified Accredited Advanced State" means a state that is actively participating in the eradication of bovine tuberculosis and that maintains its status in accordance with the provisions of the USDA Uniform Methods and Rules for Bovine Tuberculosis Eradication.

"Modified Accredited State" means a state that is actively participating in the eradication of bovine tuberculosis and that maintains its status in accordance with the provisions of the USDA Uniform Methods and Rules for Bovine Tuberculosis Eradication.

"Natural Additions" means animals born and raised in a herd.

"Negative Animals" means any cattle, bison, or dairy goats that show no response to a tuberculin test or have been classified negative by the testing veterinarian following the application of the CCT test.

"No Gross Lesion (NGL) Animals" means any cattle, bison, or dairy goats that do not reveal a lesion~~(s)~~ of bovine tuberculosis upon postmortem inspection. ~~(An~~ Any animal with skin lesions alone ~~will~~ shall be considered ~~in the same category as an~~ a NGL animal.~~)~~

"Non-modified Accredited State" means a state that has not received accredited free status or modified accredited state status.

"Official Ear Tag" means ~~a metal~~ an identification ~~eartag~~ ear tag approved by USDA that provides tamper resistant and unique identification for each individual animal. An official ear tag may ~~by conforming~~ conform to the ~~nine (9) character~~ alpha-numeric national uniform ~~eartagging~~ ear tagging system or ~~any other unique identification device~~ be an approved ~~by the Oklahoma Board of Agriculture~~ RFID tag.

"Official Tuberculin Test" means a test for tuberculosis applied and reported by approved personnel in accordance with this Subchapter and the USDA Uniform Methods and Rules for bovine tuberculosis eradication. The official tuberculin tests are the caudal fold test, the comparative cervical test, the single cervical test or any other test that is approved by the United States Department of Agriculture (USDA).

"Passed Herd" means a herd in which no animals were classified as reactors or suspects as the result of a herd test of all test eligible animals.

"Permit" means an official document issued by an authorized agent of the Board of Agriculture, a representative of APHIS VS or an accredited veterinarian that is required to accompany any reactor, suspect, or exposed animals to slaughter. The permit ~~will list~~ lists the reactor tag or, in the case of suspect animals, an official eartag number; the owner's name and address; origin and destination locations; number of animals covered and the purpose of the movement. If a change in destination becomes necessary, a new permit must be issued by authorized personnel. No diversion from the destination on the permit is allowed.

"Quarantine" means a written notice or order issued by an authorized agent of the ~~Oklahoma~~ State Board of Agriculture showing the boundaries of the area or premise affected, the animals restricted, and ~~the~~ conditions, if any. No livestock held under quarantine may be moved or released ~~until~~ without a written permit or quarantine release signed by an authorized agent ~~has been executed~~.

~~**"Quarantine Feedlot"** means a confined area under official state quarantine and shall be approved jointly by the state and federal animal health officials. The quarantine feedlot shall be maintained for finish feeding of animals in dry lot with no provisions for pasturing or grazing. Animals leaving such a feedlot must move directly to slaughter and be accompanied by permit.~~

"Reactor" means any cattle, bison, or goat that shows a response to a tuberculin test and is classified a reactor by the testing veterinarian, or any animal that may be classified as a reactor by the designated Epidemiologist based on supplemental diagnostic tests results from approved laboratories or other information.

"Routine Screening Tuberculin Test" means a caudal fold tuberculin test, or any other test which may be approved by the USDA, conducted as part of an area eradication program in which all responding animals are reported without classification to the State Veterinarian.

"Single Cervical Tuberculin Test" means the intradermal injection of 0.1 milliliters USDA bovine single cervical PPD tuberculin in the cervical (neck) region with reading by visual observation and palpation in seventy-two (72) hours (+ or - 6 hours) following injection.

"Suspect" means any cattle, bison, or goats that show a response to the caudal fold tuberculin test and are not classified as reactors, and cattle, bison, or goats that ~~have been~~ are classified suspects by a comparative cervical test.

"Tuberculin" means a product that is approved by and produced under USDA license for injection into cattle, bison, or goats for the purpose of detecting bovine tuberculosis.

PART 7. ~~INTERNATIONAL~~ IMPORT REQUIREMENTS

35:15-40-90. Requirements for cattle entering Oklahoma

(a) Cattle that test positive for tuberculosis shall not enter Oklahoma.

(b) Cattle from herds quarantined for tuberculosis shall not enter Oklahoma.

(c) All dairy steers and spayed heifers shall be accompanied by a certificate of veterinary inspection.

(d) All sexually intact dairy cattle under six (6) months of age shall be individually identified by an official ear tag and accompanied by a certificate of veterinary inspection.

(e) All sexually intact dairy cattle six (6) months of age and older shall be accompanied by a certificate of veterinary inspection that individually identifies each animal and shall meet one of the following:

(1) Originate from a tuberculosis free herd; or

(2) Test negative no more than sixty (60) days prior to entry with the results recorded on the certificate of veterinary inspection.

(f) Beef cattle under the age of eighteen (18) months and all spayed heifers or steers shall be accompanied by a certificate of veterinary inspection.

(g) All other beef cattle eighteen (18) months or older shall be accompanied by a certificate of veterinary inspection that individually identifies each animal and shall meet one of the following:

(1) Originate from a tuberculosis free state;

(2) Originate from a tuberculosis free herd; or

(3) Test negative no more than sixty (60) days prior to entry with the results recorded on the certificate of veterinary inspection.

(h) Any cattle that do not meet these testing requirements shall be tagged as slaughter-only and sent either directly to slaughter or to a designated feedlot.

35:15-40-91. ~~Importation~~ International importation of sexually intact cattle or bison

(a) All sexually intact cattle and bison~~,~~ from any foreign country or part thereof with ~~no recognized tuberculosis status comparable~~ a status less than Modified Accredited Advanced as compared to the UM&R standards of the U.S. Bovine Tuberculosis Eradication program~~,~~ and imported for reasons other than immediate slaughter or feeding for slaughter ~~must~~ shall meet the following criteria:

(1) Obtain a permit issued by the Oklahoma Department of Agriculture, Food, and Forestry prior to entry; and

(2) Be quarantined to the ~~Oklahoma~~ premise approved in the entry permit pending two (2) consecutive negative tuberculosis tests~~. The~~, with the first test ~~to be~~ conducted not less than ninety (90) days nor more than 120 days after arrival and the second test ~~to be~~ conducted not less than 210 days nor more than 240 days after arrival in ~~Oklahoma~~ the state.

(b) ~~Those~~ All sexually intact cattle and bison~~,~~ from any foreign country or part thereof with no recognized tuberculosis status comparable to the UM&R standards of the U.S. Bovine Tuberculosis Eradication program of Modified Accredited Advanced or above~~,~~ and imported for immediate slaughter or feeding for slaughter ~~must~~ shall meet the following criteria:

(1) Obtain a permit issued by the Oklahoma Department of Agriculture, Food, and Forestry prior to entry; and

(2) Be consigned direct to an approved slaughter establishment or ~~quarantined~~ designated feedlot with no diversion from the permitted destination. ~~Those animals consigned to a quarantined feedlot must be S-branded upon arrival at the feedlot.~~

(3) Animals consigned to a designated feedlot shall be tagged for slaughter-only prior to or upon arrival at the feedlot.

[OAR Docket #05-1058; filed 6-1-05]

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

[OAR Docket #05-1059]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 36. Scrapie [NEW]
35:15-36-1. [NEW]
35:15-36-2. [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agricultural Code; 2 O.S. 2001 §§ 2-4(2), 2-4(7), 2-4(29), 6-2, and 6-124; Article 6, Section 31, Constitution of the State of Oklahoma
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules are for the purpose of developing a scrapie eradication program for sheep and goats in the state of Oklahoma. Currently, no program exists. The United States Department of Agriculture is requiring all states to develop rules consistent with federal rules regarding the eradication of scrapie. Scrapie is a transmissible degenerative disease that affects the central nervous system in sheep and goats. The rules allow for quarantine and trace back of scrapie infected or suspected herds.
CONTACT PERSON:
Dr. Becky Brewer-Walker, Animal Industry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6142

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 11, 2005:

SUBCHAPTER 36. SCRAPIE

35:15-36-1. Incorporation by reference of federal regulations

(a) The Scrapie in Sheep and Goats Regulations found in Title 9 of the Code of Federal Regulations (CFR) 2004 Revision, Part 79 et seq. for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:15-36-2.

(b) All words or terms defined or used in the Federal regulations incorporated by reference shall mean the state equivalent or counterpart to those words or terms.

35:15-36-2. Deleted regulations

The following sections of the Federal regulations governing scrapie in sheep and goats (9 CFR, Part 79 et seq.) (2004 Revision) of the USDA incorporated by reference under 35:15-36-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 79.6 and 79.7.

[OAR Docket #05-1059; filed 6-1-05]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 17. WATER QUALITY

[OAR Docket #05-1060]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Registered Poultry Feeding Operations
35:17-5-11. [AMENDED]
Subchapter 7. Poultry Waste Applicators Certification
35:17-7-8. [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29), 10-9.5, 10-9.6, 10-9.22, and 10-9.23; Article 6, Section 31, Constitution of the State of Oklahoma
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The proposed rules clarify the education requirements of the Oklahoma Registered Poultry Feeding Operations Act and the Oklahoma Poultry Waste Applicators Certification Act to ensure that education hours may be carried over from year to year when more education is obtained than required in the fiscal year. In addition, the proposed rules allow education credit to be calculated on a calendar year basis rather than the fiscal year.
CONTACT PERSON:
Teena Gunter, (405) 522-4576

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 11, 2005:

SUBCHAPTER 5. REGISTERED POULTRY FEEDING OPERATIONS

35:17-5-11. Education

(a) ~~At the completion of each education session, the operator~~ All operators of poultry feeding operations shall ~~receive a certification verifying completion from Oklahoma State University~~ attend educational courses on poultry waste handling provided by the Oklahoma Cooperative Extension Service. ~~The certification shall be kept for five (5) years.~~

(b) ~~Oklahoma State University Oklahoma Cooperative Extension Service education courses previously taken by an operator pursuant to State Department of Agriculture rules promulgated for Commercial Poultry Operations~~ All operators shall ~~count towards the mandatory~~ obtain no less than nine (9) hours of education ~~requirements contained in the Oklahoma Registered Poultry Feeding Operations Act~~ in the first year and no less than three (3) hours each year thereafter.

(c) The Oklahoma Cooperative Extension Service shall develop the educational training course to aid in certification.

(1) Curricula for the training course shall include the Oklahoma Cooperative Extension Service Waste Management Facts series and record books or their current equivalent.

(2) Courses for poultry waste management shall include the following topics:

(A) Environmental process relevant to protecting water quality in poultry production;

(B) Basic handling systems to manage poultry waste from all types of poultry operations;

(C) Nutrient management, including sampling procedures, application rate determination, equipment calibration, and record keeping systems;

(D) Relevant laws and rules applicable to poultry waste management in the State of Oklahoma; and

(E) Any other related subject as determined by Oklahoma Cooperative Extension Service in consultation with the Department.

(d) At the completion of each course, the operator shall receive a certification verifying completion. The certificates shall be kept on site for five (5) years.

(e) Failure to obtain the prerequisite and annual training and education as provided in this subsection shall be deemed a violation of the Oklahoma Registered Poultry Feeding Operations Act.

(f) No integrator shall enter into any contract with an operator of a poultry feeding operation who is not in compliance with the education requirements of this section.

(g) An operator may carry forward up to three (3) education hours to the next calendar year.

(h) All operators shall obtain the required education no later than December 31st of each calendar year.

(i) Oklahoma Cooperative Extension Service education courses previously taken by an operator pursuant to rules promulgated by the State Board of Agriculture for Commercial Poultry Operations shall count towards the mandatory education requirements contained in the Oklahoma Registered Poultry Feeding Operations Act.

SUBCHAPTER 7. POULTRY WASTE APPLICATORS CERTIFICATION

35:17-7-8. Education requirements

(a) ~~Certified~~ All certified poultry waste applicators ~~who have attended educational training and received certification verifying completion pursuant to the Oklahoma Registered Poultry Feeding Operations Act~~ shall ~~be in compliance with the initial~~ attend educational ~~requirements of the Oklahoma Poultry Waste Applicators Certification Act. Nothing in this rule shall be construed to mean that a certified~~ courses on poultry waste ~~applicator shall attend courses intended for poultry producers instead of courses intended for poultry waste applicators~~ handling provided by Oklahoma Cooperative Extension Service.

(b) All poultry waste applicators shall obtain no less than nine (9) hours of education in the first year and no less than three (3) hours each year thereafter.

(c) The Oklahoma Cooperative Extension Service shall develop the educational training course to aid in certification.

(1) Curricula for the training course shall include the Oklahoma Cooperative Extension Service Waste Management Facts series and record books or their current equivalent.

(2) Courses for poultry waste management shall include the following topics:

(A) Environmental process relevant to protecting water quality in poultry production;

(B) Basic handling systems to manage poultry waste from all types of poultry operations;

(C) Nutrient management, including sampling procedures, application rate determination, equipment calibration, and record keeping systems;

(D) Relevant laws and rules applicable to poultry waste management in the State of Oklahoma; and

(E) Any other related subject as determined by Oklahoma Cooperative Extension Service in consultation with the Department.

(d) At the completion of each course, the certified poultry waste applicator shall receive a certification verifying completion. The certificates shall be kept on site for five (5) years.

(e) Failure to obtain the prerequisite and annual training and education as provided in this subsection shall be deemed a violation of the Oklahoma Poultry Waste Applicators Certification Act.

(f) An operator may carry forward up to three (3) education hours to the next calendar year.

(g) All operators shall obtain the required education no later than December 31st of each calendar year.

(h) Any certified poultry waste applicator who has completed education requirements of the Oklahoma Registered Poultry Feeding Operations Act shall be deemed to be in compliance with the education requirements of this section.

[OAR Docket #05-1060; filed 6-1-05]

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

[OAR Docket #05-1061]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 17. Combined Pesticide
Part 1. Commercial and Non-Commercial Categories of Pesticide Application
35:30-17-1. [AMENDED]
Part 3. Certification, Conduct of Examinations, And Recertification
35:30-17-4. [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

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INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
The first proposed rule deletes the pesticide license category of food processing as it is sufficiently covered by another category. The second proposed rule amends the service technician testing requirements and allows a mechanism for a service technician to receive a service technician card immediately upon providing sufficient documentation, satisfactorily completing the test, and paying the appropriate fees. This will enable companies to put service technicians to work on an expedited basis.

CONTACT PERSON:
Sandra Wells, (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 JULY 11, 2005:

SUBCHAPTER 17. COMBINED PESTICIDE

PART 1. COMMERCIAL AND NON-COMMERCIAL CATEGORIES OF PESTICIDE APPLICATION

35:30-17-1. License Categories

License categories of pesticide application are as follows:

(1) 1a: Agricultural Plant Category - Includes the application of pesticides to agricultural crops, agricultural grassland, and noncrop agricultural land. This category does not include the production of trees for any purpose.

(2) 1b: Agricultural Animal Category - Includes the application of pesticides to animals, including those in feedlots, sales barns, egg production facilities and the animal holding facilities. This excludes Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of their normal practice.

(3) 2: Forest Pest Control Category - Includes the application of pesticides in forest nurseries, forest seed production areas, trees grown for the production of forestry products, and other forest areas.

(4) 3a: Ornamental and Turf Outdoor Pest Control Category - Includes the application of pesticides within residential or business areas to lawns, ornamental trees and shrubs, including park areas, golf courses, and other recreational areas,, except as defined under licensed categories 2, 3b-c, 7, and 8.

(5) 3b: Interiorscape Category - Includes the application of pesticides to interior plantings inside structures (i.e. hospitals, buildings, shopping malls, etc.) excluding residential structures with the exception of common use areas of multiple residential structures (i.e. foyers, atriums, indoor swimming pools, management offices, meeting rooms, etc.) except as defined under licensed categories 3c, 7, and 8.

(6) 3c: Nursery/Greenhouse Category - Includes the application of pesticides in nursery and greenhouse facilities and to fields except as defined under licensed categories 2 (Forest Pest Control).

(7) 4: Seed Treatment Category - Includes the application of pesticides to seed for any purpose.

(8) 5: Aquatic Pest Control Category - Includes the application of pesticides to standing or running water in man-made or natural impoundments, streams, etc. This excludes public health activities (e.g. mosquito control) and water in totally closed systems.

(9) 6: Right-of-Way Category - Includes the application of pesticides for public road maintenance, power line maintenance, railroad right-of-way, storage tank areas, and other similar areas.

(10) 7a: General Pest Control Category - Includes the application of pesticides within and immediately adjacent to a structure, except for fumigation activities, control of termites and other wood destroying organisms in or on a structure, and control of birds or predatory animals~~, and food handling establishments~~. "Immediately adjacent to a structure" means not further than three (3) feet from the structure. Applications to restaurants are permitted in this category.

(11) 7b: Structural Pest Control Category - The application of pesticides for the purpose of controlling termites and other wood destroying organisms in or on a structure, including wood borers and fungus.

(12) 7c: Fumigation Category - The use of liberated gas within a structure or storage area, to include railcars, ships, etc.

(13) ~~7d: Food Processing Category - The application of pesticides, except fumigants, in structures where bulk food is processed or stored.~~

~~(14)~~ 8: Public Health Pest Control Category - The application of pesticides by local, state, federal or other governmental employees or commercial pesticide applicators in public health programs, to include municipal and other areawide mosquito control programs.

(~~15~~ 14) 9: Regulatory Pest Control Category - Includes the application of pesticides by state, federal or other government employees for the control of designated regulated pests.

(~~16~~ 15) 10: Demonstration and Research Pest Control Category - Includes persons engaged in the application of pesticides for scientific research or for the purpose of demonstrating pesticide products or methods of application.

(~~17~~ 16) 11: Bird and Predatory Animal Control Category - The application of pesticides for the control of birds or predatory animals and subject to the rules of the Oklahoma Department of Wildlife Conservation and the Wildlife Services Division of the Board.

(~~18~~ 17) 12a: Pressure Facility Timber Treating Category - Includes the treatment of wood in a pressure treating facility by the impregnation or application of chemical solutions for the purpose of retarding or preventing deterioration or destruction by insects, fungi, bacteria, or other wood destroying organisms.

(~~19~~ 18) 12b: Ground Line Utility Pole Timber Treating Category - Includes the ground line treatment of utility poles with chemical solutions for the purpose of retarding or preventing deterioration or destruction by insects, fungi, bacteria, or other wood destroying organisms.

(~~20~~ 19) 12c: Construction Industry Timber Treating Category - Includes the application of chemical solutions to wood members of structure which will be covered by paint, varnish, or similar covering for the purpose of retarding or preventing deterioration or destruction by insects, fungi, bacteria, or other wood destroying organisms.

(~~21~~ 20) 12d: Home Owner Timber Treating Category - Includes the application of chemical solutions to wood constructions around the home, including decks, for the purpose of retarding or preventing deterioration or destruction by insects, fungi, bacteria, or other wood destroying organisms.

(~~22~~ 21) 13: Specialty Category - Includes any area of pesticide application not defined in Category 1 thru 12 when the pesticide to be used is classified as restricted.

PART 3. CERTIFICATION, CONDUCT OF EXAMINATIONS, AND RECERTIFICATION

35:30-17-4. Examination of applicants for certification

(a) The written examination for certification of commercial and noncommercial applicators shall include two (2) phases. Phase I shall consist of general knowledge common to all licensed categories and shall be successfully completed before examination is attempted in any license category. Phase II shall consist of specific knowledge for each licensed category. An applicant may test in as many different categories as desired.

(b) A practical examination shall also be required for commercial and noncommercial applicators in the following categories: Structural Pest, General Pest, Fumigation, and Food Processing. An individual shall successfully complete the practical examination within twelve (12) months of passing the Phase II written examination in the above categories. Failure to meet the twelve (12) month deadline shall require an individual to re-take the Phase II written examination.

(c) The practical examination shall be conducted at the training facility at Oklahoma State University and includes the successful completion of an approved training program which demonstrates a thorough knowledge in the handling of pesticides, labels and labeling requirements, storage, transportation, mixing, application, disposal, insect biology and safety. The facility at Oklahoma State University meets the following conditions for treatment in the Structural Pest Category: crawl space, voids, and a concrete floor, garage floor, or patio slab.

(d) A service technician shall be certified upon successful completion of a written service technicians examination. An individual shall not act, do business, or advertise as a service technician unless a service technician identification has been issued by the Board. A service technicians' identification shall be issued in the name of the licensed entity. The licensee shall return the service technician identification to the Board upon termination of the employee. A service technician identification shall be valid for five (5) years unless suspended, canceled, revoked, or the service technician is no longer employed by the licensed entity. Recertification may be required at any time by the Board. The Department may issue a service technician identification upon completion of the following:

(1) A determination is made by the Department that the applicant has successfully completed the written examination;

(2) The licensed entity provides a completed service technician identification application form at the time of testing; and

(3) All appropriate fees are paid at the time of testing.

(e) Private applicators shall complete a certification form and an education program or written examination as required by the Board. Private applicators in the Fumigation category shall be required to complete the certification form and a closed book written exam and successfully complete the Fumigation practical at the training facility at Oklahoma State University within twelve (12) months of passing the Fumigation written exam.

(f) An individual shall not act, do business, or advertise as a certified applicator unless all qualifications and standards required by the Board have been met. A certificate in any category shall be valid for five (5) years unless suspended, canceled, or revoked. Recertification may be required by the Board, but shall not exceed one recertification in a five (5) year period.

(g) Successful completion of any written examination shall be a score of 70% or greater.

[OAR Docket #05-1061; filed 6-1-05]

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

[OAR Docket #05-1062]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 25. Seed
35:30-25-14. [NEW]
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Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29), 8-21 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule requires anyone who publishes an advertisement for seed to include the Oklahoma seed license number in the advertisement. Many advertisements are published every year that do not comply with the requirements of the Oklahoma seed law, and some of those advertisements are placed by dealers that do not have a seed license. The Department has difficulty enforcing the seed law in those cases because of the lack of certainty as to who placed the advertisement. This rule will enable the Department to determine if the dealer is licensed by the state and more easily track down dealers, whether licensed or not, regarding violations.
CONTACT PERSON:
Wade Krivanek, (405) 522-5452

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 11, 2005:

SUBCHAPTER 25. SEED

35:30-25-14. Seed advertisements

Any person that places or causes to be placed a seed advertisement in any statewide or local publication or bulletin shall include the seed dealer's license number in the advertisement.

[OAR Docket #05-1062; filed 6-1-05]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 37. FOOD SAFETY

[OAR Docket #05-1063]

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Subchapter 3. Meat Inspection
Part 1. General Provisions
35:37-3-1. [AMENDED]
35:37-3-3. [AMENDED]
Part 3. Mobile Farm Slaughter Regulations
35:37-3-10. [AMENDED]
Part 14. Official Marks, Devices, and Certificates [NEW]
35:37-3-43. [NEW]
35:37-3-44. [NEW]
35:37-3-45. [NEW]
35:37-3-46. [NEW]
35:37-3-47. [NEW]
35:37-3-48. [NEW]
Subchapter 5. Poultry Products Inspection
Part 1. General Provisions
35:37-5-1. [AMENDED]
35:37-5-2. [AMENDED]
Part 7. Official Marks, Devices and Certificates
35:37-5-18. [AMENDED]
35:37-5-19. [AMENDED]
35:37-5-20. [AMENDED]
35:37-5-21. [AMENDED]
Subchapter 7. Construction Standards for Meat Packing Plants
Part 13. Facilities for Processing Edible Product
35:37-7-46. [AMENDED]
Part 15. Design, Equipment, and Operation of Meat and Poultry Slaughtering Departments and Related Areas
35:37-7-52. [AMENDED]
35:37-7-53. [AMENDED]
Subchapter 9. Oklahoma Rabbit and Rabbit Products Inspection Regulations
Part 1. General
35:37-9-8. [AMENDED]
35:37-9-10. [AMENDED]
Part 3. Identifying and Marking Products
35:37-9-18. [AMENDED]
Part 9. Disposition of Diseased ~~Rebbit~~ Rabbit Carcasses and Parts
Part 11. Reinspection and Ingredients; Appeals
35:37-9-40. [AMENDED]
Part 13. Sanitary Requirements
35:37-9-48. [AMENDED]
Part 15. Maintenance of Sanitary Conditions and Precautions Against Contamination of Products
35:37-9-56. [AMENDED]
Subchapter 11. Exotic Livestock and Exotic Livestock Products
Part 1. General Provisions
35:37-11-4. [AMENDED]
Part 7. Official Numbers; Inauguration of Inspection; Withdrawal of Inspection; Reports of Violations
35:37-11-13. [AMENDED]
Part 13. Time of Inspection of Official ~~Establishements~~ Establishments
Part 17. Antemortem Inspection
35:37-11-43. [AMENDED]
Part 21. Disposal of Diseased or Adulterated Carcasses and Parts
35:37-11-65. [AMENDED]
Part 23. Official Marks and Devices
35:37-11-86. [AMENDED]
35:37-11-89. [AMENDED]
Part 27. Handling and Disposal of Condemned Carcasses and Parts or Other Inedible Products
35:37-11-99. [AMENDED]
35:37-11-100. [AMENDED]
Part 33. Labeling
35:37-11-114. [AMENDED]
35:37-11-118. [AMENDED]
Appendix B. Official Marks of Inspection and Other Identification for Meat and Meat Products [NEW]
Appendix C. Official Marks of Inspection and Other Identification for Poultry and Poultry Products [NEW]
Appendix D. Official Marks of Inspection and Other Identification for Rabbits and Rabbit Products [NEW]
Appendix E. Official Marks of Inspection and Other Identification for Exotic Livestock and Exotic Livestock Products [NEW]
Appendix F. Official Marks and Devices in Connection with Post-Mortem Inspection and Identification of Adulterated Products and Insanitary Equipment and Facilities [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), (7), (24), (25), and (29), 6-181 et seq., 6-251 et seq., 6-280.1 et seq., and 6-290.1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
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ANALYSIS:
The proposed rule changes clean up the food safety rules and update the incorporation by reference of Code of Federal Regulations citations. The proposed new Part 14 revives rules that were accidentally deleted in a previous rulemaking regarding official marks, devices, and certificates.
CONTACT PERSON:
Stan Stromberg, (405) 522-6113

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 11, 2005:

SUBCHAPTER 3. MEAT INSPECTION

PART 1. GENERAL PROVISIONS

35:37-3-1. Incorporation by reference of federal meat inspection regulations

The Mandatory Meat Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2003~~ 2004 Revision), Parts 301 et seq.; 416 et seq.; 417 et seq.; 424 et seq.; 441 et seq.; and 500 et seq. for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-3-3. Whenever an official mark, form, certificate or seal is designated by Federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry (ODAFF) form, certificate or seal shall be substituted.

35:37-3-3. Deleted regulations

The following sections of the Federal regulations governing the mandatory meat inspection ~~(9 CFR, Parts 301 et seq.; 416 et seq.; 417 et seq.; 424 et seq.; 441 et seq.; and 500 et seq.) (2003 Revision)~~ of the USDA incorporated by reference under 35:37-3-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 9 CFR 302.2; 303.1(c); 304.1; 304.2(a); 304.2(c); 305.2(b); 307.4; 307.5; 307.6; 316.12; 316.13(c); 317.5; 317.7; 317.9; 317.13; 318.8; 318.12; 321; 322; 327; 329.6; 329.7; 329.8; 329.9; 331; 335; 351; 352; 354; 355; 362; 381; 390; 391; and 590 (2004 Revision).

PART 3. MOBILE FARM SLAUGHTER REGULATIONS

35:37-3-10. Labeling or marking by mobile farm slaughter establishment

(a) Each carcass or part thereof shall be tagged or marked with the ~~owners~~ owner's name to ~~insure~~ ensure the identity of the owner and that the carcass or part ~~thereof are those of~~ belongs to the owner.

(b) Each carcass or part thereof shall be tagged or marked with the mobile slaughter ~~operators~~ operator's permit number ~~and~~ or name shall be subject to inspection by the Board.

PART 14. OFFICIAL MARKS, DEVICES AND CERTIFICATES

35:37-3-43. General

The marks, devices, and certificates prescribed or referenced in this Part shall be official marks, devices, and certificates and shall be used in accordance with the provisions of this Part and the rules cited therein.

35:37-3-44. Official marks and devices to identify inspected and passed products of cattle, bison, sheep, swine, or goats

The official inspection legend required by Part 316 of 9 CFR to be applied to inspected and passed carcasses and parts of carcasses of cattle, bison, sheep, swine and goats, meat food products in animal casings, and other products as approved by the Director shall be in the appropriate form as specified in Appendix B of this Subchapter, in appropriate sizes specified as follows:

(1) 1" X 11/16" - For application to sheep and goat carcasses, the loins and ribs of pork, beef tails, and the smaller varieties of sausage and meat food products in animal casings.

(2) 1 3/4" X 1 1/8" - For application to calf and swine carcasses and on the larger varieties of sausage and meat food products in animal casings. For application to swine carcasses, wholesale and primal cuts.

(3) 2 1/2" X 1 5/8" - For application to burlap, muslin, cheesecloth, heavy paper, or other acceptable material that encloses carcasses or parts of carcasses. For application to beef and bison carcasses, wholesale and primal cuts of beef and bison.

35:37-3-45. Official ante-mortem inspection marks and devices

The official marks and devices used in connection with ante-mortem inspection are those prescribed in 9 CFR 309.18.

35:37-3-46. Official seals for transportation of products

The official mark for use in sealing railroad cars or other means of conveyance as prescribed in 9 CFR Part 325 shall be the inscription and a serial number as hereinafter shown and any seal approved by the Director for applying such mark shall be an official device for purposes of the Act. This seal shall be attached to the means of conveyance only by a Division employee.

35:37-3-47. Official marks and devices in connection with post-mortem inspection and identification of adulterated products and insanitary equipment and facilities

(a) The official marks required by Part 310 of 9 CFR, for use in post-mortem inspection and identification of adulterated products and insanitary equipment and facilities are:

(1) The Oklahoma Retained tag which is used to retain carcasses and parts of carcasses in the slaughter department; it is Red and White, and bears the legend "Oklahoma Retained." It is a four section tag as used for hogs, sheep, goats, calves, cattle, bison and equine.

(2) The "Oklahoma Retained" mark which is applied to products and articles as prescribed in Part 310 of 9 CFR by means of a paper tag bearing the legend "Oklahoma Retained."

(3) The "Oklahoma Rejected" mark which is used to identify insanitary buildings, rooms, or equipment and is

applied by means of a paper tag bearing the legend "Oklahoma Rejected."

(4) The "Oklahoma Passed for Cooking" mark is applied on products passed for cooking as prescribed in Part 310 of 9 CFR by means of a brand and is in the form specified in Appendix F of this Chapter.

(5) The "Oklahoma Condemned" mark shall be applied to products condemned as prescribed in Part 21 by means of a brand and is in the form specified in Appendix F of this Chapter.

(b) The Oklahoma Retained and Oklahoma Rejected tags, and all other brands, stamps, labels, and other devices approved by the Director and bearing any official mark prescribed in 35:15-25-167(a) and 35:15-25-167(b), shall be official devices for purposes of the Act.

35:37-3-48. Official detention marks and devices

The official mark for articles and livestock detained under Part 51 of this Subchapter shall be the designation "Oklahoma Retained" and the official device for applying such mark shall be the official tag as prescribed in 35:37-3-34.

SUBCHAPTER 5. POULTRY PRODUCTS INSPECTION

PART 1. GENERAL PROVISIONS

35:37-5-1. Definitions and incorporation by reference of federal poultry inspection regulations

(a) The Mandatory Poultry Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2003~~ 2004 Revision), Parts 381 et seq.; 416 et seq.; 417 et seq.; 424 et seq.; 441 et seq.; and 500 et seq. for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-5-2. Whenever an official mark, form, certificate or seal is designated by Federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry mark, form, certificate or seal shall be substituted.

(b) All words and terms defined or used in the Federal regulations incorporated by reference by the Department shall mean the state equivalent or counterpart to those words or terms.

(c) The following terms, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise:

(1) "Act" means the Oklahoma Poultry Products Inspection Act.

(2) "Director" means the Director of Meat Inspection.

(3) "Poultry" means any domesticated bird, whether live or dead, including chickens, turkeys, ducks, geese, guineas, ratites, or squabs (also known as young pigeons from one to about thirty days of age).

(4) "Poultry product" means any poultry carcass, part, or product made wholly or in part from any poultry carcass or part which can be used as human food, except those exempted from definition as a poultry product in Title 9 of the Code of Federal Regulations (CFR), Part 381.15. This term shall not include detached ova.

(5) "Poultry byproduct" means the skin, fat, gizzard, heart, or liver, or any combination of any poultry for cooked, smoked sausage.

35:37-5-2. Deleted regulations and ~~Exemptions~~ exemptions

(a) The following sections of the Federal regulations governing the mandatory poultry inspection (9 CFR, Part 381 et seq.; 416 et seq.; 417 et seq.; 424 et seq.; 441 et seq.; and 500 et seq.), (~~2003~~ 2004 Revision) of the USDA incorporated by reference under 35:15-27-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 381.6; 381.10(a)(2), (5), (6), and (7); 381.10(b); 381.10(d)(2)(i); 381.13(b); 381.16; 381.17; 381.20; 381.21; 381.37; 381.38; 381.39; 381.96; 381.101; 381.103 through 381.112; 381.123(b)(1) and (4); 381.132(c); 381.133; 381.179; 381.185; 381.186; 381.195 through 381.225.

(b) The provisions of this Act and rules do not apply to poultry producers with respect to poultry of their own raising on their own farms, which they slaughter if:

(1) Such producers slaughter not more than two hundred and fifty (250) turkeys, or not more than an equivalent number of birds of all species, excluding ratites, during the calendar year for which this exemption is being determined, four (4) birds of other species being deemed the equivalent of one (1) turkey; and

(2) Such poultry producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms; and

(3) None of such poultry moves in "commerce," as defined in 35:37-5-1. Poultry producers are specifically prohibited from selling or donating uninspected poultry products to retail stores, brokers, meat markets, schools, orphanages, restaurants, nursing homes and similar establishments. Said persons are further prohibited from sales or donation of ~~unispected~~ uninspected poultry through any type of retail market or similar establishment owned or operated by the poultry raiser; and

(4) Such poultry producer completes a certificate of registration and submits it to the Board; and

(5) Such poultry is healthy and is slaughtered and processed under sanitary standards, practices and procedures as result in the preparation of poultry products that are sound, clean and fit for human food, and each carcass, part or poultry product bear labeling that lists the customer's name, the producer's name and the statement, "This poultry product has not been inspected and passed"; and

(6) Such poultry is sold directly to and transported by the household consumer or transported directly to the consumer by the poultry producer without third-party intervention, intervening transfer or storage, and is maintained in a safe, unadulterated condition during transportation; and

(7) The poultry producers shall, at all reasonable times, upon notice by a duly authorized representative of the Board, afford such representative access to their facilities and an opportunity to examine records.

PART 7. OFFICIAL MARKS, DEVICES AND CERTIFICATES

35:37-5-18. Wording and form of the official inspection legend

Except as otherwise provided in this Part, the official inspection legend required to be used with respect to inspected and passed poultry products shall include wording as follows: "Oklahoma, Inspected and Passed." The form and arrangement of such wording shall be exactly as indicated in the example in Illustration 1 of Appendix ~~N~~ C of Chapter ~~15~~ 37, except that the appropriate official establishment number shall be shown. The Director may approve the use of abbreviations of such inspection mark; and such approved abbreviations shall have the same force and effect as the inspection mark. The official inspection legend, or the approved abbreviation thereof, shall be printed on consumer packages and other immediate containers of inspected and passed poultry products, or on labels to be securely affixed to such containers.

35:37-5-19. Official dressed poultry identification mark

Dressed poultry processed under inspection and passed for distribution shall be identified by an official inspection legend, refer to Illustration 2 of Appendix ~~N~~ C of Chapter ~~15~~ 37, which shall be not less than 1 1/2 x 3 in size. Such mark shall be applied to the immediate containers and shipping containers of the poultry.

35:37-5-20. Official seal

The official mark for use in sealing means of conveyance used in transporting poultry products under any requirement in this Part shall ~~be~~ include the inscription of "OKLA. INSP'D & PASSED" and a serial number ~~as shown in Illustration 3 of Appendix N of Chapter 15~~, and any other seals approved by the Director.

35:37-5-21. Official Oklahoma condemned mark

The term "Oklahoma Condemned" as shown in ~~Illustration 4 of~~ Appendix ~~N~~ F of Chapter ~~15~~ 37 is an official mark and the devices used by the Division for applying such mark are official devices.

SUBCHAPTER 7. CONSTRUCTION STANDARDS FOR MEAT PACKING PLANTS

PART 13. FACILITIES FOR PROCESSING EDIBLE PRODUCT

35:37-7-46. Perishable product departments

Facilities for holding perishable product under refrigeration shall be provided. To ~~insure~~ ensure proper care of product and to prevent growth of molds and bacteria, operations such as beef boning and trimming, deboning or otherwise processing raw poultry, bacon slicing, pork cutting, prepackaging meats, and sausage chopping and mixing should be conducted in departments having a temperature not higher than 50° F (10° C). Such operations should be located in rooms separate from carcass or product holding coolers to avoid contamination of product by cleanup water and condensation during the cleanup time.

PART 15. DESIGN, EQUIPMENT, AND OPERATION OF MEAT AND POULTRY SLAUGHTERING DEPARTMENTS AND RELATED AREAS

35:37-7-52. Meat

(a) Livestock Pens. To avoid delays in slaughtering operations, pens for ante-mortem inspection should have the capacity for holding the maximum number of animals of the various kinds that will be slaughtered in a single day. The pens, ramps, unloading chutes, and runways must be paved with concrete or brick and be equipped with suitable drainage facilities. Except at gateways, they shall have side curbs of similar impervious material at least 12 inches in height. Water troughs shall be provided with suitable overflows located above or adjacent to pen floor drains.

(b) Ante-mortem inspection facilities. To facilitate the ante-mortem inspection of animals, ample natural or artificial lighting must be available, and a suitable suspect pen with a squeeze chute or gate where the temperature of the animals may be taken, shall be provided. A reasonable proportion of the livestock pens, including the area where the suspect pen and restraining area are located shall be under a weathertight roof to provide an area for proper ante-mortem inspection in inclement weather.

(c) Location of holding and shackling pens. To avoid dust and odors, holding and shackling pens should be located outside the slaughtering department or should be separated from the department by full-height partitions of impervious material.

(d) Facilities for crippled animals. Suitable facilities should be furnished for conveying crippled animals into the slaughtering department.

(e) Slaughtering departments. Slaughtering departments must have adequate floor space and be arranged to facilitate the sanitary conduct of operations and efficient inspection. Truckways over which products are conveyed from the slaughtering department to rooms such as the offal cooler, the edible products tank charging room, and the inedible products tank charging level shall be located so that the material is not trucked beneath rails from which dressed carcasses and products are suspended. Personnel traffic shall not move through lines of carcasses.

(f) Maximum rate of slaughter permitted.

(1) The rate of slaughter is dependent on the ability of the establishment to present carcasses, their viscera, and parts in an orderly and clean manner, permitting a complete and efficient inspection without congestion or other objectionable conditions.

(2) The drawings or specifications (for very large plants) should indicate the proposed maximum slaughter rate. Drawings should also indicate if more than one species of animal will be slaughtered simultaneously or consecutively and if the Kosher method of slaughtering will be used.

(g) Facilities for handling viscera. Adequate space and suitable, properly located facilities must be provided for separating and handling the viscera of the various species of animals slaughtered. The cattle paunch-emptying table should be equipped with a power-operated lift. If paunches are saved for edible purposes, the ~~tap~~ top of the table should extend over the emptying hopper 12 inches, and the sides of the hopper should extend vertically below the top of the table at least 3 1/2 feet, to avoid ~~sailing~~ soiling the paunches.

(h) Edible by-product cooler. Suitable facilities for holding edible organs and parts (offal) under refrigeration in a separate cooler or in a separately drained part of a carcass cooler are required. Such areas must be accessible to the slaughtering departments without passing through a line of carcasses or through a congested cooler.

(i) Carcass chilling coolers-rail requirements.

(1) Rail arrangement. Cooler rails must be placed at least 2 feet from refrigerating equipment, walls, columns, and other fixed parts of the building. To promote cleanliness of product and to protect walls from damage by carcass shanks, it is desirable to place rails (required for main header or traffic rails) at least 3 feet from the walls.

(2) Height of cooler rails. The tops of cooler rails must be at least 11 feet above the highest part of the floor for halves of beef and bison; 9 feet above for headless hog carcasses and calves (trolleys 12 inches long); and 7 1/2 feet above for quarters of beef. Sheep and goat carcasses shall be suspended so that the hooks or gambrels are at least 6 1/2 feet above the floor.

(j) Retaining compartments. A suitable compartment shall be provided in a cooler for holding retained carcasses or parts and retained products in plants that are under Official State Inspection. The compartment may be separated from the remainder of the cooler by partitions of rust-resistant wire screen (No. 9 gauge, 1-inch mesh), or flat expanded metal of comparable gauge and mesh, extending from 2 inches above the floor to the ceiling. The compartment should have a door of similar material at least 4-feet wide, equipped for sealing or locking by the Oklahoma Department of Agriculture. For cattle carcasses retained because of infestation with cysticercus bovis, a similar compartment may be provided for holding such carcasses in a freezer at a temperature not higher than 15° F (10° C) for at least 10 days.

35:37-7-53. Poultry

(a) Holding sheds, truck maneuvering areas and loading dock bays.

(1) The holding sheds must be sufficient in size to facilitate the prescribed ante-mortem inspection, to assure a continual smooth flow of poultry into the plant, and to provide for the welfare of birds awaiting slaughter.

(2) Artificial lighting shall be provided in the holding sheds as necessary to facilitate inspection. The roofs must be watertight and the road surfaces should be paved with an impervious material, such as concrete. Any additional truck parking area and the truck maneuvering area should be surfaced with an impervious material such as concrete. The loading dock bays should be surfaced with an impervious material such as concrete which extends outward at least 20 feet. Suitable slope and drainage must be provided on all surfaces to prevent the collection of water or other obnoxious substances and to facilitate cleanup. Cleanup hose connections shall be well-located and adequate for the purpose.

(b) Docks for receiving and hanging live poultry, slaughtering area and picking area.

(1) To prevent dust, feathers, and other obnoxious substances from entering other parts of the plant, the live hanging dock shall be separated from the rest of the plant by full height impervious walls, self-closing impervious doors, and openings limited to those necessary for poultry ~~convey~~ conveyance or other systems.

(2) The slaughtering area shall be separated from the rest of the plant by full height impervious walls, self-closing impervious doors, and only such other openings as are necessary for conveyance of the poultry. Facilities shall be provided to contain the blood in an area as small as feasible. The picking and scalding operations shall be separated from the eviscerating and other areas of the plant by full height impervious walls, self-closing impervious doors, and openings limited to those necessary for poultry conveyor systems.

(c) Maximum rate of slaughter. The rate of slaughter is dependent upon the number of inspectors; the line arrangement; the spacing of birds; the incidence of disease; and the ability of the plant to present carcasses for inspection which are properly dressed and drawn, permitting complete and efficient inspection. The specifications or drawings shall indicate the proposed maximum hourly rate of slaughter for each class of poultry.

SUBCHAPTER 9. OKLAHOMA RABBIT AND RABBIT PRODUCTS INSPECTION REGULATIONS

PART 1. GENERAL

35:37-9-8. Application of inspection provisions

(a) The Oklahoma Rabbit and Rabbit Products Inspection Act shall apply to any person that engages in the business of slaughtering any rabbits or processing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of

any rabbit, for intrastate commerce, for use as human food or animal food.

(b) The provisions of this Act shall not apply to:

(1) Any person who slaughters rabbits or processes or otherwise handles rabbit products which have been or are to be processed as required by recognized religious dietary laws.

(A) Any person desiring such exemption shall make application to the Oklahoma Department of Agriculture, Food, and Forestry. The application shall be in a form and contain the information as is required by the Board.

(B) The Board may impose conditions as to sanitary standards, practices, and procedures in granting an exemption as it deems necessary to effectuate the purposes of the Oklahoma Rabbit and Rabbit Products Inspection Act. Any person who processes rabbit or rabbit products under exemption from certain requirements as provided in this Section shall be subject to all of the other applicable provisions of the Oklahoma Rabbit and Rabbit Products Inspection Act and the regulations promulgated pursuant thereto.

(C) Processing plants shall meet the sanitary requirements set forth in the Oklahoma Rabbit and Rabbit Products Inspection Act and shall be required to qualify for inspection and operate as official establishments;

(2) Any person who engages in the business of buying or selling, as rabbit products brokers, wholesalers, or otherwise, or transporting, in intrastate commerce, or storing in or for intrastate commerce, any carcasses, or parts or products of carcasses, of any rabbit; or

(3) Any person who engages in business, in or for intrastate commerce, as a renderer, or engages in the business of buying, selling, or transporting, in intrastate commerce, any dead, dying disabled, or diseased rabbit or parts of the carcasses of any rabbit that died otherwise than by slaughter.

(4) Any person who is engaged in business specified in this subsection shall be registered with the Board, in or for intrastate commerce:

(A) as a meat broker, renderer, or animal food manufacturer, or engage in business in commerce as a wholesaler of any carcasses, or parts or products of the carcasses, of any rabbits whether intended for human food or other purposes; or

(B) as a public warehouseman storing any articles in or for commerce, or engage in the business of buying, selling, or transporting in such commerce any dead, dying, disabled, or diseased animals of the specified kinds, or parts of the carcasses of any animals that died otherwise than by slaughter.

(c) The application for registration shall contain the name of such person, address of each place of business and all trade names under which such person conducts such business and such other information deemed necessary by the Board.

(1) Any person, firm, or corporation who is engaged in the business of buying, selling, or transporting in intrastate commerce dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation, in such commerce, any dead, dying, disabled, or diseased rabbits or parts of the carcasses of any such animals that died otherwise than by slaughter, shall comply with such regulations as the Board prescribes to assure that such animals, or the unwholesome parts or products thereof, will be prevented from being used for human food purposes.

(2) On and after September 1, 1989, no rabbit products intended for human food shall be allowed to be sold in this state without:

(A) first being inspected and approved by:

(i) the United States Department of Agriculture, or

(ii) the Oklahoma State Department of Agriculture, Food, and Forestry; or

(B) having been legally imported into this state pursuant to existing laws of the Federal Food Drug and Cosmetic Act.

(3) On and after September 1, 1989:

(A) Prior to slaughtering any rabbit or processing any rabbit products at any plant, a person owning or operating such plant shall have the plant approved by the Department.

(B) To receive plant approval, a person shall make application to the State Board of Agriculture. As part of the application, the person shall agree to comply with the terms and conditions of the Oklahoma Rabbit and Rabbit Products Inspection Act and any applicable regulations promulgated thereto.

(C) Prior to any approval, the plant and plant equipment shall be inspected by the Department of Agriculture, Food, and Forestry.

(D) Upon the approval of the plant and plant equipment by the Department, the plant shall be considered an official plant.

(E) No rabbits affected with any disease transmissible to man shall be slaughtered in any official establishment.

(F) No establishment or plant processing rabbits or rabbit products solely for intrastate commerce shall process any rabbits or rabbit product capable of use as human food except in compliance with the requirements of the Oklahoma Rabbit and Rabbit Products Inspection Acts.

(d) All inspection service shall be performed at all times by an inspector. The service shall be rendered where the facilities and conditions are satisfactory for the conduct of the service and the requisite inspectors are available.

(1) Rabbits that are processed in official plants in accordance with the Oklahoma Rabbit and Rabbit Products Inspection Act shall be inspected.

(2) All rabbits that are slaughtered and processed in an official plant where inspection service is maintained shall

be inspected for condition and wholesomeness. No uninspected rabbit products shall be brought into an official plant.

(3) Inspection shall not be provided at any establishment for the slaughter of rabbits which are not intended for human food.

(e) Any rabbit slaughtered or processed that is not intended for use as human food shall be decharacterized or otherwise identified as prescribed by regulations of the Board to deter its use for human food prior to its offer for sale, or transportation in intrastate commerce, unless naturally inedible by humans. Furthermore, no person, firm, or corporation shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses, parts thereof, meat or meat food products of any rabbits which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the Board or are naturally inedible by humans.

(f) All persons subject to the provisions of the Oklahoma Rabbit and Rabbit Products Inspection Act shall keep such records as will fully and correctly disclose all transactions involved in their businesses. All persons, subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the Board, afford a representative and any duly authorized representative of the Secretary of Agriculture of the United States accompanied by a representative of the Board access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all records, and to take reasonable samples of their inventory. Any record required to be maintained shall be maintained for two years or as the Board may by regulations prescribe.

(g) On and after September 1, 1989, no person shall:

(1) Slaughter any rabbit or process any rabbit products that are capable of use as human food at any establishment processing any articles solely for intrastate commerce, except in compliance with the requirements of the Oklahoma Rabbit and Rabbit Products Inspection Act; and

(2) Sell, transport, offer for sale or transportation or receive for transportation, in intrastate commerce or from an official establishment, any slaughtered rabbit from which the blood, feet, head, or viscera have not been removed in accordance with regulations promulgated by the Board, except as may be authorized by regulations of the Board.

(h) No person shall:

(1) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce:

(A) any rabbit products that are capable of use as human food and are adulterated or misbranded at the time of sale, transportation, offer for sale or transportation, or receipt for transportation, or

(B) any rabbit products required to be inspected pursuant to the Oklahoma Rabbit and Rabbit Products Inspection Act unless they have been so inspected and passed;

(2) Perform any act which is intended to cause or has the effect of causing such rabbit or rabbit products to be adulterated or misbranded;

(3) Use to their own advantage, or reveal other than to the authorized representatives of the state government or any other government in their official capacity, or as ordered by a court in any judicial proceedings, any information acquired under the authority of the Oklahoma Rabbit and Rabbit Products Inspection Act concerning any matter which is entitled to protection as a trade secret.

(i) No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark simulation, or any form of official certificate or simulation thereof, except as authorized by the Board.

(j) No person shall:

(1) forge any official device, mark, or certificate;

(2) without authorization from the Board use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate including "Oklahoma Rejected" or "Oklahoma Retained" tags;

(3) Contrary to the regulations prescribed by the Board, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(4) Knowingly possess, without promptly notifying the Board ~~of~~ or its representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any rabbit, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(k) Any plant approval given pursuant to the Oklahoma Rabbit and Rabbit Products Inspection Act may be suspended by the Department for:

(1) Failure to maintain a plant and equipment in a satisfactory state of repair;

(2) Failure to maintain plant or equipment in a sanitary manner on a continuing basis;

(3) The use of operating ~~procedure~~ procedures that are not in accordance with the Oklahoma Rabbit and Rabbit Products Inspection Act or regulations promulgated thereto;

(4) Alterations of buildings, facilities, or equipment which cannot be approved in accordance with the Oklahoma Rabbit and Rabbit Products Inspection Act or regulations promulgated thereto;

(5) Assault on an agent of the Board; or

(6) Failure to properly denature condemned and inedible materials.

(l) During such period of suspension, inspection service shall not be rendered. Upon suspension of inspection service in an official plant, the plant approval shall also become suspended, and all labels, seals, tags or packaging material bearing official identification shall be destroyed, or the official identification completely obliterated, or sealed in a manner acceptable to the Department.

35:37-9-10. Application for inspection service in official plants; approval

Any person desiring to process and pack products in a plant under inspection service must receive approval of such

plant and facilities as an official plant prior to the rendition of such service. An application for inspection service to be rendered in an official plant shall be approved according to the following procedure:

(1) Initial survey. When application has been filed for inspection service, the Director, or a designee, shall examine the plant premises, and facilities and shall specify any additional facilities required for the service. Appeals with respect to any specification may be made to the Department.

(2) Drawings and specifications to be furnished in advance of construction or alterations.

(A) Three copies of drawings or blueprints showing the features specified in this Subchapter shall be submitted to the Department. The drawings or blueprints shall be legible, made with sharp, clear lines, and properly drawn to scale, and shall consist of floor plan, plumbing plan and a plot plan.

(B) The plot plan shall show features like the limits of the plant's premises, locations in outline of buildings on the premises, one point of the compass, and roadways serving the plant, and the name and address of proposed owner.

(C) The floor plan shall show all space to be included in the official plant. If rooms or compartments shown on the drawings or blueprints are not to be included as part of the official plant, this shall be clearly indicated.

(D) The plumbing plan shall show the floor drainage system and the toilet soil lines for the entire plant as well as their size. Furthermore, the toilet soil lines must show that the two systems are separate to a point outside the building and must be complete for the official premises. Toilet soil lines must not discharge into grease catch basins.

(E) The sheets of paper on which drawings or blueprints are made shall not exceed a size 34 x 44. The drawings other than of the plot plan shall be made to a scale of at least 1/8" per foot, except that additional plans for some areas showing complex detail must be drawn to a scale of at least 1/4" per foot. The plot plan may be drawn to scale of not less than 1/32" per foot. The drawings shall indicate the scale used and shall also indicate the floor shown (e.g., basement, first, or second).

(3) Features required to be shown on floor plan. The following features shall be shown on the floor plan:

(A) The principal pieces of equipment drawn to scale in the proper locations.

(B) The name of the firm and the address of the plant by street and street number, or by other means properly identifying the location of the plant.

(C) One point of the compass (North).

(D) The doors and openings for passageways, designating those which are self-closing or permanently closed.

(E) All floor drain openings and gutter drains.

(F) Lavatories in toilet and processing rooms (lavatories which are other than hand-operated shall be so designated on the drawings or blueprints).

(G) All steam and hot and cold water outlets for cleanup purposes.

(H) Ice-making and storage facilities.

(I) The routes of the edible and inedible products.

(J) The location of fresh air inlets, exhaust fans, and hoods.

(4) Specifications. Specifications ~~Covering~~ covering the ~~Following Items Shall Accompany~~ following items shall accompany the ~~Drawings~~ drawings:

(A) Height of ceilings.

(B) Type of ceilings-open or closed.

(C) Finish of ceilings; for example-portland cement plaster, tile, rust resistant metal, cement, fiberglass, etc.

(D) Finish of walls; for example-portland cement plaster, glazed tile, glaze brick, glass blocks, etc.

(E) Screens-indicate whether all outside openings are screened or provided with other suitable devices against entrance of flies or other insects.

(F) Finish of floors-acid resistant concrete, brick, mastic material, etc.

(G) Drainage-indicate the amount of slope of floors to the drains in processing rooms, coolers, toilets, and refuse rooms, and give description of trapping and venting of drainage lines and of floor drain openings. Indicate size of drainage lines and whether house drainage lines and toilet soil lines are separate to a point outside of buildings.

(H) Heating-indicate type.

(I) Water supply-indicate whether public or private water supply, or both, and specify in terms of gallons of water available per minute for the processing needs of the plant. Non-potable water supplies are not permitted for use in any official establishment.

(J) Hot water facilities-specify facilities such as boilers, storage tanks, mixing valves, thermometers, etc., and indicate the size and number of boilers and storage tanks.

(K) Sewage disposal-indicate whether city sewer, cesspool, sedimentation tank, etc.

(5) Rooms and compartments which must be included in the official plant. The official plant shall include employees' toilet and dressing rooms, office space for the inspectors, storerooms for supplies, refuse rooms, and rooms, compartments, or passageways where rabbits or any ingredients to be used in the preparation of products under inspection will be handled or kept. It also may include other rooms or compartments located in the buildings comprising the official plant.

(6) Changes in drawings or blueprints. When changes are proposed in areas for which drawings or blueprints have been previously approved, one of the following types of revised drawings or blueprints shall be submitted for review and consideration.

(A) A completely revised sheet or sheets showing proposed alterations or additions, or

(B) Approved pasters of the proposed changes which may be affixed to the affected areas on the previously approved drawings or blueprints in a manner not obscuring essential data. Paster drawings and blueprints shall be prepared to the same scale and presented on a background similar to that of the originally approved drawing or blueprint.

(7) Final survey and plant approval. Prior to the inauguration of the inspection service, a final survey of the plant and premises shall be made by the Director or a designee to determine if the plant is constructed and facilities are in accordance with 35:37-9-41 through 35:37-9-57 and match the approved drawings and regulations described in this Part. The plant may be approved by the Department only when these requirements have been met, except that conditional approval for a specified limited time may be granted only under emergency conditions of restricted availability of facilities and construction materials, provided practices suitable to the Department are employed to effect adequate sanitary conditions in the plant.

PART 3. IDENTIFYING AND MARKING PRODUCTS

35:37-9-18. Form of inspection mark

(a) The inspection mark approved for use on inspected and passed edible products shall be contained within an oval and include the following wording: "Est. No. R-38 Oklahoma Insp'd & P'S'D". NOTE: The number "R-38" is given as an example only, the establishment number of the official establishment where product is prepared shall be used in lieu of. The required size of the inspection mark will be appropriate to the size of product package or container.

(b) The form and arrangement of such wording shall be as illustrated in Appendix ~~O~~ D of Chapter ~~15~~ 37.

PART 9. DISPOSITION OF DISEASED ~~REBBIT~~ RABBIT CARCASSES AND PARTS

PART 11. REINSPECTION AND INGREDIENTS; APPEALS

35:37-9-40. Appeal inspections; how made

Any person receiving inspection service may, if dissatisfied with any decision of an inspector relating to any inspection, file an appeal from a decision: Provided, That the appeal is filed within 48 hours from the time the decision was made. Any appeal from a decision of an inspector shall be made to the ~~inspectors~~ inspector's immediate superior having jurisdiction over the subject matter of the appeal. Review of the appeal findings, when requested, shall be made by the immediate superior of the employee of the Department making the appeal inspection. The cost of any appeal shall be borne by the applicant if the Department determines that the appeal is frivolous.

PART 13. SANITARY REQUIREMENTS

35:37-9-48. Lighting and ventilation

There shall be ample light, either natural or artificial or both, of good quality and well distributed, and sufficient ventilation for all rooms and compartments to insure sanitary conditions.

(1) All rooms in which rabbits are killed, eviscerated, or otherwise processed shall have at least 30 foot candles of light intensity on all working surfaces except that at the inspection stations the light intensity shall be of 50 foot candles. In all other rooms, there shall be provided at least 10 foot candles of light intensity when measured at a distance of 30 inches from the floor.

(2) All rooms shall be adequately ventilated to eliminate objectionable odors and minimize moisture condensation.

PART 15. MAINTENANCE OF SANITARY CONDITIONS AND PRECAUTIONS AGAINST CONTAMINATION OF PRODUCTS

35:37-9-56. Temperatures and cooling and freezing procedures

Temperatures and procedures that are necessary for cooling and freezing of rabbits in accordance with sound commercial practice shall be maintained in the coolers and freezers, and chilling temperatures and procedures shall also be in accordance with sound commercial practice.

(1) Cooling. Immediately after evisceration and washing of the carcass, it shall be placed in a cooling tank containing running cold tap water to remove the animal heat from the carcass. Carcasses shall not be allowed to remain in the cooling tank for longer than 1 hour. The internal temperature of the carcass shall be brought down to a temperature of ~~400~~ 40 degrees F. within 4 hours.

(2) Freezing.

(A) When ready-to-cook rabbits are packaged in bulk or shipping containers, the carcasses should be individually wrapped or packaged in water-vapor resistant paper to assure adequate overlapping of the lining to completely surround the carcasses and to permit unsealed closure or sealing in a manner that water-vapor loss from the product is considerably retarded or prevented. The rabbit carcasses should receive an initial rapid freezing under the packaging, temperature, air circulation, and stacking conditions that will result in freezing the carcasses solid in less than 48 hours.

(B) Frozen ready-to-cook rabbits shall be held under conditions that will maintain the product in a solidly frozen state with temperature maintained as constant as possible.

SUBCHAPTER 11. EXOTIC LIVESTOCK AND EXOTIC LIVESTOCK PRODUCTS

PART 1. GENERAL PROVISIONS

35:37-11-4. Additional definitions

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

"Artificial coloring" means a coloring containing any dye or pigment, which dye or pigment was manufactured by a process of synthesis other similar artifice, or a coloring that was manufactured by extracting a natural dye or natural pigment from a plant or other material in which such dye or pigment was naturally produced.

"Artificial flavoring" means a flavoring containing any sapid or aromatic constituent, which constituent was manufactured by a process of synthesis or other similar artifice.

"Biological residue" means any substance, including metabolites, remaining in exotic livestock at the time of slaughter or in any of its tissues after slaughter as a result of treatment or exposure of the exotic livestock to a pesticide, organic or inorganic compound, hormone, hormone like substance, growth promoter, antibiotic, anthelmintic, tranquilizer, or other therapeutic or prophylactic agent.

"CFR" means Code of Federal Regulations.

"Carcass" means all parts, including viscera, of any slaughtered exotic livestock.

"Chemical preservative" means any chemical that, when added to an exotic meat or exotic meat food product, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, or substances added to exotic meat and exotic meat food products by exposure to wood smoke.

"Circuit supervisor" means ~~a Doctor of Veterinary Medicine employed by~~ an authorized employee of the Board~~, and~~ who has supervisory responsibilities for enforcing the rules of this Subchapter~~, who has~~ with jurisdiction over a defined geographical area of Oklahoma which contains one or more districts, ~~and the~~ district supervisors, and inspectors assigned thereto.

"Commerce" means intrastate commerce within this State.

"Director" means the Director of ~~Food Safety Division,~~ Meat Inspection, employed by the Board to act for it in matters as prescribed by the rules of this Subchapter.

"District supervisor" means an authorized employee of the Board who has supervisory responsibilities for enforcing the rules of this Subchapter, and has jurisdiction over a defined geographical district of Oklahoma and the inspectors assigned thereto.

"Edible" means intended for use as human food.

"Immediate container" means the receptacle or other covering in which any product is directly contained or wholly or partially enclosed.

"Inedible" means adulterated, uninspected, or not intended for use as human food.

"Official establishment" means any slaughtering, cutting, boning, curing, smoking, salting, packing, rendering, or similar establishment at which inspection is maintained under the rules of this Subchapter.

"Oklahoma condemned" means that the exotic livestock so identified has been inspected and found to be in a dying condition, or to be affected with any other condition or disease that would require condemnation of its carcass.

"Oklahoma inspected and condemned" means that the carcass, viscera, or other part of carcass, or other product so identified has been inspected, found to be adulterated, and condemned under the rules in this Subchapter.

"Oklahoma inspected and passed" means that the meat, the byproducts, or the products derived from exotic livestock marked have been inspected and passed under the rules in this Subchapter, and at the time they were inspected, passed, and marked, they were found to be sound, healthful, wholesome, and fit for human food.

"Oklahoma passed for cooking" means that the meat or byproduct derived from exotic livestock so identified has been inspected and passed on condition that it be heat treated or rendered as prescribed by the rules in this Subchapter.

"Oklahoma passed for refrigeration" means that the meat or by- product derived from exotic livestock so identified has been inspected and passed on condition that it be refrigerated or handled as prescribed by the rules in this Subchapter.

"Oklahoma retained" means that the carcass, viscera, other part of the carcass, or other product, or article so identified, is held by an inspect or for further examination to determine its disposal.

"Oklahoma suspect" means that the exotic livestock so identified is suspected of being affected with a disease or condition which may require its condemnation, in whole or in part, when slaughtered, and is subject to further examination by a veterinarian to determine its disposal.

"Prepared" means slaughtered, salted, rendered, boned, cut up, or manufactured or processed.

"Shipping container" means the outside container (box, bag, barrel, crate, or other receptacle or covering) containing or wholly or partly enclosing any product packed in one or more immediate containers.

PART 7. OFFICIAL NUMBERS; INAUGURATION OF INSPECTION; WITHDRAWAL OF INSPECTION; REPORTS OF VIOLATIONS

35:37-11-13. Inauguration of inspection

When inspection is granted, the Director shall, at or prior to the inauguration of inspection, inform the operator of the establishment of the requirements of the rules. If the establishment, at the time inspection is inaugurated, contains any product that has not been inspected, passed, and marked in compliance with this Subchapter, ~~zone~~ the identity of the same shall be maintained, and it shall not be distributed in commerce, or processed for such purposes. The operator shall adopt and enforce all necessary measures for complying with all directions as the Board may prescribe for carrying out the

requirements of 2 O.S. Sections 6-290.3 through 6-290.13 and the rules of this Subchapter.

PART 13. TIME OF INSPECTION OF OFFICIAL ~~ESTABLISHEMENTS~~ ESTABLISHMENTS

PART 17. ANTEMORTEM INSPECTION

35:37-11-43. Official marks and devices for purposes of antemortem inspection

(a) With the exception of exotic livestock offered for slaughter at mobile slaughtering establishments, all exotic livestock required by this part to be identified as "Oklahoma Suspects" shall be tagged with a serially numbered metal ear tag bearing the term "Oklahoma Suspect".

(b) All exotic Livestock required by this part to be identified as "Oklahoma Condemned" shall be tagged with a serially numbered metal ear tag bearing the term "Oklahoma Condemned".

(c) The devices described in Subsections (a) and (b) of this Section shall be the official devices or identification of exotic livestock required to be identified as "Oklahoma Suspect" or "Oklahoma Condemned" as provided in this part.

PART 21. DISPOSAL OF DISEASED OR ADULTERATED CARCASSES AND PARTS

35:37-11-65. Carcasses infected that consumption of the meat may cause food poisoning

(a) All carcasses of exotic livestock so infected that consumption of the products may give rise to food poisoning shall be condemned. This includes all carcasses showing signs of:

(1) Acute inflammation of the lungs, pleura, pericardium, peritoneum, or meninges.

(2) Septicemia or pyemia, whether puerperal, traumatic, or without any evident cause.

(3) Gangrenous or severe hemorrhagic enteritis or gastritis.

(4) Acute diffuse metritis or mammitis.

(5) Phlebitis of the umbilical veins.

(6) Septic or purulent traumatic pericarditis.

(7) Any acute inflammation, abscess, or suppurating sore, if associated with acute nephritis, fatty and degenerated liver, swollen soft spleen, marked pulmonary hyperemia, general swelling of lymph nodes, diffuse redness of the skin, cachexia, icteric discoloration of the carcass or similar condition, either singly or in combination.

(8) Salmonellosis.

(b) Implements contaminated by contact with carcasses affected with any of the disease conditions mentioned in this Section shall be thoroughly cleaned and sanitized as prescribed in Part 15 of this Subchapter. The equipment used in the dressing of carcasses, such as viscera trucks or inspection tables shall be sanitized with hot water having a minimum temperature of 180°F. Carcasses or parts of carcasses contaminated by contact with diseased carcasses shall be condemned unless all contaminated tissues are removed within 2 hours.

PART 23. OFFICIAL MARKS AND DEVICES

35:37-11-86. Official marks and devices to identify inspected and passed carcasses and products of exotic livestock

The official inspection legend or mark of inspection required by this Subchapter to be applied to inspected and passed exotic livestock carcasses, parts of carcasses, products, containers of products, and labels for products, shall be in the form and wording illustrated in Appendix ~~Q~~ E of Chapter ~~15~~ 37. The number "G-38" shown in the illustration is given as an example only. The establishment number, assigned by the Director, for the official establishment where exotic livestock are slaughtered and dressed, or product is prepared, shall be used in lieu of, except in ratites that shall bear the standard poultry stamp specified in 35:37-5-18. The size of the inspection legend shall be determined by the Director, and will be of sufficient proportion for the size of the carcasses, product packages, labels, and containers.

35:37-11-89. Official marks and devices in connection with postmortem inspection and identification of adulterated products and insanitary equipment and facilities

(a) The official marks required by Parts 15 and 20 of this Subchapter, for use in postmortem inspection and identification of adulterated products and insanitary equipment and facilities are:

(1) The "Oklahoma Retained" tag that is used to retain carcasses and parts of carcasses in the slaughter department; it is Red and White, and bears the legend "Oklahoma Retained." It is a four section tag used for all exotic livestock.

(2) The "Oklahoma Retained" mark that is applied to products and articles as prescribed in Part 20 of this Subchapter by means of a paper tag bearing the legend "Oklahoma Retained".

(3) The "Oklahoma Rejected" mark that is used to identify insanitary buildings, rooms, or equipment as prescribed in Part 15 of this Subchapter and is applied by means of a paper tag bearing the legend "Oklahoma Rejected."

(4) The "Oklahoma Passed for Cooking" mark is applied on products passed for cooking as prescribed in Part 20 of this Subchapter by means of a brand (stamp) and is in the form illustrated in Appendix ~~Q~~ E of this Chapter ~~15~~.

(5) The "Oklahoma Condemned" mark shall be applied to products condemned as prescribed in Part 20 of this Subchapter by means a of brand (stamp) and is in the form illustrated in Appendix ~~Q~~ E of this Chapter ~~15~~.

(b) The Oklahoma Retained and Oklahoma Rejected tags, and all other brands, stamps, labels, and other devices approved by the Director and bearing any official mark prescribed in this Section, shall be official devices for their prescribed purposes.

PART 27. HANDLING AND DISPOSAL OF CONDEMNED CARCASSES AND PARTS OR OTHER INEDIBLE PRODUCTS

35:37-11-99. Specimens for education, research, or ~~othe~~ other nonfood purposes

(a) Specimens of condemned or other inedible materials, including embryos and specimens of animal parasites, may be released for educational, research, or other nonfood purposes under permit issued by the Director: Provided, that the person desiring the specimens makes a written application to the Director for the permit and arranges with and receives permission from the official establishment to obtain the specimens. Permits shall be issued for a period not longer than one year. The Director may revoke the permit if the specimens are not used as stated in the application, or if the collection or handling of the specimens interferes with inspection or the maintenance of sanitary conditions in the establishment.

(b) The specimens referred to in Subsection (a) of this Section shall be collected and handled only at a time and place and in a manner as not to interfere with the inspection or to cause any objectionable condition and shall be identified as inedible when they leave the establishment.

35:37-11-100. Livers condemned because of parasitic infestation and for other causes

(a) Livers condemned due to fluke infestation may be shipped from an official establishment only for purposes other than human food and only if they are first freely slashed, then identified and handled as provided in this Subsection. The identification shall be accomplished by either; dipping the slashed livers in a hot solution composed of one part FD&C green No. 3 or methyl violet to 5,000 parts of water, followed by washing in fresh water until the washings are no longer colored; or the application of charcoal. The liver shall be either frozen or cooked as prescribed in this Paragraph. Freezing shall be preceded by chilling the livers to a temperature not above 40° F. Livers packed in containers not more than 7 inches thick shall then be held for a period of not less than 10 days at a temperature not higher than 15° F. or for a period of not less than 5 days at a temperature not higher than 10° F. Livers packed in containers over 7 inches but less than 27 inches thick shall be held not less than 20 days at a temperature not higher than 15° F., or for not less than 10 days at a temperature not higher than 10° F. In lieu of freezing, the livers may be thoroughly cooked. It is essential that the livers be sufficiently identified through discoloration by the dye or charcoal to preclude their use as human food. Freezing may be accomplished in the regular freezer in a properly separated compartment or receptacle held under lock or seal by the inspector.

(b) Livers condemned due to hydatids or fringed tapeworms may be shipped from an official establishment only for purposes other than human food and only if they are thoroughly cooked, slashed, and identified as provided in Subsection (a) of this Section.

(c) Livers condemned due to parasites other than flukes, hydatids, or fringed tapeworms may be shipped from an official establishment without refrigeration or cooking but only for purposes other than food and only after slashing and identifying as indicated in Subsection (a) of this Section.

(d) Livers condemned for ~~telangiestasis~~ telangiectasis, angioma, "sawdust" condition, cirrhosis, or other nonmalignant change, being abscesses, or contamination, when these conditions are not associated with infectious diseases in the carcasses, may be shipped from an official establishment without refrigeration or cooking but only for purposes other than human food, and only if all tissue affected with abscesses is removed and destroyed within the establishment, and all the livers are slashed and identified as indicated in Subsection (a) of this Section or with any proprietary substances approved by the Director in specific cases.

(e) Livers identified as specified in this Section shall be placed in containers plainly marked "inedible" when shipped in commerce.

PART 33. LABELING

35:37-11-114. Labels; required features

(a) Any word, statement, or other information required by this part to appear on the label must be prominently placed thereon with such conspicuousness (as compared with words, statements, designs, or devices, in the labeling) and in terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. In order to meet this requirement, information must appear on the principal display panel except as otherwise permitted in this part.

(b) Labels of all products shall show the following information on the principal display panel (except as otherwise permitted in this part), in accordance with the requirements of this Part.

(1) The name of the product, which in the case of a product that purports to be or is represented as a product for which a definition and standard of identity or composition is prescribed, shall be the name of the food specified in the standard, and in the case of any other product shall be the common or usual name of the food, if any, and if there is none, a truthful descriptive designation, as prescribed in Subsection (d) of this Section;

(2) If the product is fabricated from two or more ingredients, the word "ingredients" followed by a list of the ingredients as prescribed in Subsection (e) of this Section;

(3) The name and place of business of the manufacturer, packer, or distributor for whom the product is prepared, as prescribed in Subsection (f) of this Section;

(4) An accurate statement of the net quantity of contents, as prescribed in Subsection (g) of this Section;

(5) An official inspection legend and, except as provided in Subsection (h) of this Section, the number of the official establishment, in the form required by Part 23 of this Subchapter;

(6) Any other information necessary for the safe handling and storage of the product as required by the rules in this Part.

(c) The principal display panel shall be the part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for sale. Where packages bear alternate principal display panels, information required to be placed on the principal display panel shall be duplicated on each principal display panel. The principal display panel shall be large enough to accommodate all the mandatory label information required to be placed thereon with clarity and conspicuousness and without obscuring of the information by designs or vignettes or crowding. In determining the area of the principal display panel, exclude tops, bottoms, flanges at tops and bottoms of cans, and shoulders and necks of bottles or jars. The principal display panel shall be:

(1) in the case of a rectangular package, one entire side, the area of which is at least the product of the height times the width of that side.

(2) in the case of a cylindrical or nearly cylindrical container:

(A) An area that is 40 percent of the product of the height of the container times the circumference of the container, or

(B) an area of at least one third of the product of the height times the circumference of the container; if immediately to the right or left of the area, there is an area reserved for information prescribed in Subsection (b), Paragraphs (2),(3), and (5) of this Section, equal to not more than 20 percent of the circumference.

(3) in the case of a container of any other shape, 40 percent of the total surface of the container.

(d) Any descriptive designation used as a product name for a product that has no common or usual name shall clearly and completely identify the product. Product that has been prepared by salting, smoking, drying, cooking, chopping, or other means shall be described on the label unless the name of the product implies, or the manner of packaging shows, that the product was subjected to the preparation. The unqualified terms "meat," "meat byproduct," "meat food product," and terms common to the meat industry but not common to consumers such as "picnic," "butt", "cala," "square," loaf," "spread, "delight," "roll," "plate," "luncheon," and "daisy" shall not be used as names of a product unless accompanied with terms descriptive of the product or with a list of ingredients, as deemed necessary in any specific case by the Director in order to assure that the label will net be false or misleading.

(e) The list of ingredients shall show the common or usual names of the ingredients arranged in their descending order of predominance, except as otherwise provided in this Subsection.

(1) The terms "flavorings" may be used to designate natural spices, essential oils, oleoresins and other natural spice extractives, and the term "spices" may ~~bemused~~ be used to designate natural spices, without naming each.

(2) The term "corn syrup" may be used to designate either corn syrup or corn syrup solids.

(3) When a product is coated with fat, gelatin, or other approved substance and a specific declaration of the coating appears contiguous to the name of a product, the ingredient statement need not make reference to the ingredients of the coating.

(4) On containers of frozen dinners, entrees, and similarly packaged consumer sized products in cartons, the ingredient statement may be placed on the front riser panel: Provided, that the words "see ingredients" followed immediately by an arrow is placed on the principal display panel immediately above the location of the statement without intervening print or designs.

(f) The name or trade name of the person that prepared the product may appear as the name of the manufacturer or packer without qualification on the label. Otherwise the name of the distributor of the product shall be shown with a phrase such as "Prepared for ***." The place of business of the manufacturer, packer or distributor shall be shown on the label by city, state, and postal zip code when the business is listed in a telephone or city directory, and if not listed in a directory, then the place of business shall be shown by street address, city, state, and postal zip code. The name and place of business of the manufacturer, packer, or distributor may be shown:

(1) On the principal display panel or

(2) On the 20 percent panel adjacent to the principal display panel reserved for required information or

(3) On the front riser panel of frozen food cartons.

(g) The requirements for the statement of net quantity of contents are:

(1) The statement of net quantity of contents shall appear on the principal display panel of all containers to be sold at retail intact and shall appear on all containers in conspicuous and easily legible boldface print or type in distinct contrast to other matter on the package and shall be declared in accordance with the provisions of this Subsection.

(2) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container exclusive of wrappers and packing substances. Reasonable variations caused by loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large.

(3) The statement shall be placed on the principal display panel within the bottom 30 percent of the area of the panel in lines generally parallel to the base: Provided, that on packages having a principal display panel of 5 square inches or less, the requirement for placement within the bottom 30 percent of the area of the label panel shall not apply when the statement meets the other requirements of this Subsection. In any case, the statement may appear in more than one line, The terms "net weight" or "net wt." shall be used when stating the net quantity of contents in terms of weight, and the term net contents" or "content" when stating the net quantity of contents in terms of fluid measure.

(4) Where no general consumer usage to the contrary exists, the statement shall be in terms of liquid measure,

if the product is liquid, or in terms of weight if the product is solid, semi-solid viscous or a mixture of solid and liquid. For example, a declaration of 3/4 pound avoirdupois weight shall be expressed as "Net Wt. 12 oz. except as provided for in Paragraph (5) of this Subsection for random weight packages; a declaration of 1 1/2 pounds avoirdupois weight shall be expressed as "Net Wt. 24 oz. (1 $\frac{1}{2}$ lbs.)" or "Net Wt. 24 oz. (1.5 lbs.)."

(5) On packages containing 1 pound or 1 pint and less than 4 pounds or 1 gallon, the statement shall be expressed as a dual declaration both in ounces and (immediately thereafter in parenthesis) in pounds, with any remainder in terms of ounces or common or decimal fraction of pound, or in the case of liquid measure, in the largest whole units with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart, except that on random weight packages the statement shall be expressed in terms of pounds and decimal fractions of the pound carried out to not more than two decimal places, for packages over 1 pound, and for packages which do not exceed 1 pound the statement may be in decimal fractions of the pound in lieu of ounces.

(6) The statement shall be in letters and numerals in type size established in relationship to the area of the principal display panel of the same package and shall be uniform for all packages of substantially, the same size by complying with the following type specifications:

(A) Not less than one-sixteenth inch in height on packages, the principal display panel of which has an area of 5 square inches or less;

(B) Not less than one-~~eighths~~ eighth inch in height on packages, the principal display panel that has an area of more than 5 but not more than 25 square inches;

(C) Not less than three-sixteenths inch in height on packages, the principal display panel of which has an area of more than 25 but not more than 100 square inches.

(D) Not less than one-quarter inch in height on packages, the principal display panel of which has an area of more than 100 but not more than 400 square inches.

(E) Not less than one-half inch in height on packages, the principal display panel of which has an area of more than 400 square inches.

(7) The ratio of height to width of letters and numerals shall not exceed a differential of 3 units to 1 unit (no more than 3 times as high as it is wide). Heights pertain to upper case of capital letters. When upper and lower case or all lower case letters are used, it is the lower case letter "o" or its equivalent that shall meet the minimum standards. When fractions are used, each component numeral shall meet one-half the height in standards.

(8) The statement shall appear as a distinct item on the principal display panel and shall be separated by a space at least equal to the height of the lettering used in the statement from other printed label information appearing above or below that statement and by a space at least equal to twice the width of the letter "N" of the style of type used in the quantity of contents statement from other printed label information appearing to the left or right of the statement. It shall not include any term qualifying a unit of weight, measure, or count such as "jumbo quart," "full gallon," "giant quart," "when packed," "Minimum" or words of similar import.

(9) The following exemptions from the requirements contained in this Subsection are hereby established.

(A) Individually wrapped and labeled packages of less than 1/2 ounce net weight that are in a shipping container, need not bear a statement of net quantity of contents as specified in this Subsection when the statement of net quantity of contents on the shipping container meets the requirements of this Subsection.

(B) Random weight consumer size packages bearing labels declaring net weight, price per pound, and total price, shall be exempt from the type size, dual declaration and placement requirements of this Subsection, if an accurate statement of net weight is shown conspicuously and on the principal display panel of the package.

(10) Labels for containers that bear any representation as to the number of servings contained therein shall bear, contiguous to the representation, and in the same size type as is used for the representation, a statement of the net quantity of each serving.

(11) As used in this Section a "random weight package" is one that is one of a lot, shipment, or delivery of packages of the same product with varying weights and with no fixed weight pattern.

(12) On a multiunit retail package, a statement of the net quantity of contents shall appear on the outside of the package and shall include the number of individual units, the quantity of each individual unit, and in parentheses, the total net quantity of contents of the multiunit package in terms of avoirdupois or fluid ounces, except that the declaration of total quantity need not be followed by an additional parenthetical declaration in terms of the largest whole units and Subdivisions thereof, as required by Paragraph (5) and of this Subsection. For the purposes of this Subsection, "multiunit retail package" means a package containing two or more individually packaged units of the identical commodity and in the same quantity, with the individual packages intended to be sold as part of the multiunit retail package but capable of being individually sold in full compliance with all requirements of the rules in this Part. Open multiunit retail packages that do not obscure the number of units and the labeling thereon are not subject to this Subsection if the labeling of each individual unit complies with the requirements of Paragraphs (2), (3), (5), and (8) of this Subsection. On multiunit retail packages, consisting of varied cuts, in the same package destined for resale as a complete unit, shall be labeled to indicate ~~specie~~ species, proper name of each cut and net weight of each cut or component part. In addition, the total net contents of the entire unit will be shown along with other label features.

(h) The requirements for the inspection legend and establishment number are:

(1) The official establishment number shall be either embossed or lithographed on all hermetically sealed metal, plastic or glass containers of products fully processed within the containers in an official establishment, except that the containers that bear labels lithographed directly on the container and in which the establishment number is incorporated need not have the establishment number separately embossed or lithographed thereon. Labels shall not be affixed to containers so as to obscure the embossed or lithographed establishment number.

(2) When any product is placed in a carton or in a wrapper of paper or cloth or in any other type of container approved by the Director, that is labeled in accordance with this Part, the official inspection legend and the official establishment number as specified in Subsection (b) of this Section, may be applied by means of a sticker to be securely and prominently affixed, along with the name of the product, at a place on the label reserved for the purpose. In case there are two or more display panels featuring the name of product, the inspection sticker shall be affixed to each panel.

(3) The official establishment number may be omitted from the official inspection legend on the immediate containers of frozen dinners and pies, and similarly packaged products when the official establishment number is placed on an end panel at the time of packaging and when it is presented on a single colored background in a prominent and legible manner in a size sufficient to insure easy recognition.

(4) The official establishment number may be omitted from the official inspection legend on consumer size packages of sliced meat food products when the official establishment number is printed on the label at the time of packaging and when it is presented on a single colored background in a prominent and legible manner in a size sufficient to insure easy recognition.

(5) The official establishment number may be omitted from the official inspection legend on consumer size containers of meat food products in aluminum pans or trays when the official establishment number is embossed on the pans or trays and when a statement such as "Est. No. on Pan" is placed contiguous to the official inspection legend on the container.

(6) The official establishment number may be omitted from the official inspection legend printed on artificial casings or bags enclosing meat food products when the official establishment number is etched in ink on a flat surface of a metal clip used to close the container in a prominent and legible manner in a size sufficient to insure easy recognition and when a statement, such as, "Est. No. on Metal Clip" is placed contiguous to the official inspection legend on the casing or bag.

(7) The official establishment number may be omitted from the official inspection legend printed on paper labels of canned products when the official establishment number is printed on the principal display panel at the time of labeling the container, or the official establishment number may be printed on the back of the paper label when the statement "Est. No. On Back of Label" is printed contiguous to the official legend, in a prominent and legible manner in a size sufficient to insure easy recognition.

(i) Labels of any product within any of the following Paragraphs shall show the information required by the Paragraph for the product:

(1) A label for product that is an imitation of another food shall bear the word "imitation" immediately preceding the name of the food imitated and in the same size and style of lettering as in that name and immediately thereafter the word "ingredients" and the names of the ingredients arranged in the order of their predominance.

(2) If a product purports to be or is represented for any special dietary use by man, its label shall bear a statement concerning its vitamin, mineral, and other dietary properties upon which the claim for use is based in whole or in part and shall be in conformity with rules the Director may prescribe.

(3) When an approved artificial smoke flavoring or an approved smoke flavoring is added as an ingredient in the formula of a meat food product, there shall appear on the label, in prominent letters and contiguous to the name of the product, a statement such as "Artificial Smoke Flavoring Added" or "Smoke Flavoring Added," as may be applicable, and the ingredient statement shall identify any artificial smoke flavoring so added as an ingredient in the formula of the meat food product.

(4) When any other artificial flavoring is to be added to a product, the ingredient statement shall identify it as "Artificial Flavoring."

(5) When product is placed in a casing to which artificial coloring is applied there shall appear on the label, in a prominent manner and contiguous to the name of the product, the words, "Artificially colored."

(6) If a casing is removed from product at an official establishment and there is evidence of artificial coloring on the surface of the product, there shall appear on the label, in a prominent manner and contiguous to the name of product, the words "Artificially colored."

(7) When a casing is colored prior to its use as a covering for product and the color is not transferred to the product enclosed in the casing, no reference to color need appear on the label but no casing may be used if it is misleading or deceptive with respect to color, quality, or kind of product, or otherwise.

(8) Product that bears or contains any other artificial coloring shall bear a label stating that fact on the immediate container or if there is none, on the product.

(9) When an antioxidant is added to product as permitted under Part 35 of this Subchapter, there shall appear on the label in prominent letters and contiguous to the name of the product, a statement identifying the officially approved specific antioxidant by its common name or abbreviation thereof and the purpose for which it is added, such as, "BHA, BHT and Propylgallate added to help protect flavor."

(10) Containers or other product packed in, bearing, or containing any chemical preservative shall bear a label stating that fact.

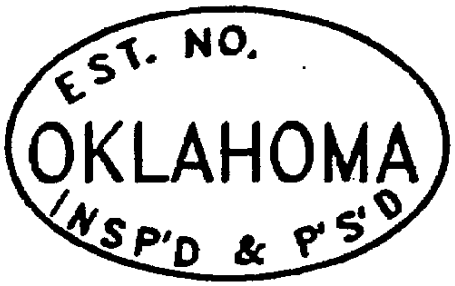
(j) Packaged products that require special handling to maintain their wholesome condition shall have prominently displayed on the principal display panel of the label the statement: "Keep Refrigerated," "Keep Frozen," "Perishable Keep Under Refrigeration," or a similar statement as the Director may approve in specific cases. Products that are distributed frozen during distribution and thawed prior to or during display for sale at retail shall bear the statement on the shipping container: "Keep Frozen." The consumer-size container for the products shall bear the statement "Previously Handled Frozen for Your Protection, Refreeze or Keep Refrigerated." For all perishable canned products the statement shall be shown in upper case letters one-fourth inch in height for containers having a net weight of 3 pounds or less, and for containers having a net weight over 3 pounds, the statement shall be in upper case letters at least one-half inch in height.

35:37-11-118. Approved labels to be used only on products to which they are applicable

Labels shall be used only on products for which they are approved, and only if they have been approved for the products: Provided, that existing stocks of labels approved prior to the effective date of this Section and the quantity of which has been identified to the inspector in charge as being in storage on ~~laid~~ said date at the official establishment or other identified warehouse for the account of the operator of the official establishment may be used until the stocks are exhausted, but not later than one year after the effective date of this Section unless the labels conform to all the requirements of this Part. The Director may upon the show of good cause grant individual extensions of times as deemed necessary.

APPENDIX B. OFFICIAL MARKS OF INSPECTION AND OTHER IDENTIFICATION FOR MEAT AND MEAT PRODUCTS [NEW]

Official marks and devices to identify inspected and passed products of cattle, bison, sheep, swine, or goats (Reference: 35:37-3-44).



APPENDIX C. OFFICIAL MARKS OF INSPECTION AND OTHER IDENTIFICATION FOR POULTRY AND POULTRY PRODUCTS [NEW]

Illustration 1
(Reference: 35:37-5-18)

Wording and form of the official inspection legend

DRESSED POULTRY
ELIGIBLE FOR FURTHER
PROCESSING
In Official Establishments Under
OSDA Inspection

Plant No. 000. Lot 000

Illustration 2
(Reference: 35:37-5-19)

Official dressed poultry identification mark

APPENDIX D. OFFICIAL MARKS OF INSPECTION AND OTHER IDENTIFICATION FOR RABBITS AND RABBIT PRODUCTS [NEW]

(Reference: 35:37-9-18)

APPENDIX E. OFFICIAL MARKS OF INSPECTION AND OTHER IDENTIFICATION FOR EXOTIC LIVESTOCK AND EXOTIC LIVESTOCK PRODUCTS [NEW]

Official marks and devices to identify inspected and passed products of exotic livestock (Reference: 35:37-11-86).

APPENDIX F. OFFICIAL MARKS AND DEVICES IN CONNECTION WITH POST-MORTEM INSPECTION AND IDENTIFICATION OF ADULTERATED PRODUCTS AND INSANITARY EQUIPMENT AND FACILITIES [NEW]

(Reference: 35:37-3-47, 35:37-5-21)

The "Oklahoma Passed for Cooking" mark:

OKLAHOMA PASSED FOR COOKING

The "Oklahoma Condemned" mark:

OKLAHOMA CONDEMNED

[OAR Docket #05-1063; filed 6-1-05]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 45. WATER QUALITY STANDARDS IMPLEMENTATION PLAN

[OAR Docket #05-1064]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Water Quality Standards Implementation Plan
35:45-1-2. [AMENDED]
35:45-1-3. [AMENDED]
35:45-1-4. [AMENDED]
35:45-1-5. [AMENDED]
35:45-1-7. [AMENDED]
35:45-1-8. [AMENDED]
35:45-1-10. [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), (7), (16), and (29) and 2-18.2; 27A O.S. Supp. 2000, § 1-1-202(B); Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
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March 17, 2005
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March 30, 2005
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March 31, 2005
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March 31, 2005
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March 31, 2005
Gubernatorial approval:
May 16, 2005
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 25, 2005
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules amend the Department's Water Quality Standards Implementation Plan to comply with the revisions of the Oklahoma Water Quality Standards. The purpose of the plan is to identify how environmental programs within the Department comply with the Oklahoma Water Quality Standards.
CONTACT PERSON:
Teena Gunter, (405) 522-4576

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 11, 2005:

SUBCHAPTER 1. WATER QUALITY STANDARDS IMPLEMENTATION PLAN

35:45-1-2. Pertinent definitions, abbreviations, and acronyms

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

"303" means Section 303 of the CWA, which requires states to review and, as necessary, revise their water quality standards at least every three (3) years.

"402" means Section 402 of the CWA, which establishes the National Pollutant Discharge Elimination System (NPDES).

"Animal Feeding Operation" means a lot or facility where the following conditions are met:

(A) animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety (90) consecutive days or more in any twelve-month period, and

(B) crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Animal Waste" means animal excrement, animal carcasses, feed wastes, process wastewaters, or any other waste associated with the confinement of animals from an animal or poultry feeding operation.

"Appendix F" means Appendix F of the OWQS, OAC 785:45, which has the statistical values of historic data for TDS, chloride, and sulfate for streams in most of the watersheds across the state.

"Background" means the ambient level of a pollutant relative to a potential source of pollution, and which is characterized by upstream (to the source being investigated) concentrations of a pollutant for surface waters or hydraulically upgradient concentrations for groundwater.

"BMP" means Best Management Practice~~(s)~~, which are schedules of activities, prohibitions on practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state.

"CAFO" means Concentrated Animal Feeding Operation, as defined by the Oklahoma Concentrated Animal Feeding Operations Act, 2 O.S. § 9-202(B)(11).

"CPP" means the Continuing Planning Process document, submitted by the state to EPA, which describes present and planned water quality management programs and the strategy used by the State in conducting these programs. Information on how the state utilizes the WQS and WQS Implementation Criteria are contained in this document.

"CWA" means the federal *Clean Water Act* and amendments.

"CWAC" as defined in OAC 785:45, means Cool Water Aquatic Community, a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality, water temperature and habitat are adequate to support warm water intolerant climax fish communities and includes an environment suitable for the full range of cool water benthos.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Discharge" means any release by leaking, pumping, pouring, emitting, emptying, dumping, escaping, seeping,

leaching, or other means of release of wastes or wastewater except as otherwise provided in Section 9-204.1 of Title 2 of the Oklahoma Statutes. The term discharge shall not include a distribution of waste water into an irrigation system for the purpose of land application of waste to property, provided the waste does not leave the land application area.

"EPA" means the federal Environmental Protection Agency.

"Fish and Wildlife Propagation" means the WQS beneficial use designation for promoting fish and wildlife propagation for the fishery classifications of HLAC, WWAC, CWAC, and Trout Fishery (Put and Take).

"Fish Consumption" means the WQS beneficial use designation for the protection of human health for the consumption of fish.

"HLAC" as defined in OAC 785:45, means Habitat-Limited Aquatic Community, a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water chemistry or habitat are not adequate to support a warm water aquatic community (WWAC).

"HQW" means High Quality Water, defined as those waters of the state which possess existing water quality which exceeds that necessary to support the propagation of fishes, shellfishes, wildlife, and recreation in and on the water. HQWs must receive special protection against degradation.

"Land Application" means the application of substances including animal waste and other substances to the land, at approved rates within the capacity of the land or crops.

"LMFO" means a Licensed Managed Feeding Operation, as defined by the Oklahoma Concentrated Animal Feeding Operations Act at 2 O.S. § 9-202(B)(18).

"MDL" means the Method Detection Limit and is defined as the minimum concentration of an analyte that can be measured and reported with 99% confidence that the analyte concentration is greater than zero. MDL is dependent upon the analyte of concern.

"Nonpoint Source" means a source of pollution without a well defined point of origin or a single identifiable source such as an outfall pipe, often involving overland flow of pollutants with storm water or subsurface flow of pollutants with groundwater over a wide area.

"NPDES" means the National Pollutant Discharge Elimination System, as authorized by Section 402 of the CWA.

"Nutrient-Limited Watershed" means a watershed of a waterbody that is designated as nutrient limited in the most recent Oklahoma Water Quality Standards.

"Nutrient-Vulnerable Groundwater" means groundwater that is designated nutrient-vulnerable in the most recent Oklahoma Water Quality Standards.

"OAC" means Oklahoma Administrative Code.

~~**"ODA"**~~ **"ODAFF"** means the Oklahoma Department of Agriculture, Food, and Forestry.

"ORW" means Outstanding Resource Water, defined as a water of the state that constitutes an outstanding resource or is of exceptional recreational or ecological significance. ORWs must receive special protection against degradation.

"O.S." means Oklahoma Statutes.

"OWRB" means the Oklahoma Water Resources Board.

"PBCR" means Primary Body Contact Recreation, a WQS beneficial use designation.

"Plan" means the Water Quality Standards Implementation Plan, or portion thereof, promulgated by ~~the State Department of Agriculture~~ ODAFF in this chapter for the programs that affect water quality within ~~the ODA's~~ ODAFF's jurisdictional areas of environmental responsibility.

"Point Source" means any discernible, confined and discrete conveyance from which pollutants are or may be discharged such as a discharge pipe (see also definition in OAC 785:45).

"Poultry Feeding Operation" means a property or facility where the following conditions are met:

(A) poultry have been, are or will be confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period,

(B) crops vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the property or facility, and

(C) producing over ten (10) tons of poultry waste per year.

"PPP" means Pollution Prevention Plan and is a written plan to control the discharge of pollutants that has been prepared in accordance with industry acceptable engineering and management practices.

"PQL" means Practical Quantitation Limit and is defined as 5 times the MDL. The PQL represents a practical and routinely achievable detection limit with high confidence.

"PPWS" means Public and Private Water Supply, a WQS beneficial use designation for the protection of human health for the consumption of water and consumption of fish and water.

"Remediation" means the removal of pollutants from soil or water by absorption, excavation, pumping, natural attenuation, biological, chemical, or other means or combination of methods.

"Scenic River" means a river or stream so designated pursuant to the Wild and Scenic Rivers Act. A scenic river is automatically considered an ORW.

"Silviculture" means the art and science of controlling the establishment, composition, and growth of forests.

"SWS" means Sensitive Water Supply, a water body that constitutes a sensitive public and private water supply.

"TMDL" means Total Maximum Daily Load, a written, pollutant-specific and water body-specific plan establishing pollutant loads for point and nonpoint sources, incorporating safety reserves, to ensure that a specific water body will attain and maintain the water quality necessary to support existing and designated beneficial uses. The term also includes consideration of increases in pollutant loads.

"UAA" means Use Attainability Analysis, an investigation by OWRB of whether a WWAC or CWAC subcategorization (for the Fish and Wildlife Propagation beneficial use) is reasonably attainable.

"USAP" means Use Support Assessment Protocols, defining how sampling and other data shall be used to determine whether or not a water body is meeting its beneficial uses, as defined at OAC 785:46, Subchapter 15.

"USDA NRCS" means the United States Department of Agriculture Natural Resources Conservation Service.

"USGS" means the United States Geological Survey.

"Waters of the State" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof. Provided, waste treatment systems, including treatment ponds and lagoons designed to meet federal and state requirements other than cooling ponds as defined in the federal Clean Water Act or promulgated rules, are not waters of the state.

"WQS (or OWQS)" means the Oklahoma Water Quality Standards, established pursuant to Section 303 of the CWA, and which serve as goals for water quality management planning and benchmark criteria for the NPDES/OPDES permitting process. Water Quality Standards consist of beneficial use classifications for navigable waters, water quality criteria to support those uses, and an antidegradation policy statement. Oklahoma's Water Quality Standards are found at OAC 785:45.

"WQSIP" means Water Quality Standards Implementation Plan.

"WWAC" as defined in OAC 785:45, means Warm Water Aquatic Community, a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality and habitat are adequate to support climax fish communities and includes an environment suitable for the full range of warm water benthos.

35:45-1-3. General statement of policy; responsibility for WQSIP document

(a) As a general statement of agency policy, programs and activities within ~~ODA~~ ODAFF will be managed to protect the beneficial uses of the state's waters and to maintain water quality standards. In addition, when problems are identified, the agency will assist landowners, the industry, and other agencies with technical recommendations on remediation efforts using appropriate practices.

(b) The Assistant Director with water quality program supervisory responsibilities and the Water Quality Staff Forester prepared the WQSIP for the Forestry Services Division. The ~~Water Quality~~ Agricultural Environmental Management Services Division section was prepared by the Division's Professional Engineer. The Plant Industry and Consumer Services Division section was developed by the Nursery Program Administrator. These individuals will be responsible for distributing copies of the final plan, informing field offices and updating the plan as necessary.

35:45-1-4. Pertinent water quality standards

(a) Pursuant to Section 303 of the CWA, Oklahoma's surface water quality standards are promulgated by the OWRB at OAC 785:45, Subchapter 5. Surface water quality standards are comprised of three elements:

(1) Beneficial uses, designated to apply to specific water bodies or defined water body segments, as listed in Appendix A to OAC 785:45, ~~and which~~ generally address the goals of the CWA. Certain default beneficial uses are assumed for waters not listed in Appendix A until a UAA indicates otherwise. The subset of beneficial uses which address water quality are:

(A) Public and Private Water Supply (PPWS) (OAC 785:45-5-10);

(B) Fish and Wildlife Propagation (F&W) (OAC 785:45-5-12), according to one of four fishery subcategories:

(i) Habitat-Limited Aquatic Community (HLAC).

(ii) Warm Water Aquatic Community (WWAC).

(iii) Cool Water Aquatic Community (CWAC).

(iv) Trout Fishery (Put and Take).

(C) Agriculture (Ag) (OAC 785:45-5-13);

(D) Primary Body Contact Recreation (PBCR) (OAC 785:45-5-16);

(E) Secondary Body Contact Recreation (OAC 785:45-5-17); and

(F) Aesthetics (OAC 785:45-5-19).

(2) Numerical and narrative criteria (OAC 785:45-5) apply statewide. Numerical criteria are pollutant-specific and apply to a water body according to its beneficial uses in accordance with OAC 785:45. Narrative criteria are generally referred to as "free from" prohibitions.

(3) Numerical salinity water quality standards ~~have been set~~ are only for agricultural beneficial uses (irrigation and watering livestock). Stream segment averages of historic data for chlorides, sulfates, and TDS are available in Appendix F for most stream segments statewide. The WQS also allows for use of upstream/background data and data from surrounding streams instead of these averages if this data provides a more appropriate basis for setting standards for a specific stream (OAC 785:45-5-13(f&g)).

(4) OAC 785:45-5-13 (e) states that "Increased mineralization from other elements such as calcium, magnesium, sodium, and their associated anions shall be maintained at or below a level that will not restrict any beneficial use," which OWRB interprets as meaning that neither salinity nor other minerals shall be allowed to impair the PPWS, F&W, PBCR, and other beneficial uses listed for streams in the WQS.

(5) Excess sediment impacts may be addressed through the numeric turbidity standards established for F&W. Heavy metal numerical ~~WQ standards~~ WQS have been set by OWRB for many beneficial uses.

(6) A water quality antidegradation policy, which applies statewide and is, consistent with the goals of the CWA, is found at OAC 785:45, Subchapter 3. Antidegradation policy implementation is found at OAC 785:45-5-25 and OAC 785:46, Subchapter 13. There are three levels of protection:

(A) Attainment or maintenance of existing or designated beneficial uses (Tier 1).

(B) Maintenance of beneficial uses and water quality in higher quality waters and sensitive water supplies of the state, as well as in waters of ecological or recreational significance (Tier 2).

(C) Prohibition of any water quality degradation from new point source discharges or increased loading from existing discharges into waters designated as outstanding resource waters (Tier 3).

(b) Although not required by any provision of the CWA, the OWRB has promulgated groundwater quality standards for the state at OAC 785:45, Subchapter 7. Groundwater quality standards and protection are ~~also~~ comprised of ~~three~~ seven elements:

(1) Beneficial uses, designated to apply to the groundwater situated below the surface of the dedicated land identified in a groundwater use permit or right issued by the OWRB. Such beneficial uses are defined at OAC 785:45-7-3(b) and may include, but are not limited to:

(A) Public and Private Water Supply (including municipal use and domestic use).

(B) Agriculture ~~(including the subcategories of~~ for irrigation ~~and non-irrigation use)~~ or livestock watering.

(C) Industrial and municipal process and cooling water.

~~(D) Recreation.~~

~~(E) Fish and Wildlife.~~

(2) Classifications, found at OAC 785:45-7-3(a) are as follows:

(A) Class I (Special Source Groundwater): Groundwaters where exceptional water quality exists, where there is an irreplaceable source of water, where it is necessary to maintain an outstanding groundwater resource or where the groundwater is ecologically important. This class of groundwater is considered to be very vulnerable to contamination and includes:

(i) All groundwater located beneath the watersheds of surface waters designated as Scenic Rivers in Appendix A to OAC 785:45.

(ii) Groundwater located underneath lands located within the boundaries of areas with waters of ecological and/or recreational significance listed in Tables 1 and 2 of Appendix B to OAC 785:45.

(iii) Groundwater located underneath lands ~~located~~ within the boundaries of a state-approved wellhead or source water protection area for public water supply.

(B) Class II (General Use Groundwater): Groundwaters capable of being used as a drinking water supply with ~~no or~~ conventional or no treatment methods, with the potential for multiple beneficial uses, and with mean TDS levels < 3000 mg/l.

(C) Class III (Limited Use Groundwater): Poor quality groundwaters due to ~~naturally occurring contaminants~~ natural conditions, which require extensive treatment for use as a drinking water source, ~~having~~ with mean TDS levels of ≥ 3000 mg/l and < 5000 mg/l.

(D) Class IV (Highly Mineralized Treatable Groundwater): Very poor quality groundwaters due to natural conditions, which require extensive treatment for use as a drinking water source, having mean TDS levels ≥ 5000 mg/l but <10000 mg/l.

(3) Beneficial use designations: Class I and II, not identified in Appendix H of OAC 785:45, shall be public and private water supply, agriculture, and Industrial and municipal process ad cooling water. Class III and IV, not identified in Appendix H of OAC 785:45, shall be agriculture, and Industrial and municipal process and cooling water. Appendix H specifies beneficial uses for groundwater contained in the appendix.

(4) Vulnerability level: Certain hydrogeologic basins are classified according to its vulnerability to contamination and identified as Very Low, Low, Moderate, High and Very High per Table 1 of Appendix D of OAC 785:45.

(5) Nutrient-vulnerable groundwater: Certain groundwaters are subject to further designation as nutrient-vulnerable groundwater per Table 2 of Appendix D.

(~~3~~ 6) ~~Protective measures and corrective actions, composed~~ Criteria for protection of groundwater quality:

(A) ~~Numerical criteria for certain organic compounds listed at OAC 785:45-7-2(a)(2), as well as practically measurable levels~~ Groundwaters of ~~toxics listed pursuant to Section 307(a) of~~ the ~~CWA, which, if exceeded, constitute~~ state shall be maintained to prevent alteration of their chemical properties by harmful substances not naturally found in groundwater ~~pollution and may require corrective action~~.

(B) ~~Narrative criteria requiring that protective~~ Protective measures shall be at all times maintained which are adequate to preserve and protect existing and designated groundwater basin classifications and which are sufficient to minimize the impact of pollutants on groundwater quality.

(C) The concentration of any synthetic substances or any substances not naturally occurring in that location shall not exceed the PQL in an unpolluted groundwater sample using laboratory technology.

(~~C~~ D) ~~Development of prescriptive~~ Prescriptive measures shall be developed by each state environmental agency and included in their WQSIP, and ~~subsequent use of such measures,~~ they shall be implemented to prevent~~, control or abate~~ groundwater pollution caused by any person or entity within their jurisdictional area of environmental responsibility.

(~~D~~ E) ~~Consideration by each~~ Each state environmental agency ~~of a~~ shall consider the hydrogeologic basin's vulnerability level~~, as illustrated in OWRB Technical Report 99-1, Statewide Groundwater Vulnerability Map of Oklahoma, Noël I. Osborn and Ray H. Hardy, in~~ and designated nutrient vulnerable groundwaters for surface activities with the potential to contaminate groundwater.

(7) Criteria for corrective action:

(A) Groundwater that has been polluted as a result of human activities shall be restored to a quality that will support uses designated in OAC 785:45-7-3(b) for that groundwater or meet the requirements of a site specific remediation plan approved by the appropriate state environmental agency.

(B) Measures to remedy, control or abate groundwater pollution caused by any person shall be the responsibility of each state environmental agency within its jurisdictional areas of environmental responsibility as prescribed in the agency's WQSIP.

35:45-1-5. Specific jurisdictional areas of environmental responsibility

(a) Title 27A of the Oklahoma Statutes outlines environmental responsibilities of the various environmental agencies. According to 27A O.S. § 1-3-101(D), ~~ODA~~ ODAFF has environmental responsibility for the following jurisdictional areas:

(1) point source discharges and nonpoint source runoff from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets, and animal waste;

(2) pesticide control;

(3) forestry and nurseries;

(4) fertilizer;

(5) facilities which store grain, feed, seed, fertilizer and agricultural chemicals;

(6) dairy waste and wastewater associated with milk production facilities;

(7) groundwater protection for activities subject to the jurisdictional areas of environmental responsibility;

(8) utilization and enforcement of Oklahoma Water Quality Standards and implementation documents; ~~and~~

(9) development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of Title 27A in the Oklahoma Statutes for its jurisdictional areas of environmental responsibility~~.~~ ; and

(10) storm water discharges for activities subject to the jurisdictional areas of environmental responsibility.

(b) The following areas are specifically reserved to the jurisdiction of ~~the Oklahoma Department of Environmental Quality~~ ODEQ at 27A O.S. § 1-3-101(D)(2):

(1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products;

(2) slaughterhouses, but not including feedlots at such facilities;

(3) aquaculture and fish hatcheries, including but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of ~~waters~~ wastes and sludge, and other pollution originating at ~~such~~ these facilities; and

(4) facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of ODEQ with respect to such storm water discharges.

(c) The following is a list of programs as addressed in the ~~Water Quality Standards Implementation Plan~~ WQSIP within the jurisdictional areas of environmental responsibility of ~~the Oklahoma Department of Agriculture~~ ODAFF, as defined in 27 A O.S. Section 1-3-101(D)~~, as amended by 1999's Senate Bill No. 549~~.

(1) Point source discharges and nonpoint source runoff from livestock production, feed yards, livestock markets and animal waste; dairy waste and wastewater associated with milk production facilities.

(A) Animal waste programs.

(B) WQSIP required.

(2) Pesticide Control; point source discharges and nonpoint source runoff from agricultural crop production and agricultural services.

(A) Pesticide program.

(B) WQSIP required.

(3) Forestry and nurseries; point source discharges and nonpoint source runoff from silviculture.

(A) Forestry Best Management Practices Program.

(B) WQSIP required.

(4) Fertilizer; point source discharges and nonpoint source runoff from agricultural crop production and agricultural services.

(A) Fertilizer program.

(B) WQSIP required.

(5) Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of ~~the Department~~ ODAFF.

(A) Groundwater protection activities.

(B) Separate WQSIP not required because requirements for groundwater quality protection and corrective measures, if necessary, are included in each of the individual programs.

(6) Utilization and enforcement of Oklahoma Water Quality Standards and Implementation Plan pursuant to Section 1-1-202 of Title 27A OS for jurisdictional areas of environmental responsibility.

(A) Water quality standards implementation.

(B) WQSIP not required.

(7) Development and promulgation of a ~~Water Quality Standards Implementation Plan~~ WQSIP pursuant to Section 1-1-202 of Title 27A OS for its jurisdictional areas of environmental responsibility.

(A) Water quality standards implementation.

(B) WQSIP not required.

35:45-1-7. Animal waste programs

(a) Compliance with antidegradation requirements and protection of beneficial uses.

(1) This area of jurisdiction includes the licensing or registering of CAFOs, LMFOs and poultry operations. These programs include land application of animal or poultry waste. Discharges of animal and poultry waste into waters of the State are statutorily prohibited. As a result, no discharge shall result from the operation of the facility. CAFOs and LMFOs may only discharge in the event of a 25 year/24 hour rainfall event and are

required to construct the waste retention structures to contain the 25 year/24 hour rainfall event. In addition, OAC 35:17-3-14(b)(3)(C) allows a facility which has been properly designed, constructed, and operated and is in danger of an imminent overflow due to chronic or catastrophic rainfall to discharge wastewaters to land application sites for filtering prior to discharging to surface or groundwaters of the state.

(2) Beneficial uses that could potentially be impaired by improper land application, leakage from animal waste lagoons, or breach of a lagoon could impact both ground water and surface water. Beneficial uses that could be affected include, but are not limited to: (1) Fish and Wildlife Propagation may be impaired by lack of DO due to nutrient loading. (2) Public and Private Water Supplies may be impaired by fecal coliform. (3) Recreation may be impaired by pathogens. (4) Aesthetics may be impacted by nutrient loading. All of these impairments could be caused by unauthorized discharges to waters of the state.

(3) Violations of the "no discharge" standard for CAFOs, LMFOs, and poultry feeding operations result in enforcement actions. These actions integrate corrective or remedial activities that can include clean up activities and restoration activities. Remediation requirements are determined on a case-by-case basis. The Department shall assess and review all approved remediation requirements to provide technical standards for future remediations.

(4) Education programs are also required for all poultry waste applicators, operators of poultry feeding operations, and employees of LMFOs.

(5) OAC 785:46-13-5 provides that no new or increased point source discharges are allowed in waterbodies and watersheds designated by the ~~Water Quality Standards~~ WQS as ORW or Scenic River. Waters that have been classified as ~~High Quality Waters (~~HQW~~)~~ and ~~Sensitive Public and Private Water Supplies (~~SWS~~)~~ according to OAC 785:45-5-25 (c) (3) and (4) are prohibited from having any new point source discharge(s) of any pollutant or increased load or concentration of specified pollutants from existing point sources discharge(s), except as provided in the regulations. CAFOs are by definition point sources. In addition, all nonpoint sources shall implement best management practices in watersheds designated as ORW. However, if nonpoint sources are identified as significantly contributing to the degradation of a waterbody designated as an ORW, conservation plans shall be developed in subwatersheds. Finally, LMFOs established after ~~June 10~~ August 1, 1998 applying for a new CAFO license or expansion after March 9, 1998 shall not be located within three (3) miles of any designated scenic river area or within one (1) mile of a waterbody designated as ORW.

(6) LMFO's that are located in nutrient-limited watersheds and or nutrient-vulnerable groundwaters as designated by the Oklahoma Water Resources Board must meet current lagoon liner criteria according to Title 2, O.S. Section 9-205.4 .H.3.

(b) Application of USAP - In the event ODA engages in surface water monitoring, USAP will be consulted to determine if beneficial uses have been impaired. All animal waste programs require no discharges from facilities, therefore USAP is not applicable. Any discharge will be a violation of the license and subject to enforcement action and possible fines.

(c) Description of programs affecting water quality.

(1) The ~~Water Quality~~ Agricultural Environmental Management Services Division of ~~the Department of Agriculture~~ ODAFF is responsible for the review of applications for animal feeding operations that meet size and type requirements. The division also investigates complaints received by the Department regarding animal waste issues that could affect water quality.

(2) The animal waste programs can affect groundwater and surface water beneficial uses if facilities are not designed and operated properly. The application process is targeted at removing the possible threat of pollution to the waters of the State ~~through technology based management~~ by not allowing any discharge to surface water, except in limited circumstances, by promoting recycle and beneficial reuse of wastewater, by not permitting any hydrologic connection between waste storage facility and groundwater, and emphasizing best management practices.

(d) Technical information and procedures for implementation.

(1) All programs are involved in regulating the animal and poultry feeding operations to assure that facilities meet the minimum requirements. The programs evaluate facility location, watershed, soils, groundwater data, stream data, flood information, water samples and other pertinent information. The application process evaluates the potential effects of the proposed operation on the waters of the State to insure that both groundwater and surface water are not polluted. Potential impacts on beneficial uses designated in water quality standards will be further evaluated during the license application process to assist elimination of the threat to ~~highly vulnerable groundwater basins~~ nutrient vulnerable groundwaters and surface waters.

(2) The CAFO and poultry programs utilize a number of databases, software programs and models for implementation. These include: stream gage data from the U.S. Geological Survey; Microsoft Access database and Microsoft Excel spreadsheet software for water quality data information; ArcInfo and ArcView GIS software data analysis and mapping; precipitation and evaporation data from the National Weather Service and Oklahoma Climatological Survey; maps and hydrologic information from the U.S Geological Survey, Oklahoma Geological Survey, and Oklahoma Water Resources Board; USDA NRCS Soil Surveys and Technical Standards; and OSU Oklahoma Cooperative Extension Service Fact Sheets. Models may be obtained or developed to analyze information and data to assist in meeting WQS as necessary.

(e) Integration of WQSIP into water quality management activities - ~~Oklahoma Department of Agriculture~~ ODAFF

rules for these programs require compliance with ~~State Water Quality Standards~~ WQS pursuant to 2 O.S. § 9-205.3 (B) (4) (c) and ensure that watersheds and groundwater are adequately protected pursuant to 9-205.3 (B)(4)(h). Future changes in Water Quality Standards may require additional rules and policies. Amendments will be made as necessitated by those changes.

(f) Compliance with mandated statewide water quality requirements - ~~The Oklahoma Department of Agriculture~~ ODAFF will comply with other statewide water quality requirements by participating in the update of ~~Oklahoma's Water Quality Standards~~ WQS, and in updates of the state's Continuing Planning Process document, water quality management plan and other planning efforts. ~~The Department~~ ODAFF will continue to participate in the Nonpoint Source Working Group and will cooperate with the Oklahoma Conservation Commission and others involved in NPS pollution prevention programs. ~~The Department~~ ODAFF will participate in the TMDL process as resources permit, and will make use of the Beneficial Use Monitoring Program data compiled in cooperation with other state environmental agencies to modify its water quality program as necessary.

(g) Public and interagency participation.

(1) ~~The Department of Agriculture~~ ODAFF interacts with other environmental agencies through the Water Quality Standards Implementation Advisory Committee. The agencies review and comment on each agency's plan and consult with each other as needed.

(2) Public participation requirements of the Oklahoma Administrative Procedures Act are followed in promulgating rules that integrate water quality standards into these program areas.

(h) Evaluation of effectiveness of agency activities.

(1) The effectiveness of these programs in the protection of designated beneficial uses for designated stream segments will be evaluated utilizing the following processes: review and integration of CAFO monitoring well sampling, soil analysis, stream gage data from the U.S. Geological Survey, U.S. Army Corps of Engineers, and Oklahoma Water Resources Board, and all other available data.

(2) The swine ~~Licensed Managed Feeding Operations~~ LMFO monitoring well sampling and laboratory analysis project began in 2000. All LMFOs with more than 1,000 swine animal units were required by Senate Bill 1175 of 1998 [Title 2 O.S. § 9-205.4(F)(1)(2)] to install and maintain a leak detection system or sufficient monitoring wells both upgradient and downgradient around the perimeter of each waste retention structure. ~~The ODA~~ ODAFF is required by Title 2 O.S. 9-205-4(F)(3) to sample and laboratory analyze the samples from the LMFO monitoring wells at least annually. The LMFO monitoring well samples are required in Title 35, Chapter 17, Subchapter 3 of the CAFO Permanent Rules [35:17-3-11.(6)(H)] to be sampled and laboratory analyzed for electrical conductivity, pH, ammonium-nitrogen, nitrate-nitrogen, total phosphorus and fecal coliform bacteria. ~~All samples are collected by ODA Water Quality Services Division environmental specialists in accordance with procedures and protocol developed by the division.~~ The information and data collected under this program is published in a report annually by ~~the ODA~~ ODAFF.

(3) Groundwater samples from other wells are also taken from LMFO facilities during each annual inspection by ~~ODA~~ ODAFF environmental specialists. These samples and some surface water samples are analyzed in accordance with procedures and protocol developed by ~~the ODA~~ ODAFF. Water well samples are also taken and analyzed on a voluntary basis from residents located in the vicinity of animal feeding operations. The latter sampling project has been in place since 1992.

(4) In the event groundwater problems are identified, ~~ODA~~ ODAFF will take steps to identify the sources of the problems. If CAFOs or LMFOs are identified as the source, appropriate remediation activities will be implemented.

35:45-1-8. Pesticide program

(a) ~~The ODA~~ ODAFF regulates spills and misuse of pesticides associated with facilities and activities of licensed pesticide applicators, homeowners and farm applications. This includes improper storage and disposal of pesticides and pesticide containers.

(b) Compliance with antidegradation requirements and protection of beneficial uses.

(1) All pesticide programs and regulatory activities require no degradation of surface or groundwater by pesticide use. Pesticide labels contain warnings that the pesticide could contaminate surface and groundwater if misused or improperly disposed. ~~The ODA~~ ODAFF regulates spills and misuse of pesticides associated with facilities and activities of licensed pesticide applicators, homeowners and farm applications. This includes improper storage and disposal of pesticides and pesticide containers.

(2) Beneficial uses that could be impaired by improper handling and application of pesticides include Fish and Wildlife Propagation, Private and Public Water Supply, Recreation, and Agriculture. The potential for pesticides to enter ground water and surface water exist and is supported by the fact that several water bodies are classified as impaired by pesticides on the current 303(d) list. Antidegradation is automatically implemented because the presence of pesticide in any water is a violation of the standards no matter how the water body is classified.

(3) Recent spills and newly located polluted sites are remediated by the responsible party, or by the use of EPA superfund monies to the extent necessary to meet ~~ODA~~ ODAFF goals. Pesticide remediation brings any impaired surface or groundwater back to the quality prior to the pesticide spill, including restoration of all beneficial uses pursuant to the WQS. Procedures for groundwater protection are covered in the ~~ODA~~ ODAFF Generic Pesticide in Groundwater Management Plan.

(4) The certification of persons to become pesticide applicators involves training and testing of the individual in the safe use and handling of pesticides. Training includes information on how to read a pesticide label, pesticide storage, pesticide container disposal and proper procedures to follow in the event of a pesticide spill. The protection of surface water and groundwater is an integral part of the certification process.

(c) Application of USAP - The procedures for pesticide monitoring are outlined in the Quality Assurance Project Plan, the pesticide operating procedures and the Generic Pesticide in Groundwater Management Plan. USAP will be utilized in assessing beneficial uses of all monitored surface waters. USAP does not apply to groundwater at this time.

(d) Description of programs affecting water quality.

(1) The Plant Industry and Consumer Services Division of ~~the Department of Agriculture~~ ODAFF is responsible for the licensing and certifying of pesticide applicators. ~~ODA~~ ODAFF registers all pesticides distributed in the state and has authority to restrict the use of pesticides to prevent unreasonable risk to the quality of Oklahoma's water.

(2) Under the Pesticide Management Plan, ~~ODA~~ ODAFF will develop and implement point and non-point source prevention measures, participate in relaying use information, carry out monitoring, develop and implement response to detection, keep records of action taken and provide progress reports to EPA.

(3) ~~ODA~~ ODAFF will also develop and maintain a statewide agriculture chemical database and a pesticide concerns list in regard to water quality standards.

(4) ~~The ODA~~ ODAFF licenses all commercial applicators of pesticides and requires the certification of private applicators before they can use restricted pesticides. When spills or other environmental problems, resulting from current or historic practices, are found, ~~ODA's~~ ODAFF's goal is to prevent impairment of the surface water and groundwaters of the state. This includes preventing significant risk to humans, livestock, or ecological receptors from inhalation of fumes, direct contact, or ingestion.

(5) Pesticide labels contain warnings that the pesticide could contaminate surface and groundwater if misused or improperly disposed. All ~~ODA~~ ODAFF activities related to pesticides are geared toward maintaining ~~Water Quality Standards~~ WQS. Specific programs include the following:

(A) Certification of individuals and the licensing of companies to apply pesticides;

(B) Investigation of pesticide spills and misuse;

(C) Inspection of pesticide producer establishments;

(D) Inspection of pesticide applicator facilities for proper pesticide storage;

(E) Audit records of restricted use pesticide dealers;

(F) Conduct private applicator record keeping inspections;

(G) Monitor pesticide application at new construction sites;

(H) Requiring backflow prevention devices on chemigation wells;

(I) Monitoring the irrigation tailwater return flow on several large container nurseries on the Illinois River in Cherokee County; and

(J) Groundwater monitoring.

(e) Technical information and procedures for implementation - The pesticide program utilizes a number of databases, software programs and models for implementation. These include: Microsoft Access database and Microsoft Excel spreadsheet software for water quality data information; ArcInfo and ArcView GIS software data analysis and mapping; and pesticide leaching models from EPA to map and analyze data. EPA standards are used to calibrate laboratory equipment when analyzing for specific pesticides. Many cases will require samples to be taken. The Pesticide Inspectors Manual covers the procedures for taking, sealing and shipping pesticide samples to the lab. Sampling results become a part of the complaint file. Notice of violations, stop work orders, informal or formal hearings, cleanup orders, fines and referral to US EPA for federal prosecution are some of the enforcement actions available to the ~~ODA~~ ODAFF in the event a water quality or other violation is found. The Oklahoma Combined Pesticide Law and Rules set the standards used in the storage, use and disposal of pesticides, pesticide containers, and pesticide waste.

(f) Integration of WQSIP into water quality management activities - Future changes in ~~Water Quality Standards~~ WQS may require additional rules and policies. Amendments will be made as necessitated by those changes.

(g) Compliance with mandated statewide water quality requirements - Compliance with statewide water quality requirements is the primary goal of the pesticide certification program, pesticide facility inspections, pesticide spill and misuse investigations and pesticide monitoring programs.

(h) Public and interagency participation.

(1) ~~The Oklahoma Department of Agriculture~~ ODAFF has been charged with the regulatory responsibilities of agricultural activities that could impact the ~~water quality standards~~ WQS of the waters of Oklahoma. The "Agricultural Resources Protection and Management Operation" document outlines standard operating procedures to fulfill this charge for the present and provides guidance for future needs. This document contains no new or modified authorities not subject to legislative approval. Should subsequent events call for law, rule or regulation changes or additions, these shall be subject to approvals in accordance with the ~~"Oklahoma Administrative Procedures Act" and/or~~ APA or the legislative process.

(2) Public participation requirements of the ~~Oklahoma Administrative Procedures Act~~ APA were followed in promulgating rules that integrate water quality standards into this program area. Section III of this document contains a summary of comments received and responses relating to the promulgation of ~~ODA's~~ ODAFF's WQSIP.

(i) Evaluation of effectiveness of agency activities - The effectiveness of the pesticide programs will be evaluated through the routine monitoring of surface water and groundwater. Special monitoring may be initiated if potential sources of contamination are identified. USAP will assist in dictating surface water monitoring.

35:45-1-10. Fertilizer program

(a) This program covers the storage of both dry and liquid fertilizer, the application of fertilizer to agricultural crops, pastures, and lawns and the investigation of fertilizer spills.

(b) Compliance with antidegradation requirements and protection of beneficial uses.

(1) Beneficial uses that could be impaired by improper handling and application of fertilizers include Fish and Wildlife Propagation, Private and Public Water Supply, Recreation, Aesthetics, and Agriculture. The potential for fertilizers to enter ground water and surface water exist and is supported by the fact that several water bodies are classified as impaired by fertilizers on the current 303(d) list.

(2) ~~ODA~~ ODAFF licenses all commercial fertilizer facilities. This permit requires the approval of the fertilizer storage facility prior to being licensed. When spills or other environmental problems are found resulting from current or historic practices, the goal of ~~ODA~~ ODAFF is to prevent impairment of the surface water and groundwaters of the state. This includes preventing significant risk to humans, livestock, or ecological receptors from inhalation of fumes, direct contact, or ingestion.

(3) Recent spills and newly located polluted sites are remediated by the responsible party.

(c) Application of USAP - The Oklahoma Fertilizer Law describes requirements for fertilizer storage and the approval procedure for liquid fertilizer storage containment. USAP will be utilized to aid in determining beneficial use impairment caused by spills.

(d) Description of programs affecting water quality.

(1) None of the programs and regulatory activities of the fertilizer section allow for the degradation of surface or groundwater by fertilizer use. Bagged fertilizer labels have warnings that the fertilizer could contaminate surface and groundwater if misused or improperly stored. Many of the activities of the Fertilizer Section are geared toward maintaining water quality standards.

(2) Specific fertilizer programs include:

(A) The licensing of companies to sell or apply fertilizer;

(B) Approval of dry and liquid fertilizer storage facilities;

(C) Require the use of approved backflow prevention devices or methods on chemigation wells;

(D) Investigation of fertilizer spills and misuse;

(E) Inspection of fertilizer storage facilities to reduce the risk of surface water and ground water contamination;

(F) Monitoring the irrigation tailwater return flow on several large container nurseries on the Illinois River in Cherokee County; and

(G) Water monitoring around fertilizer spills.

(3) Agricultural return flows have the potential to impair beneficial uses through the addition of excessive nutrient loads to receiving streams. Controlling nutrient loading to receiving streams due to irrigation is an activity within the agricultural crop production jurisdictional area of environmental responsibility. When Oklahoma has developed numerical nutrient criteria the WQSIP will be revised to consider this area. Due to the new criteria for Phosphorus of 0.037 mg/l for protection of the Aesthetic use of scenic rivers, control measures will be implemented on return flows from nurseries located in the Upper Illinois River with a goal of meeting the compliance deadline of June 30, 2012 for in-stream phosphorus.

(e) Technical information and procedures for implementation - The protection of surface water and groundwater is an integral part of the fertilizer licensing process. All complaints are given a case number, an inspector to investigate and a program manager to review the investigation. Many cases will require a sample to be taken. The Fertilizer section of the Inspectors Manual will covers the procedures for taking, sealing and shipping samples to the lab. All sample results are kept with each case. Notice of violations, stop work orders, informal or formal hearings, cleanup orders, and fines are some of the enforcement actions ~~ODA~~ ODAFF can use.

(f) Integration of WQSIP into water quality management activities.

(1) Storage sites for liquid fertilizers are submitted to the Fertilizer Section of Plant Industry for approval. All sites must have a plan that meets the requirements as specified in the Oklahoma Fertilizer Law.

(2) The Oklahoma Fertilizer Law states that "no person owning or operating a fertilizer storage facility or a commercial fertilizer facility shall discharge or release or cause to be placed any fertilizer material in a location where it is likely to cause contamination of any surface or groundwater of this state."

(3) ~~Oklahoma Water Quality Standards~~ WQS will be used to determine if a fertilizer facility is causing the degradation of the quality of surface or groundwater.

(4) Future changes in ~~Water Quality Standards~~ WQS may require additional rules and policies. Amendments will be made as necessitated by those changes.

(g) Compliance with mandated statewide water quality requirements - Compliance with statewide water quality requirements is the primary goal of the fertilizer licensing program, fertilizer facility inspections, fertilizer spill and misuse investigations and fertilizer monitoring programs.

(h) Public and interagency participation - ~~The Oklahoma Department of Agriculture~~ ODAFF has been charged with the regulatory responsibilities of agricultural activities that could impact the water quality standards of the waters of Oklahoma. The "Agricultural Resources Protection and Management Operation" document outlines standard operating procedures to fulfill this charge for the present and provides guidance for

future needs. This document contains no new or modified authorities not subject to legislative approval. Should subsequent events call for law, rule or regulation changes or additions, these shall be subject to approvals in accordance with the ~~"Oklahoma Administrative Procedures Act" and/or~~ APA or the legislative process. Public participation requirements of the ~~Oklahoma Administrative Procedures Act~~ APA are followed in promulgating rules that integrate water quality standards into this program area.

(i) Evaluation of effectiveness of agency activities - The effectiveness the fertilizer programs will be evaluated through the routine monitoring of surface water and groundwater. Special monitoring may be initiated if potential sources of contamination are identified. Special monitoring may be initiated if potential sources of contamination are identified. USAP will assist in dictating surface water monitoring.

[OAR Docket #05-1064; filed 6-1-05]

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

[OAR Docket #05-1123]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
40:25-1-3. Alcoholic breath simulators [AMENDED]
AUTHORITY:
Title 47 O.S. , Chapter 67, Section 759; Board of Tests for Alcohol and Drug Influence
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
25-1-3., Alcoholic Breath Simulator; There had been scrivener error created by the State Director leaving out the Guth Model 2100 Breath Alcoholic Simulator. This was to correct this error.
CONTACT PERSON:
McBeth Sample, Jr.; State Director of Tests for Alcohol and Drug Influence, 405-425-2460 or **msample@dps.state.ok.us**

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 74 O.S., SECTION 308.1 (A), WITH AND EFFECTIVE DATE OF JULY 11, 2005:

40:25-1-3. Alcoholic breath simulators

The following alcoholic breath simulator devices are hereby approved, for use in association with any breath-alcohol analysis apparatus, device, or instrument for the determination of the alcohol concentration of breath specimens approved for that purpose by the Board of Tests for Alcohol and Drug Influence or its predecessor agency:

(1) Alcoholic Breath Simulator, Model Mark IIA, National Draeger, Inc., Pittsburgh, PA, or its predecessors or successors

(2) Alcoholic Breath Simulator, Model 34C, Guth Laboratories, Inc., Harrisburg, PA, or its predecessors or successors

(3) Alcoholic Breath Simulator, Model 10-4, Guth Laboratories, Inc., Harrisburg, PA, or its predecessors or successors

(4) Alcoholic Breath Simulator, Model 210021, Guth Laboratories, Inc., Harrisburg, PA, or its predecessors.

(5) Alcoholic Breath Simulator, ~~Model 210021~~ Model 2100, Guth Laboratories, Inc., Harrisburg, PA, or its predecessors.

[OAR Docket #05-1123; filed 6-7-05]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT CHAPTER 5. FEES

[OAR Docket #05-1065]

RULEMAKING ACTION:
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RULES:
160:5-1-2. [AMENDED]
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Administrator of Consumer Credit; 14A O.S., §6-104(1)(e)
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SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
160:5-1-2. [AMENDED]
Gubernatorial approval:
August 11, 2004
Register publication:
22 Ok Reg 7
Docket number:
04-1268
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The amended rule changes fees for mortgage brokers and mortgage loan originators pursuant to House Bill 1503 from the 2004 Second Regular Session of the 49th Legislature.
CONTACT PERSON:
Jack Stone, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4661.

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 11, 2005:

160:5-1-2. Fees

Fees charged by the Department are as follows:

(1) Supervised Lenders

(A) $150.00 application fee for license, except that for any license granted after June 30, the fee shall be $75.00 [14A:3-503(1)]

(B) $225.00 investigation fee for license [14A:3-503(1)]

(C) $150.00 annual renewal fee [14A:3-504(5)] and a $50.00 late fee for a late application for renewal of a license received after December 1 [14A:3-504(5)]

(D) For any examination under one-half hour, no fee. For any examination over one-half hour up to eight (8) hours, $300.00. For any examination in excess of eight (8) hours, $300.00 plus $50.00 per examiner per hour for each full hour, or pro rata for each partial hour, over eight (8) hours. A $50.00 late fee shall be imposed when the examination fee is not received within thirty (30) days of the invoice date. No licensee shall be assessed a total fee in excess of Six Hundred Fifty Dollars ($650.00) for each licensed office in any calendar year. [14A:3-506(1)]

(E) $25.00 fee for a duplicate or amended license [14A:3-504(5)]

(F) $25.00 fee for a returned check [14A:3-506(10)]

(G) $25.00 late fee for any annual report received after May 1 [14A:3-506(5)]

(~~G~~H) All fees are non-refundable unless the Code or these rules require otherwise.

(2) Notifications

(A) $20.00 annual filing fee [14A:6-203(1)]

(B) sellers, lessors, lenders and assignees shall pay the $20.00 annual filing fee plus $10.00 per $100,000.00 of business conducted in Oklahoma [14A:6-203(2) and (3)]

(C) All fees are non-refundable unless the Code or these rules require otherwise.

(3) Pawnbrokers

(A) $100.00 application fee for license, except that for any application filed after June 30, the fee shall be $50.00 [59:1505(A)]

(B) $125.00 investigation fee for license [59:1505(A)]

(C) $100.00 annual renewal fee [59:1506(C)]

(D) $200.00 annual examination fee [59:1508(A)]

(E) All fees are non-refundable unless the Act or these rules require otherwise.

(4) Rent-to-Own Businesses

(A) $100.00 application fee for license, except that for any application filed after June 30, the fee shall be $50.00 [59:1953]

(B) $100.00 annual renewal fee [59:1953]

(C) $200.00 annual examination fee [59:1955(B)]

(D) All fees are non-refundable unless the Act or these rules require otherwise.

(5) Health Spas

(A) $200.00 initial registration fee [59:2002(A)(4)];this fee shall be applied without regard to the date of filing.

(B) $200.00 annual renewal fee [59:2002(A)(4)]

(C) All fees are non-refundable unless the Act or these rules require otherwise.

(6) Credit Services Organizations

(A) $100.00 application fee for license [24:143(A)]; this fee shall be applied without regard to the date of filing.

(B) $100.00 investigation fee for license [24:143(A)]

(C) $100.00 annual renewal fee [24:143(A)]

(D) $200.00 annual examination fee [24:146(A)]

(E) All fees are non-refundable unless the Act or these rules require otherwise.

(7) Precious Metals and Gem Dealers

(A) $50.00 application fee for license for dealers, $25.00 application fee for license for each employee [59:1525(A) and (B)]; these fees shall be applied without regard to the date of filing.

(B) $50.00 investigation fee for license [59:1525(A)]

(C) $50.00 annual renewal fee for dealers, $25.00 annual renewal fee for each employee [59:1526(A) and (B)]

(D) All fees are non-refundable unless the Act or these rules require otherwise.

(8) Mortgage Brokers

(A) $750.00 application fee for a mortgage broker license; this fee shall be applied without regard to the date of filing [59:2085(A)(2)]

(B) ~~$300.00~~$100.00 initial license fee for a mortgage broker license [59:2085(I)(1)]; this fee shall be applied without regard to the date of filing.

(C) ~~$300.00 triennial~~$100.00 annual renewal fee for a mortgage broker license [59:2085(I)(1)]

(D) $25.00 late fee per day for a late application for renewal of a mortgage broker license received after December 31 and on or before January 31 [59:2085(D)]

(E) ~~$150.00 triennial~~$50.00 annual license fee for a branch office license [59:2085(I)(2)]; this fee shall be applied without regard to the number of licenses sought or the date of filing.

(F) $50.00 inactive status fee for a mortgage broker license [59:2085(I)(3)]; this fee shall be paid for each year of inactive status [59:2085(E)]

(G) Reactivation fees for a mortgage broker license [59:2085(F)]

(i) If a mortgage broker license has been inactive for ~~one~~a licensing year, then the reactivation fee is ~~$200~~$100.00.

(ii) If a mortgage broker license ~~has been inactive for two consecutive licensing years, then the reactivation fee is $100~~reactivation application is filed on or before June 30 of an inactive license year, then the reactivation fee is $100.00.

(iii) If a mortgage broker license ~~is reactivated during~~reactivation application is filed after June 30 of an inactive license year, then the reactivation fee is ~~the prorated portion of the $300 license fee to cover the remainder of the three year license period~~$50.00.

(H) $10.00 change of address fee [59:2085(H) and (I)(4)]

(I) ~~$100.00~~$50.00 initial license fee for a mortgage loan originator license [59:2085(I)(5)]; this fee shall be applied without regard to the date of filing.

(J) ~~$100.00 triennial~~$50.00 annual renewal fee for a mortgage loan originator license [59:2085(I)(5)]

(K) $10.00 change of sponsor fee [59:2085(I)(6)]

(~~K~~L) $150.00 license test fee; this fee is required for each test taken without regard to test results or the number of times that a person takes the test [59:2092(C)]

(~~L~~M) Test handbook fee equal to the actual cost of producing and distributing the handbook [59:2092(E)]

(~~M~~N) All fees are non-refundable unless the Act or these rules require otherwise.

(9) Deferred Deposit Lenders

(A) $250.00 application fee for license; this fee is required of each applicant without regard to the number of licenses sought or the date of filing [59:3113(D)]

(B) $500.00 investigation fee for license; this fee is required of each applicant without regard to the number of licenses sought or the date of filing [59:3113(D)]

(C) $250.00 annual renewal fee; this fee is required of each applicant without regard to the number of licenses sought [59:3113(E)]

(D) For any examination under one-half hour, no fee. For any examination over one-half hour up to eight (8) hours, $300.00. For any examination in excess of eight (8) hours, $300.00 plus $50.00 per examiner per hour for each full hour, or pro rata for each partial hour, over eight (8) hours. A $50.00 late fee shall be imposed when the examination fee is not received within thirty (30) days of the invoice date. [59:3114(A)]

(E) $25.00 late fee for any annual report received after May 1 [59:3114(F)]

(F) All fees are non-refundable and non-abatable unless the Act or these rules require otherwise. [59:3113(D)]

(10) Other

(A) $0.25 fee per page for copies [51:24A.5(3)]

(B) $1.00 fee per copied page for a certified copy [51:24A.5(3)]

(C) Reasonable search fee of the hourly rate of lowest paid employee capable of performing search when records are requested solely for commercial purpose or the request would clearly cause excessive disruption of the Department's essential functions [51:24A.5(3)]

[OAR Docket #05-1065; filed 6-1-05]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 45. TRUTH IN LENDING RULES

[OAR Docket #05-1066]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
160:45-1-2. [AMENDED]
Subchapter 9. Special Rules for Certain Home Mortgage Transactions
160:45-9-2. [AMENDED]
AUTHORITY:
Administrator of Consumer Credit; 14A O.S., §6-104(1)(e) and (2)
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SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The rules incorporate federal changes to maintain Oklahoma's exemption from federal regulation.
CONTACT PERSON:
Jack Stone, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4661.

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 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

160:45-1-2. Definitions and rules of construction

(a) **Definition.** For purposes of this chapter, the following definitions apply:

(1) **"Administrator"** means the Administrator of the Department.

(2) **"Advertisement"** means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.

(3) **"Billing cycle"** or **"cycle"** means the interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter of a year. An interval will be considered equal if the number of days in the cycle does not vary more than four days from the regular day or date of the periodic statement.

(4) **"Board"** means the Board of Governors of the Federal Reserve System.

(5) **"Business day"** means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under 160:45-3-13 and 160:45-5-7, and for purposes of 160:45-9-1, the term means all calendar days except Sundays and the legal public holidays specified in 5 USC 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(6) **"Card issuer"** means a person that issues a credit card or that person's agent with respect to the card.

(7) **"Cardholder"** means a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of a credit card to another natural person.

(8) **"Cash price"** means the price at which a creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

(9) **"Closed-end credit"** means consumer credit other than "open-end credit" as defined in this section.

(10) **"Code"** means the Uniform Consumer Credit Code beginning at §1-101 of Title 14A of the Oklahoma Statutes.

(11) **"Consumer"** means a cardholder or a natural person to whom consumer credit is offered or extended. However, for purposes of rescission under 160:45-3-13 and 160:45-5-7, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

(12) **"Consumer credit"** means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(13) **"Consummation"** means the time that a consumer becomes contractually obligated on a credit transaction.

(14) **"Credit"** means the right to defer payment of debt or to incur debt and defer its payment.

(15) **"Credit card"** means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit. **"Charge card"** means a credit card on an account for which no periodic rate is used to compute a finance charge.

(16) **"Credit sale"** means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer -

(A) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

(B) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

(17) **"Creditor"** means:

(A) A person

(i) who regularly extends consumer credit **3/** that is subject to a finance charge or is payable by written agreement in more than four installments (not including a downpayment), and

(ii) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(B) For purposes of 160:45-1-4(c)(8) (Discounts) and 160:45-3-7(d) (Finance charge imposed at time of transaction), a person that honors a credit card.

(C) For purposes of subchapter 3, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.

(D) For purposes of subchapter 3 (except for the credit and charge card disclosures contained in 160:45-3-2 and 160:45-3-7(e) and (f), the finance-charge disclosures contained in 160:45-3-4(1) and 160:45-3-5(4) through (7) and the right of rescission set forth in 160:45-3-13) and subchapter 5, any card issuer that extends closed-end credit that is

subject to a finance charge or is payable by written agreement in more than four installments.

(18) **"Department"** means the Oklahoma State Department of Consumer Credit.

(19) **"Downpayment"** means an amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(20) **"Dwelling"** means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(21) **"Open-end credit"** means consumer credit extended by a creditor under a plan in which -

(A) the creditor reasonably contemplates repeated transactions;

(B) the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(C) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(22) **"Periodic rate"** means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

(23) **"Person"** means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(24) **"Prepaid finance charge"** means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

(25) **"Residential mortgage transaction"** means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

(26) **"Security interest"** means an interest in property that secures performance of a consumer credit obligation and that is recognized by state or federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosure under 160:45-3-4 and 160:45-5-2, the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under 160:45-3-13 and 160:45-5-7, the term does include interests that arise solely by operation of law.

(27) **"State"** means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(b) **Rules of construction.** For purposes of this chapter, the following rules of construction apply:

(1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.

(2) Where the words "obligation" and "transaction" are used in this chapter, they refer to a consumer credit obligation or transaction, depending upon the context. Where the word "credit" is used in this chapter, it means "consumer credit" unless the context clearly indicates otherwise.

(3) Unless defined in this chapter, the words used have the meanings given to them by state law or contract.

(4) Footnotes have the same legal effect as the text of the chapter.

(5) Where the word "amount" is used in this chapter to describe disclosure requirements, it refers to a numerical number.

2/ Reserved

3/ A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of 160:45-9-2) more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of 160:45-9-2 or one or more such credit extensions through a mortgage broker.

SUBCHAPTER 9. SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

160:45-9-2. Requirements for certain closed-end home mortgages

(a) **Coverage.**

(1) Except as provided in paragraph (a)(2) of this section, the requirements of this section apply to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either:

(A) The annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(B) The total points and fees payable by the consumer at or before loan closing will exceed the greater of 8 percent of the total loan amount, or $400; the $400 figure shall be adjusted annually on January 1

by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1.

(i) The dollar amount for 1996 is $412.

(ii) The dollar amount for 1997 is $424.

(iii) The dollar amount for 1998 is $435.

(iv) The dollar amount for 1999 is $441.

(v) The dollar amount for 2000 is $451.

(vi) The dollar amount for 2001 is $465.

(vii) The dollar amount for 2002 is $480.

(viii) The dollar amount for 2003 is $488.

(~~viv~~ix) The dollar amount for 2004 is $499.

(x) The dollar amount for 2005 is $510.

(2) This section does not apply to the following:

(A) A residential mortgage transaction.

(B) A reverse-mortgage transaction subject to 160:45-9-3.

(C) An open-end credit plan subject to subchapter 3 of this chapter.

(b) **Definitions.** For purposes of this subchapter, the following definitions apply:

(1) For purposes of paragraph (a)(1)(B) of this section, **points and fees** means:

(A) All items required to be disclosed under 160:45-1-4(a) and (b), except interest or the time-price differential;

(B) All compensation paid to mortgage brokers;

(C) All items listed in 160:45-1-4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and

(D) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.

(2) **Affiliate** means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.).

(c) **Disclosures.** In addition to other disclosures required by this chapter, in a mortgage subject to this section, the creditor shall disclose the following in conspicuous type size:

(1) **Notices.** The following statement: "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."

(2) **Annual percentage rate.** The annual percentage rate.

(3) **Regular payment; balloon payment.** The amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment disclosed under this paragraph shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is disclosed under paragraph (c)(5) of this section.

(4) **Variable-rate.** For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be disclosed under 160:45-7-4.

(5) **Amount borrowed.** For a mortgage refinancing, the total amount the consumer will borrow, as reflected by the face amount of the note; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

(d) **Limitations.** A mortgage transaction subject to this section shall not include the following terms:

(1) **Balloon payment.**

(A) For a loan with a term of less than five years, a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

(B) **Exception.** The limitations in paragraph (d)(1)(A) of this section do not apply to loans with maturities of less than one year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(2) **Negative amortization.** A payment schedule with regular periodic payments that cause the principal balance to increase.

(3) **Advance payments.** A payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds.

(4) **Increased interest rate.** An increase in the interest rate after default.

(5) **Rebates.** A refund calculated by a method less favorable than the actuarial method (as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d)), for rebates of interest arising from a loan acceleration due to default.

(6) **Prepayment penalties.** Except as allowed under paragraph (d)(7) of this section, a penalty for paying all or part of the principal before the date on which the principal is due. A prepayment penalty includes computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992.

(7) **Prepayment-penalty exception.** A mortgage transaction subject to this section may provide for a prepayment penalty otherwise permitted by law (including a refund calculated according to the rule of 78s) if:

(A) The penalty can be exercised only for the first five years following consummation;

(B) The source of the prepayment funds is not a refinancing by the creditor or an affiliate of the creditor; and

(C) At consummation, the consumer's total monthly debts (including amounts owed under the mortgage) do not exceed 50 percent of the consumer's monthly gross income, as verified by the consumer's signed financial statement, a credit report, and payment records for employment income.

(8) **Due-on-demand clause.** A demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

(A) There is fraud or material misrepresentation by the consumer in connection with the loan;

(B) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; or

(C) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.

[OAR Docket #05-1066; filed 6-1-05]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 55. MORTGAGE BROKERS

[OAR Docket #05-1067]

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PERMANENT final adoption
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160:55-3-1.4. [AMENDED]
160:55-3-4. [AMENDED]
160:55-3-10.1. [AMENDED]
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n/a
ANALYSIS:
The rules provide regulations for the change in licensure period from three years to one year pursuant to House Bill 1503 from the 2004 Second Regular Session of the 49th Legislature.
CONTACT PERSON:
Jack Stone, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4661.

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 11, 2005:

SUBCHAPTER 3. LICENSING

160:55-3-1.1. Licensure forms

(a) **License application.**

(1) The license application shall be completed by the person seeking a mortgage broker license or a mortgage loan originator license and shall include all fees, forms and exhibits requested.

(2) The Administrator may require any applicant to provide additional information. An application is not considered final until all requested information has been submitted and the applicant has passed a license test, if required. [59:2085(A)(1)(c), (A)(9) and (L)(4), and 2092(B)]

(3) The Administrator shall grant or deny a license application within thirty (30) days from final application unless the period is extended by written agreement between the applicant and the Administrator. [59:2085(C)]

(4) An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial. If any applicant pays for a license test, but does not take the license test, the license test fee shall be returned to the applicant. If an applicant for a mortgage broker license fails to comply with the application process, the initial license fee shall be returned to the applicant, but the Administrator shall retain the application fee.

(b) **License test.** The examination approved by the Administrator that is required to be taken and passed by applicants for mortgage broker licenses, unless waived by the Administrator. [59:2085(A)(1)(c) and (A)(9), and 2092(A) and (B)] The examination approved by the Administrator that is required to be

taken and passed by applicants for mortgage loan originator licenses that do not have the required experience, unless waived by the Administrator. [59:2085(A)(9) and (L)(4), and 2092(A) and (B)]

(c) **Licenses.** No license is transferable or assignable. [59:2085(A)(7)] Expired licenses shall not be renewed; however, a new license may be issued if the applicant satisfies all of the licensing requirements of an initial license. [59:2085(D)]

(1) **Mortgage broker license.** The license, executed under the hand of the Administrator and delivered, is evidence of a person's authority to engage in the mortgage business within Oklahoma. The license shall be prominently displayed in an area of the principal place of business that is used or visited by a majority of the borrowers [59:2085(G)].

(2) **Mortgage loan originator license.** The license, executed under the hand of the Administrator and delivered, is evidence of an individual's authority to make, negotiate or offer to make or negotiate a mortgage loan for or on behalf of a mortgage broker.

(3) **Branch office license.** The license, executed under the hand of the Administrator and delivered, is evidence of a location in addition to the principal place of business noted on the mortgage broker license where mortgage business may be transacted. Any branch office license shall be prominently displayed in an area of the branch office that is used or visited by a majority of the borrowers [59:2085(H)].

(d) **Renewal application.**

(1) The license renewal application shall be completed by persons previously issued a license and shall be submitted with all fees and postmarked on or before the first day of December~~ of the final year of validity of each license~~each year, unless the person holds a three year license for which the renewal application with all fees shall be submitted and postmarked on or before the first day of December of the final year of validity. As a courtesy, the Department may send a notice of renewal to each person, but the failure to do so shall not relieve any person of the duty to renew timely or impair the authority of the Administrator against any person.

(2) If the license is not renewed by December 15~~ of the final year of validity of each license~~, a delinquency notice shall be sent to the person. If the license is not renewed by December 31, the license shall be suspended. A suspended license may be renewed with a completed license renewal application submitted with all fees and postmarked on or before January 31. If the license is not renewed by January 31, the license shall expire. [59:2085(D)]

(e) **Inactive and reactivation applications.** In lieu of renewal, a mortgage broker may place its license on inactive status for the following license year by completing an inactive application and submitting the application with its license and fee postmarked on or before the first day of December~~ of the final year of validity of the license~~. [59:2085(E)] If a mortgage broker applies for inactive status when the license is not eligible for inactive status, the Administrator shall notify the mortgage broker that the license is subject to the renewal requirements.

(1) At the end of the first inactive license year, the mortgage broker shall complete an inactive application or a reactivation application and submit it with the proper fee postmarked on or before the first day of December. [59:2085(E) and (F)] If a mortgage broker applies for inactive status when the license is not eligible for inactive status, the Administrator shall notify the mortgage broker that the license is subject to the reactivation requirements.

(2) If the mortgage broker license is on inactive status for two (2) consecutive years, then at the end of the second inactive license year, the mortgage broker shall complete a reactivation application and submit it with the fee postmarked on or before the first day of December. [59:2085(E) and (F)]

(3) If a mortgage broker license is not inactivated or reactivated by December 31, then the license shall expire. [59:2085(E)]

(4) During an inactive license year, the mortgage broker license may be reactivated for the remainder of the ~~three~~ year~~ license period~~ by completing a reactivation application and submitting the application with the fee. [59:2085(F)]

160:55-3-1.4. Mortgage brokers continuing education

(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education which a mortgage broker must meet, and to set forth the requirements for approval by the Administrator of a proposed continuing education course.

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

(1) **"CEC"** means continuing education credit.

(2) **"Certificate of course completion"** means a form acceptable to the Administrator and completed by the provider that signifies satisfactory completion of the approved course and reflects hours of credit earned.

(3) **"Credit hour"** means at least a fifty (50) minute classroom instructional session unless a correspondence or self-study course.

(4) **"Education verification form"** means a form acceptable to the Administrator and completed by the mortgage broker that states under oath to compliance with the continuing education requirements.

(5) **"Provider"** means the Commission; a technology center school; a college or university; a private school; the Oklahoma Association of Mortgage Brokers, the National Association of Mortgage Brokers or any affiliate thereof; the Oklahoma Bar Association, American Bar Association or any affiliate thereof; or an education provider that provides approved continuing education courses to mortgage brokers. [59:2093(B)]

(c) **Continuing education requirements.**

(1) **Credit hours.**

(A) All mortgage brokers shall complete ~~forty eight (48)~~sixteen (16) credit hours of continuing education ~~during each thirty six (36) month~~

~~period~~before December 31, 2006. [59:2093(A)] ~~The thirty-six (36) month period ends December 31 of the final year of validity of the license.~~ Following the renewals in 2006, all mortgage brokers shall complete sixteen (16) credit hours annually for license renewal. Courses taken in excess of the required hours shall not carry forward.

(B) A minimum of ~~sixteen (16)~~seven (7) of the ~~forty-eight (48)~~sixteen (16) credit hours shall consist of:

(i) ~~four (4)~~one (1) credit ~~hours~~hour covering the Real Estate Settlement Procedures Act;

(ii) ~~four (4)~~one (1) credit ~~hours~~hour covering the Truth In Lending Act;

(iii) ~~four (4)~~one (1) credit ~~hours~~hour covering federal laws related to fair lending - the Equal Credit Opportunity Act, the Fair Housing Act and the Home Mortgage Disclosure Act; and

(iv) four (4) credit hours covering ethics. [59:2093(A)]

(C) Courses must be of a meaningful nature and shall not include items such as prospecting, motivation, sales techniques, psychology, recruiting, time management, phone etiquette, and subjects not relating to the mortgage broker's license. Courses conducted in conjunction with other meetings must have a separate continuing education course component; the method to monitor attendance must be stated and approved by the Administrator.

(2) **Correspondence and video courses.**

(A) **Correspondence courses.** A mortgage broker who completes an approved course by correspondence and provides satisfactory proof of completion will receive credit for the number of hours assigned for the course.

(B) **Video courses.** In order for a mortgage broker to receive credit for viewing an approved course presented by video, the mortgage broker must view the video under the supervision of a contact person with the provider and swear by affidavit that the video was viewed in its entirety. The affidavit must also be signed by the supervising contact person.

(3) **Credit for instructors.** An instructor who is a mortgage broker shall receive the same continuing education credit for presenting approved course materials as a mortgage broker who attends an approved classroom instructional session.

(4) **Certificates of course completion required for license renewal or reactivation.** Each mortgage broker shall attach an education verification form and certificates of course completion for the required number of credit hours to the renewal or reactivation application. [59:2093(A)]

(5) **Repeating courses.** A mortgage broker may repeat a course ~~within the thirty-six (36) month period~~before renewal, if the maximum credits designated for the course were not attained in the first attempt. By repeating the course, the mortgage broker may not earn more than the maximum credits designated for the course. A mortgage broker may repeat a course after two (2) license renewal dates have elapsed and receive the maximum credits designated for the course.

(6) **Exceptions.** The requirements for continuing education in this section shall not apply to:

(A) a mortgage broker whose license is on inactive status; or,

(B) a non-resident mortgage broker who is licensed in a state having continuing education requirements and the mortgage broker meets all the requirements of that state. The non-resident mortgage broker shall be responsible for providing satisfactory proof of compliance with the other state's requirements. [59:2093(E)]

(7) **Extensions.** For good cause shown, the Administrator may grant an extension of time during which the continuing education requirements may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding ~~thirty-six (36) month period~~renewal. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the mortgage broker and shall include details and any documentation to support the request. Each request must be received by the Administrator no less than thirty (30) days before ~~the expiration of the thirty-six (36) month period~~renewal.

(d) **Approval of continuing education courses.**

(1) **Information required.** Each provider shall apply for approval of each course. All providers, including publicly funded educational institutions, shall provide:

(A) Name and address of the provider.

(B) Contact person and his or her address and telephone number(s).

(C) The location of the course, unless it is an individual study or correspondence course.

(D) The number of CEC hours requested for each course. Courses must consist of a minimum of one (1) credit hour.

(E) Subject outlines which list the summarized subjects covered in each course and a copy of any course materials.

(i) If a classroom course, a timed outline including any breaks.

(ii) If a correspondence course, a copy of text or table of contents with page numbers.

(F) The names and qualification of instructors. An instructor shall have one (1) of the following qualifications:

(i) Three (3) years of recent experience in the subject area being taught; or

(ii) A degree related to the subject area being taught; or

(iii) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college and/or vocational technical school credit hours in the subject area being taught.

(2) **Application deadline for course approval.** At least thirty (30) days prior to the course date, the provider shall apply to the Administrator for course approval. The Administrator shall grant or deny approval in writing based upon information submitted regarding each course. The Administrator will assign the number of CEC hours awarded for an approved course. Each course approval shall be valid for a period of twelve (12) months. Course materials must be resubmitted at the time of expiration.

(3) **Withheld or withdrawn approval.** The Administrator may withhold or withdraw approval for any course for non-compliance with any provision of this section. This withdrawal will not affect any CEC hours attained under the course previous to the withdrawal.

(4) **List of approved courses.** A list of approved courses shall be available from the Administrator. [59:2093(C)]

(5) **Certificate of Course Completion.** At the completion of each course, the provider shall provide each mortgage broker with a "Certificate of Course Completion" form.

(6) **List of mortgage brokers completing course to Administrator.** At the completion of each course, the provider shall provide the Administrator a list of all mortgage brokers who completed the course. This list shall reflect the mortgage broker's name and license number.

(7) **Course records.** Providers shall maintain course records for at least seven (7) years.

160:55-3-4. Licensure periods

Any license issued during a year shall run only to December 31 of ~~the third calendar~~that year, except three year licenses shall run to December 31 of the third calendar year.

160:55-3-10.1. Loss or change of licensed mortgage broker sponsor

(a) When a mortgage broker cancels the sponsorship of a mortgage loan originator, the mortgage broker shall submit the mortgage loan originator's license to the Department within three (3) business days.

(b) The Department shall return the license to the mortgage loan originator with the name of the new sponsoring mortgage broker after all requested forms, exhibits ~~and~~, information and fee have been submitted.

(c) The Department's holding of the mortgage loan originator license does not change the licensure period.

(d) The person remains subject to all licensing and renewal requirements for the mortgage loan originator license whether the person or the Department holds the license.

[OAR Docket #05-1067; filed 6-1-05]

TITLE 170. DEPARTMENT OF CORRECTIONS
CHAPTER 15. PRIVATE PRISON CONTRACTOR COMPLIANCE MONITORING

[OAR Docket #05-1134]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
170:15-1-1. through 170:15-1-3. [AMENDED]
Subchapter 3. ~~Auditing~~Monitoring Process
170:15-3-1. through 170:15-3-4. [AMENDED]
170:15-3-4.1. [NEW]
170:15-3-5. [AMENDED]
Subchapter 5. Appeal of ~~Audit~~Audits
170:15-5-1. [AMENDED]
Subchapter 7. Costs
170:15-7-1. [AMENDED]
170:15-7-3. through 170:15-7-5. [NEW]
Subchapter 9. Private Prison Custody [NEW]
170:15-9-1. through 170:15-9-3. [NEW]
Subchapter 11. Private Prison Contract Application [NEW]
170:15-11-1. [NEW]
170:15-11-2. [NEW]
Subchapter 13. Private Prison Emergency Plans [NEW]
170:15-13-1. through 170:15-13-3. [NEW]
Subchapter 15. Indemnification and Insurance [NEW]
170:15-15-1. [NEW]

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N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
These rule changes have been developed to provide greater detail on private prison oversight and contract monitoring as practiced by the Oklahoma Department of Corrections. These rules establish the procedures and standards for the Oklahoma Department of Corrections to monitor and provide on going evaluation of private prison contractors operating in the state. The rule changes update the point of contact information and requirements; modify definitions; update the monitoring and compliance process; update standards in use; add statutory requirements; update review and appeal process; add language from statute on federal and out-of-state inmates; update application process; add request for proposal information; adopt emergency plan guidelines; and add indemnification language for contractors.

CONTACT PERSON:
Dennis Cunningham, Administrator, Private Prison Administration, DOC, 2901 North Classen Boulevard, Suite 200, Oklahoma City, Oklahoma, 73106, 405-962-6080

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 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

170:15-1-1. Purpose

The rules in this Chapter establish the procedures and standards for the Oklahoma Department of Corrections to monitor and evaluate private prison contractors operating in the state who house inmates under the custody of the Oklahoma Department of Corrections, inmates from out of state jurisdictions and inmates in federal custody who are housed in private prisons.

170:15-1-2. Scope: initial point of contact

Section E of 57 O.S., Section 563.3 requires the Oklahoma Department of Corrections to promulgate and adopt rules for the implementation of this section.

(1) This Chapter is concerned with:

(A) Approval by the department of internal and perimeter security;

(B) Adequate food, housing, and medical care in the private prisons;

(C) Financial condition of the private contractor;

(D) The ability of the private prison contractor to comply with American Correctional Association standards; and

(E) Adequate insurance coverage to indemnify the state, its political subdivisions, and its officers, agents, and employees for expenses or losses incurred in intervening in the operation of the private prison, and to indemnify and hold harmless the state, its political subdivisions, its officers and employees for acts resulting in liability by inmates, officers, and employees of the private contractor or stockholders;~~, and the creation of a continuing compliance process and a process for closing the private facility for noncompliance.~~

(F) Requirement to obtain written authorization for operation of a private prison from the governing board of the municipality in which the facility is located or from the county commissioners if the facility is located outside a municipality;

(G) Conducting FBI and OSBI felony record searches of all employees;

(H) Provision for regular on site monitoring by the Oklahoma Department of Corrections Private Prison Administration unit for statutory, contractual and operational compliance. Access shall be unrestricted;

(I) Collection of fees for monitoring compliance with statutory requirements;

(J) The creation of a continuing compliance process and a process for closing the private facility for noncompliance.

(2) The initial point of contact for prospective private prison contractors shall be ~~the department's principal office, 3400 Martin Luther King Avenue, Oklahoma City, Oklahoma 73111; (405) 425-2500~~. the Private Prison Administration Office, 2901 Classen Blvd., Suite 200, Oklahoma City, Oklahoma, 73106; (405) 962-6080.

170:15-1-3. Definitions

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

"Audit team" means those persons who have been appointed ~~by the director~~ to ~~monitor and~~ evaluate the private prison contractor on a quarterly and annual basis pursuant to these rules.

"Contract Monitor" means those persons who have been assigned to monitor compliance of the private prison contractors and to coordinate actions and communication between the department and the operator.

"Department" means the Oklahoma Department of Corrections, its facilities, divisions, offices, and institutions.

"Director" means the director of the Oklahoma Department of Corrections or designee.

"Operating Standards" means applicable federal, state and local laws, codes, regulations constitutional requirements, court orders, American Correctional Association and local standards, applicable Department of Corrections Policies.

"Prisoner, offender, inmate, or supervisee" means:

(A) Any person who has been convicted of a felony and contracted to the housing, care, and control of a private prison contractor; and

(B) ~~and who has only one~~ Out of state or federal inmates who do not have a history of ~~any~~ escape from maximum or medium security for adult facilities, as defined by Oklahoma law, and who do not have histories of rioting, and ~~has~~ have not been convicted of a crime which would be a capital offense if committed in this state, ~~nor convicted of a sex-related offense, nor convicted of a misdemeanor,~~ or a sex-related offense, or who are sentenced to federal or state facilities for conviction of a misdemeanor, other than a sex-related offense, or who are under arrest or detained for federal felony or misdemeanor violations, or detained for a violation of immigration laws, within a facility owned or operated by the private prison contractor unless such incarceration in the facility is consistent with American Correctional Association requirements relating to incarceration of inmates convicted of more serious offenses, or unless subject to the exception made in 170:15-3-2 (l).

"Private prison administration" means the unit within the Oklahoma Department of Corrections assigned to exercise regulatory oversight of private prisons and private prison contractors.

"Private prison contractor" means:

(A) A non-governmental entity or public trust, which pursuant to a contract with the Oklahoma Department of Corrections, operates an institution within the department or provides for the housing, care, and control of medium and or minimum security inmates and performs other functions related to said responsibilities within a minimum or medium security level facility not owned by the department, but operated by the contractor, or from other state jurisdictions; or

(B) A non-governmental entity or public trust, which pursuant to a contract with the United States Government or another state, provides for the housing, care, and control of minimum or medium security inmates in the custody of the United States Government or another state, and performs other functions related to said responsibilities within a facility owned or operated by the contractor.

SUBCHAPTER 3. ~~AUDITING~~ MONITORING PROCESS

170:15-3-1. ~~Audit team~~ Compliance monitoring

(a) The Department of Corrections private prison administration unit is responsible for establishing inspection standards for new and existing private prison facilities. The private prison facilities will be monitored for compliance to applicable state laws, contractual requirements, Department of Corrections operations memoranda, facility post orders and American Correctional Association standards. Compliance monitoring audits will be conducted on a quarterly and annual basis for each private prison facility housing Oklahoma inmates, out of state inmates and inmates in federal custody.

(~~a~~b) Appointment. The ~~Director~~ private prison administrator shall appoint not less than three but not more than 15 qualified persons to the audit team to complete the preliminary audit within a reasonable amount of time not to exceed 60 days pursuant to this Chapter. The ~~Director~~ private prison administrator shall appoint a chairperson of the audit team who shall supervise the completion of the report. The private prison administrator may appoint a full and/or part time contract monitor for contract and non-contract private prison oversight.

(~~b~~c) Duties and Responsibilities. The audit team, as directed, shall be responsible for ~~the~~ preliminary ~~audit~~ audits, ~~or the annual~~ and shall conduct periodic monitoring audits of the performance and continued compliance of the private prison contractor with the provisions of these rules and the standards set forth in this Chapter.

170:15-3-2. Standards

(a) The department shall use the latest American Correctional Association standards as amended and updated applicable statutes, codes, and procedures. ~~the foundation/core standards for correctional institutions, as amended and published by the Commission on Accreditation of the American Correctional Association.~~ The department audit team may function in compliance with audit team roles and responsibilities pursuant to the American Correctional Association protocol for audit teams.

(~~1~~b) The ~~audit team~~ private prison administration shall monitor and evaluate the internal and perimeter security of the private prison contractor to ensure adequate protection of the public. Criteria for evaluation will include, but not be limited to facility post orders, applicable Department of Corrections Operations memoranda and American Correctional Association security standards. Specific areas audited during preliminary and subsequent quarterly / annual inspections are listed below.

(1) Internal Security/Inmate Accountability Procedures

(A) Frequency of Counts
(B) Post Orders
(C) Security Inspections
(D) Key Control
(E) Emergency Keys
(F) Locking Mechanisms
(G) Tool Control
(H) Security Equipment
(I) Inmate Physical Identification
(J) Staff /Visitor Identification
(K) Visitor Searches
(L) Communication Devices
(M) Contraband Control
(N) Segregation Unit
(O) Internal Patrols
(P) Surveillance
(Q) Intelligence program

(2) External Security

(A) Security Sensing Devices
(B) Double Fences With Razor Wire Barriers
(C) Sensing Devices
(D) Perimeter and Emergency Lighting
(E) Sally Ports/Gates
(F) Video Surveillance
(G) Transportation
(H) External Patrols
(I) Armory
(J) Firearms/Chemical Agents
(K) Fence and Footing Construction
(L) Emergency Procedures

(~~2~~c) The ~~audit team~~ private prison administration shall monitor and evaluate the food, housing, and medical care provided to the inmates. Food service menus shall meet average daily requirements and be certified by a registered dietician. Health care shall be equivalent to community department standards. Annual inspections by local and state authorities shall be conducted by the Office of the State Fire Marshal, State Health

Department, State Boiler Inspector and other State agencies, where applicable. These inspections and subsequent corrective action shall be monitored for compliance to approved plans of action.

(~~3~~d) The ~~audit team~~ private prison administration shall evaluate the private prison contractor to ensure ~~that the necessary and qualified personnel are operating the prison~~ sufficient, qualified personnel are able to deliver twenty-four hours care and supervision to the inmates, as well as administrative, treatment and support service personnel for the overall operation of the facility according to their staffing pattern, submitted and approved by the Department of Corrections.

(~~4~~e) The audit team shall evaluate the financial condition of the private prison contractor to ensure that the private prison can be operated adequately.

(~~5~~f) The audit team shall evaluate the private prison facility to ensure it has the capacity and ability to comply with court orders.

(~~6~~g) The audit team shall evaluate the private prison facility to ensure it has the capacity and ability to comply with the American Correctional Association standards for accreditation within three years of commencing operation.

(~~7~~h) The audit team shall evaluate and certify that the private prison contractor has sufficient insurance to indemnify and reimburse the state or political subdivision for expenses arising from any incident which may occur that requires intervention by the state or political subdivision, and in addition to indemnify this state, its officers, and employees, for any liability or other loss, including property damage, judgments, costs, attorney fees, or other expenses arising from the operation of the facility. If the private prison contractor operates more than one facility, separate insurance coverage shall be obtained or provided for each facility.

(~~8~~i) The audit team shall evaluate and certify that the private prison contractor has,regardless of insurance or other indemnification, agreed to hold harmless this state and its officers and employees, for any and all acts of prison inmates, and/or officers, employees, and stockholders of such private prison contractor for any liability arising out of acts of prison inmates, officers, employees, and stockholders of the private prison contractor in relation to the operation of the facility.

(~~9~~j) The audit team shall certify that written authorization for the private prison has been received from the governing board of the municipality or board of county commissioners, as applicable, where the prison is to be located. Furthermore, the authorizing authority, shall certify the prison location is more than one mile from the nearest public or private elementary school or secondary school.

(~~10~~k) The audit team shall certify that felony record searches will be conducted before employment for new employees, and yearly thereafter for current employees. Searches will be based upon fingerprints and shall be conducted through the Oklahoma State Bureau of Investigation and the Federal Bureau of Investigation ~~to obtain out-of-state records~~.

(~~11~~l) The process for determining security classification level of inmates as referenced in 57 O.S., Section 563.2.~~H - J~~ shall be those found in the ~~following~~ department operations policies and memoranda security and classification sections. Copies of the operations policy and memoranda may be obtained from the Department of Corrections web site, www.doc.state.ok.us. ~~These operations policies and memoranda, latest edition, may be obtained by the private prison contractor from the department at a cost of 25 cents per page.~~ A private prison contractor operating a facility on January 1, 2004, at twenty-five percent (25%) or less capacity may contract with the federal government or another state to provide housing, care and control of minimum or medium security level inmates provided the facility would be allowed to house the same type of inmates if contracting with this state.

~~(A) "Initial Offender Classification"~~

~~(B) "Offender Classification"~~

~~(C) "Procedures for Initial Assessment and Reception of Inmates"~~

(~~12~~m) The private prison administration shall review and evaluate instruction and training of personnel authorized to use firearms, pursuant to Title 70 Section 3311, in the performance of their duties and responsibilities. The training must follow the approved Council of Law Enforcement Education and Training guidelines.

170:15-3-3. Preliminary audit

(a) Within two months of commencing operations, ~~A~~ a private prison contractor, ~~who is within two months of commencing operations,~~ shall notify the director and request a preliminary audit to determine whether commencing operations of the new private facility constitutes a threat to the public safety. If the audit finds deficiencies which constitute a threat to the public safety, the Director shall notify the private prison contractor of intentions to order the facility to cease operations within 60 days of receipt of the notice of intent, unless the deficiencies are remedied.

(b) The private prison contractor, upon receiving notice from the director of an intention to order a cessation of operations, may appeal and prepare a plan to correct the deficiencies within the 60 day notice period. If no plan is submitted and/or the deficiencies are not corrected within the 60-day notice period, the director may order a private prison contractor to cease operations within 30 days after receipt of the notice to cease. Any order of the director to cease operations shall be enforced by injunction issued by a district court of this state. Any and all such legal costs of procuring and enforcing such order shall be assessed against the private prison contractor.

170:15-3-4. American Correctional Association audit

(a) The private prison ~~contract~~ contractor shall stipulate in its accreditation audit contract a requirement that the Commission on Accreditation of the American Correctional Association notify the director within ten days of its final determination on accreditation. If denied, the director shall, within five days, send notice to the private prison contractor to cease its operations within 30 days.

(b) Any order of the director to cease operations shall be enforced by injunction issued by a district court of this state. Any and all such legal costs of procuring and enforcing such order shall be assessed against the private prison contractor.

170:15-3-4.1. Annual Compliance audits

(a) The private prison administrator shall appoint an audit team of up to 15 persons to conduct an annual audit of the performance and continued compliance of a contractor with the provision of rules and standards as set forth in OS 57.563.2 and OS 57.563.3 and with the facility operational plan. The department will utilize the Standards for Adult Correctional Institutions as amended and published by the American Correctional Association, applicable Department of Corrections operations memoranda, contractual requirements and pertinent state statutes.

(b) Private contractors will prepare corrective action plans for deficiencies found by the audit team. The private prison administrator will monitor corrective action plans for completion within time frames established in the approved corrective action plan.

170:15-3-5. American Correctional Association accreditation

Every private prison contractor shall, at its own expense, take steps to achieve accreditation by the Commission on Accreditation for Corrections of the American Correctional Association standards. Accreditation shall be achieved within three years of commencing operation and must be maintained (S/S 57-561.1.).

(1) The private prison shall be accredited as to the type of facility it is operating. If the facility is a jail, then the standards applicable to jails shall be used. For prisons, the standards applicable to institutions shall be utilized.

(2) The private prison contractor shall notify the director when an audit by American Correctional Association has been scheduled and shall send a copy of the American Correctional Association audit team report to the director within five working days of receipt of the final report.

(3) The private prison contractor shall notify the director within five working days of receiving the final action by the Commission on Accreditation.

SUBCHAPTER 5. APPEAL OF ~~AUDIT~~ AUDITS

170:15-5-1. Appeal and review of department ~~audit~~ audits

(a) The department audit team shall submit a report of its findings and recommendations to the private prison contractor and the director.

(b) The private prison contractor shall have 30 days in which to review the audit report and appeal any findings or conclusions in writing to the ~~director~~ private prison administrator. The ~~director shall~~ private prison administrator, after consultation with the Deputy Director of Operations Support, shall review any appeals and render a decision, which shall be final, as to the findings and conclusion of the audit team. The provision of rule 170:15-3-3 shall apply.

SUBCHAPTER 7. COSTS

170:15-7-1. Costs for ~~audits~~ monitoring activities

(a) The department shall charge the private prison contractor for costs incurred in conducting the preliminary and annual audit for monitoring compliance with the requirements of 57 O.S.. Section 563.3, (A)(1) and (2).

(b) The department shall charge the private prison contractor for costs incurred in monitoring compliance with state statutes.

(1) Costs shall include, but not be limited to:

(A) The salary of ~~audit team~~ monitoring team members. ~~for time spent to prepare, conduct, and respond to findings of the audit~~;

(B) Per diem (if any) for the ~~audit~~ team members;

(C) ~~Costs~~ Operational costs associated with the preparation and publication of their report;

~~(D) Transportation costs;~~

~~(E) Communication costs; and~~

~~(F) Other costs incidental to the audit.~~

(2) The department shall submit an invoice or statement to the private prison contractor for costs incurred listing the line item costs and total.

(3) The private prison contractor shall reimburse the department within 30 days of receipt of the invoice or statement.

170:15-7-3. [RESERVED]

170:15-7-4. Loss of services

(a) If at any time during the contract period the contractor does not provide services as listed in the contract, the contractor shall be notified in writing by the private prison administrator to remedy the failed sections of the contract. Failure shall be based upon documented evidence obtained through contract monitor inspections, statutory compliance, contractual agreements, American Correctional Association Standards, State Health Department regulations and Office of the State Fire Marshal regulations.

(b) In the event the Department of Corrections expends funds to provide services, which the contractor has failed to provide, the Department of Corrections may recover the funds by assessing fees for the loss of services. The fees assessed will not exceed actual expenses. An invoice or statement shall be submitted to the contractor for costs incurred listing the line item costs and total.

170:15-7-5. Liquidated damages

In the event of non-compliance by the private prison contractor to adhere to the provisions of the contract, the Department of Corrections may assess liquidated damages for each day the breach of contract remains unresolved.

SUBCHAPTER 9. PRIVATE PRISON CUSTODY

170:15-9-1. Federal and out of state inmates

(a) A private prison contractor under the provisions of OS 57-563.2. may be approved to house inmates under federal jurisdiction or inmates from an out of state jurisdiction.

(b) The State of Oklahoma shall not assume jurisdiction or custody of federal or out of state inmates.

(c) If an inmate is to be released, discharged, placed on probation or paroled, the sending state or federal jurisdiction will make arrangements to transfer the inmate back to the respective legal authority.

(d) Federal inmates or inmates from out of state shall not be allowed to leave the premises of the facility except to comply with a court order, receive medical care or work in approved minimum-security public works projects. To gain approval of minimum-security public works projects, contractors must follow the conditions listed below.

(1) The public works project is in or adjacent to the county or municipality in which the facility is located.

(2) Security procedures will ensure the safety of the public and the Department of Corrections has approved the procedures. Complete security procedures including post orders, supervision requirements, and transportation procedures will be reviewed by the Department of Corrections prior to approval of minimum-security work crews operating in the community or outside private prison property.

(3) The Department of Corrections and county or municipal authorities approve the public works project.

(4) The private contractor has procured and has in force liability insurance in the amount of $1,000,000 per incident. This liability insurance shall cover any loss resulting in participation in said project for any injuries occurring to inmates or employees.

(5) Use of federal inmates for public works projects will be in strict compliance with the provisions of Section 4002 of Title 18 of the United States Code and other applicable provisions of federal law.

(e) Unless federal custody status is specified, security level restrictions shall refer to the security level restrictions applicable to inmates in institutions within the Department of Corrections, as determined by policy of the Department of Corrections, unless the Department of Corrections approves more restrictive levels of security as prescribed by the private prison contractor. Private prison contractors housing federal inmates or inmates of another state shall be bound by department approved security level classifications.

(f) A private prison contractor shall not house inmates from this state with federal inmates or inmates from another state, unless segregated or otherwise housed in such a manner as to satisfy the Director of the Department of Corrections.

(g) A private prison contractor housing federal inmates or inmates of another state shall not accept any of the following inmates except as provided for in statute:

(1) An inmate who would be incarcerated in the facility for conviction of a misdemeanor, unless incarceration in the facility is consistent with American Correctional Association requirements and as determined by Oklahoma Department of Corrections Sentence Administration.

(2) Any maximum-security level inmate as determined by Department of Corrections classification standards.

(3) Any inmates with an escape history.

(4) Any inmate with a capital conviction.

(5) Any inmate with a sex-related conviction.

(h) This state shall not be liable for loss resulting from the acts of such inmates, employees, officers, citizens or other individuals nor shall this state be liable for any injuries to the inmates.

(i) The private prison contractors shall be responsible for all costs and expenses arising from legal actions against the state of Oklahoma including court costs, sheriff mileage fees, witness fees, district attorney expenses, expenses of the office of Attorney General, Legal Division of the Oklahoma Department of Corrections, indigent or public defender fees and costs, judicial expenses, court reporter expenses and any other costs, fees or expenses associated with the proceedings or actions.

(j) Section 2 of Article 73 of the Oklahoma Constitution limits the use of inmate labor by agencies or sources other than the Oklahoma Department of Corrections to PPW and makes violation of this law a crime. Private prison contractors shall submit inmate work plans to the Private Prison Administration to review for compliance with this law.

170:15-9-2. Private prison personnel

(a) A private prison contractor will not employ any personnel convicted of a felony if the person has been incarcerated in the private prison facility for which an application for employment is being considered; however a private prison contractor may employ personnel convicted of drug-related felonies who have completed a drug or other substance abuse program, deemed rehabilitated and free from supervision a minimum of one year to provide substance abuse programming for inmates of the facility.

(1) Ex-offender status will not prevent employment unless prohibited by law.

(2) Prior to appointment of an ex-felon, written approval must be obtained from the director.

(b) A felony record search of fingerprints of the employee or prospective employee of the private prison contractor will be required. The search will be based on fingerprints and will be conducted by the Federal Bureau of Investigation and Oklahoma State Bureau of Investigation. The contractor will maintain the search records of each employee as long as the employee works for the contractor. The personnel records and background investigation records will be subject to inspection by the Department of Corrections.

(c) Any personnel of a private prison facility, except any person convicted of a felony offense, shall be authorized to carry and use firearms while in the performance of their official duties only after completing training approved by the Department of Corrections. Private prison training plans must be previously approved and must follow the Council of Law Enforcement and Education Training (C.L.E.E.T.) lesson plan and be taught by a certified C.L.E.E.T instructor. Such personnel shall only be authorized to use firearms for the following purposes:

(1) To prevent escape from the facility or from custody while being transported.

(2) To prevent an act which would cause death or serious bodily injury to any person.
(3) If an inmate escapes from the facility, the Department of Public Safety, county sheriff, city police department and the private prison administration duty officer will be notified immediately.

170:15-9-3. Personnel qualifications

The private prison contractor shall designate employee positions for each job task required to operate the facility. The qualifications for each employee position shall have the same minimum qualifications or requirements as in comparable Office of Personnel management positions for the Department of Corrections.

SUBCHAPTER 11. PRIVATE PRISON CONTRACT APPLICATION

170:15-11-1. Private prison contract application

(a) Title 57 Section 561 authorizes the Department of Corrections under the auspices of the Board of Corrections to contract with private prison contractors for the operation of a prison. The process of contracting for a prison is described below.
(b) Services expected from a private prison are more extensive than expected from a typical contract jail or detention facility. Private prisons shall include provisions for:
(1) American Correctional Association accreditation
(2) Accounting of inmate funds
(3) Approved dietary regiment
(4) Canteen/Commissary Services
(5) Case management/classification services
(6) Counseling services
(7) Disciplinary process
(8) Religious services
(9) Law library, access to courts
(10) Outdoor recreation
(11) Programs (e.g., rehabilitative, substance abuse)
(12) Health Services including medical, mental health, dental
(13) Laundry/Clothing/Property
(14) Transportation
(15) Mail/Legal Mail
(16) Religious Services
(17) Security and Control
(18) Visitation
(19) Records Management/Sentence Computation
(20) Work Activities
(21) Library
(22) Drug Testing
(23) Education (e.g. literacy, GED Vo-Tech)
(24) Quality Assurance Plan
(25) Emergency Procedures
(26) Any other services listed specifically in the agreement
(c) Prospective vendors will complete an application packet containing all of the basic elements listed above for submission to the private prison administrator. The application will be evaluated and maintained in a comprehensive file. Applications will be purged from the comprehensive file after one year.

170:15-11-2. Request for proposal

(a) The private prison administrator shall develop a Request for Proposal (RFP), which contains a statement of purpose and defines the need for the proposed contract. When finalized, the RFP shall be mailed to qualified vendors. Returned applications will be evaluated and maintained in a comprehensive file. The private prison administration unit will maintain the comprehensive file listing qualified vendors.
(b) The private prison administration unit in the Operations Support Division and Department of Corrections' Legal Division shall prepare a contract draft which best serves the needs of Oklahoma, striving for lowest cost, best service and protection of the public, employee and offender.
(c) Upon approval of the bids by the Board of Corrections, contracts will be finalized with the private prison contractors that have met and agreed to all statutory, board and department standards as stipulated in the RFP. The director or the director's designee shall notify the successful vendor of the approval of the contract upon final review and certification by the Department of Central Services.

SUBCHAPTER 13. PRIVATE PRISON EMERGENCY PLANS

170:15-13-1. Development of emergency plans

Each private prison contractor shall prepare emergency plans that address facility riots, disturbances, natural disasters, escapes, hostage situations, job actions or walkouts, and utility failures. The emergency plans must be submitted for review and approval to the private prison administration unit thirty (30) days prior to the date that the contract is signed. Revisions, if required, must be enacted before commencement of operations.

170:15-13-2. Emergency response

(a) In the event of a serious incident as defined by the Department of Corrections policy, personnel from the facility shall immediately inform the Department of Corrections if there is any riot or other serious incident, or if an inmate escapes. The Department of Corrections shall be directed to respond on behalf of the public safety of this state.
(b) The Department shall charge the private prison contractor for the costs incurred as a result of investigation and responding to serious incidents at private prisons.
(c) Reasonable force may be used as required and as authorized by applicable law and pursuant to applicable Department procedures.

(1) The contractor will comply with department policy regarding use of force and serious incidents as to the definition of serious incident notification, and reporting.

(2) The contractor will notify the private prison administration duty officer immediately by telephone of all serious incidents and will e-mail or fax copies of all serious incident reports prepared as required by department policy.

(3) The contractor shall establish a serious incident report log that shall reflect every serious incident report number, incident date, and a brief summary of the contents of the incident reports. A copy of the incident log will be provided to the private prison administrator monthly. The private prison administrator will have access to all investigative reports in regard to serious incidents.

(d) All private prisons in Oklahoma shall prepare a written mutual aid agreement between the private prison facility and state and local entities to include the Department of Corrections. Specific Department of Corrections facilities shall be designated to provide support in the event of a riot, escape, other serious incident, and emergency situation.

170:15-13-3. Departmental emergency response reimbursement

Any emergency response, to include serious incident investigation, provided by the Oklahoma Department of Corrections and/or state and/or local law enforcement agencies will be the sole expense of the private prison contractor/operator. Each responding agency will submit a written invoice detailing costs incurred which will be paid within 30 days of receipt by the private prison contractor/operator.

SUBCHAPTER 15. INDEMNIFICATION AND INSURANCE

170:15-15-1. Indemnification and insurance

(a) The Contractor must have adequate insurance coverage to indemnify the state, its political subdivisions, and its officers, agents, and employees for expenses or losses incurred in intervening in the operation of the private prison, and to indemnify and hold harmless the state, its political subdivisions, its officers and employees for acts resulting in liability by inmates, officers, and employees of the private contractor or stockholders.

(b) The private contractor shall be responsible for all claims arising from the provisions of the individual contracts. Claims shall be defined as:

(1) Any breach or default by the owner/operator in performance of the contract.

(2) Claims or losses for services rendered by the owner/operator.

(3) Claims or losses to any person injured or property damage.

(4) Claims or losses by any person or firm injured or damaged by the owner/operator.

(5) Failure by the owner/operator, agents, or employees to observe the Constitution or laws of the United States and the State of Oklahoma.

(c) The owner/operator shall continuously maintain and pay for such insurance and shall protect the owner/operator, the state, the department and the board, officer, agents and employees in accordance with paragraph D.

(d) Prior to service commencement date and upon annual renewal the owner/operator shall provide insurance policies and endorsements to the private prison administration unit evidencing insurance coverage for review. The private prison administration unit will forward documentation to the Risk Management administration for evaluation. Insurance coverage shall cover the following types and amounts:

(1) Workmen's compensation insurance approved by the State Worker's Compensation Board with coverage limit of $1,000,000 for each accident or disease per employee with a $5,000,000 annual aggregate.

(2) Comprehensive General Liability, Civil Rights Violation Liability and Medical Malpractice/Professional Liability coverage in an amount not less than $1,000,000 for each occurrence with an annual aggregate of $2,000,000 with a total umbrella of $5,000,000.

(3) Automobile and other vehicle liability insurance in an amount not less than $1,000,000 per accident or occurrence.

(4) Business interruption insurance in the amount of $7,000,000.

(5) Fire, with uniform standard extended coverage, endorsements including damage, destruction hazard insurance and vandalism and malicious mischief, riot and insurrections insurance in a coverage amount equal to the replacement value of the facility.

(6) All policies and certificates of insurance shall not be canceled, reduced or allowed to lapse unless and until the State has received at least ten days written notice.

(e) The State shall have the right, but not the obligation, to advance money to prevent the required insurance from lapsing for nonpayment of premiums. If the State advances such amount, the owner/operator shall be obligated to repay the State the amount of any advance plus interest at the maximum legal rate. The State shall set off and deduct such amount from any amounts owed to the owner/operator. No election to advance money to pay insurance premiums shall be deemed to cure default by the owner/operator of its obligation to provide insurance.

(f) At least thirty days prior to each policy anniversary date, the owner/operator shall provide the private prison administration unit with renewal information and any changes in coverage.

[OAR Docket #05-1134; filed 6-9-05]

TITLE 170. DEPARTMENT OF CORRECTIONS
CHAPTER 35. EMPLOYEE RECRUITMENT REFERRAL INCENTIVE PROGRAM

[OAR Docket #05-1135]

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ANALYSIS:
The rules of this chapter establish the procedures for implementation of the Employee Recruitment Referral Incentive Program (ERRIP) in accordance with 57 O.S. § 510(A)(18). The Employee Recruitment Referral Incentive Program augments the department's recruitment and retention program by encouraging department employees and retirees, through the provision of incentives, to recruit and retain the best qualified, skilled, and diverse workforce.
CONTACT PERSON:
Debbie Boyer, Administrator, Human Resources Unit, DOC, 3400 Martin Luther King Ave., Oklahoma City, Oklahoma, 73136-0400, 405-425-2844

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 11, 2005:

170:35-1-1. Scope

Oklahoma State Statutes Title 57 Section 510 empowers the director of the Oklahoma Department of Corrections to promulgate rules which establish an Employee Recruitment Referral Incentive Program. The scope of the rules and regulations of this chapter is to provide standard procedures whereby the Oklahoma Department of Corrections establishes and administers the Employee Recruitment Referral Incentive Program.

170:35-1-2. Definitions

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

"Eligible Applicant" means any person who is not a current Oklahoma Department of Corrections employee applying for an eligible position.

"Eligible Employee/Retiree" means any permanent, classified or unclassified, full or part-time employee. Eligibility is also extended to include any Oklahoma Department of Corrections retiree.

"Eligible Position" means positions that have received Director's approval to fill.

"Referral Incentive" means payment made, in the form of United States Savings Bonds, to any eligible employee whose referral of an eligible applicant results in hiring and the eligible applicant remaining with the agency for two full years.

"Referred Employee" means an eligible applicant referred by an eligible employee/retiree and subsequently employed by the Oklahoma Department of Corrections in an eligible position.

"Referring Employee" means an eligible employee making a referral.

170:35-1-3. Program purpose

The purpose of the Oklahoma Department of Corrections Employee Recruitment Referral Incentive Program is to augment the department's recruitment and retention program by encouraging department employees and retirees, through the provision of incentives, to recruit and retain the best qualified, skilled, and diverse workforce.

170:35-1-4. Eligibility requirements

The Oklahoma Department of Corrections may pay a recruitment referral incentive of up to $600 in United States Savings Bonds to any eligible employee/retiree whose referred eligible applicant is hired and remains with the agency for two full years. There is no limit to the number of referrals an eligible employee may make.

170:35-1-5. Payment conditions and amounts

(a) The Oklahoma Department of Corrections will make an initial payment of $100 United States Savings Bond to the referring eligible employee/retiree when the referred eligible applicant has been hired.

(b) The Oklahoma Department of Corrections will make a second payment of $200 United States Savings Bond to the referring eligible employee/retiree when the referred eligible employee successfully completes one full year of employment with the agency which is documented by an overall rating of Meets or Exceeds Standards on the initial performance evaluation. (Retired employees are not eligible for this payment.)

(c) The Oklahoma Department of Corrections will make a third payment of $300 United States Savings Bond to the referring eligible employee/retiree when the referred eligible employee successfully completes two full years of employment

with the agency which is documented by an overall rating of Meets or Exceeds Standards on the annual performance evaluation. (Retired employees are not eligible for this payment.)
(d) Special incentives may be offered, upon approval of the director, for referral of applicants with specialized skills identified as a special agency need.

170:35-1-6. Limitations
(a) If the referred employee does not remain with the agency for one full year, the referring employee will be allowed to keep the initial incentive payment but will not receive subsequent incentive payments.
(b) If the referred employee does not remain with the agency for two full years, the referring employee will be allowed to keep the initial and second incentive payments but will not receive the third payment.
(c) If the referred employee transfers, promotes, or voluntarily demotes to another position within the agency, the referring employee will receive incentive payments as scheduled, so long as all other required conditions are met.
(d) If a referring employee earns a referral incentive(s) but leaves employment, with the Oklahoma Department of Corrections, in a manner other than retirement, prior to receiving the payment(s), the incentive(s) will be forfeited.
(e) If the referred employee receives an overall rating of Does Not Meet standards on the initial or annual performance appraisal, the second and third payments will be forfeited. However, denial of any one payment does not affect future payments so long as all program criteria have been satisfied.
(f) If a referring employee earns a referral incentive(s) but is deceased prior to receiving the payment(s), the incentive(s) will be forwarded to the beneficiary of any final wages owed as specified on the employee's Data Summary Sheet.
(g) Oklahoma Department of Corrections retirees will receive a one-time only incentive of a $200 United States Savings Bond after the referred applicant has been hired and determined to meet the criteria set forth in these administrative rules.
(h) Referral incentives may be approved or denied contingent upon available funding and compliance with all criteria set forth in these administrative rules.
(i) Payments for referral incentives will be made, upon approval by the administrator of Human Resources or designee.
(j) If funding is not available at the time of initial hire or at any time during the scheduled payment period, incentive payments will be discontinued and will not be paid retroactively.

170:35-1-7. Application and approval
(a) Application for recruitment referral incentive payments will be made in accordance with specific operational guidelines set forth by the Oklahoma Department of Corrections.
(b) Applications will be reviewed in accordance with specific operational guidelines prescribed by the Oklahoma Department of Corrections.
(c) Referral incentive payments may be approved or denied contingent upon available funding and compliance with program guidelines.

170:35-1-8. Program evaluation
The effectiveness of the program will be evaluated annually based on fiscal year in accordance with specific operational guidelines prescribed by the Oklahoma Department of Corrections.

170:35-1-9. Record keeping
The Oklahoma Department of Corrections will maintain and publish records related to program administration sufficient to document the expenditure of public funds.

[OAR Docket #05-1135; filed 6-9-05]

TITLE 300. GRAND RIVER DAM AUTHORITY
CHAPTER 20. PURCHASING POLICY

[OAR Docket #05-1089]

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300:20-1-1. Introduction to purchasing policy [AMENDED]
300:20-1-2. Purpose [AMENDED]
300:20-1-4. Responsibilities [AMENDED]
300:20-1-5. Gifts and gratuities [AMENDED]
300:20-1-7. Local purchases [AMENDED]
300:20-1-10. Requisition review [AMENDED]
300:20-1-11. Vendor selection, quotations, evaluation, and disputes [AMENDED]
300:20-1-12. Change orders [AMENDED]
300:20-1-13. Emergency confirmatory purchase orders [AMENDED]
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ANALYSIS:
The rules set forth the Grand River Dam Authority's Purchasing Policy. Because the Grand River Dam Authority is a nonappropriated agency and is exempt from the Central Purchasing Act, the rules detail the agency's method and policy of purchasing goods and services.
CONTACT PERSON:
Michael Kiefner, Grand River Dam Authority General Counsel (918) 256-5545

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 11, 2005:

300:20-1-1. Introduction to purchasing policy

(a) The material contained herein is designed to explain and facilitate understanding of the Purchasing Department, its functions, policies and procedures~~,~~. The material will also serve as a~~n operating~~ guide to the Operating Departments~~,~~ and ~~to~~ serve as a tool to provide information and direction to the various departments and functions of GRDA. Its primary purpose is to communicate policies and give guidance to ~~buying~~ personnel in charge of purchases, personnel assigned to the purchasing function and others with delegated purchasing authority.

(b) The included policy statements represent the basic intentions and goals of the GRDA Board of Directors. They represent the permanent foundation upon which the Authority operates, and are expected to be relatively independent of the changing technologies and methods used to carry them out. It is the responsibility of all who have been delegated the authority to commit GRDA funds through the purchasing function to adhere to the policies contained herein.

(c) The procedures set forth are expressly designed to implement the Board's policy and ~~State~~ state law. ~~Procedure~~ Procedures will ~~be conformed~~ conform to ~~meet~~ changes in policy or law and when necessary, procedures will be modified on an "as needed basis" to refine the purchasing process.

(d) **Definitions.**

(1) **Purchasing.** Identification and recognition of the required need for goods and services in all parts of the organization, and the assurance of satisfaction of those needs at the lowest possible cost, consistent with the best quality of goods required. Purchasing reflects the role of a service department by serving as the primary contact between the various functions of GRDA and its suppliers.

(2) **Policies.** Policies, as referred to herein, are pre-decisions made by Management and the Board of Directors for the purpose of giving information and direction. Policies establish basic philosophies and climates, and determine the major values upon which the Purchasing function must operate.

(3) **Procedures.** Procedures are the prescribed means of accomplishing policy. Their intent is to provide GRDA personnel with the guidelines and, where appropriate, ~~the~~ specific action sequences to ensure uniformity, compliance and control of all policy-related activities.

300:20-1-2. Purpose

(a) In order for GRDA to continue to provide low-cost power to GRDA customers, it is imperative that ~~we~~ it continually strive for lower costs in every area of ~~our~~ its business operation. A large element of cost is purchased material and services, so this activity provides ~~us~~ GRDA with an opportunity for cost reduction and control. The overall policy goal is to maintain, at all times, a continuous supply of goods and services necessary to support the production of power by GRDA. Individual aspects of this policy are:

(1) To comply with, in all aspects and without qualification or evasion, the laws of the State of Oklahoma and the GRDA Bylaws governing policy and procedures for purchases.

(2) To ensure the uninterrupted flow of production by obtaining and ensuring delivery of an acceptable quality of goods and services at the maximum end-use value per dollar spent.

(3) The management of inventories of purchased goods so as to meet the use requirements of all GRDA departments at the lowest possible cost.

(4) To develop reliable alternate sources of supply to meet GRDA requirements.

(5) To treat all prices and technical information submitted by suppliers as confidential until after bid openings in order to preserve a good business reputation and obtain competitive pricing.

(6) The amicable resolution of complaints on all purchased goods and services.

(7) The standardization of materials, supplies, equipment, services and procedures.

(8) To dispose of, to the best advantage, all materials and equipment declared to be surplus or obsolete by the GRDA Board of Directors. ~~Such disposal shall be in accordance with the Oklahoma Surplus Property Act (74 O.S. § 62.1 et seq.).~~

(b) Purchasing is an important activity~~,~~. ~~the~~ The primary responsibility of the Purchasing Department ~~being~~ is to provide and operate a system for the purchase of materials, supplies and services, with the objective that they will be available at the proper time~~,~~ and in the proper place~~,~~ in quantity, quality and price consistent with the needs of the Authority. It is necessary that the responsibility for buying materials and services be assigned to a group of people skilled in purchasing techniques.

(c) To achieve this overall objective, the responsibilities, authorities and controls set forth in this policy must be adhered to by all GRDA employees.

300:20-1-4. Responsibilities

(a) The Board of Directors is primarily responsible for promulgating a comprehensive Purchasing Policy and for approving purchases above ~~$25,000.00~~ $50,000.00.

(b) The General Manager is responsible for the actions of the Assistant General Managers and their subordinates ~~while~~ who ~~performing~~ perform ~~the~~ purchasing procedures and the General Manager is responsible for approving emergency purchases above ~~$25,000.00~~ $50,000.00.

(c) The Assistant General Managers shall have commitment authority not to exceed $5,000.00 to commit GRDA for materials, equipment, supplies or services. With the approval of the General Manager, an Assistant General Manager may issue a standing order delegating any portion of his commitment authority to supervisors assigned to the Assistant General Manager's area of responsibility.

(d) Unless otherwise directed by the Board of Directors, an Assistant General Manager designated by the General Manager shall supervise and direct purchasing in compliance with the GRDA purchasing manual.

(e) The Purchasing Department has the responsibility for obligating the Authority and for making the final determination of source of supply, ultimate quantities purchased, delivery schedule, price, and commercial terms. These decisions will be made in conjunction with other departments as appropriate.

(f) The Purchasing Department is responsible for initiating and maintaining effective and professional relationships with suppliers, both actual and potential.

(g) The Purchasing Department is to serve as the exclusive channel through which all requests regarding prices and products are handled. ~~The~~ This Department and no other will conduct all correspondence with suppliers involving prices or quotations. In cases where technical details are necessary, the ~~using~~ department requesting supplies may correspond with suppliers. In such cases, the Purchasing Department should be provided with copies of all such correspondence. Close communication and coordination between the Purchasing Department and the ~~using departments~~ department requesting supplies must occur. This Subsection ~~G~~ g does not apply to emergency purchases and small-dollar purchases (less than ~~$250~~$250.00).

(h) All employees involved in purchasing activities will work to maintain and enhance the Authority's image by their personal conduct and methods of doing business.

(i) All employees engaged in purchasing activities will recognize and practice good public relations by giving all callers and visitors courteous treatment.

(j) Purchasing Department personnel are ~~to seek~~ to obtain and purchase all goods at the lowest possible end-use cost, considering the guidelines of ~~prices~~ price, service, quality and delivery.

(k) Purchasing Department personnel are to inform requisitioning departments whenever the quantity or specifications of materials ordered are inconsistent with sound purchasing practices or market conditions.

(l) Purchasing Department personnel will work to establish and encourage timely delivery of specified goods and services in correct quantities.

(m) Purchasing Department personnel will negotiate the return of rejected equipment or supplies to the supplier.

(n) The Purchasing/Contracting and Acquisitions Administrator and Purchasing Department personnel will advise management of economic conditions and changes significant to GRDA's interests.

(o) Purchasing Department personnel shall coordinate with the General Counsel to assure compliance with the Oklahoma Public Competitive Bidding Act (61 O.S. § 101 et seq.).

300:20-1-5. Gifts and gratuities

This policy provides guidance ~~in the purchasing function~~ concerning the ~~receiving~~ receipt of gifts and/or gratuities. The manager ~~in charge~~ responsible ~~of~~ for ~~purchasing~~ personnel in charge of purchasing has the responsibility to ensure that ~~they~~ these employees have ~~the~~ an understanding of all relevant ~~policy~~ policies and ~~procedure~~ procedures when they are first employed.

(1) No Board member, officer or employee shall directly solicit or accept any compensation, gift, loan, entertainment, favor or service for the purpose of influencing such Board member, officer, or employee in the discharge of their official duties.

(2) No employee shall permit any influence ~~which could~~ to conflict with the best interest of the Authority or prejudice the Authority's reputation.

(3) Association with ~~supplier~~ suppliers' representatives at luncheons or business organization meetings ~~are~~ is helpful in establishing better business ~~understanding~~ communications, provided the buyer keeps himself free of obligations. ~~To ensure this~~ Therefore, ~~purchasing~~ personnel in charge of purchasing ~~can~~ may act as hosts on occasion. Such efforts should be part of their operation expense.

(4) The responsibility for adherence to this policy is a joint one. Individuals who represent GRDA must be beyond challenge or reproach in every business transaction, and must not allow themselves to be put into a position where their judgments can be influenced.

(5) Pens, pencils, notepads, etc., which bear a vendor's advertising are considered to be of nominal value and are acceptable.

300:20-1-7. Local purchases

Purchases from vendors in the State of Oklahoma will be referred to as local vendors. It will be the policy to encourage meaningful participation ~~of~~ by local vendor sources, whenever possible, to provide useful and acceptable quality services or materials at competitive prices. ~~Purchasing personnel~~ Personnel in charge of purchasing are responsible for making every effort to solicit local vendor bids for products and services. ~~However, their bids will be evaluated the same as out-of-state vendors with no preferences given.~~

300:20-1-10. Requisition review

This policy applies to all ordinary procurements. The Purchasing Department shall have the responsibility and authority to review specifications and sources within the following guidelines:

(1) The user and the Purchasing Department shall be jointly responsible for developing a list of acceptable vendors of a specific product or service whenever necessary, with the user being responsible for the technical aspects of the evaluation and the Purchasing Department being responsible for the financial and service aspects. Once a list of acceptable vendors has been established, the Purchasing Department shall be responsible for the selection of vendors from that list who ~~best~~ can best respond to the requirements of each particular order.

(2) Purchasing shall review the specifications of each purchase requisition. The review shall include: requests for "sole source or sole brand" purchases; requests for goods of a quality or quantity that seem to be greater or

less than required; requests that do not conform to Authority standards; and requests without proper authorization. Buyers shall not materially alter specifications without discussion with the requestor.

(3) Requisitions which do not contain enough specific information will be returned to the requestor for further attention. "Sole source or sole brand" requisitions shall be accompanied by a "Sole Source or Sole Brand Affidavit" completely showing the factual basis substantiating the exclusion of other bidders.

300:20-1-11. Vendor selection, quotations, evaluation, and disputes

This policy applies to ordinary transactions on material or services with an estimated value in excess of $2,500.00.

(1) The selection of vendors is primarily the responsibility of the Purchasing Department and requires a consideration of several factors. In making the selection, the Purchasing Department will coordinate closely with other departments to obtain adequate and reasonable specifications. Whenever possible, identification of brand names, or sufficient detail, should be obtained to ensure that the order can be properly filled. Direct access to the manufacturers will be obtained whenever possible. One major decision required during the purchasing process is vendor selection. It is the purpose of this policy to define the responsibility for and provide basic guidelines for vendor selection.

(2) Purchases shall be investigated by GRDA to assure the quality of the product and the viability of the vendor.

(A) Subsequent travel and expenses necessary or advisable to ~~assure~~ validate quality ~~assurance~~, timely delivery and, or technical compliance shall be evaluated during the bidding process.

(B) Buyers should endeavor to place orders with regard to the dependability and service record of the vendor, price and quality of merchandise, and should give special attention to:

(i) Suppliers who are developing new and improved products or equipment, or who are designing and developing a special product for the company's exclusive use.

(ii) Suppliers located near the operation.

(iii) Suppliers with adequate financial strength who also have a reputation for adhering to specifications and delivery schedules.

(iv) Suppliers who are local vendors.

(v) Suppliers who are certified minority vendors.

(3) The Superintendent of Fiscal Services has the responsibility ~~for~~ of maintaining a uniform set of procedures and forms to ~~serve~~ service the bid process. Considerations should include the need for forms for vendor notifications, bid analysis and summary, bidder mailing list applications, competitive invitations, instructions to bidders, policy statement of bid award, and sealed bid envelopes. Purchasing Department personnel are responsible for obtaining bids on all material or services covered under this policy for both estimating purposes and purchases. Quotations shall be of the following types, depending upon the size and nature of the potential purchase:

(A) Verbal B Not to exceed $2,500.00.

(B) Written B Over $2,500.00.

(C) Sealed Bids B Over ~~$25,000.00~~ $50,000.00.

(D) Verbal/written follow-up on auxiliary boiler fuel, vehicle fuel and emergency confirmatory purchases.

(4) If a dispute arises on purchased goods and services concerning vendor selection, quotation, or evaluation, the affected vendor may contact the Contracting and Acquisitions Agent assigned to the particular purchase for possible resolution of the dispute. If a dispute arises on purchased goods and services concerning the amount due~~,~~ or non-payment~~,~~ to a vendor, the affected vendor may contact the Accounts Payable Supervisor for possible resolution of the dispute. In both cases, should the dispute not be resolved to the vendor's satisfaction, the vendor may contact the Superintendent of Fiscal Services for further discussion.

(5) The Purchasing/Contracting and Acquisitions Administrator will cause to be included in each bid request file a bid analysis summary, required affidavits, and insurance requirement forms. Purchase orders requiring insurance will be sent to the Assistant General Manager of Regulatory Compliance and Risk Management for review. The following factors in combination, not necessarily listed in their order of importance, will be considered in reviewing bids and awarding contracts:

(A) Price

(B) Quality and conformance to specifications, affidavits and insurance requirements

(C) Bidder's previous record of performance and service

(D) Ability of bidder to render satisfactory service, delivery, etc.

(E) ~~FOB~~ Free on Board points and shipping charges

(F) Last purchase cost

(6) The right is reserved to reject any and all bids and to contract as the best interests of the Authority may require.

300:20-1-12. Change orders

This Policy provides guidance in the Purchasing function concerning change orders and when they are required to be utilized.

(1) A change order or cumulative change orders which fall within the below listed amounts shall require formal approval by the GRDA Board of Directors. ~~accepting such~~ The GRDA Board of Directors must accept the additional adjusted amount prior to GRDA being responsible for payment thereof:

(A) Change orders to purchase orders or to construction or service contracts more than ~~$25,000.00~~ $50,000.00 up to $1,000,000.00 shall not exceed a 15% cumulative increase in the original amount.

(B) Change orders to purchase orders or to construction or service contracts more than $1,000,000.00 shall not exceed a 10% cumulative increase in the original amount.

(2) Any change orders to purchase orders or to construction or service contracts not falling within the two categories specified ~~in Paragraph XI. A.~~ above shall require written approval by the General Manager of GRDA prior to GRDA being responsible for payment thereof. However, GRDA Board of Directors' approval is not required for change orders in this category unless the total amount of the resulting change order exceeds ~~$25,000.00~~ $50,000.00~~, and in such case, formal GRDA Board of Director approval is required~~.

(3) Any change orders to public construction contracts for the purpose of making any public improvements or constructing any public building or making repairs to the same, all of which is defined within the Oklahoma Public Competitive Bidding Act (61 O.S. § 101 *et seq.*), shall be issued in accordance with such Act.

(4) Any and all Board Resolutions previously adopted by the GRDA Board of Directors and to the contrary, including Resolution No. 4659 adopted September 16, 1981, are hereby rescinded and are no longer in force or effect.

300:20-1-13. Emergency confirmatory purchase orders

In the event it becomes necessary to purchase an item or service~~,~~ or a series of related items or services, in which the total amount exceeds ~~$25,000~~ $50,000.00, and prior to receiving formal Board approval authorizing such purchase, ~~and~~ plus such purchase is mandatory to keep the facilities operating and~~/~~,or to ensure continuous transmission service, the general manager is authorized to declare an emergency situation and immediately purchase the necessary materials or services. Emergency purchases in this category will be presented to the GRDA Board for formal approval as confirmatory purchase orders at the next regularly scheduled Board meeting.

[OAR Docket #05-1089; filed 6-2-05]

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

[OAR Docket #05-1068]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
310:4-1-5. [AMENDED]
310:4-1-7.1. [AMENDED]
310:4-1-13. [AMENDED]
310:4-1-15. [REVOKED]
AUTHORITY:
State Board of Health, 63 O.S. Sections 1-104, 1-850 et seq., and 1-880.1 et seq.
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ANALYSIS:
These proposed amendments make the rules consistent with the Long Term Care Certificate of Need Act, Title 63 O.S. Section 1-850 et seq., which was changed pursuant to Enrolled House Bill No. 2723 effective June 4, 2004. The amendments remove provisions that contradict or unnecessarily repeat the new law. Cross-references to sections of rule and law are corrected and updated. Requirements regarding application forms are amended to reflect new exemptions under the law.

Additionally, application review procedures are amended to afford an applicant the opportunity to respond in writing to the Department's report of investigation. Requirements for application forms are modified to ensure that all persons with controlling interest are fully and accurately disclosed, and to ensure that financial information submitted is true, correct and complete.
CONTACT PERSON:
Darlene Simmons, Director, Health Facility Division, Health Resources Development Service, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-9444, x57267; facsimile: 405-271-7360; email: darlene@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 JULY 11, 2005:

310:4-1-5. Standard review process

This Section governs the reviews of Certificate of Need applications.

(1) **Capital Cost.** For purposes of determining filing fees, capital cost means one or more of the following depending on the underlying nature of the transaction.

(A) For construction, the total cost of the project shall include the following components as applicable: land acquisition and site development, soil survey and investigation, construction, equipment, architect fees, engineering fees, supervision, performance and payment bonds, contingency, and inflation factor.

(B) For acquisition by purchase, the total cost of the project shall be the greater of current book value of building and/or equipment, or total contract price including any exchanges or other consideration.

(C) For acquisition by lease, the total cost of the project shall be the current book value of the facility to be leased plus any additional capital expenditures, such as equipment purchases.

(D) For a sale and leaseback, or a combination lease and purchase, the total cost of the project shall be the greater of the purchase cost or current book value of the facility.

(E) For a non-monetary transfer of stock, the total capital cost of the project shall be zero dollars ($0).

(F) For a transfer of stock in which one party pays or exchanges other consideration to acquire the stock of another party, the total cost of the project shall be the greater of the value of the consideration given for the stock or the book value of the facility on the seller's books.

(G) For a management contract that includes no purchase, lease, donation, transfer of stock, corporate merger, assignment or foreclosure of building, equipment or other assets, the capital cost shall be zero dollars ($0).

(H) For any other type of project, including but not limited to an addition of beds through conversion of a previously constructed physical plant, the project cost shall be based on the greater of the book value or fair market value of the assets required to accomplish the project.

(I) For any type of project in which book value is used to establish the capital cost, the book value shall be based on audited financial statements or upon generally accepted accounting principles.

(2) **Applicant.** The applicant for a Certificate of Need shall include:

(A) For a long-term care facility:

(i) The person or entity that is or will be the owner, as that term is defined in 63 O.S. Section 1-1902;

(ii) The person or entity that is or will be the licensee, as that term is defined in 63 O.S. Section 1-1902;

(iii) The person or entity that is or will be~~, for longer than six months,~~ the manager as that term is defined in OAC 310 675-1-2.; and

(iv) Any person with a controlling interest, as that term is defined in 63 O.S. Section 1-851.1; or

(B) For a hospital, the entity responsible for operation as defined in OAC 310:667-1-3.

(3) **Filing the application.** The applicant must apply using a form available from the Department. The form must be accompanied by a filing fee in the form of a check payable to the Oklahoma State Health Department.

(A) The fee for an application submitted under the Long Term Care Certificate of Need Act shall be in the amount specified in the Act.

(B) The fee for an application submitted under the Psychiatric and Chemical Dependency Facility Certificate of Need Act shall be three-fourths of one percent (.75%) of the capital cost of the project, with a minimum of One Thousand Five Hundred Dollars ($1,500.00) and a maximum of Ten Thousand Dollars ($10,000.00).

(C) If an application is withdrawn before the Department issues an approval or denial on the application, one of the following refunds shall apply:

(i) For an application that is withdrawn prior to the Department's determination of whether the application is complete or incomplete the refund shall be seventy-five percent (75%) of the fee paid;

(ii) For an application that is withdrawn before the deadline for participation by parties the refund shall be fifty percent (50%) of the fee paid; or

(iii) For an application that is withdrawn before the issuance of the Commissioner's final decision the refund shall be twenty-five percent (25%) of the fee paid.

(D) The refund to the applicant pursuant to ~~310:4-1-5(C)~~310:4-1-5(3)(C) shall not cause the total fee paid by the applicant to be less than the applicable minimum fee set in the Long Term Care Certificate of Need Act or 310:4-1-5(3)(B).

(4) **Completing the application.** Within fifteen (15) days after the application is filed, the Department shall determine whether or not the application is complete, clear, consistent and accurate. If the Department finds that the application is not complete, the Department shall send a written notice to the applicant requesting the additional or clarifying information needed to make the application complete. The applicant shall file all the requested information with the Department, to be received by the Department not later than ninety (90) days after the date of the notice, or the application shall be summarily dismissed. The Department's finding of completeness shall not prevent the Department from subsequently denying a certificate of need based on such incompleteness, lack of clarity, inconsistency or inaccuracy that may be discovered by the Department as the result of the investigation conducted pursuant to 63 O.S. Section 1-852 or 63 O.S. Section 1-880.6.

(5) **Notice of readiness for review.** The Department shall notify the applicant by mail when the application is determined complete. Also, the Department shall mail notice to health care facilities which provide the same type of service in the service area. The Department shall cause a paid public notice to be published in a newspaper of general circulation near the facility, and in a newspaper of general circulation in the area where the application is available for inspection. These notices shall include the name and location of the facility, a brief description of the project, information on where the full application can be viewed, and an explanation of how parties may participate in the review.

(6) **Participation by parties.** Any person or agency may participate in the review process. Any evidence or argument that a participating party proposes to have the Commissioner consider before making a final decision shall be submitted to the Department in writing within

twenty (20) days after the date of publication of the paid public notice.

(7) **Decision deadlines.** The decision to approve or deny a certificate of need for acquisition of a psychiatric or chemical dependency facility shall be made within fifteen (15) days after the deadline for submitting evidence and argument as provided in OAC ~~310:4-1-5(5)~~310:4-1-5(6). The decision to approve or deny any other type of certificate of need shall be made within forty-five (45) days after the deadline for submitting evidence and argument as provided in OAC ~~310:4-1-5(5)~~310:4-1-5(6).

(8) **Report of investigation.** If the Department's investigation indicates that the application is not consistent with applicable criteria and standards, then the Department shall notify the applicant of such inconsistencies in writing prior to the decision deadline in 310:4-1-5(7). The applicant shall be offered an opportunity to respond in writing to the Department's notice. To allow the applicant sufficient time to respond and upon mutual agreement of the applicant and the Department, the decision deadline may be extended to a date certain. Upon receipt of the applicant's response, the Department may amend the report of investigation but shall not be required to offer the applicant a second opportunity to respond. The Commissioner shall consider the applicant's response in making a decision on the certificate of need application. The provisions of this subsection shall not apply if any person has knowingly given false, misleading, or intentionally incomplete information in the application.

310:4-1-7.1. Applicant's holdings and history

For the purposes of investigation under 63 O.S. Section ~~1-852.F~~ 1-852(G) and of findings under 63 O.S. Section ~~1-853.F.~~1-853(D), the Department and the Commissioner shall consider the following:

(1) If the licensee has not established a record of performance in long-term care facility operations in the state of Oklahoma of at least sixty (60) months immediately preceding the filing of the application, then the Department and the Commissioner shall investigate and make required findings on the holdings and long-term care facility operations of each person with a controlling interest. In determining the relevance of prior holdings and operations, the Commissioner shall consider whether the person as an individual:

(A) Has authority to adopt or substantially influence governing policies that affect the financial performance or quality of care of the facility for which a Certificate of Need has been applied; and

(B) Had authority to adopt or substantially influence governing policies that affected the financial performance or quality of care of the prior holding or operation.

(2) A history of noncompliance ~~shall be evidenced for the purposes of 63 O.S. Section 1-853.F.2 by findings of substandard quality of care or actual harm on the last three (3) consecutive standard surveys at any long-term care facility operated by the applicant~~ as defined in 63 O.S. Section 1-851.1(6).

~~(3) A history of noncompliance in the operation of a specialized facility for mentally retarded persons or of an intermediate care facility for mentally retarded persons shall be evidenced for the purposes of 63 O.S. Section 1-853.F.2 by two or more routine or complaint surveys that resulted in determinations that the facility was out of compliance with two or more Conditions of Participation in the Medicaid program in the preceding sixty (60) months.~~

~~(4) When deciding whether to *refuse to issue a certificate of need to an applicant who has had, in the preceding sixty (60) months, an administrative penalty above the level of a deficiency,* [63:1-853.F.3] the Department shall investigate and the Commissioner shall consider the existence of any of the following facts or circumstances as unfavorable to the applicant and as evidence in support of a denial:~~

~~(A) **Level of severity.** The administrative penalty included a citation of immediate jeopardy or actual harm to a resident;~~

~~(B) **Circumstances.** The circumstance cited in connection with a civil money penalty or other administrative penalty resulted in the death of a resident;~~

~~(C) **Recurring deficiencies.** Multiple civil money penalties, denials of payment, or other administrative penalty have been assessed based on findings of substandard quality of care, actual harm, or potential for more than minimal harm, at any of the applicant's facilities within the preceding 60 months; or~~

~~(D) **Extent.** Civil money penalties, denials of payment, or other administrative penalties have been assessed based on findings of substandard quality of care, actual harm, or the potential for more than minimal harm, in 20% or more of the facilities operated by the applicant during the 60 month period.~~

~~(5) When deciding whether to *refuse to issue a certificate of need to an applicant who has had, in the preceding sixty (60) months, an administrative penalty above the level of a deficiency,* [63:1-853.F.3] the Department shall investigate and the Commissioner shall consider the existence of any of the following facts or circumstances as favorable to the applicant and as evidence in support of an approval:~~

~~(A) **Present condition.** The circumstance that resulted in the administrative penalty occurred during the first 24 months of the 60 month period and has not recurred since that time; or~~

~~(B) **Evidence to counteract.** The applicant has produced clear and convincing evidence that the administrative penalty was not due to the applicant's action or inaction.~~

~~(6) In the case of a specialized facility for mentally retarded persons or an intermediate care facility for mentally retarded persons, a determination that the facility is out of compliance with two or more Conditions of Participation~~

~~in the Medicaid program shall be considered equivalent to an administrative penalty above the level of deficiency.~~

~~(7) Nothing in OAC 310:4-1-7.1 shall be interpreted to limit the Department's power and duty to conduct a thorough investigation of the application and of the applicant's holdings and history and to report such investigation to the Commissioner.~~

310:4-1-13. Description of application forms

(a) The standard application for a certificate of need ~~requests~~requires the following:

(1) The names and addresses of the facility and contact person;

(2) Disclosure of the applicant's identity and information sufficient for the Department to determine whether *the applicant has been convicted of a felony criminal offense related to the operation or management of a long-term care facility* ~~[63:1-853.F]~~[63:1-853(D)(2)(d)], including but not limited to:

(A) ~~Notarized attestations~~Sworn and notarized statements from the applicant and each person with controlling interest ~~attesting to~~confirming the lack of any such conviction;

(B) Social security numbers for the applicant and each person with a controlling interest;

(C) Birth dates for the applicant and each person with a controlling interest;

(D) Copies of certificates of incorporation, bylaws, articles of organization, company operating agreements, certificates of limited partnership, or equivalent documents maintained pursuant to state or federal law, and any amendments of such documents. Instead of submitting a document that is not a public record previously filed with a local, state or federal government agency, the applicant may submit a sworn and notarized statement that includes all of the following information:

(i) Name and date of the document;

(ii) Name and address of each person or entity that has current or proposed interests, responsibilities or participation in the ownership, operation or management of the facility or that otherwise makes or influences any decision relating to expenditures or operations affecting the facility, whether the person or entity is identified in the disclosed document by proper name or by function;

(iii) Description of the interest, responsibility, and/or nature of participation of each person or entity named pursuant to (a)(2)(D)(ii) of this section; and

(iv) Location address and telephone number of the place of business in Oklahoma wherein the applicant shall make the document(s) available for inspection by the Department, upon written request by the Department;

(3) Historical operating and financial information for the applicant and the facility;

(4) Residents council and family council minutes for the applicant's facilities;

(5) A detailed description of the project;

(6) Projections of personnel needs and identification of the medical director;

(7) Construction and building information;

(8) Justification of need for the project; and

(9) Data and projections on financial and economic feasibility~~.~~, including but not limited to the following as applicable:

(A) For conventional, bank, seller-carried, third party, or bond financing, a statement of the proposed principal amount, interest rate and repayment terms, and that the applicant has access to the required funds, signed under oath by a representative of the lending institution, seller, third party, or authority;

(B) For equity financing:

(i) An attested balance sheet for the applicant that is dated within the past twelve (12) months and that reflects cash or cash equivalents sufficient to fund the project; or

(ii) A certificate of deposit or other proof that funds are available and have not been pledged for some other purpose.

(C) For financing or other funding from or guaranteed by a third party that is not duly authorized or chartered as a bank:

(i) An attested balance sheet, certificate of deposit or other attested proof that is dated within the past twelve (12) months for the third party, unless the third party is a licensed insurer or surplus lines insurer, the United States of America, a state of the United States of America, or an agency or instrumentality thereof; and

(ii) Copies of organizational documents and contracts necessary to substantiate the relationship between the applicant and the third party.

(b) The certificate of need application for exemption for a ten (10) bed or ten percent (10%) expansion of a licensed nursing or specialized facility ~~requests~~requires the following:

(1) The names and addresses of the facility and contact person;

(2) Disclosure of the applicant's identity ~~and information sufficient for the Department to determine whether *the applicant has been convicted of a felony criminal offense related to the operation or management of a long-term care facility* [63:1-853.F], including but not limited to:~~

~~(A) Notarized attestations from the applicant and each person with controlling interest attesting to the lack of any such conviction;~~

~~(B) Social security numbers for the applicant and each person with a controlling interest;~~

~~(C) Birth dates for the applicant and each person with a controlling interest~~;

(3) Historical occupancy information for the facility;

(4) A detail of the number of beds to be added; and

(5) The projected capital cost~~; and~~

~~(6) Residents council and family council minutes for the applicant's facilities~~.

(c) The certificate of need application for exemption for facility replacement ~~requests~~requires the following:

(1) The names and addresses of the facility and contact person;

(2) Disclosure of the applicant's identity;

(3) A detail of the number of beds to be replaced;

(4) The projected capital cost;

(5) A plan for future use of the facility to be replaced; and

(6) The distance from the current and proposed sites and a map of the area~~; and~~

~~(7) Residents council and family council minutes for the applicant's facilities~~.

(d) The certificate of need application for facility acquisition ~~requests~~requires the following:

(1) The names and addresses of the facility and contact person;

(2) Disclosure of the applicant's identity and information sufficient for the Department to determine whether *the applicant has been convicted of a felony criminal offense related to the operation or management of a long-term care facility* ~~[63:1-853.F]~~[63:1-853(D)(2)(d), including but not limited to:

(A) ~~Notarized attestations~~Sworn and notarized statements from the applicant and each person with controlling interest ~~attesting to~~confirming the lack of any such conviction;

(B) Social security numbers for the applicant and each person with a controlling interest;

(C) Birth dates for the applicant and each person with a controlling interest;

(D) Copies of certificates of incorporation, bylaws, articles of organization, company operating agreements, certificates of limited partnership, or equivalent documents maintained pursuant to state or federal law, and any amendments of such documents. Instead of submitting a document that is not a public record previously filed with a local, state or federal government agency, the applicant may submit a sworn and notarized statement that includes all of the following information:

(i) Name and date of the document;

(ii) Name and address of each person or entity that has current or proposed interests, responsibilities or participation in the ownership, operation or management of the facility or that otherwise makes or influences any decision relating to expenditures or operations affecting the facility, whether the person or entity is identified in the disclosed document by proper name or by function;

(iii) Description of the interest, responsibility, and/or nature of participation of each person or entity named pursuant to (d)(2)(D)(ii) of this section; and

(iv) Location address and telephone number of the place of business in Oklahoma wherein the applicant shall make the document(s) available for inspection by the Department, upon written request by the Department;

(3) A description of the proposed transaction and a copy of the contract or agreement;

(4) A plan for operating the facility including identification of the medical director;

(5)The projected capital cost;

(6) Financial ~~information showing~~proof of the applicant's ability to complete the acquisition and to continue services and staffing; and

(7) Residents council and family council minutes for the applicant's facilities.

(e) The certificate of need notice for a decrease of beds or a change in continuum of care at a psychiatric or chemical dependency treatment facility or unit ~~requests~~requires the following:

(1) The names and addresses of the facility and contact person;

(2) A description of the change in beds or change in continuum of care; and

(3) The anticipated date of the decrease or change.

(f) The certificate of need application for exemption of a management agreement ~~requests~~requires the following:

(1) The names and addresses of the facility, manager and contact person;

(2) A copy of the executed management agreement that details the manager's responsibilities and duties;

(3) ~~A copy of any associated acquisition agreement~~Disclosure of the applicant's identity and experience that is sufficient to determine if the management entity and any person with a controlling interest has a history of noncompliance;

(4) Copies of certificates of incorporation, bylaws, articles of organization, company operating agreements, certificates of limited partnership, or equivalent documents maintained pursuant to state or federal law, and any amendments of such documents. Instead of submitting a document that is not a public record previously filed with a local, state or federal government agency, the applicant may submit a sworn and notarized statement that includes all of the following information:

(A) Name and date of the document;

(B) Name and address of each person or entity that has current or proposed interests, responsibilities or participation in the ownership, operation or management of the facility or that otherwise makes or influences any decision relating to expenditures or operations affecting the facility, whether the person or entity is identified in the disclosed document by proper name or by function;

(C) Description of the interest, responsibility, and/or nature of participation of each person or entity named pursuant to (f)(4)(B) of this section; and

(D) Location address and telephone number of the place of business in Oklahoma wherein the applicant

shall make the document(s) available for inspection by the Department, upon written request by the Department; and

(~~4~~5) The anticipated date of commencement of the management agreement.

(g) The certificate of need application for exemption for ownership change or transfer requires the following:

(1) The names and addresses of the facility and contact person; and

(2) A description of the transfer and disclosure of persons and entities involved or affected;

(3) Copies of agreements or contracts by which ownership is changed or transferred; and

(4) Copies of certificates of incorporation, bylaws, articles of organization, company operating agreements, certificates of limited partnership, or equivalent documents maintained pursuant to state or federal law, and any amendments of such documents. Instead of submitting a document that is not a public record previously filed with a local, state or federal government agency, the applicant may submit a sworn and notarized statement that includes all of the following information:

(A) Name and date of the document;

(B) Name and address of each person or entity that has current or proposed interests, responsibilities or participation in the ownership, operation or management of the facility or that otherwise makes or influences any decision relating to expenditures or operations affecting the facility, whether the person or entity is identified in the disclosed document by proper name or by function;

(C) Description of the interest, responsibility, and/or nature of participation of each person or entity named pursuant to (g)(4)(B) of this section; and

(D) Location address and telephone number of the place of business in Oklahoma wherein the applicant shall make the document(s) available for inspection by the Department, upon written request by the Department.

(h) For the purposes of this section, the term "attest" shall have the meanings as defined in 59 O.S. Supp. 2004, Section 15.1A.

310:4-1-15. Management contract exemption [REVOKED]

~~(a) Any person who proposes to acquire a facility through management contract that is part of a purchase, lease, donation, transfer of stock, corporate merger, assignment or foreclosure proceeding shall file an application for exemption on the form described in OAC 310:4-1-13(f) before commencing management of the facility. The Department may grant an extension of no more than three months if a certificate of need application and required fee have been filed for review of the related acquisition of the facility.~~

~~(b) Any person who proposes a management contract with a term of six months or less shall file an application for exemption on the form described in OAC 310:4-1-13(f) before commencing management of the facility. The Department may grant an extension of no more than three months if a certificate of need application and required fee have been filed for review of the acquisition by management contract.~~

~~(c) A management contract filed under OAC 310:4-1-15 shall be exempt from certificate of need review unless the Department finds that the term of the management contract exceeds the limits specified in 63 O.S. Section 1-852.B., or unless the financial and operational duties and responsibilities under the contract exceed those of a manager as provided in the Nursing Home Care Act and OAC 310:675.~~

[OAR Docket #05-1068; filed 6-1-05]

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

[OAR Docket #05-1069]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
310:205-1-2. [AMENDED]
310:205-1-3. [AMENDED]
Subchapter 3. License Requirements
310:205-3-1. [AMENDED]
310:205-3-2. [AMENDED]
310:205-3-3. [AMENDED]
310:205-3-4. [AMENDED]
310:205-3-7. [AMENDED]
Subchapter 5. Special Provisions
310:205-5-1. [AMENDED]
310:205-5-2. [AMENDED]
Appendix A. Table of Alarm Industry Licensing Requirements [REVOKED]
AUTHORITY:
Oklahoma State Board of Health; Alarm Industry Act, 59 O.S., Sections 1800.1 et seq.
DATES:
Comment Period:
February 15, 2005 through March 17, 2005
Public Hearing:
March 17, 2005
Adoption:
March 17, 2005
Submitted to Governor:
March 28, 2005
Submitted to House:
March 28, 2005
Submitted to Senate:
March 28, 2005
Gubernatorial approval:
May 12, 2005
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2005
Final adoption:
May 20, 2005
Effective:
July 11, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
Incorporated Standards:
International Code Council(ICC) 2003 Edition International Building Code (IBC);
2002 Edition National Electrical Code (NFPA 70);

2002 Edition National Fire Alarm Code (NFPA 72);
2002 Edition Standard for the Installation of Sprinkler Systems (NFPA 13);
2002 Edition Standard for the installation of Sprinkler Systems in One and Two Family Dwellings (NFPA 13D);
2002 Edition Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four stories in Height (NFPA 13R);
2003 Edition Standard for the Installation of Standpipe and Hose Systems (NFPA 14);
2001 Edition Standard for Water Spray Fixed Systems for Fire Protection (NFPA 15);
2003 Edition Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems (NFPA 16);
2003 Edition Standard for the Installation of Stationary Pumps for Fire Protection (NFPA 20);
2002 Edition Standard for the Installation of Private Fire Service Mains and Their Appurtenances (NFPA 24);
2002 Edition Standard for the Inspection, Testing, and Maintenance Water-Based Fire Protection Systems (NFPA 25);
2003 Edition Code for Safety to Life from Fire in Buildings and Structures (NFPA 101)

Incorporating rules:

310:205-1-3

Availability:

The incorporated standards are available for viewing at the Consumer Protection Service, Room 154, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299. Copies of the codes are available for purchase at various commercial bookstores in Oklahoma and from:

International Conference of Building Officials
5360 Workman Mill Road
Whittier, CA 90601-2298
(800) 284-4406
Southern Building Code Congress International
900 Montclair Road
Birmingham, AL 35213-1206
(205) 591-1853
National Fire Protection Association
1 Batterymarch Park
Quincy, MA 02269
1-800-344-3555

ANALYSIS:

The proposed amendments include revisions and new rule language designed to address various concerns and effect improvement to the qualification of persons licensed to perform work in the alarm industry. The qualification necessary for licensure as a Fire Sprinkler Inspector is changed. The new rule language governing licensure for Fire Sprinkler Inspectors requires the prospective licensee to submit proof of a Level II certification in Inspection and Testing from the National Institute For Certification in Engineering Technologies. The certification requirements will be raised to a higher standard beginning on July 1, 2005 and then incrementally increased again on July 1, 2007. Adopted references are amended to bring the fire, sprinkler, building, and life safety codes up to the most current standards in the alarm industry.

Changes include provisions that amend the requirements for burglar company managers and fire alarm company managers who will, under the new provisions, be allowed to represent only one burglar or fire alarm company, respectively, in the State of Oklahoma; provisions that amend the licensure application requirements to allow burglar, fire alarm and sprinkler technician to apply for licensure without submitting certification of experience; provisions that amend certification for unlimited fire alarm salespersons allowing them to use new coursework from the National Training School as a basis for licensure; provisions that amend the definition of burglar technician trainees and fire alarm technician trainees to clarify their role in burglar and fire alarm companies; provisions that create a new classification of licensure for sprinkler alarm trainees; provisions that amend the licensing period to clarify that all Alarm Licensing Industry licenses expire on June 30 of each year; provisions that amend the requirements for re-examination to delete the waiting period to re-test; and, provisions that amend the term "fire sprinkler alarm" to "fire sprinkler" to resolve the confusion caused by fire alarms. The foregoing amendments require the addition of the following newly defined terms: "fire sprinkler trainee," "multiple activity office," and "IBC."

Finally, the proposed new rule language amends the uniform tagging requirements by clarifying when a given deficient condition or combination of conditions will warrant a given tag within the adopted tagging system.

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 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

310:205-1-2. Definitions

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

"BOCA" means Building Officials and Code Administrators International, Inc.

"Burglar alarm company" means an alarm industry business which offers to, or engages in the planning, installation, repair, alteration, maintenance, service, sale, inspection or advertisement of burglar alarms.

"Burglar alarm company manager" means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract, who shall provide direct supervision over the function and local operations of such alarm industry business or a branch thereof.

"Burglar alarm salesperson" means an individual who is employed by an Oklahoma licensed burglar alarm company to sell burglar alarm equipment.

"Burglar alarm technician" means an individual who is employed by an Oklahoma licensed burglar alarm company to install, service and sell burglar alarm equipment.

"Burglar alarm technician trainee" means an individual who is employed by an Oklahoma licensed burglar alarm company to assist burglar alarm technicians or managers and learn to properly install service and sell burglar alarm equipment.

"CABO" means The Council of American Building Officials.

"Certification of an alarm system" shall mean testing per applicable code of any burglar alarm, fire alarm, or sprinkler alarm system by a properly licensed alarm individual working for a properly licensed alarm company to verify that the system complies with all of the requirements of the applicable code or standard.

"Certification of Personnel" shall mean proof of successful completion of a standardized formal program of related instruction and testing as provided by a recognized organization and approved by the Alarm Industry Committee in compliance with section 310:205-3-2(f)of this chapter.

"Commercial building" means a building or structure used for any purpose or occupancy that is not defined in this section as a *Residential Building*.

"Committee" means the Alarm Industry Committee.

"Department" means the Oklahoma State Department of Health.

"Fire alarm company" means an alarm industry business which offers to, or engages in the planning, installation, repair, alteration, maintenance, service, sale, inspection or advertisement of fire alarms. The company will be licensed as a limited or unlimited fire alarm company as defined by this chapter.

"Fire alarm company manager" means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract, who shall provide direct supervision over the function and local operations of such alarm industry business or a branch thereof.

"Fire alarm salesperson" means an individual who is employed by an Oklahoma licensed fire alarm company to sell fire alarm equipment.

"Fire alarm sprinkler inspector" means an individual who is employed by an Oklahoma licensed alarm company to inspect and test a fire alarm sprinkler system to determine if it has been installed and is operating according to the appropriate code or standard.

"Fire alarm technician" means an individual who is employed by an Oklahoma licensed Fire Alarm Company to install, service and sell fire alarm equipment.

"Fire alarm technician trainee" means an individual who is employed by an Oklahoma licensed Fire Alarm Company to assist fire alarm technicians or managers and learn to properly install, service and sell fire alarm equipment.

"Fire sprinkler alarm company" means an Alarm Industry Business which employs a Fire Sprinkler ~~Alarm~~ Company Manager. An Oklahoma licensed Fire Sprinkler ~~Alarm~~ Technician or Manager shall be on any job site where fire sprinkler work is being performed. The company will be licensed as a limited or unlimited company as defined by this chapter.

"Fire sprinkler alarm company manager" means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract, who shall provide direct supervision over the function and local operations of such alarm industry business or a branch thereof.

"Fire sprinkler alarm technician" means an individual who is employed by an Oklahoma licensed alarm company to install, service and sell fire sprinkler equipment.

"Fire sprinkler technician trainee" means an individual who is employed by an Oklahoma licensed fire sprinkler company to assist fire sprinkler technicians or managers and learn to properly install and service fire sprinkler systems.

"IBC" means the International Building Code.

"ICC" means the International Code Council, Inc.

"Inspection" shall mean the visual observation or alarm system test of any burglar alarm system, fire alarm system or fire sprinkler ~~alarm~~ system to determine if the alarm system has been installed and is operating according to the applicable code or standard.

"Limited fire alarm license" means the category of license which authorizes a fire alarm company, manager, technician or salesperson to engage in the alarm industry activities in compliance with this Chapter for fire alarm systems used in Residential Building and manufactured housing.

"Limited fire sprinkler alarm license" means the category of license which authorizes a fire sprinkler ~~alarm~~ company, manager, or technician to engage in the alarm industry activities in compliance with this Chapter for fire sprinkler ~~alarm~~ systems used in Residential Building and manufactured housing.

"Manufactured Housing" means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet (2438 body mm) or more in width or 40 body feet (12 192 body mm) or more in length, or, when erected on site, is 320 square feet (30 m^2)or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein. For the purpose of these rules, a mobile home shall be considered a manufactured home, and each shall be regarded as manufactured housing.

"Monitoring company" means an alarm industry business which offers to, or does monitor burglar and/or fire alarms located in Oklahoma.

"Monitoring company manager" means an individual who is employed by an Oklahoma licensed alarm company and has control of the monitoring of alarm systems located in Oklahoma.

"Multiple activity office" means a location where more than one regulated activity is performed or conducted.

"Multipurpose Fire Sprinkler System" means a single piping system within residential building and manufactured housing where the same piping system simultaneously serves both domestic and fire protection needs and are not independent systems in any manner as described by the 1999 edition Standard for the installation of Sprinkler Systems in One and Two Family Dwellings (NFPA 13D).

"NBFAA" means the National Burglar and Fire Alarm Association.

"NFPA" means the National Fire Protection Association.

"NICET" means the National Institute of Certification in Engineering Technologies, a certification program sponsored by the National Society of Professional Engineers.

"NTS" means The National Training School, created by the National Burglar & Fire Alarm Association (NBFAA) to provide standardized training and testing for the certification of burglar and fire alarm individuals.

"Ownership" means the dominion, title or proprietary right in a company subject to the Alarm Industry Act and this Chapter.

"Residential building" shall mean buildings arranged for the use of one (1)- or two (2)-family dwelling units, including not more than five (5) lodgers or boarders per family and multiple single-family dwellings where each unit has an independent means of egress and is separated by a two (2)-hour fire separation assembly and all detached one (1)- or two (2)-family dwellings not more than three (3) stories in height, and the accessory structures as indicated in the 1995 edition of the CABO One and Two Family Dwelling Code.

"Security verification" means information submitted to the appropriate authority on each applicant to verify any criminal records.

"Unlimited fire alarm license" means the category of license which authorizes a fire alarm company, manager, technician or salesman to engage in the alarm industry activities in compliance with this Chapter for any residential or commercial application.

"Unlimited fire sprinkler alarm license" means the category of license which authorizes a fire sprinkler ~~alarm~~ company, manager or technician to engage in the alarm industry activities in compliance with this chapter for any residential or commercial application.

"Vehicle alarm company" means an alarm industry business which offers to, or engages in the planning, installation, repair, alteration, maintenance, service, sale, or inspection of vehicle alarms.

"Vehicle alarm company manager" means an individual who has control of an Oklahoma licensed vehicle alarm company.

310:205-1-3. Adopted references

The Board of Health hereby incorporates by reference the ~~Building Officials and Code Administrators (BOCA)~~International Code Council (ICC) ~~1999~~2003 (IBC) Edition ~~National~~International Building Code; the ~~1999~~(2002) Edition National Electrical Code (NFPA 70); the ~~1999~~2002 Edition National Fire Alarm Code (NFPA 72); the ~~1999~~2002 Edition Standard for the Installation of Sprinkler Systems(NFPA 13); the ~~1999~~2002 Edition Standard for the installation of Sprinkler Systems in One and Two Family Dwellings (NFPA 13D); the ~~1999~~2002 Edition Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four stories in Height (NFPA 13R); the ~~1999~~2003 Edition Standard for the Installation of Standpipe and Hose Systems (NFPA 14); the ~~1996~~2001 Edition Standard for Water Spray Fixed Systems for Fire Protection (NFPA 15); the ~~1999~~2003 Edition Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems (NFPA 16); the ~~1999~~2003 Edition Standard for the Installation of Stationary Pumps for Fire Protection (NFPA 20); the ~~1995~~2002 Edition Standard for the Installation of Private Fire Service Mains and Their Appurtenances (NFPA 24); the ~~1998~~2002 Edition Standard for the Inspection, Testing, and Maintenance Water-Based Fire Protection Systems (NFPA 25); and the ~~2000~~2003 Edition Code for Safety to Life from Fire in Buildings and Structures (NFPA 101) as the minimum standard of installation for the alarm industry in Oklahoma. If a conflict exists between any of the above referenced installation standards, the more stringent standard shall apply. If a conflict exists between any of the above referenced codes or standards and any rule in this chapter, the rule in this chapter shall apply.

SUBCHAPTER 3. LICENSE REQUIREMENTS

310:205-3-1. General alarm license requirements

(a) The categories of licensing in the alarm industry shall be:
- (1) Burglar alarm;
- (2) Limited fire alarm;
- (3) Unlimited fire alarm;
- (4) Alarm Monitoring;
- (5) Vehicle alarm; or
- (6) Fire sprinkler ~~alarm~~.

(b) General licensing requirements for the alarm industry are set forth in Appendix A of this Chapter.

310:205-3-2. License fees, period and display, and examination alternatives or prerequisites

(a) **License fees.** The following fees apply to alarm industry licensure:
- (1) **Initial licensing fee**
  - (A) Alarm Company License - $250.00; license issued after February 1, but before the end of the State fiscal year - $125.00
  - (B) ~~Alarm~~ Company Manager - $200.00
  - (C) Alarm Technician/Alarm Technician Trainee - $75.00
  - (D) Alarm Salesperson - $75.00
  - (E) Re-Examination, Per Attempt - $50.00
  - (F) Inspector - $75.00
  - (G) Fire Sprinkler Technician -$75.00
  - (H) Fire Sprinkler Technician Trainee $20.00
  - (~~G~~I) Duplicate or Revised license $25.00
- (2) **Renewal fees.**
  - (A) ~~Alarm~~ Company License - $250.00
  - (B) ~~Alarm~~ Company Manager - $100.00
  - (C) ~~Alarm~~ Technician - $35.00
  - (D) Alarm Technician Trainee - $25.00
  - (E) Alarm Salesperson $35.00
  - (F) Inspector $35.00
  - (G) Fire Sprinkler Technician Trainee $15.00

(b) **License period.**
- (1) A license shall expire on June 30, 1991, and each year thereafter~~, and may be renewed without penalty during the month of July~~. Beginning on ~~August 1~~July 1, a license may be renewed by paying double the renewal fee.
- (2) Initial application for Alarm Technicians, Sales and Trainees shall be submitted within three (3) working days of employment to the Department. This registration shall be contingent on a security background investigation. ~~All individuals employed for any length of time shall have application and finger prints submitted to employer prior to employment.~~
- (3) A license which has been expired for more than two (2) years shall not be renewed. An individual may obtain a valid license by successful completion of the appropriate examination and/or certification and other licensure requirements.

(c) **Re-examination.** Any applicant ~~initially~~ failing to pass the appropriate examination~~, if required,~~ shall ~~not be permitted to take~~ be required to retake the same category examination ~~for at least thirty (30) days, and thereafter any such applicant failing to pass the examination shall not be permitted~~

~~to take a subsequent examination for at least ninety (90) days~~after payment of the appropriate retest fee pursuant to 310:205-3-2(a)(1).

(d) **Company license display.** The state issued company license number shall be placed on all letterhead stationery, business cards, invoices, statements, contracts, bids, estimates and printed advertisements, and shall be included in electronic media advertisements. Decals and yard signs shall display the state issued company license number. The state issued license number shall be located on all vehicles that display the alarm company name.

(e) **Personal license display.** Each Manager, Technician, Technician Trainee, or Salesperson, shall possess the state issued card any time the person is working. The card shall be shown when requested.

(f) **Certification.**

(1) An applicant for an alarm license may submit certification or proof of passing the appropriate examination(s) from a nationally recognized organization as a prerequisite to, or as a substitute for, an alarm examination administered by the Department as provided for in Sections 310:205-3-3, 310:205-3-4 or 310:205-3-7 of this Chapter.

(2) In order to qualify, certification submitted by an applicant for alarm licensure shall be from an organization that issues national certification to individuals in the alarm industry and is based on successful completion of an examination which determines if the applicant is sufficiently knowledgeable in alarm systems or technical sub-fields of alarm systems to plan, install, repair, alter, maintain, service, sell, inspect, advertise, and monitor alarm systems or technical sub-fields of alarm systems according to nationally acceptable code standards.

(3) The Department shall accept certification from an organization if the certification standards have been verified by the Alarm Industry Committee to include that the certifying organization:

(A) shall conduct certification activities which are national in scope;

(B) shall be administratively independent in matters pertaining to certification. Administratively independent means that all policy decisions relating to certification matters are the sole decision of the certifying organization and not subject to approval by any other body or the membership of an affiliated body, and that all financial matters related to the operation of the certifying organization are segregated from those of the parent or any affiliated organization;

(C) shall demonstrate that the organization staff possesses the knowledge and skills necessary to conduct the certification or re-certification programs or that non-staff consultants and professionals are available to sufficiently supplement staff knowledge and skills;

(D) shall use reliable testing mechanism(s) to evaluate individual knowledge that is objective, fair to all candidates, job-related, and based on the knowledge and skills needed to function in the alarm industry or technical sub-field of the alarm industry;

(E) shall establish pass/fail levels that protect the public determining if the applicant is sufficiently knowledgeable in alarm systems to design, install, service, and sell alarm systems or technical sub-fields of the alarm industry that meet applicable code standards, and that are generally acceptable in the psychometric community as being fair and reasonable; and

(F) shall publish and make available to the Department general descriptive materials on the procedures used in examination construction and validation, all eligibility requirements and determination procedures, and the procedures for examination administration including exam dates and locations, fees, reporting of results, re-certification requirements, and grievance or appeals procedures.

310:205-3-3. Burglar alarm license requirements

Licensing requirements for the burglar alarm industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed burglar alarm company manager who is responsible for the operations of the company's office. Any company maintaining multiple activity offices within Oklahoma, shall have a licensed burglar alarm manager at each office. Each burglar alarm company shall employ an Oklahoma licensed burglar alarm company manager. After January 1, 2003, all burglar alarm companies applying for initial licensure and/or any burglar alarm company which changes its burglar alarm company manager or ownership shall comply with section 310:205-3-3(2)(C) of this chapter. After July 1, 2003, all burglar alarm companies will comply with section 310:205-3-3(2)(C) of this chapter.

(B) A licensed burglar alarm technician or manager shall be on site for any work being performed.

(C) A burglar alarm company may operate ~~branch~~multiple activity offices provided each ~~branch~~ office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-3(1)(A). The company will notify the department of the physical address and telephone number for each ~~branch~~multiple activity office ~~and will keep this information current with the department~~in accordance with 59 O.S. Section 1800.10.

(D) The alarm company shall remove access and "lockout" codes from the alarm system after the legal termination of the monitoring agreement on customer-owned equipment upon the receipt of a written request from the owner to remove such codes.

(E) The customer shall be given a copy of all documents at the time of the sale and the company shall maintain a copy of all of the documents. All monitoring and/or lease contracts shall include, as a minimum, the following information: the initial term of the agreement, the renewal term of the agreement,

the terms for notification of cancellation of the agreement as well as the costs involved of all the terms of the agreement, the company name and the state issued license number, the sales representative's name and state issued license number, and the customer's name and address. The minimum information described above shall be disclosed in one of the following two ways:

(i) Printed on the front or face of the written contract in not less than twelve (12) point bold type and at least two (2) points larger than the rest of type size of the remaining text in the written contract; or,

(ii) On a separate disclosure form appended to the written contract and dated, and signed by the customer and the licensed alarm company representative who made the sale.

(2) **Manager.**

(A) Each application for licensure as a manager shall include verification of at least eight thousand (8,000) hours of experience in the burglar alarm business. The experience shall include 4000 hours verified/or licensed experience as a Burglar Alarm technician. If applying for licensure as a burglar and fire alarm manager, 4000 hours of verified experience in each classification shall be required.

(B) Each licensed burglar alarm company manager shall pass an examination administered by the Department which qualifies him and determines if the applicant is sufficiently knowledgeable in burglar alarms to plan, install, repair, alter, maintain, service, sell, inspect, advertise, and monitor burglar alarm systems according to acceptable code standards.

(C) Each licensed burglar alarm company manager shall be responsible for all activities ~~of the burglar alarm company~~ conducted within the State of Oklahoma by the multi-activity office where they are listed as manager.

(D) Each licensed burglar alarm company manager shall have a security background verification.

~~(E) The burglar alarm company manager may be the person holding majority ownership in the said burglar alarm company or a full time employee thereof. A burglar alarm company manager who is a full time employee shall be the burglar alarm company manager of only one burglar alarm company in which he does not hold a majority ownership interest.~~

(3) **Technician.**

(A) Each technician shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.

(B) Each technician shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in burglar alarms to design, install, service, and sell burglar alarm systems that meet applicable code standards when installed; or in lieu of examination by the Department, an applicant for a license as a burglar alarm technician shall submit proof of Level 1 certification by NBFAA/NTS or proof of certification by another organization that offers national certification to individuals in the burglar alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.

(C) Each technician shall have a security background verification.

(4) **Technician/Salesman Trainee.**

(A) A technician/salesman trainee shall be employed by a licensed Oklahoma burglar alarm company.

(B) A technician/salesman trainee shall work under the direct supervision of a licensed burglar alarm company manager, burglar alarm technician or a burglar alarm salesman.

(C) There shall be no more than three (3) technician/salesman trainees per burglar alarm company manager, burglar alarm technician or burglar alarm salesman per job site.

(D) Each technician/salesman trainee shall have security background verification.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.

(B) Each salesperson shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in burglar alarms to design and sell burglar alarm systems that meet applicable code standards when installed; or in lieu of examination by the Department, an applicant for a license as a burglar alarm salesperson may submit proof of Level 1 certification by NBFAA/NTS or proof of certification by another organization that offers national certification to individuals in the burglar alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.

(C) Each salesperson shall have a security background verification.

310:205-3-4. Fire alarm license requirements

Licensing requirements for the fire alarm industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed fire alarm company manager who is responsible for the operations of the company's office. Any company maintaining multiple activity offices within Oklahoma shall have a licensed manager at each office regarding each regulated activity. Each company shall employ an Oklahoma licensed fire alarm company manager. After July 1, 2002, all fire alarm companies applying for initial licensure or any fire alarm company which changes managers or ownership shall comply with section 310:205-3-4 (2)(H) of this chapter. After July 1, 2003, all fire alarm companies will comply with section 310:205-3-4 (2)(H) of this chapter.

(B) A licensed fire alarm technician or manager shall be on site for any work being performed.

(C) A company whose manager only holds a limited fire alarm manager license shall be issued a limited fire alarm company license.

(D) A company whose manager holds an unlimited fire alarm manager license shall be issued an unlimited fire alarm company license.

(E) A company with a limited fire alarm company license shall only offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarms for use in Residential Building and manufactured housing.

(F) A company with an unlimited fire alarm company license may offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for any residential or commercial use.

(G) Any equipment installed by a company as part of a fire alarm system shall be listed by Underwriters Laboratories, Factory Mutual or any other nationally recognized testing entities for such purpose.

(H) A fire alarm company may operate ~~branch~~multiple activity offices provided each ~~branch~~ office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-4(1)(A). The company will notify the department of the physical address and telephone number for each ~~branch~~ multiple activity office ~~and will keep this information current with the department~~in accordance with 59 O.S. Section 1800.10.

(I) A properly licensed fire alarm technician or manager of a properly licensed alarm company shall perform the initial testing, inspection, or certification of the entire fire alarm system, and that licensed alarm company shall assume full responsibility for the installation of the alarm system.

(2) **Manager.**

(A) Each application for licensure as a fire alarm manager shall include verification of at least eight thousand (8,000) hours of experience in the fire alarm business. The experience shall include 4000 hours verified/or licensed experience as a fire alarm technician. If applying for licensure as a burglar and fire alarm manager, 4000 hours of verified experience in each classification shall be required.

(B) Each manager shall pass an examination administered by the Department which qualifies him and determines if the applicant is sufficiently knowledgeable in fire alarms to plan, install, repair, alter, maintain, service, sell, inspect, advertise, and monitor fire alarm systems according to acceptable code standards.

(C) Each licensed company manager shall be responsible for all activities of the ~~company~~office they are listed as manager for within the State of Oklahoma.

(D) Each licensed company manager shall have a security background verification.

(E) A manager with a limited fire alarm manager license shall only offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for use in Residential Building and manufactured housing.

(F) A manager with an unlimited fire alarm manager license may offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for any residential or commercial use.

(G) An applicant for initial licensure as, or renewal of, an unlimited, fire alarm manager license shall submit proof of NICET II, technical sub-field Fire Alarm Systems, certification, NBFAA/NTS Level IIB certification or certification by another organization that offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter. After July 1, 2002, an applicant for initial licensure as an unlimited fire alarm manager license shall submit proof of NICET II, technical sub-field Fire Alarm Systems, certification; or NBFAA/NTS Level IIB Fire Systems Installation Standards, certification NBFAA/NTS Level IIB Controls & Communications, certification and Level IIA Advanced Electronics, certification; or NBFAA/NTS Level IIB Fire Systems Installation Methods and Level IIA Advanced Electronics, certification; or proof of certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter. After July 1, 2003, an applicant for initial licensure as, or renewal of, an unlimited fire alarm manager license shall submit proof of NICET II, technical sub-field Fire Alarm Systems, certification; or NBFAA/NTS Level IIB Fire Systems Installation Standards, certification, NBFAA/NTS Level IIB Controls & Communications, certification and Level IIA Advanced Electronics, certification; or NBFAA/NTS Level IIB Fire Systems Installation Methods and Level IIA Advanced Electronics, certification or proof of certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.

~~(H) The fire alarm company manager may be the person holding majority ownership in the said fire alarm company or a full time employee thereof. A fire alarm company manager who is a full time employee shall be the fire alarm company manager of only one fire alarm company in which he does not hold a majority ownership interest.~~

(3) **Technician.**

(A) Each technician shall work for a licensed fire alarm company and under the supervision of a fire alarm company manager.

~~(B) Each technician's application shall include verification of experience in the fire alarm industry by a licensed fire alarm company manager.~~

(~~C~~B) Each technician shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in fire alarms to design, install, service, and sell fire alarm systems that meet applicable code standards when installed.

(~~D~~C) Each technician shall have a security background verification.

(~~E~~D) Each technician shall perform or supervise only fire alarm work within the fire alarm license category for which the fire alarm company is licensed.

(~~F~~E) An initial applicant for a limited technician license shall be issued a limited license after successful completion of the appropriate technician examination; or in lieu of examination by the Department, an applicant for a license as a limited fire alarm technician shall submit proof of Level 1 certification by NBFAA/NTS or proof of certification by another organization that offers national certification to individuals in the limited fire alarm industry in accordance with subsection 310:205-3-2(f) of this chapter.

(~~G~~F) A technician with a limited technician license shall only install, repair, alter, maintain, service, sell, or inspect fire alarm systems for use in Residential Building. A technician with a limited technician license may be a trainee on commercial installations and service work including the install, repair, alter, maintenance, service and inspections as long as he or she is under the direct supervision of a licensed unlimited technician.

(~~H~~G) A technician with an unlimited technician license may install, repair, alter, maintain, service, sell, or inspect fire alarm systems for any residential or commercial use.

(~~I~~H) Beginning July 1, 2000, an applicant for an initial unlimited technician license, or an applicant for renewal of an unlimited technician license, may be issued an unlimited technician license after successful completion of the appropriate technician examination and submission of proof of passing the examinations required for NICET II certification, sub-field Fire Alarm Systems; or proof of NBFAA/NTS Level IIB Fire Systems Installation Standards, NBFAA/NTS Level IIB Controls and Communications, certification, and NBFAA/NTS Level IIA Advanced Electronics, certification; or NBFAA/NTS Level IIB Fire Alarm~~Systems~~ Installation Methods and Level IIA Advanced Electronics, certification; or proof of certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.

(4) **Technician/Salesman trainee.**

(A) A technician/salesman trainee shall be employed by a licensed Oklahoma fire alarm company.

(B) A technician/salesman trainee shall work under the direct supervision of a licensed fire alarm company manager, fire alarm technician or a fire alarm salesman.

(C) There shall be no more than three (3) technician/salesman trainees per fire alarm company manager or fire alarm technician per job site.

(D) Each technician/salesman trainee shall have a security background verification.

(E) Each technician/salesman trainee shall only install, repair, alter, maintain, service, sell, or inspect fire alarm systems within the fire alarm license category for which the supervisor is licensed.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed fire alarm company and under the supervision of a fire alarm company manager.

(B) Each salesperson shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in fire alarms to design and sell fire alarm systems that meet applicable code standards when installed.

(C) Each salesperson shall have a security background verification.

(D) An applicant for an initial limited salesperson license shall be issued a limited license after successful completion of the appropriate salesperson examination; or in lieu of examination by the Department, an applicant for a license as a limited fire alarm salesperson shall submit proof of certification by NBFAA/NTS or proof of certification by another organization that offers national certification to individuals in the limited fire alarm industry in accordance with subsection 310:205-2-3(f) of this chapter.

(E) Each salesperson shall design and sell only fire alarm systems in the license category for which the fire alarm company is licensed.

(F) An initial applicant for an unlimited salesperson license shall be issued an unlimited license after successful completion of the appropriate salesperson examination or submission of proof of NICET II certification, sub-field Fire Alarm Systems, or NBFAA/NTS Fire Alarm Installation Methods and Life Safety Course, or NBFAA/NTS Practical Fire Alarm certification, or certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.

310:205-3-7. Fire sprinkler license requirements

Licensing requirements for the fire sprinkler industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed fire sprinkler company manager who shall attend the operations of that office. Each company which maintains multiple offices within Oklahoma, except for offices established for single event activity such as job site construction offices, shall have a licensed manager at each individual office. The company licensed manager shall attend only one (1) of the company offices in Oklahoma.

(B) A licensed fire sprinkler technician or manager must be on job site of any being performed.

(C) A company whose manager only holds a limited fire sprinkler ~~alarm~~ manager license shall be issued a limited fire sprinkler ~~alarm~~ license.

(D) A company whose manager holds an unlimited fire sprinkler manager license shall be issued an unlimited fire sprinkler ~~alarm~~ license.

(E) A company with a limited fire sprinkler company license shall only offer to, or engage in the planning, sales, installation, repair, alteration, service, and inspection of residential multipurpose fire sprinkler systems on residential building and manufactured housing.

(F) A company with an unlimited fire sprinkler company license may offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire sprinkler systems for any residential or commercial use.

(2) **Manager.**

(A) Each unlimited fire sprinkler manager shall submit proof of Level Three certification by NICET or certification by another organization which offers national certification to individuals in the fire sprinkler ~~alarm~~ industry in accordance with subsection 310:205-3-2(f) of this Chapter in the technical sub-field of automatic sprinkler systems layout, or possess a registration as a professional engineer in the State of Oklahoma in the field of fire protection.

(B) Each licensed limited or unlimited company manager further accepts full responsibility for all activities of his company within the State of Oklahoma.

(C) A fire sprinkler company manager is a specialty contractor whose principal contracting business is the execution of contracts requiring the art, ability, experience, knowledge, science, and skill to design, fabricate, install, inspect (other than electrical), alter or repair, fire sprinkler systems, piping or tubing and appurtenances and equipment pertaining thereto, including both overhead and underground non-potable water mains, fire hydrant mains, standpipes, and hose connections to fire sprinkler systems, air line systems used in connection with fire sprinkler systems, and tanks and pumps connected thereto, in compliance with nationally recognized standards including state and local codes and standards for layout, installation and maintenance of fire sprinkler systems.

(D) Each limited fire sprinkler manager shall submit proof of NICET II, technical sub-field of automatic sprinkler systems layout, or certification by another organization which offers national certification to individuals in the fire sprinkler ~~alarm~~ industry in accordance with subsection 310:205-3-2(f) of this Chapter in the technical sub-field of automatic sprinkler systems layout, or possess a registration as a professional engineer in the state of Oklahoma in the field of fire protection.

(E) A limited fire sprinkler ~~alarm~~ manager shall only offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of multipurpose fire sprinkler ~~alarm~~ systems for use in Residential Building and manufactured housing.

(F) An unlimited fire sprinkler ~~alarm~~ manager may offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire sprinkler ~~alarm~~ systems for any residential of commercial use.

(3) **Technician.**

(A) Each limited or unlimited fire sprinkler technician must work for a licensed fire sprinkler company and work under the supervision of a fire sprinkler company manager.

~~(B) Each technician's experience must be validated by a licensed fire sprinkler company manager.~~

(~~C~~B) Each unlimited fire sprinkler technician must pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable to plan, install, repair, alter, maintain, service and sell~~,~~ ~~inspect~~ (other than electrical), fire sprinkler systems that meet applicable code standards when installed in any residential or commercial building.

(~~D~~C) Each limited technician shall submit proof of certification approved by the alarm industry committee which demonstrates successful completion of training and testing administered by the National Fire Sprinkler Association, the American Fire Sprinkler Association in the installation of residential multipurpose piping systems that serve both domestic water and fire protection needs for Residential Building and manufactured homes or certification by another organization which offers national certification to individuals in the fire sprinkler ~~alarm~~ industry in accordance with subsection 310:205-3-2(f) of this Chapter. Certification programs shall consist of a minimum of 16 hours of residential training.

(~~E~~D) An unlimited fire sprinkler technician working for a fire sprinkler company with a limited license shall only perform fire sprinkler work for which the company is licensed ~~for~~.

(4) **Technician Trainee.**

(A) A technician trainee shall be employed by a licensed Oklahoma fire sprinkler company.

(B) A technician trainee shall work under the direct supervision of a licensed fire sprinkler company manager or fire sprinkler technician.

(C) There shall be no more than ten (10) technician trainees per fire sprinkler company manager or fire sprinkler technician per job site.

(D) A technician trainee must submit a trainee application to the Oklahoma State Department of Health within fifteen (15) days of being hired by a Oklahoma licensed fire sprinkler company.

(~~4~~5) **Inspector.**

(A) An applicant for initial licensure as a Fire ~~Alarm~~ Sprinkler Inspector shall possess an alarm industry license with the unlimited fire sprinkler ~~alarm~~ manager or unlimited fire sprinkler ~~alarm~~ technician category ~~and submit proof of experience validated by an unlimited fire sprinkler alarm company manager for inspecting fire alarm sprinkler systems~~ or possess a registration as a professional engineer in the state of Oklahoma in the field of fire protection. Beginning July 1, ~~2004 an applicant for initial licensure as, or renewal of a fire sprinkler alarm inspector shall submit an alarm industry license with the unlimited fire sprinkler alarm manager or unlimited fire alarm sprinkler alarm technician category; or possess a registration as a professional engineer in the State of Oklahoma in the field of fire protection; or possess proof of NICET Level II certification or proof of passing the examinations required for NICET Level II in the sub field of Inspection and Testing of Water Based Systems; or certification by another organization which offers national certification to individuals in the fire sprinkler alarm industry in accordance with subsection 310:205-3-2(f).~~ 2005, an applicant for initial or renewal fire sprinkler inspector license shall also submit proof of NICET Level II certification in the sub-field of Inspection and Testing of Water-Based Systems or submit proof of NICET Level III certification in the sub-field of automatic sprinkler systems layout, or by another organization which offers national certification to individuals in the fire sprinkler industry in accordance with subsection 310:205-3-2(f) of this Chapter in the technical sub-field of automatic sprinkler systems layout, or possess a registration as a professional engineer in the State of Oklahoma in the field of fire protection. Beginning July 1, 2007, an applicant for initial or renewal fire sprinkler inspector license shall also submit proof of NICET Level III certification in the sub-field of Inspection and Testing of Water-Based Systems or submit proof of NICET Level III certification in the sub-field of automatic sprinkler systems layout, or certification by another organization which offers national certification to individuals in the fire sprinkler industry in accordance with subsection 310:205-3-2(f) of this Chapter in the technical sub-field of automatic sprinkler systems layout, or possess a registration as a professional engineer in the State of Oklahoma in the field of fire protection.

(B) Each fire ~~alarm~~ sprinkler inspector shall work for a licensed fire ~~alarm~~ sprinkler company.

(C) Each fire ~~alarm~~ sprinkler inspector shall inspect and test each fire ~~alarm~~ sprinkler system to determine if the system has been installed and is operating according to the appropriate code and standard before certifying the system.

(D) Each fire ~~alarm~~ sprinkler inspector shall work for a fire sprinkler ~~alarm~~ company which possesses an unlimited fire sprinkler ~~alarm~~ company license.

SUBCHAPTER 5. SPECIAL PROVISIONS

310:205-5-1. Unlimited fire alarm tagging requirements

(a) **White Tag (Installation sticker).** The White Tag shall be the permanent visual record of the original installation and certification. The following additional requirements shall apply to the use of the White Tag:

(1) The tag must be permanently affixed to the main control panels as long as the system is in service.

(2) The tag shall be five inches (5") in height by four inches (4") in width and shall be water durable and have a self-adhesive backing.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";

(B) The certifying company's name, address, and telephone number (local office);

(C) The certifying company's unlimited fire alarm license number;

(D) The signature and license number of the Unlimited Fire Alarm Technician certifying the system;

(E) The Fire Alarm Permit number;

(F) The model of the control panel;

(G) The date of certification; and,

(H) The Code, Edition and year under which the system was installed.

(4) Only the Fire Code Official may remove an installation tag.

(b) **Traffic Light Bright Green Tag (Annual inspection tag/sticker).** The Green Tag shall be the visual record of the last annual inspection or initial certification testing where the system was found to be operable with no ~~deficiencies~~impairments. The following additional requirements shall apply to the use of the Green Tag:

(1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.

(2) The tag shall be five inches (5") in height by four inches (4") in width and shall ~~be water durable with~~have a self-adhesive backing or made of colored card stock placed in a plastic sleeve.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The service company's name, address, and telephone number (local office);

(C) The service company's unlimited fire alarm license number;

(D) The signature and license number of the Unlimited Fire Alarm Technician certifying the system; and

(E) The date the inspection was performed.

(4) Only an Unlimited Fire Alarm Technician, employed by an Unlimited Fire Alarm Company or the Fire Code Official may remove the tag.

(c) **Traffic Light Bright Yellow Tag (Annual inspection tag/sticker). Operational Fire Alarm System but with minor impairments.** The intent of the Yellow Tag is to provide notification to the Authority Having Jurisdiction of a system that is operable with impairments that do not severely compromise the system's functional operation. The Yellow Tag shall be the visual record of the last annual inspection where the system was found to be operable but with minor ~~deficiencies~~impairments. The following additional requirements shall apply to the use of the Yellow Tag:

(1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.

(2) The tag shall be five inches (5") in height by four inches (4") in width and shall ~~be water durable with~~have a self-adhesive backing or made of colored card stock placed in a plastic sleeve.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";

(B) The service company's name, address, and telephone number (local office);

(C) The service company's unlimited fire alarm license number;

(D) The signature and license number of the Unlimited Fire Alarm Technician certifying the system;

(E) The date the inspection was performed; and,

(F) A list of the impairments.

(4) Only an Unlimited Fire Alarm Technician, employed by an Unlimited Fire Alarm Company or the Fire Code Official may remove the tag.

(5) If a Yellow Tag is placed on a fire alarm system the Unlimited Fire Alarm Company shall notify the building owner or agent and the Fire Code Official in writing of all ~~deficiencies~~impairments immediately or as soon as practicable, but no later than seventy-two (72) hours.

(d) **Traffic Light Bright Red Tag (Annual inspection tag/sticker) Fire Alarm System Inoperable.** The ~~Red Tag shall be the visual record of the last annual inspection where the system was found to be inoperable~~intent of the Red Tag is to provide notification to the Authority Having Jurisdiction of a Fire Alarm System that is inoperable.

(1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.

(2) The tag shall be five inches (5") in height by four inches (4") in width and shall ~~be water durable with~~have a self-adhesive backing or made of colored card stock placed in a plastic sleeve.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";

(B) The service company's name, address, and telephone number (local office);

(C) The service company's unlimited fire alarm license number;

(D) The signature and license number of an Unlimited Fire Alarm Technician certifying the system;

(E) The date the inspection was performed;

(F) A list of the deficiencies that render the system inoperable; and,

(G) A list of any deficiencies present that do not render the system inoperable.

(4) Only an Unlimited Fire Alarm Technician, employed by an Unlimited Fire Alarm Company or the Fire Code Official may remove an annual inspection tag.

(5) If a Red Tag is placed on a fire alarm system the Unlimited Fire Alarm Company shall notify the building owner or agent and the Fire Code Official in writing of all ~~deficiencies~~impairments immediately or as soon as practicable, but no later than twenty-four (24) hours.

310:205-5-2. Fire sprinkler tagging requirements

(a) **White Sticker.** The white sticker shall be made from water durable material and permanently affixed to the riser of the fire protection system. The ~~Fire Code Official~~white sticker shall be affix this sticker at the time of acceptance. This sticker shall be ~~permanently affixed above the data plate and be~~ completed with waterproof ink. The following additional requirements shall apply to the use of the White Sticker:

(1) The sticker shall be a permanently affixed sticker(glued back) that is completed by the contractor. This installation sticker shall be affixed to the riser directly ~~next~~adjacent to the data plate. This sticker will stay on the riser indefinitely. The sticker will be five inches in height and four inches in width.

(2) The sticker shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";

(B) The contractor's name;

(C) The contractor's complete address;

(D) The contractor's phone number;

(E) The contractor's Oklahoma State license number;

(F) The applicable version of NFPA 13 which the system was installed under;

(G) The date of installation;

(H) The technician's name responsible for installation; and

(I) The name of the Authority Having Jurisdiction(AHJ).

(3) All information shall be printed and be legible.

(4) Any subsequent addition(s) to the sprinkler shall require a new white sticker with the same data referenced above. The new sticker shall be placed on top of the previous sticker.

(b) **Traffic Light Bright Green Inspection/Service Tag.** The Traffic Light Bright Green Inspection/Service Tag shall be placed in a clear plastic sleeve and attached to the system after the system has been thoroughly inspected by a Licensed Fire Alarm Sprinkler Inspector or a Licensed Fire Alarm Sprinkler Company Manager of a licensed sprinkler company and found to be operational ~~and in compliance with all applicable codes~~. The following additional requirements shall apply to the use of the Traffic Light Bright Green Inspection/Service Tag:

(1) After annual inspection or initial installation of a sprinkler system the Traffic Light Bright Green Inspection/Service Tag shall be affixed to the riser when no ~~deficiencies~~impairments are found and the system appears to be operational.

(2) A Traffic Light Bright Green Inspection/Service Tag shall be attached to the riser each time the system is serviced or repaired and the appropriate block punched. Any necessary comments shall be printed in the provided space on the rear of the tag.

(3) The Traffic Light Bright Green Inspection/Service Tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The Licensed Fire Alarm Sprinkler Contractor's name and address;

(C) The Licensed Fire Alarm Sprinkler Contractor's Oklahoma State license number;

(D) The day, month and year inspected in print, and punched;

(E) The Fire Alarm Licensed Sprinkler Inspector or Licensed Fire Alarm Sprinkler Company Manager's signature; and,

(F) The type of work performed punched in the appropriate block for each type of work, installation, service and inspection performed.

(4) The tag shall be "traffic light bright" green in color, five and one fourth inches (5 1/4") in height and two and five-eights inches (2 5/8") in width.

(5) The tag shall be printed with dates and may be established for any six-year period. After each printing a copy of the tag shall be sent to the State Fire Marshall and the State Health Department Licensing Division.

(6) The tag can be removed only by a Licensed Sprinkler Inspector or a Licensed Company Manager of a licensed sprinkler company, an employee of the local or State Fire Marshal's office or an authorized representative of a governmental agency with regulatory authority. Unnecessary tags shall be removed and discarded each time a new tag is installed. The new tag shall be placed in the clear plastic sleeve.

(c) **Traffic Light Bright Yellow Inspection Tag.** The Traffic Light Bright Yellow Inspection Tag shall be placed in a clear plastic sleeve and be attached to the fire protection system after the system has been thoroughly inspected by a Licensed Fire Alarm Sprinkler Inspector or a Licensed Fire Alarm Sprinkler Company Manager of a licensed sprinkler company and found to contain ~~minor deficiencies as per all applicable codes~~impairments, but continues to be operational. The application of this inspection tag requires notification to the Fire Code Official within ~~twenty-four (24)~~ seventy-two(72) hours. The following additional requirements shall apply to the use of the Traffic Light Bright Yellow Inspection Tag:

(1) The Traffic Light Bright Yellow Inspection Tag cannot be removed and/or replaced by a Traffic Light Bright Green Inspection/Service Tag until the condition that caused or created the ~~minor deficiencies~~impairment(s) has been corrected. The following ~~deficiencies~~ are some examples ~~appropriate for~~of impairments where the use of the Traffic Light Bright Yellow Inspection Tag would be appropriate, provided the said ~~deficiencies~~impairments do not render the system inoperable:

(A) Minor loading of heads;

(B) Spare wrench or heads missing;

(C) Escutcheon rings missing;

(D) Minor head clearance violations (stock or storage);

(E) FDC cap missing;

(F) Glass on a gauge missing or broken;

(G) Stock piled within three ~~fee~~feet of a riser;

(H) Ceiling tiles missing, where there are pendant head;

(I) Improper spacing of sprinkler heads (due to structural modifications by tenant); ~~and,~~

(J) Incorrect head rating or type (due to hazard classification change)~~.~~;

(K) Water flow signaling devices missing;

(L) Valves not properly secured or supervised; and

(M) Water pressure up to 20% lower than design pressure.

(2) The tag shall be attached to the riser.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The Licensed Fire Alarm Sprinkler Contractor's name and address;

(C) The Licensed Fire Alarm Sprinkler Contractor's Oklahoma State license number;

(D) The day, month and year inspected in print, and punched; and,

(E) The Licensed Fire Alarm Sprinkler Inspector or Licensed Sprinkler Company Manager's signature.

(4) The tag shall be "traffic light bright" yellow in color, five and one-fourth inches (5 1/4") in height and two and five-eights inches (2 5/8") in width.

(5) The tag shall be printed with dates and may be established for any six-year period. After each printing a copy of the tag shall be sent to the State Fire Marshal and the State Health Department Licensing Division.

(6) The tag can be removed only by a Licensed Fire Alarm Sprinkler Inspector or a Licensed Fire Alarm Sprinkler Company Manager of a licensed sprinkler company, an employee of the local or State Fire Marshal's office or

an authorized representative of a governmental agency with regulatory authority, after a determination of the system's condition has been made consistent with subsection (1) above. Unnecessary tags shall be removed and discarded each time a new tag is installed. The new tag shall be placed in the clear plastic sleeve.

(7) After the Traffic Light Bright Yellow Inspection Tag is placed on the sprinkler system the person or authority affixing the tag shall, in addition to notifying the Fire Code Official within ~~twenty-four (24)~~seventy-two (72) hours, notify the building owner or agent immediately or as soon as practicable. Notification to the Fire Code Official shall be accomplished by transmission of a copy of the inspection form, preferably by telephonic facsimile transmission, that was completed by the person or authority affixing the tag. When the ~~deficiencies~~impairments are corrected the system shall be re-inspected and the appropriate colored tag placed upon the system.

(d) **Traffic Light Bright Red Inspection Tag.** The Traffic Light Bright Red Inspection Tag shall be placed in a clear plastic sleeve and be attached to the fire protection system after the system has been thoroughly inspected by a Licensed Fire Alarm Sprinkler Inspector or a Licensed Fire Sprinkler Company Manager of a licensed sprinkler company and found to contain ~~deficiencies~~ impairments that could, or do in fact, render it inoperable. The application of this inspection tag requires notification to the Fire Code Official within twenty-four (24) hours. The following additional requirements shall apply to the use of the Traffic Light Bright Red Inspection Tag:

(1) The Traffic Light Bright Red Inspection Tag cannot be removed and or replaced by a Traffic Light Bright Yellow Inspection Tag or a Traffic Light Bright Green Inspection/Service Tag until the condition that caused it to be inoperable has been corrected. The following deficiencies are appropriate for the use of the Traffic Light Bright Red Inspection Tag:

(A) ~~Extreme loading of heads with paint, grease or saw dust~~Water pressure less than 80% of design pressure;

(B) Water turned off to the system;

(C) Frozen pipes;

(D) Inability of a licensed contractor to test the system because of obstructed drains;

~~(E) Flow signaling devices missing;~~

(~~F~~E) Severe head obstruction;

(~~G~~F) ~~No FD~~Inoperable fire department connection; or

(~~H~~G) Uncovered areas that the system was designed to cover~~; and,~~.

~~(I) Valves not properly secured or supervised.~~

(2) The tag shall be attached to the riser.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The Licensed Fire Alarm Sprinkler Contractor's name and address;

(C) The Licensed Fire Alarm Sprinkler Contractor's Oklahoma State license number;

(D) The day, month and year inspected in print, and punched;

(E) The Licensed Fire Alarm Sprinkler Inspector or Licensed Fire Alarm Sprinkler Company Manager's signature; and,

(F) The appropriate ~~deficiency~~impairments check boxes and comment lines.

(4) The tag shall be "traffic light bright" red in color, five and one-fourth (5 1/4") inches in height and two and five-eights (2 5/8") inches in width.

(5) The tag shall be printed with dates and may be established for any six-year period. After each printing, a copy of the tag shall be sent to the State Fire Marshal and the State Health Department Licensing Division.

(6) The tag can be removed only by a Licensed Fire Alarm Sprinkler Inspector or a Licensed Fire Alarm Sprinkler Company Manager of a licensed sprinkler company, an employee of the local or State Fire Marshal's office or an authorized representative of a governmental agency with regulatory authority, after a determination of the system's condition has been made consistent subsection (1) above. Unnecessary tags shall be removed and discarded each time a new tag is installed. The new tag shall be placed in the clear plastic sleeve.

(7) After the Traffic Light Bright Red Inspection Tag is placed on the sprinkler system the person or authority affixing the tag shall, in addition to notifying the Fire Code Official within twenty-four (24) hours, notify the building owner or agent immediately or as soon as practicable but not later than twenty-four (24) hours. Notification to the Fire Code Official shall be accomplished by transmission of a copy of the inspection form, preferably by telephonic facsimile transmission, that was completed by the person or authority affixing the tag. When the ~~deficiencies~~impairments are corrected the system shall be re-inspected and the appropriate colored tag placed upon the system

APPENDIX A. TABLE OF ALARM INDUSTRY LICENSE REQUIREMENTS [REVOKED]

[OAR Docket #05-1069; filed 6-1-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 210. ~~BARBER REGULATIONS~~BARBERS

[OAR Docket #05-1070]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Examinations
310:210-3-3. [AMENDED]
Subchapter 5. Licensing
310:210-5-6. [AMENDED]
310:210-5-8. [AMENDED]
Subchapter 7. General Sanitation
310:210-7-13. [AMENDED]
Subchapter 9. Barber School and College Requirements
310:210-9-3. [AMENDED]
310:210-9-8. [AMENDED]
310:210-9-11. [AMENDED]
Subchapter 11. Barber School or College Management Requirements
310:210-11-6. [REVOKED]
Appendix B. Barber Instructor Curriculum and Hours [REVOKED]
Appendix B. Barber Instructor Curriculum and Hours [NEW]
Appendix C. Barber Apprentice Curriculum and Hours [REVOKED]
Appendix C. Barber Apprentice Curriculum and Hours [NEW]
AUTHORITY:
Oklahoma State Board of Health; Barbers, 59 O.S., Section 61.1 et seq., as amended
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ANALYSIS:
Language is proposed to amend the requirements for the barber and barber instructor examination, license renewal, apprentice ratio, number of instructors required in each barber school, and barber school equipment. In Subchapter 3, language is added to require licensed Oklahoma cosmetologists completing a 750-hour study course of barbering techniques as a prerequisite for the barber examination to serve one (1) year as a barber and apply for the barber examination at that time. Barber instructor examination applicants must possess a current barber license and verify four years of experience as a licensed barber, or complete a 600 clock hour instructor's course in no less than four months and verify one year as a licensed barber. Applicants may enroll and begin an instructor course at a licensed barber school upon passing the barber examination. In subchapter 5, language is added to allow barber licenses to be renewed by individuals on active military duty provided individuals can verify their active military status, and their return or discharge from duty within six months of making application. Language has been added to allow a barber to employ two graduate apprentices if no other apprentice is employed in the shop, and to allow a barber apprentice called to active military duty to resume the barber apprenticeship on return from duty, even if another apprentice was acquired during this time. Subchapter 7 adds barber students to the list of individuals unable to proceed with services if head lice are detected. Language is added in Subchapter 9 to clarify the number of instructors required per students enrolled and the number of lavatories required per students enrolled.
CONTACT PERSON:
Ted Evans, Consumer Health Services, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone:(405) 271-9444, ext. 57944; facsimile: (405) 271-5286 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 JULY 11, 2005:

SUBCHAPTER 3. EXAMINATIONS

310:210-3-3. Examination prerequisite

(a) Applicants for the barber examination ~~for barber license~~ shall:

(1) Complete fifteen hundred (1,500) clock hours in no less than nine (9) months from an approved Oklahoma licensed barber school or college; or

(2) Complete eighteen (18) months and ~~[~~three thousand (3,000) clock hours as a licensed barber apprentice over a period of at least eighteen (18) months, and not more than two (2) years, under an Oklahoma licensed barber who has engaged in the practice of barbering for at least two (2) years. An applicant for examination shall not combine school and apprentice hours to meet the examination prerequisite. A barber apprentice who does not complete and file an examination application within five (5) years of completing the apprenticeship shall lose all accumulated apprenticeship hours;

(3) Hold a valid current license in good standing to practice barbering issued by another state or country which has licensure requirements that are substantially equivalent to the requirements of this state. If the documents are not written in English, the person shall provide a certified English translation; or

(4) Hold a current Oklahoma cosmetologist license pursuant to the cosmetology rules and complete a seven hundred fifty (750) hour course of study consisting of barbering techniques in a barber school or college licensed pursuant to this Chapter~~;~~ and serve one (1) year as a barber and apply for the barber examination at that time; and

(5) Pay a fee established by the Board.

(b) Applicants for the barber instructor examination must possess a valid current barber license and shall:

(1) Verify four (4) years experience as a licensed barber; or

(2) Complete a six hundred (600) clock hour instructor course in no less than four (4) months from an approved Oklahoma licensed barber school or college and verify one (1) year as a licensed barber. Applicants may enroll

and begin the instructor course at a licensed barber school upon passing the barber examination; and

(3) Pay a fee established by the board.

SUBCHAPTER 5. LICENSING

310:210-5-6. Expiration and renewal of license

(a) **License expiration.** The expiration date for licenses are:

(1) Barber: June 30 each year;

(2) Barber Apprentice: One (1) year from the date of issue;

(3) Barber School or College: June 30 of each year;

(4) Instructor: June 30 of each year;

(5) Graduate Apprentice: Four (4) months from the date of issue or upon successful completion of the Oklahoma barber exam if less than four (4) months from the date of issue;

(6) Hardship apprentice: One (1) year from the date of issue; and

(7) Transfer apprentice: One (1) year from the date of issue of the original apprentice license.

(b) **License renewal.** License renewal requirements are:

(1) A barber or barber instructor license shall be renewable without penalty until the date of expiration. A renewal delivered in person or postmarked after the expiration date shall not be renewed without payment of the late renewal fee and only upon Department approval. Any barber or barber instructor license that has been expired for more than five (5) years shall not be renewable. Any person that has a license that has expired more than five (5) years before a request for renewal shall obtain another license by examination only, unless the person was able to renew the barber or barber instructor license when beginning active military duty and provides verification of being on active military duty and having returned or been discharged within six (6) months of making application.

(2) A barber apprentice license shall be renewed only once and shall be renewable upon expiration of the original license.

(3) A barber school or college license shall be renewable without penalty until the date of expiration. A renewal delivered in person or postmarked after the expiration date shall not be renewed without payment of the late renewal fee and only upon Department approval.

(4) A graduate, hardship or transfer apprentice license shall not be renewed.

(c) **Application form.** An application form to renew a license shall be mailed to the address last reported in writing to the Department. Failure to receive the renewal application does not excuse the licensee from renewing the license prior to expiration.

310:210-5-8. Barber apprentice and graduate-apprentice employment

(a) **Barber requirements for barber apprentice employment.** An Oklahoma licensed barber who employs a barber apprentice shall provide direct supervision over an apprentice for what constitutes a complete day unless the barber also employs another qualified, licensed barber, full time, for an apprentice working in the shop. The licensed supervising barber shall keep an accurate record of the apprentice hours. The supervising barber shall submit to the Department reports of hours accumulated by the barber apprentice every three (3) months. Credit shall not be allowed for any hours received before the apprentice ~~registering~~registers with the Department. Licensed barbers employing barber apprentices shall notify the Department, in writing, within fourteen (14) days of the date when a licensed barber apprentice leaves the barber's employment.

(b) **Apprentice ratio.** No barber shall have more than one (1) licensed barber apprentice and one (1) graduate-apprentice or two (2) graduate-apprentices, if no other apprentice is employed, in each shop. If a barber apprentice goes on active military duty and another apprentice is acquired during this time, these regulations will allow the apprentice returning from active military duty to resume apprenticeship and will allow two apprentices in the shop until each apprentice's two-year registration period expires.

(c) **Barber apprentice requirements.**

(1) A barber apprentice accumulates hours based on the actual number of hours under direct supervision performing and training in the shop.

(2) A barber apprentice shall work not less than 1500 hours or more than 2000 hours during the duration of a barber apprentice license except where the provisions of OAC 310:210-5-7(a) apply.

(3) A barber apprentice work station shall be located in the same room of the shop as the supervising barber's work station.

(d) **Hardship barber apprentice license.** A hardship barber apprentice license shall be issued only after review and approval by the Department. To qualify for a hardship apprentice license an apprentice must document circumstances beyond their control that have prevented them from obtaining the minimum required hours and months of experience while licensed for two (2) years as a barber apprentice. Upon completion and approval of the hardship barber apprentice license application, the license shall be issued.

(e) **Transfer barber apprentice license.** A transfer barber apprentice license shall be issued only after review and approval by the Department. To qualify for a transfer apprentice license an apprentice shall document the dissolution of the apprenticeship agreement by which the barber apprentice license was obtained. Upon completion and approval of the transfer barber apprentice license application, the license shall be issued.

(f) **Curriculum for barber apprentices.** The barber apprentice curriculum shall include each subject listed in OAC 310:210-9-10(b)(2). The minimum number of hours for each subject are listed in Appendix C of OAC 310:210.

(g) **Graduate-apprentice requirements.** No person shall be issued a license as a graduate-apprentice unless such person is at least sixteen (16) years of age and has completed the barber curriculum at an Oklahoma licensed barber school or

college and whose application to take the Oklahoma barber examination has been accepted.

SUBCHAPTER 7. GENERAL SANITATION

310:210-7-13. Head lice

If head lice is detected, the barber, barber instructor, barber apprentice, barber student, hardship apprentice, transfer apprentice or graduate-apprentice shall not proceed with further services and shall wash and disinfect his/her hands. The barber or instructor shall recommend that the infected patron see a physician or other health care provider. All areas exposed to the head lice shall be cleaned with an approved germicidal solution. All tools and equipment exposed to head lice shall be disinfected.

SUBCHAPTER 9. BARBER SCHOOL AND COLLEGE REQUIREMENTS

310:210-9-3. Number instructors required

Each barber school shall have not less than one (1) licensed instructor for one (1) to fifteen (15) students enrolled, two (2) instructors for sixteen (16) to thirty (30) students enrolled, three (3) instructors for thirty-one (31) to forty-five (45) students enrolled, ~~or~~ four (4) instructors for forty-six (46) to sixty (60) students enrolled, five (5) instructors for sixty-one (61) to seventy-five (75) students enrolled, six (6) instructors for seventy-six (76) to ninety (90) students enrolled, or seven (7) instructors for ninety-one (91) to one hundred and five (105) students enrolled, with this fifteen (15) to one (1) ratio continuing as enrollment increases. Instructors shall be on the floor at all times.

310:210-9-8. Barber school equipment

Barber School equipment shall consist of a minimum as follows:

(1) One (1) barber chair for each student enrolled.

(2) One (1) lavatory for each two (2) students~~.~~ to a maximum of fifteen (15) lavatories. When fifteen (15) lavatories are required, only fifteen (15) lavatories will be required for each 100 students or portion thereof enrolled.

(3) Back bar with cabinet storage, linens enclosed.

(4) One (1) immersion sanitizer for each student.

(5) Equipment:

(A) One (1) vibrator

(B) Video Cassette Recorder and approved tape library

(C) Personal locker for each chair

(D) Infrared lamp

(E) Suitable microscope

(F) Chalkboard at least four (4) foot by six (6) foot in size in the lecture room.

(G) Bulletin board, conspicuously located, for posting rules and regulations, notices, and other information

(H) One (1) set of record files for student history and activities

(I) Supply of standard tonics, lotions, shampoos, and other cosmetics

(J) One (1) time clock

(K) One set of anatomic charts showing nerves, muscles, blood vessels, bones of the head and neck, and structure of the hair and skin.

(6) A library of reference books on anatomy, physiology, diseases of the skin and a medical dictionary.

310:210-9-11. Instructor's course curriculum

A barber school desiring to offer the instructor's course shall follow the curriculum listed in Appendix B. The ~~instructors~~ instructor's course schedule must be followed in the school. Any changes in the ~~instructors~~instructor's schedule or curriculum shall be submitted to the Department and approved before being put into operation.

SUBCHAPTER 11. BARBER SCHOOL OR COLLEGE MANAGEMENT REQUIREMENTS

310:210-11-6. Instructor license requirements [REVOKED]

~~Each applicant for an instructor license shall have:~~

~~(1) four (4) years work experience as a licensed barber and pass the state barber instructor examination; or~~

~~(2) two (2) years experience as a licensed barber and successful completion of a five hundred (500) hour instructor course from an approved barber school, and pass the state barber instructor examination.~~

APPENDIX B. BARBER INSTRUCTOR CURRICULUM AND HOURS [REVOKED]

APPENDIX B. BARBER INSTRUCTOR CURRICULUM AND HOURS [NEW]

	SUBJECT	MINIMUM HOURS OF INSTRUCTION
(1)	Barber Licensing Act and Rules	20
(2)	Preparatory theoretical instruction, including teaching techniques, lesson planning, methods of instruction, evaluation of instruction, student record-keeping, state record-keeping, and school operation;	70
(3)	Supervision of desk, booking appointments, and assigning students for clinic services;	30
(4)	Clinic floor supervision under direct supervision of licensed instructor;	50
(5)	The remaining three hundred sixty (360) hours shall be completed as scheduled by the school and shall include: (A) presentation of theoretical subject in a classroom situation; (B) presentation of practical subjects in a classroom situation; and (C) supervision of clinic floor.	 50 50 330
Total Hrs		**600**

APPENDIX C. BARBER APPRENTICE CURRICULUM AND HOURS [REVOKED]

APPENDIX C. BARBER APPRENTICE CURRICULUM AND HOURS [NEW]

SUBJECT	THEORY AND DEMO. ACTUAL PRACTICE HOURS	PRACTICE HOURS	TOTAL
Sanitation and Sterilization	20	180	200
Licensing Laws	10		10
Salesmanship and Job Search	50	100	150
Shop Management	100		100
History of Barbering	25		25
Facial Massage and Treatment	25	50	75
Haircutting and Styling	200	1300	1500
Electricity and Light Therapy	10	10	20
Chemistry	15		15
Properties and Disorders of Skin, Scalp and Hair	45	80	125
Hair and Scalp Treatments	40	80	120
Chemical Hair Relaxing and Soft Curl Permanents	30	50	80
Men's Hairpieces	40		40
Shaving	10		10
Mustache and Beard Design	10	10	20
Bacteriology	15		15
Professional Image	10	25	35
Anatomy and Physiology	40		40
Implements, Tools and Equipment	40	100	140
Hair Coloring	40	100	140
Permanent Waving	40	100	140
Total Theory, Demonstration, Hours and Actual Practice			**3000**

[OAR Docket #05-1070; filed 6-1-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 250. FEE SCHEDULE FOR ~~ENVIRONMENTAL~~CONSUMER HEALTH SERVICES

[OAR Docket #05-1071]

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PERMANENT final adoption
RULES:
Subchapter 3. License Classifications and Associated Fees For ~~Environmental~~Consumer Health Services
310:250-3-6. [NEW]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. 2001, Section 1-106.1 and 1-1118.
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ANALYSIS:
The proposal amends the present Fee Schedule for Consumer Health Services in order to correlate the fees with the mandate of House Bill 2282. The intent is to increase the safety of public bathing places and reduce the possibility of contracting waterborne illness from public bathing places. The proposal contains language to amend Subchapter 3 of the present Fee Schedule for Consumer Health Services in order to institute funding for public bathing place inspection programs and industry education activities. Included is a reinspection fee for public bathing places as authorized in House Bill 2282.
CONTACT PERSON:
Ted Evans, Chief, Consumer Health Services, Protective Health Services, Oklahoma State Department of Health, (405) 271-9444, ext. 57944

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 11, 2005:

SUBCHAPTER 3. LICENSE CLASSIFICATIONS AND ASSOCIATED FEES FOR ~~ENVIRONMENTAL~~CONSUMER HEALTH SERVICES

310:250-3-6. Public Bathing Places Licenses

The following are license classifications and associated fees for Public Bathing Places:

(1) Type 82 Class I
  (A) Public Bathing Places License Fee - $50.00
  (B) Public Bathing Places Re-inspection Fee - $250.00
(2) Type 82 Class O
  (A) Public Bathing Places License Fee - $50.00
  (B) Public Bathing Places Re-inspection Fee - $250.00

[OAR Docket #05-1071; filed 6-1-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 256. FOOD SERVICE ESTABLISHMENTS

[OAR Docket #05-1072]

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RULES:
Subchapter 1. General Provisions
310:256-1-2. [AMENDED]
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Oklahoma State Board of Health; 63 O.S. 2001, Section 1-1101 et seq.
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ANALYSIS:
The proposal extends the seasonal licensing period from 150 days to 180 days. Currently per Chapter 256, Food Service Establishment Regulations, the seasonal food service licensees cannot be open for more than 150 consecutive days, per physical address, per year. The intent is to provide the seasonal food licensee the capability to operate and serve the public for additional operational days. Other changes involve minor corrections to the existing rule language.
CONTACT PERSON:
Ted Evans, Chief, Consumer Health Services, Consumer Protection Division, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-9444, ext. 57944; facsimile: (405) 271-3458 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 JULY 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

310:256-1-2. Definitions

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

"Accredited Program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals.

"Adulterated" means the definition in 63 O.S. 1991, Section 1-1109.

"Approved" means acceptable to the Department based on a determination of conformity with these rules.

"Beverage" means a liquid for drinking, including water.

"Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, and includes bottled mineral water.

"Bulk food" means unpackaged or unwrapped, processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn. For the purpose of this interpretation, the term does not include fresh fruits, fresh vegetables, nuts in the shell, and buffet areas in food-service establishments.

"Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the National Shellfish Sanitation Program.

"Certified applicator" means any individual who is certified under 7 USC 136(i) or by the Oklahoma State Department of Agriculture as authorized to use or supervise the use of any pesticide that is classified for restricted use. Any applicator who holds or applies registered pesticides or uses dilutions of registered pesticides consistent with the product labeling only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served is not deemed to be a seller or distributor of pesticides.

"CIP" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. It does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

"Code of Federal Regulations" or **"CFR"** means the compilation of the general and permanent rules adopted by federal executive departments and agencies.

"Color additive" means any material, not exempted under section 201(t) of the Federal Food, Drug, and Cosmetic Act, that is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source and that, when added or applied to a food, drug, or cosmetic or to the human body or any part thereof, is capable (alone or through reaction with another substance) of imparting a color thereto. Substances capable of imparting a color to a container for foods, drugs, or cosmetics are not color additives unless the customary or reasonably foreseeable handling or use of the container may reasonably be expected to result in the transmittal of the color to the contents of the package or any part thereof. Food ingredients such as cherries, green or red peppers, chocolate, and orange juice which contribute their own natural color when mixed with other foods are not regarded as color additives; but where a food substance such as beet juice is deliberately used as a color, as in pink lemonade, it is a color additive. Food ingredients as authorized by a definitions and standard of identity prescribed by regulations pursuant to section 401 of the Federal Food, Drug, and Cosmetic Act are color additives, where the ingredients are specifically designated in the definitions and standards of identity as permitted for use for coloring purposes. An ingredient of an animal feed whose intended function is to impart, through the biological processes of the animal, a color to the meat, milk, or eggs of the animals is a color additive and is not exempt from the requirements of the statute. This definition shall apply whether or not such ingredient has nutritive or other functions in addition to the property of imparting color. An ingested drug the intended function of which is to impart color to the human body is a color additive. For the purposes of this part, the term color include black, white, and intermediate grays, but substances including migrants from packaging materials which do not contribute any color apparent to the naked eye are not color additives.

"Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing and includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, formed roast beef, gyros, ground beef, and sausage; and a mixture of two (2) or more types of meat that have been reduced in size and combined.

"Commissary" means a facility used for the servicing of pushcarts and mobile retail units and storage of packaged food and single service articles for use in those units.

"Common dining area" means a central location in a group residence where people gather to eat at mealtime but does not apply to a kitchenette or dining area located within private living quarters.

"Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism and epidemiological analysis implicates the food as the source of the illness.

"Consumer" means a person who takes possession of food, is not functioning in the capacity of an operator of a food service establishment or food processing plant, and does not offer the food for resale.

"Corrosion-resistant material" means a substance that maintains acceptable surface clean ability characteristics under

prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the environment.

"Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

"Critical item" means a provision of these rules that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard.

"Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter is controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

"Customer self-service" means customer selection and packaging of a bulk food product from a product module.

"Department" means the Oklahoma State Department of Health.

"Display area" means a location or locations, including physical facilities and equipment, where bulk food is offered or customer self-service.

"Drinking water" means water that is traditionally known as "potable water." The term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "non-drinking" water.

"Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

"Easily cleanable" means a surface that allows effective removal of soil by normal cleaning methods; is dependent on the material, design, construction, and installation of the surface; or varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

"Easily movable" means an object mounted on casters, gliders, or rollers, or provided with a mechanical means to safely tilt a unit of equipment for cleaning, and has no utility connection, a utility connection that disconnects quickly or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and the adjacent area.

"Employee" means a person working in a food service establishment.

"EPA" means the U.S. Environmental Protection Agency.

"Equipment" means an article such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine. It does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or over wrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids. Food equipment that shall be certified by the National Sanitation Foundation (NSF) or an equivalent organization includes but is not limited to, floor mounted refrigerators, grills, warewashing machines, griddles, fryers, ice machines, and steam tables; and counter mounted equipment such as slicers, grinders, food processors, crock-pot/hot holding units, and other similar food processing equipment.

"Farmers Market" means a designated area in which farmers, growers or producers from a defined region gather on a regularly scheduled basis to sell at retail non-potentially hazardous farm food products and whole shell eggs to the public. A portion of the raw food ingredients used by the individual vendor to produce a product must have been grown or raised by the vendor. The individual vendors wishing to process food as defined by Chapter 260 of the regulations must obtain a state food processor's license. A Farmers' Market must have written operational guidelines and a minimum of six vendors along with a designated market manager or advisory board who will be responsible for distribution of a copy of the guidelines to the vendors. Farmers' Markets must be registered with the Oklahoma Department of Agriculture, Food and Forestry and comply with the *Food Service Establishment Regulations*, Chapter 256, and/or *Good Manufacturing Practice, Chapter 260*. This definition does not include individual farmers who grow and sell unprocessed fruit and/or vegetables from the farm, roadside or truck. Any vendors who prepare or sell any potentially hazardous foods at the Farmers' Markets must abide by all applicable sections of Chapter 256 of the ~~requlations~~regulations including acquiring a license from the department.

"FDA" means the Food and Drug Administration.

"Fish" means fresh or saltwater finfish, molluscan shellfish, crustaceans, and other forms of aquatic animal life other than birds or mammals and includes any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.

"Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

"Food additive" means all substances not exempted by section 201(s) of the Federal Food, Drug, and Cosmetic Act, the intended use of which results or may reasonably be expected to result, directly or indirectly, either in their becoming a component of food or otherwise affecting the characteristics of food. A material used in the production of containers and packages is subject to the definition if it may reasonably be expected to become a component, or to affect the characteristics, directly or indirectly, of food packed in the container. "Affecting the characteristics of food" does not include such physical effects, as protecting contents of packages, preserving shape, and preventing moisture loss. If there is no migration of a packaging component from the package to the food, it does not become a component of the food and thus is not a food additive. A substance that does not become a component of food, but that is used, for example, in preparing an ingredient of the food to give a different flavor, texture, or other characteristic in the food, may be a food additive.

"Foodborne disease outbreak" means an incident in which two (2) or more persons experience a similar illness after ingestion of a common food.

"Food-contact surface" means a surface of equipment or a utensil with which food normally comes into contact.

"Food employee" means a person working with unpackaged food, food equipment or utensils, or food-contact surfaces.

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.

"Food service establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption or any establishment that relinquishes possession of food to a consumer directly, or indirectly through a delivery service. It includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite location unless the vending location is licensed by the Department; and an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises.

"Food service establishment - fee exempt" means:

(A) A food establishment operated by a hospital, public school or government institution, which only prepares and serves food to its patients, students, employees, members or inmates and occasional visitors or guests; or

(B) Except as otherwise provided in paragraph (i) and (ii) below, a food establishment or operation conducted by a nonprofit civic, charitable or religious organization primarily for benevolent purposes.

(i) Fee exempt licensees shall comply with the applicable sections of these rules depending upon the type of operation involved; e.g., food service, retail food, combination, temporary, or mobile.

(ii) Fee exempt licenses, except temporary licenses, shall not expire but shall remain in full force and effect until revoked, suspended, annulled or withdrawn by the Commissioner in accordance with applicable law. A license is not required for a non-profit civic, charitable or religious organization, using non-paid persons to prepare or serve food on its behalf, for occasional fund-raising events sponsored and conducted by the organization, nor shall a license be required if such an organization, using non-paid persons, prepares and serves non-hazardous food at events sponsored or conducted by other organizations. Guidelines shall be provided for safeguarding the health of customers.

"Game animal" means an animal, the products of which are food, that is not included in the definitions of 2 O.S. 1991, §§ 6-183 et seq. (cattle, bison sheep, swine and goats). Equines are not included due to the provisions of 63 O.S. 1991, § 1-1135 (prohibits the use of equine for food), 2 O.S. 1991, § 6-251 et seq. (poultry, including any domestic bird whether live or dead), 2 O.S. 1991, §§ 6-280.1 et seq. (domesticated rabbits whether live or dead), 2 O.S. 1991, § 6-290.3 et seq. (exotic livestock including commercially raised livestock including but not limited to animals of the families bovidae, cervidae, antilocapridae, or birds of the order casuariiformes or in the definitions of fish in this subchapter).

"General use pesticide" means a pesticide that is not classified by the EPA for restricted use as specified in 40 CFR 152.175.

"Grade A milk and milk products" means the milk and milk products at any stage from production through pasteurization and packaging, that are of the minimum quality and are produced, hauled, processed and distributed under conditions which substantially meet the requirements of the Oklahoma Milk and Milk Products Act (OS 2, Supp 1998, Sec 7-401 et seq).

"Group residence" means a private or public housing corporation or institutional facility that provides living quarters and meals or includes a domicile for unrelated persons.

"HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

"Hazard" means a biological, chemical, or physical property that shall cause an unacceptable consumer health risk.

"Hermetically sealed container" means a receptacle that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

"Highly susceptible population" means a group that is more likely than other populations to experience foodborne disease; i.e., immunocompromised persons, older adults, or preschool age children in a facility that provides custodial care.

"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury.

"Impermeable" means incapable of allowing liquids to pass through the covering.

"Injected" means manipulating a meat so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat with juices which may be referred to as "injecting," "pinning," or "stitch pumping".

"Juice" means the aqueous liquid expressed or extracted from one or more fruits and vegetables, purees of the edible portions of one or more fruits and vegetables, or any concentrate of such liquid or puree.

"Kitchenware" means food preparation and storage utensils.

"Law" means local, state, and federal statutes, rules, and ordinances.

"License" means the document issued by the Department that authorizes a person to operate a food service establishment.

"Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including gloves.

"Meat" means the flesh of animals used as food including the dressed flesh of cattle, bison, swine, sheep, goats, and other edible animals, except fish and poultry, that is offered for human consumption.

"mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

"Misbranding" means the definition contained in 63 O.S. 1991, § 1-1110.

"Mobile food service establishment" means a facility that is vehicle mounted (has wheels and axles), is readily moveable and remains at one physical address for no more than 17 days at one time.

"Mobile pushcart" means a non-self propelled mobile food unit that can be manually moved, is limited to serving non-potentially hazardous foods, pre-packaged food or preparation and serving of frankfurters, and returns daily to a commissary.

"Mobile retail food establishment" means a facility that is vehicle mounted, remains at one physical address for no more than 17 days at a time and serves only prepackaged foods and dispensed drinks prepared in a facility that is regulated by the Good Manufacturing Practices in Title 21 of the CFR or regulated as a license holder pursuant to Chapter 310:260, Good Manufacturing Practice Regulations, or this chapter.

"Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

"Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food service establishment or a food processing plant. It does not include a wrapper, carryout box, or other non-durable container used to facilitate food protection during service and receipt of the food by the consumer.

"Person" means an association, corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

"Person in charge" means the individual present at a food service establishment who is responsible for the operation at the time of inspection.

"Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance.

"pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

"Physical facilities" means the structure and interior surfaces of a food service establishment including accessories.

"Physician" means a doctor of medicine (M.D.) or osteopathic medicine (D.0.) currently licensed to practice medicine and surgery in Oklahoma.

"Plumbing fixture" means a receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

"Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

"Poisonous" or **"toxic materials"** means substances that are not intended for ingestion and are included in the following:

(A) Cleaners and sanitizers including cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(B) Pesticides including substances such as insecticides and rodenticides;

(C) Substances necessary for the operation and maintenance of the establishment including non-food grade lubricants and personal care items that may be deleterious to health; and

(D) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, including petroleum products and paints.

"Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of ***Clostridium botulinum,*** or in raw shell eggs, the growth of ***Salmonella enteritidis***. Potentially hazardous foods include, but are not limited to, animal foods (a food of animal origin) that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures that are not modified in a way that results in mixtures that do not support growth. Potentially hazardous food does not include air-cooled hard-boiled eggs with the shell intact, a food with a water activity of 0.85 or less, a food with a pH level of 4.6 or below when measured at seventy-five (75) degrees F, a food in an unopened, hermetically sealed container, a food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of **S. enteritidis** or **C. botulinum** can not occur, a food that may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness, but that does not support the rapid and progressive growth of infectious or toxigenic microorganisms.

"Poultry" *includes chickens, turkeys, ducks, geese and other domesticated bird used for human food and/or animal feed [OS 2, Supp 1998, Section 10-9.1].*

"Premises" means the physical facility, its contents, and the contiguous land or property under the control of the license holder; or the physical facility, its contents, and the contiguous land or property and its facilities and contents that are under the control of the license holder that may affect food service establishment personnel, facilities, or operations.

"Primal cut" means a basic major cut into which carcasses and sides of meat are separated.

"Product module" means a food contact container (multi-use or single-service) designed for customer self-service of bulk food by either mechanical or manual means.

"Public water system" means the definition in Chapter 630, "Public Water Supply Operation," of the Oklahoma Department of Environmental Quality.

"Ready-to-eat food" means food that is in a form that is edible without washing, cooking, or additional preparation by the food service establishment or the consumer and that is reasonably expected to be consumed in that form. It also includes unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food under OAC 310:256-5-45 through OAC 310:256-5-47; raw, washed, cut fruits and vegetables; whole, raw, fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet, or other food presented for consumption where further washing or cooking is not required and the rinds, peels, husks or shells have been removed.

"Reduced oxygen packaging" means the reduction of the amount of oxygen in a package by removing oxygen, displacing oxygen and replacing it with another gas or combination of gases, or otherwise controlling the oxygen content to a level below that normally found in the surrounding 21% oxygen atmosphere, and a process as specified in this definition that involves a food for which **Clostridium botulinum** is identified as a microbiological hazard in the final packaged form. Reduced oxygen packaging includes vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package, such as sous vide~~,~~. Reduced oxygen packaging includes modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes a reduction in the proportion of oxygen, a total replacement of oxygen, or an increase in the proportion of other gasses such as carbon dioxide or nitrogen. Reduced oxygen packaging also includes controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material.

"Refuse" means solid waste not carried by water through the sewage system.

"Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175 and that is limited to use by or under the direct supervision of a certified applicator.

"Safe material" means an article manufactured that shall not reasonably be expected to result, directly or indirectly, in becoming a component or otherwise affecting the characteristics of any food; an additive that is used as specified in Section 409 or 706 of the Federal Food, Drug, and Cosmetic Act; or other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

"Sanitization" means the application of cumulative heat or chemicals on cleaned food contact surfaces that, when evaluated for effectiveness, yield a reduction of five (5) logs, which is equal to a 99.999 percent reduction, of representative disease microorganisms of public health importance.

"Sealed" means free of cracks or other openings that allows the entry or passage of moisture.

"Seasonal food service establishment" means a facility that is open no more than ~~150~~180 consecutive days per physical address per year. The seasonal food service establishment is limited to serving coffee, snow cones, raw fruits, raw vegetables, nuts in the shell, and commercially bottled syrup, sorghum, honey, sweet cider, and other non-potentially hazardous foods.

"Seasonal fruit stand" means an establishment that is open no more than ~~150~~180 consecutive days per physical address per year and is limited to whole, raw fruits and vegetables and unprocessed nuts in the shell.

"Service animal" means an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

"Servicing area" means an operating base location to which a mobile food service establishment or transportation vehicle returns regularly for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

"Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and includes liquids containing chemicals in solution.

"Shellfish control authority" means a local, state, federal or foreign government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

"Shellstock" means raw, in-shell molluscan shellfish.

"Shucked shellfish" means molluscan shellfish that have one (1) or both shells removed.

"Single-service articles" means tableware, carryout utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one (1) time, one (1) person use after which they are intended for discard.

"Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single use articles include items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and items which do not meet the materials, durability, strength, and cleanability specifications for multiuse utensils.

"Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of minus twenty-three (23) degrees Celsius (minus 10 degrees Fahrenheit) to minus four (4) degrees Celsius (25 degrees Fahrenheit) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen foods.

"Smooth" means a food contact surface having a surface free of pits and inclusions with a clean ability equal to or exceeding that of one hundred (100) grit number three (3) stainless steel; a non-food-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and a floor, wall, or ceiling having an even or

level surface with no roughness or projections that render it difficult to clean.

"Table-mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

"Tableware" means eating, drinking, and serving utensils for table use, hollowware and plates.

"Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

"Temporary food service establishment" means a food service establishment where food is offered for sale or sold at retail from a fixed, temporary facility in conjunction with a single event or celebration not to exceed the duration of the event or celebration.

"USDA" means the United States Department of Agriculture.

"Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multi-use, single-service, or single-use gloves used in contact with food and food temperature-measuring devices.

"Variance" means a written document issued by the Department that authorizes a modification or waiver of one or more requirements of these rules if, in the opinion of the Department, a health hazard or nuisance will not result from the modification or waiver.

"Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

"Vending machine location" means the room, enclosure, space, or area where one (1) or more vending machines are installed and operated and includes the storage and servicing areas on the premises that are used in conjunction with the vending machines.

"Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

"Water activity" means a measure of the free moisture in a food that is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a_w.

"Whole-muscle intact beef" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which ~~beefsteaks~~beef steaks may be cut.

[OAR Docket #05-1072; filed 6-1-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 276. HOME INSPECTION INDUSTRY

[OAR Docket #05-1073]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
310:276-1-2. [AMENDED]
Subchapter 5. License Requirements, License Fees, License Period, Re-Examination, Display and Insurance
310:276-5-2. [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; 59 O.S. 2001, § 858-621 et seq.
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ANALYSIS:
The proposal amends Subchapters 1 and 5. Language is proposed in Subchapter 1 to define professional craftsman. The amendment to Subchapter 5 proposes requiring a thirty (30) day waiting period between each home inspection license examination. Currently, applicants failing the first examination must wait thirty (30) days to retake the examination and all subsequent failures result in a waiting period of at least ninety (90) days.
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 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

310:276-1-2. Definitions

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

"Act" means the Home Inspection Licensing Act, found at 59 O.S.§ ~~858.621~~858-621 et seq.

"Alarm systems" means warning devices, installed or free-standing, including but not limited to: carbon monoxide detectors, flue gas and other spillage detectors, security equipment, ejector pumps and smoke alarms.

"Applicant" means any person applying for an examination for a license or registration under the Act.

"Architectural service" means any practice involving the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction, including but not specifically limited to, schematic design, design development, preparation of construction contract documents, and administration of the construction contract.

"Board" means the State Board of Health.

"Certificates of course completion" means a document acceptable to the Committee which signifies satisfactory completion of course work and reflects the hours of credit earned.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a home inspector license examination for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Classroom hour" is equal to fifty (50) minutes out of each sixty (60) minute segment.

"Client" means a person with a direct material interest in the outcome of a home inspection who hires and compensates a home inspector for the performance of a home inspection.

"Commissioner" means the State Commissioner of Health**.**

"Committee" means the Committee of Home Inspector Examiners established by the Home Inspector Licensing Act, 59 O.S. 858-624.

"Component" means a part of a system.

"Continuing education" means education that is approved by the Committee to satisfy education requirements in order to renew licensure as a home inspector.

"Continuing education verification form" means a form acceptable to the Committee and completed by the course provider, that documents compliance with the continuing education requirements.

"**Decorative"** means ornamental; not required for the operation of the essential systems and components of a home.

"Defect" means a condition, malfunction or problem, which is not decorative, that would have a materially adverse effect on the value of a system or component, or would impair the health or safety of the occupants or client.

"Department" means the Oklahoma State Department of Health.

"Describe" means to report a system or component by its type or other observed, significant characteristics to distinguish it from other systems or components.

"Dismantle" means to take apart or remove any component, device or piece of equipment that would not be taken apart or removed by a homeowner in the course of normal and routine homeowner maintenance.

"Engineering service" means any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with the specifications and design, in conjunction with structures, buildings, machines, equipment, works or processes.

"Further evaluation" means examination and analysis by a qualified professional, tradesman or service technician beyond that provided by the home inspection.

"Home" or **"residence"** means any dwelling, from one to four (1-4) units in design, intended principally for residential purposes by one (1) or more individuals.

"Home inspection" or "inspection" *means a visual examination of any or all of the readily accessible physical real property and improvements to real property consisting of four or fewer dwelling units, including structural, lot drainage, roof, electrical, plumbing, heating and air conditioning and such other areas of concern as are specified in writing to determine if performance is as intended.* [59:858-622(5)]

"Home inspection license unit" means the staff and administrative support unit to the Committee of Home Inspector Examiners.

"Home inspection report" means a written opinion of the functional and physical condition of property written by the licensed home inspector pursuant to home inspection.

"Home inspector" means an individual licensed pursuant to the Home Inspection Licensing Act who, for compensation, conducts home inspections.

"Inspect" means to examine readily accessible systems and components of a building in accordance with these Standards of Practice, using normal operating controls and opening readily openable access panels.

"Installed" means attached such that removal requires tools.

"Instructor" means a person who presents course materials approved for qualifying education and continuing education credit hours that has the experience, training, and/or education in the course subject matter and has been approved by the Committee.

"Normal working order" means the system or component functions without defect for the primary purpose and manner for which it was installed.

"Normal operating controls" means devices such as thermostats, switches or valves intended to be operated by the homeowner.

"Professional craftsman" means a person who can demonstrate by certification, education or experience, specialized skill in the construction or repair of homes, duplexes, apartment buildings or similar structures. Persons demonstrating specialized skill by experience alone must be able to show that they have been actively engaged in their profession,

trade or craft for at least one (1) year prior to the performance of a single item inspection.

"Provider" means a person, corporation, professional association or its local affiliates, or any other entity, which is approved by the Committee and provides approved qualifying and continuing education to home inspectors.

"Readily accessible" means available for visual inspection without requiring moving of personal property, dismantling, destructive measures, or any action which will likely involve risk to persons or property.

"Readily openable access panel" means a panel provided for homeowner inspection and maintenance that is within normal reach, can be removed by one person, and is not sealed in place.

"Reciprocity agreement" means an agreement whereby a home inspector who is licensed in other states with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

"Recreational facilities" means spas, saunas, steam baths, swimming pools, exercise, entertainment, athletic, playground or other similar equipment and associated accessories.

"Report" means to communicate in writing.

"Representative number" means one component per room for multiple similar interior components such as windows and electric outlets; one component on each side of the building for multiple similar exterior components.

"Roof drainage systems" means components used to carry water off a roof and away from a building.

"Shut down" means a state in which a system or component cannot be operated by normal operating controls.

"Solid fuel burning appliances" means a hearth and fire chamber or similar prepared place in which a fire may be built and which is built in conjunction with a chimney; or a listed assembly of a fire chamber, its chimney and related factory-made parts designed for unit assembly without requiring field construction.

"Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

"System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.

"Technically exhaustive" means an investigation that involves dismantling, the extensive use of advanced techniques, measurements, instruments, testing, calculations, or other means.

"Under-floor crawl space" means the area within the confines of the foundation and between the ground and the underside of the floor.

"Unsafe" means a condition in a readily accessible, installed system or component which is judged to be a significant risk of personal injury during normal operation. The risk may be due to damage, deterioration, improper installation or a change in accepted residential construction standards.

"Wiring methods" means identification of electrical conductors or wires by their general type, such as "non-metallic sheathed cable" ("Romex"), "armored cable" ("bx") or "knob and tube", etc.

SUBCHAPTER 5. LICENSE REQUIREMENTS, LICENSE FEES, LICENSE PERIOD, RE-EXAMINATION, DISPLAY AND INSURANCE

310:276-5-2. License fees, license period, re-examination, display, and insurance requirements

(a) **Initial license fees.** The following fees apply to home inspection industry licensure:

(1) Approval fees for schools, instructors and home inspection organizations - $100.00

(2) Approval fees for educational course content - $50.00

(3) Application for license - $30.00

(4) Licensure for reciprocity - $50.00

(5) Examination fee - $200.00

(6) License fee - $250.00

(7) License Renewal - $150.00

(8) License reactivation - $50.00

(b) **License period.**

(1) A license shall expire twelve months after issuance, and may be renewed without penalty during the month following expiration.

(2) A license which has been expired for more than one (1) year shall not be renewed. An individual may obtain a valid license by successful completion of the appropriate examination and other licensure requirements.

(c) **Re-examination.** ~~Any applicant initially failing to pass the appropriate examination, if required, shall not be permitted to take the same category examination for at least thirty (30) days, and thereafter any such applicant failing to pass the examination shall not be permitted to take a subsequent examination for at least ninety (90) days.~~Any applicant who fails an examination must wait thirty (30) days before retaking the home inspection examination.

(d) **License display.** The state issued license number shall be placed on all letterhead stationery, business cards, bids, estimates and printed advertisements, and shall be included in electronic media advertisements. Decals and yard signs shall display the state issued license number.

(e) **Personal license display.** All persons subject to these rules shall possess the state issued card any time the person is working. The card shall be shown when requested.

(f) **Insurance requirements.** Each licensee must maintain insurance coverage and furnish and maintain in effect a certificate of insurance therefor which indicates that the licensee has a comprehensive general liability policy. 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 Home Inspection License Unit, prior to cancellation or material alteration of the required insurance.

[OAR Docket #05-1073; filed 6-1-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 320. PUBLIC BATHING ~~PLACES OPERATIONAL REGULATIONS~~PLACES

[OAR Docket #05-1074]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Operational Provisions
310:320-3-13. [NEW]
Subchapter 5. Forms and Tables
310:320-5-6. [AMENDED]
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Oklahoma State Board of Health; 63 O.S. 2001, Section 1-1013 et seq.
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ANALYSIS:
The revisions to the rule are to implement the mandate of HB 2282. The proposal amends Subchapter 3, Section 3-13 Operational Provisions, and Subchapter 5, Section 5-6 Forms and Tables, of the present Public Bathing Place Regulations in order to institute funding for public bathing place inspection programs and industry education activities. All public bathing places including, but not limited to country clubs, motels/hotels, apartments, workout facilities, homeowner associations (31 units or more), municipalities' pools and water parks will be included in this licensure program. Each operator shall pay an annual fee for licensure to be determined by the State Board of Health. Municipalities with a population of 5,000 or less shall not be charged more than $50.00. The fee schedule for pools will be inserted into Chapter 250. The proposed rule implements a re-inspection fee, as authorized by House Bill 2282. Also, the proposal involves the addition of language to complete and clarify the application process and the responsibility of the license holder.
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) 271-3458 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 JULY 11, 2005:

SUBCHAPTER 3. OPERATIONAL PROVISIONS

310:320-3-13. Subsequent examination, investigation, and inspection

(a) Subsequent to examination, investigation, and inspection by the State Commissioner of Health or his representative, any public bathing place found to be in non-compliance with the requirements of this chapter and therefore constituting a public nuisance, shall be reinspected within a reasonable time to determine if the public bathing place has been brought into compliance with the requirements of this chapter. Before each reinspection shall occur, the owner/operator shall pay a reinspection fee to the Department.

(b) **Reinspection Fee.** The reinspection fee shall be in the amount of two hundred fifty dollars and no cents ($250.00) payable to the Oklahoma State Department of Health.

SUBCHAPTER 5. FORMS AND TABLES

310:320-5-6. Application guidelines for permits to construct and licenses to operate public bathing places

(a) An applicant shall be an owner/operator of the public bathing place, as defined in 63 O.S. Section 1-1013 et. Seq. complying with the requirements of this chapter, agree to permit access to the public bathing places, provide required information, and pay the applicable license fee and submit application on a form provided by the Department.

(b) The application shall include:

(1) The name, mailing address, telephone number, approximate number of employees, and signature of the person applying for the license and the name, mailing address and location of the public bathing places;

(2) Information about the legal entity for the public bathing places; and

(3) Information about the type of public bathing places.

(c) The license holder shall comply with all provisions of OAC 310:320-3-2.

(~~a~~d) **Fee.** The fee (see Fee Schedule, Regulations Section 310:320-5-5) ~~should be paid by cashier's check or money order. There will be a forty five (45) day delay to allow for clearance of personal or "company" checks~~ shall be made payable to the Oklahoma State Department of Health.

(~~b~~e) **Facility definition.**

(1) A public bathing facility, for permitting purposes, will be:

(A) A single swimming pool, spa, water slide, or other bathing unit, or

(B) A complex of two (2) or more such units with deck areas in common, "deck" being used in the same context as in the Public Bathing Place Standards, or,

(C) A complex of such units with water in common such as indoor and outdoor pools connected by a channel.

(2) For the purpose of allocating permit fees, a single fee and permit will apply in each of the above cases 1

through 3. A new permit and fee will apply for a new bathing unit added later to an existing facility, and for a major modification of an existing unit.

(~~e~~f) **Applicant identification.**

(1) Title 63 Oklahoma Statutes, ~~1981~~ (Public Health Code), Section 1-1017 states, in part "...plans and specifications shall be accompanied by an application for permit, and both the plans and specifications and the application shall bear the signature of the person for whom the work is to be done." (Emphasis added.)

(2) The Department of Health interprets this to mean the owner or an authorized agent of the owner. The application may take these forms:

(A) Applicant is the owner and signs as such.

(B) Applicant is an authorizing officer of the organization which is the owner; the full name of the organization and the signer's title must be supplied.

(C) Application includes a letter from the owner (or from an officer as in #2, or from an authorized agent of the owner) authorizing the applicant to act on his behalf for the purpose of obtaining the permit.

(D) Application is signed "XXX, agent for YYY, owner." If there is any question whether "expediency" may have resulted in misrepresentation, the Department may require an authorizing letter as in #3 above.

(3) If the application does not show whether the owner and/or agent is an individual, a partnership, or a corporation, processing of the permit will be delayed until this information is supplied.

(4) The application form also requires that, if Item C-4 on the application is checked "No," information is to be provided on who will be responsible for the facility following completion of construction. In the case of joint ownership, such as a condominium or housing development, the applicant may state on the application that, for example, a homeowners association will own and operate the bathing facility. In such cases, a provision in the permit will assign this future responsibility accordingly, if no Affidavit of Responsibility is supplied with the application. In other cases (C-4 check "No"), there must be submitted with the application, a notarized Affidavit of Responsibility signed appropriately. The purpose of this is to remove any doubt that the responsible party is aware of its responsibility.

(~~d~~g) **Non-applicable items.**

~~(1)~~ Items A, C-6, C-7, and all of page 3, may be ignored in the case of public bathing place permits, unless the facility is to be municipally owned.

~~(2) If there are questions on the above, contact H. R. Hickey, Engineer, at (405) 271-7329 or Mike Wofford, Attorney, at (405) 271-8060.~~

Note: Compliance with the Public Bathing Place Facility Standards and the Public Bathing Place Regulations Criteria is required respecting all features not included here.

Public Bathing Place
Summary Engineering Report

Complete separately for each unit (pool, spa, other).

A. General

1. Physical location of facility (not P.O. Box or Rural Route): _____

2. Type (pool, spa, wading pool, water slide, raft ride, etc): _____

3. Water area, ft^2 _____

4. Perimeter, ft _____

5. Volume, gal _____

6. Shallow water area ("above" lifeline), ft^2 _____

7. Deep water area ("below" lifeline), ft^2
   Capacity, persons _____

8. Diving boards, number and height _____

9. Bottom slopes: shallow area _____ transition _____

B. Water Supply and Wastewater

1. Water source _____. Two diameters or six (6) inches air gap at fill spout ____ (Y/N)

2. Backwash discharges to _____ with indirect connection ____ (Y/N)

3. Walkways drain to _____ at slope = _____ (1/4 inch per foot minimum)

C. Recirculation and Filter System

1. Minimum turnover rate required by Standards, gpm _____

2. Number of skimmers _____ @ 30 gpm = _____ gpm

3. Design flow rate, gpm _____

4. Main drain flow (at least 30 percent of total flow) gpm _____

5. Filter type (sand, DE, or cartridge) _____

6. Minimum filter area required, ft^2 _____

7. Design filter area, ft^2 _____

8. Maximum filter flux density, gpm/ft^2 _____

9. Head loss in suction piping is no greater than 6 ft/1000 ft. _____ (Y/N)

10. Head loss in discharge (pressure) piping is no greater than 12 ft/100 ft. _____ (Y/N)

11. Maximum TDH, dirty filter, ft _____

12. Pump capacity at maximum TDH, gpm _____

13. Number of inlets:_____ a depth _____ (inches)

14. Antivortex cover or complying suction openings specified _____ (Y/N)

15. Flow meter specified _____ (Y/N)

16. Filter influent and effluent pressure gauges specified, and compound or vacuum gauge specified between pump and hair and lint strainer _____ (Y/N)

17. Extra hair/lint basket specified _____ (Y/N)

18. Piping schematic included in plans _____ (Y/N)

19. Each skimmer and main drain valved separately _____(Y/N)

D. **Miscellaneous**

1. Two-inch diameter equalizer line specified at skimmers _____ (Y/N)

2. Skimmers listed as approved by NSF _____ (Y/N)

3. Filters listed as approved by NSF _____ (Y/N)

4. Chlorinator or brominator listed as approved by NSF _____ (Y/N)

5. Two thermometers specified, if heater used _____ (Y/N)

6. All parts of facility served by 50 foot (maximum) hoses, from hose bibs with backflow preventers _____ (Y/N)

7. Valves and piping tagged or color coded _____ (Y/N)

8. Depth markers specified, both pool wall and deck _____ (Y/N)

9. Life line specified at change in bottom slope _____ (Y/N)

10. If spa, "jet" or "therapy" system is independent from filter/recirculation system, other than at spa plenum _____ (Y/N)

11. Local ordinances permit proposed backwash discharge _____ (Y/N)

12. Operating instructions specified _____ (Y/N)

13. Enclosure complies with Standards Section 310:315-7-2 _____ (Y/N)

14. Entry to pool is through self-closing, self-latching gates or doors, only _____ (Y/N)

15. Lighting and electrical wiring are specified in accordance with Standards Sections 310:315-7-18 and 310:315-7-19 _____ (Y/N)

16. Safety equipment and provisions are specified in accordance with Regulations Sections 310:320-3-1 and 310:320-3-4 _____ (Y/N)

17. Provisions for handicapped are specified (If pool is Open to the General Public) _____ (Y/N)

18. Bathhouse complies with Standards Sections 310:315-7-7 and 310:315-7-8 (if pool is Open to the General Public) _____ (Y/N)

Any items answered "No" require explanation. Add pages as necessary.

_____ _____

Engineer's Signature Date

January 29, 1985

Public Bathing Places

Procedure and Design Check List

This procedure and design check list is limited to significant features of the Public Bathing Place Facility Standards, the Public Bathing Place Regulations, and some features which generate questions frequently. Purposes are to help simplify and organize design work, review work, and inspection work. Not every regulatory feature is covered--some are left to the Standards and Regulations, and the Standards and Regulations leave some to specifications of others such as the NSF, ANSI, ASSE, NEC, FINA, and others. Further, "good practice" is a universal criterion. The design engineer is responsible for alerting the applicant and contractors to these requirements sufficiently through the plans he prepares and through direct communication. It is expected that installation will conform to approved plans in respect to all significant details, including any change orders approved by the design engineer and by the OSDH. Further, compliance with the Standards and Regulations is required respecting all features not included in the approved plans.

REFER TO THE PUBLIC BATHING PLACE FACILITY STANDARDS AND THE PUBLIC BATHING PLACE REGULATIONS

Procedures

_____ 1. Application completed in accordance with "Guidelines for applicants for Public Bathing Place Permits."

_____ 2. Five (5) sets of plans submitted, each signed by applicant and sealed by a professional engineer licensed in Oklahoma.

_____ 3. Fee submitted.

Design

_____ 1. Engineering report (may be a summary on drawings) presenting significant design features, and added narrative solutions to unusual problems when needed for clarity.

_____ 2. Water supply: source; backflow prevention (including all hose bibs); drinking fountains; fill spout (2 diameters or 6 inch air gap).

_____ 3. Wastewater: approved sewer (permit exists) of sufficient capacity; NPDES permit if applicable; diatomaceous earth separation; sanitary and backwash wastes plan; backflow prevention (air gap); local ordinances provisions on backwash discharge.

_____ 4. Pool material and finish: impervious; white or pastel color (no variegated finish).

_____ 5. Enclosure: excludes unattended small children; permits visual observation; maximum gap four (4) inches; four (4) feet height (six (6) feet if open to general public); construction does not form ladder; all entry through self-closing, self-latching gates only; no safety hazards at grade separations.

_____ 6. Equipment and chemical storage areas; sufficient access for operation and maintenance (eighteen (18) inch clearances); access by public limited; venting; hose bib with backflow preventer; chemical storage signs. See Standards Sections 310:315-7-2 and 310:315-7-13.

_____ 7. Bathing load computed per Standards Section

310:315-7-3.

_____ 8. Pool features: handicapped provisions if open to general public; three (3) feet minimum depth (three and one-half (3-1/2) feet recommended), competition pools; bottom slopes; lifeline at break; side walls; depths; ledges inside line eleven (11) degrees from plumb; diving board height, projection over pool, headroom; depth markings (deck and pool wall); outlets (144 in^2 or antivortex covers); adjustable inlets, required minimum plus added inlets at stairs, recessions, flow-through channels; gutters comply with Standards Section 310:315-7-14; skimmers thirty (30) gpm each, valved separately, NSF-listed.

_____ 9. Ladders, stairs, seats, fountains: two (2) ladders or one (1) ladder and one (1) set of stairs; stairs recessed or "go clear across"; colored stripes; uniform height; barriers around recessed seats, and added inlets; fountain supply filtered and chlorinated if discharging to pool; no structures in fountain to invite diving.

_____ 10. Decks: four (4) foot minimum width; impervious; non-slip; slope and drainage; no wood decks indoors, and sealed, drained, and unshaded if outdoors; access by fifty (50) foot (maximum) hose from hose bib with backflow preventer; no carpeting; no epoxyed gravel unless interstices are grouted.

_____ 11. Bathhouse: see Standards for (extensive) details; must be sanitizable; required only at (1) pools open to the general public, (2) where access to pool is problematic as at a housing development, and (3) other special installations; no fire traps; fire extinguisher (not CCL_4).

_____ 12. Ventilation: all indoor spaces effectively ventilated.

_____ 13. Wading pools: four (4) hour turnover; flow measurement and control; eighteen (18) inches maximum depth; one (1) skimmer per four hundred (400) ft^2 pool area; emergency drainage with quick-opening valve; barrier if contiguous with swimming pool.

_____ 14. Spas: impervious (no wood); no depth markers required; four (4) foot minimum deck width about fifty (50) percent of perimeter if less than 120 ft^2

spa area;

decks drained; handrail complying with Standards Section 310:315-7-11; thirty (30) gpm per skimmer (NSF-listed) plus adequate main drain flow to prevent settling in lines; no connection, other than at spa plenum, between filter and therapy circulation systems; antivortex or equiv-alent suction openings; disinfection device NSF-listed (bromine recommended); two (2) filter return inlets, minimum; temperature control at 105°F maximum; inlet and return temperature gauges. (See also #16 below.)

_____ 15. Water recreation attractions; preconsultation with OSDH required; see Standards Section 310:315-7-12.

_____ 16. Recirculation system: system TDH calculated for dirty filter; pump sized at maximum TDH; hair and int strainer with extra basket and compound pressure gauge where required: vacuum cleaning provisions; inlet and return temperatures measured if heater provided; piping sized per Standards Section 310:315-7-14; piping color coded and valves tagged; flow meter with minimum and maximum flows marked; piping schematic provided. See Standards Section 310:315-7-14 for further details.

_____ 17. Filters: influent and effluent pressure gauges; sign glass; filter tanks and piping drainable; filter medium composition and particle size specified; filter NSF-listed; head loss when dirty at maximum allowable flux (gpm/ft^2) computed correctly; operating instructions provided, including maximum and minimum flow rates. See Standards Section 310:315-7-15 for further details.

_____ 18. Disinfection and pH control: chlorinator/brominator NSF-listed and meets delivery requirements of Standards Section 310:315-7-16; chlorine gas installation per Standards Section 310:315-7-16; gas mark; pH control feeder if pool open to general public or larger than fifty thousand (50,000) gallons.

_____ 19. Testing equipment: see Standards Section 310:315-7-17.

_____ 20. Lighting and electrical requirements: artificial lighting required, ten (10) foot-candles, deck area; underwater lights (if used) recommended @

eight (8) foot-candles and with low water cutoff protection; ten (10) foot-candles, interior rooms; all wiring meets NEC

Code; ground fault interrupter circuit breakers for

outlets; all piping and metal fencing grounded per NEC Code.

_____ 21. Life saving provisions and equipment: lifeguard or attendant needs weighed carefully where slides or swings are used; safety/pool rules signs specified, including "No Lifeguard or Attendant on Duty" where required; see Regulations Section 310:320-3-1 for details.

_____ 22. First aid: kit specified; telephone (non-coin operated) accessible; emergency phone numbers posted.

[OAR Docket #05-1074; filed 6-1-05]

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

[OAR Docket #05-1075]

RULEMAKING ACTION:
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RULES:
Subchapter 13. Academic Requirements
310:403-13-1. [AMENDED]
310:403-13-2. [AMENDED]
310:403-13-3. [AMENDED]
Subchapter 15. Supervised Experience Requirement
310:403-15-5. [AMENDED]
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ANALYSIS:
The proposed changes are intended to make the rule consistent with recent amendments to the Licensed Behavioral Practitioner Act in O.S.L. 2004, Chapter 523, Section 15, effective June 9, 2004. In Subchapter 13, deadlines for implementation of certain academic requirements are delayed to January 1, 2008, and the name of the approved accrediting body is amended to "Master's in Psychology Accreditation Council." Additionally, an error that refers to a licensed behavioral practitioner as an "LPC" is corrected in Subchapter 15.
CONTACT PERSON:
Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6030; facsimile: (405) 271-1918; electronic mail: nenaw@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 JULY 11, 2005:

SUBCHAPTER 13. ACADEMIC REQUIREMENTS

310:403-13-1. Graduate degree requirements

(a) Pursuant to the Act, all applicants shall possess at least a masters degree from a program in psychology from a regionally accredited college or university.

(b) The program must be intended to prepare a scientist-practitioner in the field of psychology at the masters level and meet all the following criteria:

(1) The masters program must be clearly identified as a psychology program. Such a program must specify in a pertinent institutional catalogue, its intent to educate and train students in the field of psychology at the masters level;

(2) The pertinent institutional catalogue must state the structure and content of the curriculum of the program; and

(3) The program must have faculty who hold graduate degrees in psychology or closely related fields.

(c) Beginning January 1, ~~2005~~2008, the program shall meet the above criteria and also be accredited by the ~~Interorganizational Board for Accreditation of Masters Programs in Psychology,~~Master's in Psychology Accreditation Council, its designees or successors. [59:1935(C)(2)]

(d) The academic requirements set forth in the Act must be completed before a person applies for licensure.

310:403-13-2. Required knowledge areas

All applicants from January 1, 2002 to December 31, ~~2004~~2007, as part of the required 45 graduate semester hours, shall have the following core knowledge areas:

(1) Assessment and Diagnosis - at least six (6) semester hours. Psychological theory, research, and methods concerning the measurement and assessment of an individual's behavioral or psychological functioning, such as the assessment of psychopathology, personality characteristics, intellectual functioning, skills and interests, and neuropsychological functioning;

(2) Intervention - at least six (6) semester hours. Psychological theory, research, and methods regarding empirically validated treatment modalities for the remediation, treatment, or prevention of behavior disorders, adjustment problems, and psychopathology, or other disturbances in psychological functioning;

(3) Experimental Foundations - at least three (3) semester hours. Psychological theory, research, and methods concerning the design, conduct, analysis, and interpretation of psychological research, or concerning the general principles and processes for the core areas of experimental psychology;

(4) Psychopathology - at least three (3) semester hours. Psychological theory, research, and methods concerning the descriptive characteristics, diagnosis, and etiology of psychopathology, or mental and behavioral disorders of children and adults;

(5) Personality and Social Psychology - at least six (6) semester hours. Psychological theory, research, and methods concerning the psychological or behavioral development and functioning of the individual and group

differences. Three (3) of these hours shall be in a course in multicultural issues or cultural bases of behavior;

(6) Professional orientation/ethics - at least (3) semester hours. Objectives of professional behavioral health services organizations, codes of ethics, legal aspects of practice, standard of preparation and the role of persons providing direct behavioral health services.

(7) Biological bases of behavior - at least three (3) semester hours. Physiological, or genetic underpinnings of behavior.

(8) Practicum/internship. Organized practica/internships with at least three hundred (300) clock hours in behavioral health services with planned experiences providing classroom and field experience with clients under the supervision of college or university approved behavioral health services professionals; and

(9) Elective courses. The remaining courses needed to meet the forty-five (45) graduate hour requirement shall be in any of the knowledge areas listed above.

310:403-13-3. Required knowledge areas ~~as of~~on or after January 1, ~~2005~~2008

~~As of~~On or after January 1, ~~2005,~~2008, all applicants shall have the following core knowledge areas as part of the required 60 graduate semester hours:

(1) Assessment - as described in OAC 310:403-13-2(1): at least six (6) semester hours;

(2) Intervention - as described in OAC 310:403-13-2(2): at least nine (9) semester hours;

(3) Experimental foundations - as described in OAC 310-403-13-2(3): at least six (6) semester hours;

(4) Psychopathology - as described in OAC 310:403-13-2(4): at least six (6) semester hours;

(5) Personality and Social Psychology - as described in OAC 310:403-13-2-(5): at least six (6)semester hours;

(6) Professional orientation/ethics - as described in Subchapter 310:403-13-2(6): at least three (3) semester hours;

(7) Biological bases of behavior - as described in OAC 310:403-13(7): at least three (3) semester hours;

(8) Practicum/internship as described in OAC 310:403-13-2(8); and

(9) Elective hours: the remaining courses needed to meet the sixty (60) hour requirement shall be in any of the knowledge areas listed in OAC 310-13-1(1-8).

SUBCHAPTER 15. SUPERVISED EXPERIENCE REQUIREMENT

310:403-15-5. Acceptability of supervised experience

(a) Supervised experience is acceptable when it consists of the performance of behavioral health services as described in Section 1931, of the Act as described below.

(1) Supervision shall focus on the raw data from an LBP Candidate's continuing clinical practice, which may be available to the supervisor through a combination of direct observation, co-therapy, written clinical notes, and audio and video recordings.

(2) Supervision is a process clearly distinguishable from personal psychotherapy, and is contracted in order to serve professional/vocational goals.

(3) Individual supervision consists of face-to-face contact with one supervisor and one LBP Candidate.

(4) Group supervision may be conducted with two (2) to six (6) LBP Candidates and a supervisor.

(b) An LBP Candidate may accrue supervised experience hours in academic, governmental or private practice settings.

(c) Supervision shall be accrued in a private not-for-profit or a private for-profit practice only if:

(1) The LBP Candidate works at the same location as a person licensed in the state of Oklahoma as a Licensed Behavioral Practitioner, a Licensed Professional Counselor, a Licensed Marital and Family Therapist, a Psychologist, a Physician, or a Clinical Social Worker who directs and is responsible for the professional duties of the ~~LPC~~LBP Candidate; and

(2) The LBP Candidate is receiving supervision for licensure from an approved LBP supervisor who is not required to work at the same location as the LBP Candidate.

[OAR Docket #05-1075; filed 6-1-05]

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

[OAR Docket #05-1076]

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Subchapter 9. Academic Requirements
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Subchapter 11. Supervised Experience Requirement
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Subchapter 17. Continuing Education Requirements
310:405-17-2. [AMENDED]
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The language added to Subchapter 9 and amending 310:405-9-1 increases the number academic elective knowledge areas to 16. The language added to subchapter 9 and amending 310:405-9-2 creates a new academic elective category entitled, "Physical and Emotional Health." The language added to Subchapter 11 and amending 310:405-11-4 establishes a requirement for approved supervisors to complete three hours of continuing education in counseling supervision each renewal period. The language added to Subchapter 17 and amending 310:405-17-2 establishes a requirement for LPCs to include three hours of continuing education in counseling ethics each renewal period and for approved supervisors to include three hours of counseling supervision each renewal period.
CONTACT PERSON:
Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6030; facsimile: (405) 271-1918; e-mail: nenaw@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 JULY 11, 2005:

SUBCHAPTER 9. ACADEMIC REQUIREMENTS

310:405-9-1. Graduate hours and degrees required

(a) Each applicant shall possess at least a master's degree in counseling, or a mental health related graduate degree deemed substantially content-equivalent. All graduate course work applied toward licensure shall be from a regionally accredited college or university recognized by the United States Department of Education. At least sixty (60) credit hours of graduate counseling-related course work, including internship, shall be earned. In order to be considered acceptable, the graduate degree(s) shall:

(1) follow a planned, sequenced mental health program of study which is reflected in the university catalog and approved by the governing authority of the college or university.

(2) include a program whose primary focus is clearly to prepare the applicant for a career in counseling.

(3) be listed in the college or university catalog, including the core courses from the knowledge areas outlined in 310:405-9-2 (1-7) and include at least five (5) of the ~~fifteen (15)~~sixteen (16) knowledge areas outlined in 310:405-9-2 (8).

310:405-9-2. Knowledge area required

(a) Each applicant shall possess as a part of the required sixty (60) credit hours of graduate curriculum, one (1) or more courses of at least three (3) credit hours per course in each of the following core counseling areas:

(1) Human growth and development - at least one (1) course which deals with the process stages of human intellectual, physical, social and emotional development of any of the stages of life from prenatal through old age.

(2) Abnormal human behavior - at least one (1) course which offers a study of the principles of understanding dysfunction in human behavior or social disorganization.

(3) Appraisal/assessment techniques - at least two (2) courses which deal with the principles, concepts and procedures of systematic appraisal, assessment, or interpretation of client needs, abilities, and characteristics, which may include the use of both testing and non-testing approaches.

(4) Counseling theories/methods - at least two (2) courses which survey the major theories and/or techniques of counseling.

(5) Professional orientation/ethics - at least one (1) course which deals primarily with the objectives of professional counseling organizations, codes of ethics, legal aspects of practice, standards of preparation and the role of persons providing direct counseling services.

(6) Research - at least one (1) course in the methods of social science or mental health research which includes the study of statistics or a thesis project in an area relevant to the practice of counseling.

(7) Practicum/internship - at least one (1) course of an organized practicum with at least three hundred (300) clock hours in counseling with planned experiences providing classroom and field experience with clients under the supervision of college or university approved counseling professionals.

(8) Knowledge areas - at least five (5) courses of at least three (3) credit hours each from the knowledge areas listed below.

(A) Group dynamics
(B) Life style and career development
(C) Social and cultural foundations
(D) Personality theories
(E) Crisis intervention
(F) Marriage/family counseling
(G) Addictions counseling
(H) Rehabilitation counseling
(I) Gerontology
(J) Human sexuality
(K) Counseling with children/adolescents
(L) Clinical supervision
(M) Psychopharmacology
(N) Consultation
(O) ~~Specialty areas when established~~Physical and Emotional Health
(P) Specialty areas when established

(b) **Remaining courses.** Effective January 1, 2000, the remaining courses needed to meet the sixty (60) graduate-hour requirement shall be in any of the knowledge areas listed in 310:405-9-2(b).

(c) **Required content.** Effective January 1, 2000, if an applicant completes a titled course which does not meet the entire content requirements of any area named in 310:405-9-2(b), the

applicant may be required to submit evidence to the Department that the required content was covered in portions of more than one (1) course.

SUBCHAPTER 11. SUPERVISED EXPERIENCE REQUIREMENT

310:405-11-4. Supervisor qualifications

Supervisor qualifications include:

(1) A Licensed Professional Counselor who has practiced in positions relevant to those the LPC proposes to supervise for two (2) years beyond the date of issue of the license, and

(2) An LPC who was licensed by endorsement from another state who has practiced in positions relevant to those they propose to supervise for one (1) year beyond the date of issue of the Oklahoma license.

(3) As of January 1, 2000:

(A) an LPC who has successfully completed a graduate course in counselor supervision of at least forty-five (45) contact hours or equivalent course of study acceptable to the Department. This equivalent course of study shall consist of workshops in counseling supervision in combination with directed study of counseling supervision literature. Fifteen (15) of the forty-five (45) contact hours shall be in a class or workshop format which includes four (4) supervisors-in-training; the other thirty (30) contact hours shall be reserved for directed study, and

(B) an LPC who has passed the Oklahoma Legal and Ethical Responsibilities Examination.

(4) An agreement to be "on call" to the supervisee on a twenty-four (24) hour basis and to arrange for an alternate supervisor if not available.

(5) After receipt of the LPC supervision agreement, LPC supervisor may be approved by the Department.

(6) Approved LPC Supervisors are required to complete a minimum of three (3) clock hours of continuing education in counseling supervision each renewal period.

SUBCHAPTER 17. CONTINUING EDUCATION REQUIREMENTS

310:405-17-2. Number of hours required

(a) Licensees shall complete and furnish documentation to the Department of twenty (20) clock hours of continuing education per year. One (1) academic hour is equal to fifteen (15) clock hours.

(b) A minimum of three (3) clock hours of continuing education hours must be in counseling ethics.

(c) Approved LPC Supervisors must complete a minimum of three (3) clock hours of continuing education in counseling supervision.

[OAR Docket #05-1076; filed 6-1-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 566. COMPREHENSIVE BREAST AND CERVICAL CANCER DETECTION AND TREATMENT

[OAR Docket #05-1077]

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PERMANENT final adoption
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Subchapter 1. General Provisions [NEW]
310:566-1-1. through 310:566-1-7. [NEW]
Subchapter 3. Service Provision [NEW]
310:566-3-1. through 310:566-3-3. [NEW]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S., § 1-502, 56 O.S., §§ 1010.1 et seq., Ok Session Laws 2004, Chapter 219, as codified at 63 O.S. Supp. 2004, §§ 1-554 et seq.
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ANALYSIS:
The proposed rule establishes eligibility criteria for uninsured women to receive breast and/or cervical cancer treatment. The rule establishes the comprehensive breast and cervical cancer early detection program components: early detection methods, diagnostic services for women with abnormal screening findings, educational training for health care providers, public awareness and epidemiological trend studies. The overall goal is to reduce the mortality rates among women with breast and cervical cancer

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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 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

310:566-1-1. Purpose

This Chapter implements O.S.L. Chapter 210 "Oklahoma Breast Cancer Prevention and Treatment" and Public Law 101-354, Title XV, Public Service Act, "Breast and Cervical Cancer Mortality Prevention" authorized by Congress in 1990 and amended in 2000. State statutes established a breast and cervical cancer prevention, treatment and research program advised by a group of predetermined individuals. The federal law established a comprehensive population based statewide breast and cervical cancer early detection program with an additional amendment establishing the treatment program. The purpose of both laws is to reduce the mortality of breast and cervical cancer by providing statewide early detection, diagnosis and treatment of breast and cervical cancer.

310:566-1-2. Definitions

"Abnormal screen"means a suspicion of breast or cervical cancer. A suspicion of breast cancer includes clinical breast exam findings of: palpable breast mass, breast dimpling, nipple retraction, bloody nipple discharge, palpable lymph nodes around clavicle or axilla, nipple erythema and scaliness, a mammography result of BiRads 4 (Suspicious Abnormality suggesting need for biopsy) or 5 (Highly Suggestive of Malignancy) (ICD 793.8), breast biopsy result of Ductal Cancer in situ, Lobular Cancer in situ (ICD 233.0), or breast or lymph node (or other) biopsy result of breast cancer. Suspicion of cervical cancer is a Pap test result of Atypical Squamous Cells (ASC), Atypical glandular cells (AGC), Low-grade squamous intraepithelial lesions (LSIL), or High-grade squamous intraepithelial lesions (HSIL) (ICD 622.1), leukoplakia of the cervix, (ICD 622.2), or cervical biopsy result of Cervical intraepithelial neoplasia II or III, or Cancer in situ (ICD 233.1).

"ACR"means American College of Radiology. The ACR is the FDA recognized approved accreditation body for minimum quality standards for personnel, equipment, and record keeping in facilities that provide mammography.

"Benign"means a non-cancerous condition that does not spread to other parts of the body.

"Bethesda System"means a specified system of reporting cervical cytology findings.

"Biopsy"means removal of an entire abnormality (excisional biopsy) or a sampling or portion of abnormality (core and incisional biopsy) for microscopic examination in order to diagnose a problem.

"BiRads"means Breast Image Reporting and Data System.

"Breast and Cervical Cancer Program Treatment Act (BCCPTA)"means a Medicaid plan amendment creating a new categorically needy group consisting of women screened for breast and /or cervical cancer under the BCCEDP and found to be in need of treatment.

"Breast carcinoma in situ"means breast changes in which malignant cells are localized and confined to breast ducts or lobules and may press against adjoining breast tissue but have not penetrated or spread beyond the breast.

"BSE"means breast self-examination. This is inspection and palpation of a woman's breasts by the woman herself.

"Cancer"means a general term for more than 100 diseases characterized by abnormal and uncontrolled growth of cells.

"CBE"means clinical breast examination. A complete examination of the breast and axilla with palpation by a health professional, including examination of the breast in both the upright and supine positions.

"Case management"means a program component of the Oklahoma Breast and Cervical Cancer Early Detection Program that involves establishing, brokering, and sustaining a system of available clinical and essential support services for all women enrolled in the program.

"Certified provider"means a healthcare professional who has signed a memorandum of understanding with the Oklahoma Breast and Cervical Cancer Early Detection Program certifying that the woman received breast or cervix screening, was found to be in need of treatment, and meets eligibility criteria for referral to the Medicaid Breast and Cervical Cancer Treatment Program.

"CLIA"means the Clinical Laboratory Improvement Act which establishes minimum quality standards for personnel and quality assurance methods which monitor patient test management and assess quality control, proficiency testing and personnel handling of laboratory and pathology specimens.

"Colpscopy"means examination of the cervix with a high-powered microscope.

"Creditable coverage"means any insurance that pays for medical bills incurred for the screening, diagnosis, or treatment of breast and cervical cancer. Creditable coverage includes, but is not limited to, group health plans, health insurance coverage consisting of medical care under any hospital or medical service policy, or health maintenance organization, Medicare Part A and B, Medicaid, Armed Forces Insurance, and/or state health risk pool. A woman having creditable coverage will not be eligible to apply for Medicaid coverage of breast and cervical cancer screening or treatment.

"Creditable coverage circumstances"means there are some circumstances where a woman has creditable coverage but is not actually covered for treatment of breast or cervical cancer. In an instance such as pre-existing condition exclusions, or when the annual or lifetime limit on benefits has been exhausted, a woman is not considered to have creditable coverage for this treatment. If the woman has

limited coverage, such as limited drug coverage or limits on number of outpatient visits or high deductibles, the woman is still considered to have creditable coverage and is not eligible to apply for Medicaid coverage of breast and cervical cancer treatment. If the woman has a policy with limited scope of coverage such as only dental, vision, or long term care, or a policy that covers only a specific disease or illness, she is not considered having creditable coverage, unless the policy provides full coverage for breast and cervical cancer treatment. For the purposes of this program eligibility for IHS or Tribal health care is not considered creditable coverage.

"Diagnostic mammography"means radiologic examination used to evaluate a patient with a breast mass(es), other breast signs or symptoms (spontaneous nipple discharge, skin changes, of special cases such as a history of breast cancer with breast conservation or augmented breasts).

"FDA"means the United States Food and Drug Administration. The FDA certifies that a mammography facility meets minimum quality standards for personnel, equipment, and record keeping.

"Follow-up"means a program component of the Oklahoma Breast and Cervical Cancer Early Detection Program that involves a system for seeking information or reviewing an abnormal condition, rescreening, and/or recall for annual visits.

"Infrastructure"means sufficient staff and adequate supporting systems to plan, implement, and evaluate the program components of the Oklahoma Breast and Cervical Cancer Early Detection Program.

"In need of treatment"means an abnormal screen determined as a result of a screening for breast and/or cervical cancer under the Oklahoma Breast and Cervical Cancer Early Detection Program.

"Medicaid"means a combined federal and state payment source for health care benefits for certain eligible women who are disabled or who have dependent children. Health care benefits must be a part of the state plan for health services.

"Medicare"means a federal payment source for health benefits for certain eligible women.

"Minimum data elements"means a set of standardized data elements developed by the Centers for Disease Prevention and Control, Division of Cancer Prevention and Control, to ensure that consistent and complete information on screening location, demographic characteristics, screening results, diagnostic procedures, tracking and follow-up, and treatment information are collected on women screened and/or diagnosed with federal funding.

"Never screened"means women who have never been screened for breast and/or cervical cancer or who do not utilize preventive health services.

"Oklahoma Breast and Cervical Cancer Early Detection Program (BCCEDP)"means a comprehensive breast and cervical cancer program established and funded under Title XV of the federal Public Health Service Act with delegated responsibility of implementation and evaluation to the Centers for Disease Control and Prevention, Division of Cancer Prevention and Control, and administered by the Oklahoma State Department of Health.

"Oncologist"means a specialist who treats or studies the physical, chemical, and biologic properties and features of neoplasms, including causation, pathogenesis, and treatment.

"Outreach"means a program component of the Oklahoma Breast and Cervical Cancer Early Detection Program that involves recruiting high-risk populations, targeted populations or persons who never or rarely utilize preventive health services.

"Pap smear"means a screening test for the detection of abnormal cells from the cervix. The Pap smear can detect abnormal cells or pre-cancerous cells before cancer develops.

"Pathologist"means a specialist in pathology; a physician who practices, evaluates, or supervises diagnostic tests, using materials removed from living or dead patients, and functions as a laboratory consultant to clinicians, or who conducts experiments or other investigations to determine the causes or nature of disease changes.

"Physician"means any person who has completed a course of medical training, has received a medical degree and is licensed by the Oklahoma State Board of Medical Licensure or the Oklahoma Osteopathic Board of Examiners to practice medicine.

"Pre-cancerous lesions"means poorly differentiated cells that could progress to cancer.

"Program and fiscal management"means a program component of the Oklahoma Breast and Cervical Cancer Early Detection Program that conducts planning, organizing, directing, coordinating, managing, budgeting, and evaluating program activities

"Radiologist"means a physician skilled in the diagnostic and/or therapeutic use of x-rays and other forms of radiant energy.

"Rarely screened"means women who have not had breast and/or cervical cancer screening within the last five (5) years.

"Referral"means a program component of the Oklahoma Breast and Cervical Cancer Early Detection Program that involves directing women with abnormal screens to appropriate resources for action.

"Screening mammography"means x-ray of the breasts of asymptomatic women in an attempt to detect abnormal lesions of the breast when they are small, non-palpable, and confined to the breast.

"Service delivery"means providing either directly or through contractual arrangements for comprehensive breast and cervical cancer services of screening, diagnosis, and treatment through client tracking of screening intervals, timeliness of diagnosis and timeliness of treatment.

"Surgeon"means a physician who treats disease, injury, and deformity by operation or manipulation.

"Surveillance"means a program component of the Oklahoma Breast and Cervical Cancer Early Detection Program that involves the systematic collection, analysis, and interpretation of health data.

"Ultrasound of the breast"means the use of sonic energy to produce a pictorial representation of the internal structure of the breast. The image is produced by pulse-echo techniques

with detection and display of tissue interfaces rather than densities.

310:566-1-3. Agreement with Oklahoma Health Care Authority

The Oklahoma State Department of Health, the Oklahoma Health Care Authority, and the Department of Human Services have coordinated to develop procedures for women who are residents of Oklahoma, are in need of treatment, meet eligibility criteria. (BCCPTA)

310:566-1-4. Eligibility for Breast and/or Cervical Cancer Treatment (BCCPTA)

A woman who is an Oklahoma resident is able to apply for Medicaid coverage for treatment of breast or cervical cancer including breast carcinoma in situ or precancerous conditions of the cervix if:

(1) She is currently enrolled in the Oklahoma Breast and Cervical Cancer Early Detection Program (OKBCCEDP). To be considered enrolled in OKBCCEDP she must meet program age guidelines and have at least one of the basic screening services (pap test or CBE) paid by the OKBCCEDP and be in need of treatment due to an abnormal screen which is suspicious for breast or cervical cancer, and/or breast and cervical pre-cancerous conditions; or

(2) She is referred by an OKBCCEDP certified provider and is documented to be in need of treatment due to an abnormal screen which is suspicious for either breast or cervical cancer, and/or breast or cervical pre-cancerous condition.

(3) Have a family income that is at or below one hundred eighty-five percent (185%) of the federal poverty income level.

(4) Have not attained the age of sixty-five (65) years.

(5) Have no or have inadequate creditable health insurance or health benefit coverage.

(6) Is an Oklahoma and US Citizen or qualified alien.

(7) Has an abnormal breast or cervical cancer screening test result, or has been diagnosed with breast or cervical cancer and is still in need of treatment.

310:566-1-5. Coverage for treatment (BCCPTA)

Medicaid shall provide full payment coverage throughout the period of time required for treatment of the individual's breast or cervical cancer. Reimbursement rates for the treatment of breast and cervical cancer will be consistent with established Medicaid rates.

310:566-1-6. Loss of eligibility (BCCPTA)

A woman will no longer meet eligibility criteria for this program when her health care provider deems she is cancer free and will not require continued cancer treatment and/or therapy.

310:566-1-7. Criteria for certified screening provider

Physicians (M.D., D.O.), advanced practice nurses, physician assistants, and Certified Nurse Midwives who have signed a memorandum of understanding with the Oklahoma Breast and Cervical Cancer Early Detection Program can be a certified provider. The provider in signing the memorandum of understanding certifies that the woman received breast or cervix screening, was found to be in need of treatment, and meets eligibility criteria for referral to the Medicaid Breast and Cervical Cancer Treatment Program. Eligibility criteria includes that the woman is between the ages of 19 and 64, is a US Citizen or qualified alien and a resident of Oklahoma, has an income at or below 185% of the current Federal Poverty Level, has provided a social security number, does not have creditable coverage for breast or cervical cancer treatment, and has an abnormal finding following a breast or cervical cancer screening service. Suspicious findings for breast includes clinical breast exam findings of: palpable breast mass, breast dimpling, nipple retraction, bloody nipple discharge, palpable lymph nodes around clavicle or axilla, nipple erythema and scaliness, a mammography result of BiRads 4 (Suspicious Abnormality suggesting need for biopsy) or 5 (Highly Suggestive of Malignancy) (ICD 793.8), breast biopsy result of Ductal Cancer in situ, Lobular Cancer in situ (ICD 233.0), or breast or lymph node (or other) biopsy result of breast cancer. Suspicion of cervical cancer is a Pap test result of Atypical Squamous Cells (ASC), Atypical glandular cells (AGC), Low-grade squamous intraepithelial lesions (LSIL), or High-grade squamous intraepithelial lesions (HSIL) (ICD 622.1), leukoplakia of the cervix, (ICD 622.2), or cervical biopsy result of Cervical intraepithelial neoplasia II or III, or Cancer in situ (ICD 233.1). Certified screening providers need not be BCCEDP contractors, and will not be reimbursed by the BCCEDP nor by Medicaid for the screening services provided to the woman.

SUBCHAPTER 3. SCREENING SERVICE PROVISION

310:566-3-1. Service provision of the Oklahoma Comprehensive Breast and Cervical Cancer Early Detection Program

The Oklahoma Comprehensive Breast and Cervical Cancer Early Detection Program shall include the following key components:

(1) Program and Fiscal Management will be conducted by ensuring strategic planning, implementation, coordination, integration, and evaluation of all programmatic activities and administrative systems, as well as the development of key communication channels and oversight mechanisms to aid in these processes. Program Management will ensure that infrastructure adequately supports service delivery.

(2) Service Delivery directly provided or provided through contractual arrangements of specific and appropriate clinical procedures to detect breast and/or cervical abnormalities for women enrolled in the Oklahoma Breast and Cervical Cancer Early Detection Program. In the

Oklahoma Breast and Cervical Cancer Early Detection Program appropriate clinical screening procedures include clinical breast examinations (CBE), mammograms, screening pelvic exams and pap tests. Appropriate clinical diagnostic procedures include diagnostic mammography, ultrasound of the breast, surgical consultation, biopsy of the cervical or breast, colopscopy of the cervix, and electrical loop excisional biopsies of the cervix. Women should receive patient education directed toward breast self-examination (BSE) and risk reduction.

(3) Referral, Tracking and Follow-up will be conducted utilizing a data system to monitor an enrolled woman's receipt of screening/re-screening, diagnostic, and treatment procedures. The enrolled woman will be notified of the results of the service delivery whether the results are normal, benign, or abnormal. The data system will provide tracking of appropriate and timely clinical services following an abnormal test result and/or diagnosis of cancer. Enrolled women with abnormal Pap smears or breast screening procedures will be provided comprehensive referral directing the woman to appropriate additional diagnostic or treatment services. The comprehensive referral will be written. Follow-up will be conducted to seek information about whether services were timely, completed, or met.

(4) Case Management will be provided and involve establishing, brokering, and sustaining a system of available clinical (screening, diagnostic, and treatment) and essential support services for all Oklahoma Breast and Cervical Cancer Early Detection Program enrolled women, and assisting clients diagnosed with cancer through the Program to obtain needed diagnostic and treatment services.

(5) Quality Assurance and Improvement will be conducted utilizing established standards, systems, policies and procedures to monitor, assess and identify practical methods for improvement of the program and its components. Quality assurance tools will include utilizing FDA and ACR minimum standards for mammography facilities and CLIA minimum standards for cytopathology and pathology laboratories. Quality assurance contributes to the identification of corrective actions to be taken to remedy problems found as a result of investigating quality of care.

(6) Professional Education will be provided through a variety of channels and activities that enable professionals to perform their jobs competently, identify needs and resources, and contribute to ensuring that health care delivery systems provide positive clinical outcomes.

(7) Population Based Public Education and Outreach will be provided that involves the systematic design and delivery of clear and consistent messages about breast and cervical cancer and the benefits of early detection, using a variety of methods and strategies to reach priority populations. Outreach activities should focus on women who have never been screened or rarely been screened and work toward the removal of barriers to care, i.e.: the need for childcare, respite care, interpreter services and transportation through collaborative activities with other community organizations.

(8) Coalitions and Partnerships will be developed to bring together groups and individuals who establish a reciprocal agreement for sharing resources and responsibilities to achieve the common goal of reducing breast and cervical cancer mortality.

(9) Surveillance will be conducted utilizing continuous, proactive, timely and systematic collection, analysis, interpretation and dissemination of breast and cervical cancer screening behaviors, incidence, prevalence, survival, and mortality of breast and/or cervical cancer. Epidemiological studies will be conducted utilizing Minimum Data Elements and other data sources to establish trends of disease, diagnosis, treatment, and research needs. Program planning, implementation, and evaluation shall be based on the epidemiological evidence.

(10) Evaluation will be conducted through systematic documentation of the operations and outcomes of a program, compared to a set of explicit or implicit standards or objectives. The Oklahoma Breast and Cervical Cancer Prevention and Treatment Advisory Committee shall review the service delivery contractual agreements as to their outcomes. The Oklahoma Breast and Cervical Cancer Prevention and Treatment Advisory Committee shall make recommendations based on the evaluation in its annual report.

310:566-3-2. Eligibility criteria for the early detection program

(a) Women who are Oklahoma residents and who meet the following criteria are eligible for breast and cervical cancer early detection services:

(1) Women 19-65 years of age whose incomes are less than 185% of poverty and lack creditable health insurance coverage are eligible with the following criteria.

(2) Women 50-65 years of age will be the priority population to receive annual breast and cervical cancer screening.

(3) Women 40-49 years of age who are symptomatic of breast cancer will receive breast cancer diagnostic work-up and cervical cancer screening if appropriate.

(4) Women 35-65 years of age with an intact cervix who have not had a pap test in 5 or more years will be the priority population to receive cervical cancer screening.

(5) Women 35-65 years of age who have had a hysterectomy due to cervical cancer or pre-cancerous conditions of the cervix may receive Pap smears.

(6) Women 19-35 years of age will be eligible for cervical cancer screening depending on appointment availability.

(b) All enrolled women will receive annual recall for screening.

(c) Women who have creditable medical insurance, including Medicare Part B and Medicaid shall be referred to their primary care provider or facility for services.

310:566-3-3. Criteria for screening services contractors

Criteria for contractors to provide services include the following:

(1) Contractors shall ensure approved services are performed by board certified radiologists, pathologists, GYN physicians, surgeons, and oncologists.

(2) Contractors agree that procedures and services provided shall not exceed the amount that would be paid under Medicare Part B rates of Title XVIII of the Social Security Act.

(3) Mammography contractors shall ensure current FDA certification and ACR accreditation; be Medicare and Medicaid approved facilities; their participating physicians/providers be Medicare and Medicaid approved providers; and their services must be delivered with personnel and equipment in accordance with the Mammography Quality Standards Act.

(4) Mammography facilities shall utilize the Breast Image Reporting and Data System (BIRADS) and follow the ACR guidelines for mammography report content.

(5) A board certified radiologist must be immediately available to determine selection of views, and readings when a diagnostic mammogram is performed.

(6) Cytology and pathology specimens obtained shall be submitted to a CLIA approved laboratory for processing. The laboratory will provide cytological reading and analysis of cervical and vaginal Pap smears by Certified/Registered Cytotechnologists. And cytology (Pap) smears will be reported using the current Bethesda classification system. The laboratory will provide board certified pathologists or experienced certified cytotechnologists to re-screen all Pap smears with specified abnormal diagnosis. The Laboratory will provide surgical pathology analyses and readings of cervical and breast biopsies.

(7) Contract physicians shall practice according to the current standards of medical care for breast and cervical cancer early detection, diagnosis and treatment.

(8) Service delivery can be provided by a variety of settings. Service delivery must include:

(A) Providing screening services for a specific geographic area.

(B) Providing a point of contact for scheduling appointments.

(C) Providing age and income eligibility screening.

(D) Providing comprehensive breast and cervical cancer screening to eligible women.

(E) Providing referral and follow-up for women with abnormal screening results.

(F) Providing required reporting system for screening and follow-up activities.

(G) Providing population based education, out-reach, and recruitment activities.

[OAR Docket #05-1077; filed 6-1-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 620. CERTIFICATE OF NEED STANDARDS FOR HEALTH CARE FACILITY ACQUISITIONS

[OAR Docket #05-1078]

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These proposed amendments make the rules consistent with the Long Term Care Certificate of Need Act, Title 63 O.S. Section 1-850 et seq., which was changed pursuant to Enrolled House Bill No. 2723 effective June 4, 2004. The amendments remove provisions that contradict or unnecessarily repeat the new law. A citation to a section of law is corrected.

Additionally, requirements for proof of an applicant's financial resources are modified to ensure that the financial information submitted is true, correct and complete.
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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 11, 2005:

SUBCHAPTER 1. GENERAL

310:620-1-3. Applicability [REVOKED]

~~(a) **Types of Acquisitions.** Transactions subject to review under the standards of Subchapter 3 of this Chapter include any acquisition specified in 63 O.S. Section 1-852.B.~~

~~(b) **Exemption from review.** A transaction shall not be subject to review under the standards of Subchapter 3 of this Chapter if it is limited to the following:~~

~~(1) Acquisition of real estate only, with no interest or control whatever in the health care facility operated thereon;~~

~~(2) A transfer from one entity owned by a shareholder or shareholders, to another entity owned by the same shareholder or shareholders;~~

~~(3) Reversion of facility ownership or operation to a previous owner or operator if:~~

~~(A) The reversion takes place pursuant to the expiration or termination of a lease or purchase agreement previously approved by the Department as part of a Certificate of Need application, or it takes place pursuant to the order of a court of competent jurisdiction;~~

~~(B) The person to whom the ownership or operation reverts was previously the facility's licensed operator, was in good standing with the Department, and did not relinquish ownership or operation to avoid an administrative penalty or other sanction; and~~

~~(C) The transaction is not a court-ordered receivership;~~

~~(4) A change of stock or interest that:~~

~~(A) Is less than 50% of the common stock or partnership interest;~~

~~(B) Does not give the acquiring party control of a percentage of stock greater than any other stockholder or equal to the other single largest stockholder; and~~

~~(C) Does not give the acquiring party control of a percentage of partnership interest greater than any other partner or equal to the other single largest partnership interest;~~

~~(5) A change in an applicant's board, officers or active management, if:~~

~~(A) The change occurs no sooner than six months after the applicant has finalized the acquisition of the facility; and~~

~~(B) The person added to the board, officers, or management complies with 63 O.S. Section 1-853.F and OAC 310:4-1-7.1; or~~

~~(6) A change in the board, officers or management of the owner, licensee or manager if the person being added does not have authority as an individual to adopt or substantially influence governing authority policies that affect the facility's financial performance or quality of care.~~

SUBCHAPTER 3. STANDARDS

310:620-3-1. Financial

The applicant shall provide ~~documentation~~proof of sufficient financial resources to complete the acquisition and to ~~ensure maintaining the~~maintain services and staffing ~~adequate to~~that meet licensure standards for at least twelve (12) months following acquisition.

(1) **Financial ~~documentation~~proof for acquisition.** ~~Documentation~~Proof of sufficient financial resources to complete the acquisition shall be provided in the following forms, as applicable:

(A) For conventional, bank, seller-carried, third party, or bond financing, a statement of the proposed principal amount, interest rate and repayment terms, ~~attested~~and that the applicant has access to the required funds, signed under oath by a representative of the lending institution, seller, third party, or authority;

(B) For equity financing:

(i) ~~A~~An attested balance sheet for the acquiring party that is dated within the past ~~three (3)~~twelve (12) months and that reflects cash or cash equivalents sufficient to fund the project; or

(ii) A certificate of deposit or other proof that funds are available and have not been pledged for some other purpose.

(C) For financing or other funding from or guaranteed by a third party that is not duly authorized or chartered as a bank:

(i) ~~A~~An attested balance sheet, certificate of deposit or other attested proof that is dated within the past ~~three (3)~~twelve (12) months for the third party, unless the third party is a licensed insurer or surplus lines insurer, the United States of America, a state of the United States of America, or an agency or instrumentality thereof; and

(ii) Copies of organizational documents and contracts necessary to substantiate the relationship between the applicant and the third party~~; and~~.

(~~D~~2) **Projected Budget.** ~~For all applications,~~Each application shall include a projected budget of revenues and expenses for the first twelve (12) months of operation of the facility after the anticipated issuance of the Certificate of Need. The Department may require the applicant to justify the difference between the applicant's projected budget and the facility's expenses and revenues as reported to the Oklahoma Health Care Authority pursuant to 56 O.S. Section 2002 or OAC 317:30-5.

(~~2~~3) **Balance sheets.** All balance sheets shall include ~~information sufficient to assess the net value of each asset and shall identify any claims which would affect the asset's use as collateral.~~ a release authorizing the Department to verify the financial information submitted in the certificate of need application. The Department may make independent inquiry into the financial condition of the applicant.

(~~3~~4) **~~Reserves~~Financial proof for services and staffing.** To ensure the maintenance of services and staffing ~~adequate to meet the needs of all residents~~, the applicant shall ~~document~~ prove the availability of reserves equivalent to the average monthly projected expenses, in addition to funds needed to complete the acquisition. The amount of the average monthly expenses shall be calculated based on a per-month average of the projected

twelve-month budget of revenues and expenses submitted with the application. ~~Documentation~~Proof of the availability of reserves shall conform to the following:

(A) For reserves to be provided or maintained through letter of credit, line of credit, or conventional, bank or bond financing:

(i) A statement of the proposed principal amount, interest rate and repayment terms, ~~attested~~and that the applicant has access to the required funds, signed under oath by a representative of the lending institution or authority;

(ii) A statement of provisions for terminating or rescinding a letter of credit or line of credit;

(B) For reserves to be maintained through the applicant's equity or net worth:

(i) ~~A~~An attested balance sheet that is dated within the past ~~three~~twelve (12) months for the acquiring party and that reflects cash or cash equivalents sufficient to meet the one-month reserves requirement; or

(ii) A certificate of deposit or other proof that funds are available and have not been pledged for some other purpose;

(C) For reserves to be funded or guaranteed by a third party that is not duly authorized or chartered as a bank:

(i) An attested balance sheet, certificate of deposit or other attested proof that is dated within the past ~~three~~ twelve (12) months for the third party, unless the third party is a licensed insurer or surplus lines insurer, the United States of America, a state of the United States of America, or an agency or instrumentality thereof; and

(ii) Copies of organizational documents and contracts necessary to substantiate the relationship between the applicant and the third party.

(5) **Attested documents.** For the purposes of this section, the term "attest" shall have the meanings as defined in 59 O.S. Supp. 2004, Section 15.1A.

310:620-3-3. Experience

If the applicant has less than sixty (60) months experience in health care facility operation immediately preceding the filing of the application, the applicant shall provide a plan which details how experienced and competent staffing and leadership shall be responsible for the facility operations. The operational plan shall include:

(1) Organizational papers, bylaws, articles of incorporation, partnership agreements, business plans, or other documents which confirm the applicant's claims about the policies, rights, duties and responsibilities of the applicant and its principals;

(2) Statements from the person or persons who shall fill management or administrative staffing and leadership positions, including but not limited to the director of nursing, the medical director, the administrator, and the applicant's policy body, with said statements to specify the minimum amount of time those persons shall spend working at the facility; and

(3) A statement from the applicant agreeing to advise the Department prior to any change in the staffing and leadership during the first six months of operation after the acquisition is finalized~~; and~~.

(4) A statement from the applicant agreeing that any person added to or replacing another person in the staffing or leadership plan during the first six months of operation shall comply with 63 O.S. Section 1-853.F and OAC 310:4-1-7.1.

310:620-3-4.1. Description of notice to residents and families

The form used to notify residents and families as required in 63 O.S. Section ~~1-852.G~~1-852(I) requires the following information:

(1) The name of the applicant;

(2) The name and location of the facility to be acquired;

(3) A brief explanation of the public's opportunity to participate in the review of the certificate of need application;

(4) The location where and the times when the certificate of need application shall be available for public inspection; and

(5) The address and deadline for submitting written comments to the Department.

[OAR Docket #05-1078; filed 6-1-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 630. CERTIFICATE OF NEED STANDARDS FOR LICENSED NURSING FACILITY BEDS

[OAR Docket #05-1079]

RULEMAKING ACTION:
PERMANENT final adoption
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310:630-1-3. [AMENDED]
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ANALYSIS:
These proposed amendments make the rules consistent with the Long Term Care Certificate of Need Act, Title 63 O.S. Section 1-850 et seq., which was changed pursuant to Enrolled House Bill No. 2723 effective June 4, 2004. The amendments remove a provision that contradicts the new law. A citation to a section of law is corrected.
CONTACT PERSON:
Darlene Simmons, Director, Health Facility Division, Health Resources Development Service, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-9444, x57267; facsimile: 405-271-7360; email: darlene@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 JULY 11, 2005:

310:630-1-3. Standards

(a) The applicant shall demonstrate that existing licensed nursing facility beds are not and will not be adequate in the service area described in 310:630-1-2, based on the need of the population.

(1) The applicant shall demonstrate that there are persons who need services in the area but are unable to obtain those services due to the inadequacy of existing LNF facilities in the area.

(2) The applicant shall demonstrate the probable impact of the proposed beds on the ratio of LNF beds to the number of persons age 75 and over statewide. The applicant must show that the proposed new beds likely will not cause the statewide ratio to exceed 179 beds per 1000 persons age 75 and over, and that the project is consistent with the achievement of an optimal target ratio of 152 beds per 1000 persons age 75 and over.

(3) The applicant shall demonstrate the probable impact of the proposed beds on the ratio of LNF beds to the number of persons age 75 and over in the service area. No application shall cause an excessive increase in the bed to population ratio of a service area. The determination of whether or not an increase is excessive shall be based on the percentage of increase a project will cause in an area's bed to population ratio, and on a comparison of the area's bed to population ratio against the statewide ratio.

(4) The most recent population data published at the time the application is filed shall be used. The source of population projections for current and future years shall be based on year 2000 census data as published by the Oklahoma Department of Commerce.

(5) If the applicant proposes a special service area under 310:630-1-2, then the applicant shall demonstrate that the target population will have access to the proposed services through public or private transportation.

(b) The applicant shall demonstrate that alternative or substitute services are not and will not be available or are and will be inadequate to meet the needs of the population.

(1) An overall mean occupancy rate of 85% should be maintained in LNF beds in the Service Area described in OAC 310:630-1-2.

(A) This mean shall be based upon data from all similarly-licensed facilities in the Service Area using monthly reports filed with the Department of Health, taking into consideration the following:

(i) any specialized facility for mentally retarded persons or intermediate care facility for mentally retarded persons in the area shall be excluded;

(ii) in the case of a nursing facility application, any hospital-based skilled nursing unit shown to serve a different health service need shall be excluded;

(iii) in the case of a hospital-based skilled nursing unit application, any nursing facility shown to serve a different health service need shall be excluded;

(iv) in the case of a facility demonstrating a special service area under OAC 310:630-1-2(b), each facility not shown to be adequate or appropriate to meet the needs of the facility's special population shall be excluded.

(B) The mean shall be calculated using data for the most recent six month period for which reports are published by the Department of Health, as of the first day of the month during which an application is initially filed.

(i) Beds reserved for residents who were temporarily absent from facilities for hospitalization or other therapeutic purposes shall be considered to have been occupied.

(ii) The area bed capacity used to calculate the occupancy rate shall be reduced by the number of beds that are not available because rooms licensed for multiple occupants have been reserved for single occupants throughout the six-month period.

(C) In determining the service area's conformity to the occupancy goal specified in this subsection, the Department shall investigate the causes for low-occupancy operation of other facilities in the service area. The Department shall exclude such low-occupancy facility from the service area calculations if the facility has been in operation continuously under the current licensee for twenty-four (24) or more months and:

(i) The facility's state license or federal certification during the sixty (60) months preceding the filing of the application has been revoked, rescinded, canceled, terminated, involuntarily suspended or refused renewal;

(ii) The facility has a history of noncompliance as defined in ~~63:1-853.F.2 and OAC 310:4-1-7.1~~63:1-851.1(6); or

(iii) The facility has not complied with all lawful orders of suspension, temporary management, or administrative penalty issued by the Department, another state agency, or by the federal Health Care Financing Administration;

(iv) The facility's owner, operator, manager, or medical director has been convicted of a criminal offense related to the operation or management of a long-term care facility; or

(v) The facility has been assessed an administrative penalty above the level of deficiency with one or more of the following unfavorable factors:

(I) The administrative penalty included a citation of immediate jeopardy or actual harm to a resident;

(II) The circumstance cited in connection with a civil money penalty or other administrative penalty resulted in the death of a resident; or

(III) Multiple civil money penalties, denials of payment, or other administrative penalty have been assessed based on findings of substandard quality of care, actual harm, or potential for more than minimal harm, at the facility within the preceding 60 months.

(2) The applicant shall demonstrate that the proposed beds are needed in addition to any beds previously approved under the State Certificate of Need laws but not yet in operation in the service area.

(3) The applicant's demonstration shall include consideration of the adequacy of such alternative services as residential care facilities, Eldercare, home health care, hospice, assisted living and adult day care.

(c) The applicant shall demonstrate adequate financial resources for the new or expanded long-term care services and for the continued operation thereof.

(1) Reimbursement shall be structured to realistically provide for care and services to persons living in the service area.

(2) The proposed charges shall be in line with the prevailing rate of similar institutions and services within the health service area.

(3) The projected utilization rates shall be sufficient to maintain cost-effectiveness.

(4) The projected cash flow shall give the proposed project financial viability within three years.

(5) The relationship of the institution's assets to liabilities shall not be increased by the proposed project to the point of threatening the financial viability of the institution.

(6) The applicant shall supply a cost/benefit analysis to justify the cost-effectiveness of the proposed project.

(d) The applicant shall demonstrate that sufficient personnel will be available to properly staff and operate the proposed new or expanded long-term care service.

(1) A proposal to provide new or expanded long-term care service must provide assurances that the appropriate numbers and types of staff will be available to comply with licensure requirements.

(2) Professional and paraprofessional staffing of new or expanded long-term care services must not compromise the staffing of existing long-term care services.

(3) The applicant shall disclose all current and prior experience in the operation of health care facilities, giving names of facilities, locations, and dates. If the applicant has less than sixty (60) months experience in health care facility operations immediately preceding the filing of the application, then the applicant shall:

(i) Provide a plan which details how experienced and competent staffing and leadership, including but not limited to the director of nursing, the medical director, the administrator, and the applicant's policy body, will be placed in charge of facility operations; and

(ii) Agree to advise the OSDH, prior to any change in the staffing and leadership during the first six months of operation of the new or expanded facility~~; and~~

~~(iii) Agree that any person added to the board, officers, or management shall comply with 63 O.S. Section 1-853.F and OAC 310:4-1-7.1~~.

[OAR Docket #05-1079; filed 6-1-05]

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

[OAR Docket #05-1080]

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310:641-9-3. [NEW]
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ANALYSIS:
These amendments are offered in order to clarify exceptions to staffing requirements; increase licensure renewal and reinstatement fees; permit the Department to deny new ambulance service licenses to persons and corporations whose licenses have been revoked in the past; clarify staffing exemptions; allow certain allied health personnel to serve as supplemental staff; update equipment requirements, require stretcher aid vans to hold dispatch screening agreements, display a company logo on vehicles and expand their required reporting; clarify medical director licensure requirements; expand sanitation requirements for facilities and vehicles; update correction order requirements; remove the requirement that certain agencies contact the trauma transfer center before transporting; allow voluntary First Response Agency certification inspections and re-inspections to be made at the discretion of the Department; update agency file requirements; update individual licensure and re-licensure requirements; clarify the scope of practice when not under medical supervision; increase reciprocity fees and eliminate "temporary licensure"; expand requirements for training institutions; and make permanent the trauma transfer center certification rules.
CONTACT PERSON:
R, Shawn Rogers, Director, Emergency Medical Services, Protective Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-4027; electronic mail: shawnr@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 JULY 11, 2005:

SUBCHAPTER 3. AMBULANCE SERVICES

PART 3. AMBULANCE SERVICES

310:641-3-11. Issuance of a ground ambulance license

(a) A license may be issued for basic life support, intermediate life support, paramedic life support, specialized mobile intensive care units, or stretcher aid vans.

(1) Basic life support means that the ambulance service vehicles are equipped with the minimum basic equipment, and staffed with at least one EMT-Basic on each request for emergency medical services.

(2) Intermediate life support means that the ambulance service vehicles are equipped with the minimum intermediate equipment, and staffed with at least one EMT-I on each request for emergency medical services~~.~~, except as specified in 310-641-3-15(a)(2).

(3) Paramedic life support means that the ambulance service vehicles are equipped with the minimum paramedic equipment, and staffed with at least one EMT-P on each request for emergency medical services~~.~~, except as specified in 310-641-3-15(a)(2).

(4) Specialized mobile intensive care is a special category of ambulance service licensed only to transport between medical facilities. These licenses are issued on a case by case basis when the Department finds the interest of the public can best be served. Examples of specialized care include, but are not limited to, neonatal care, coronary care, burn care. Specialized mobile intensive care does not pertain to vehicles, but rather a special group of patients. Pre-hospital or scene transportation is not permitted of specialized mobile intensive care ambulance services.

(b) The license shall be issued only for the name, service area (area of coverage), level, and type of service given in the application.

(c) The license is not transferable or assignable.

(d) The initial license period shall expire the second June 30th, following the date of issue. Subsequent renewal periods shall be twenty four (24) months, or two (2) years.

(e) A temporary license, not to exceed one hundred twenty (120) days and for one (1) time only, may be issued by the Department. A temporary license may be issued to an applicant who substantially meets all requirements and may be granted only for an area of Oklahoma that may otherwise be without ambulance service. Sole determination for a temporary license shall be made by the Department and based upon the following:

(1) The safety, need, and well-being of the public and general populace to be served by the ambulance service;

(2) The availability of personnel in the area, and equipment of the ambulance service;

(3) The financial ability of the applicant to meet the minimum standards of emergency medical services law;

(4) The number of estimated runs to be made by the ambulance service;

(5) The desire of the community(ies) to be served.

(f) The original, or a copy of the original, license shall be posted in a conspicuous place in the principal business office. If an office, or other public place is not available, then the license shall be available to anyone requesting to see the license, during regular business hours.

(g) The Department shall have the authority to upgrade or downgrade an advanced life support ambulance provider's license upon evidence that the license no longer meets existing license requirements for that level of care. Under no circumstance shall a downgrade be for less than basic life support, and during the time of a downgrade the service shall operate on State protocols. In order to return to a level of advanced life support, the service shall provide the Department written evidence that they now meet the requirements for a higher level

of care. A fee of fifty ($50.00) dollars shall be required for reinstatement.

310:641-3-12. Renewal of a ground ambulance license

The Department shall mail to all licensed ambulance services a "Survey/Renewal Form" in December, each year. This form shall be considered and utilized as a renewal application, if due. The "Survey/Renewal Form" along with proof of current workers' compensation and liability insurance shall be returned to the Department by January 31st each year.

(1) Upon receipt of a complete and correct renewal application, a renewal fee statement shall be mailed by the Department to each licensee in need of renewal.

(2) A non-refundable fee for the renewal of an ambulance service license shall be ~~fifty ($50.00)dollars~~one hundred dollars ($100.00), fifty dollars ($50.00) for each substation, plus ~~ten ($10.00)dollars~~twenty dollars ($20.00) for each vehicle in excess of two (2).

(3) An ambulance service license shall be renewed if:

(A) The ambulance service has applied for such renewal;

(B) The ambulance service has no outstanding deficiencies or is in need of correction as may be identified during inspection of the service, and;

(C) The proper fee has been received by the Department.

(4) An ambulance service license, if not renewed by midnight July 31st of the expiration year, shall be considered non-renewed. Thereafter a new application shall be required for the continuation of any such license, and the applicant shall be subject to initial application procedures. An extension may be granted by the Department for the purpose of renewal, subject to a determination by the Department of the following:

(A) The safety, need, and well-being of the public and general populace to be served by the ambulance service;

(B) The availability of personnel, equipment, and the financial ability of the applicant to meet the minimum standards of emergency medical services law;

(C) The number of estimated runs to be made by the ambulance service;

(D) The desire of the community(ies) to be served.

310:641-3-13. Denial of an initial or renewal license

(a) An application may be denied for any of the following reasons:

(1) The failure to meet standards set forth by statute or rule;

(2) A felony conviction of any person, member of the firm, partnership, corporation or the person designated to supervise the service; to include, but not be limited to, fraud, grand larceny, child abuse or other sexual offense(s), drug offense(s), or a conviction which might otherwise have a bearing on the operation of the service;

(3) Insufficient number of personnel to properly staff one vehicle on a twenty four (24) hour basis at the highest level of the service license;

(4) In urban areas, an insufficient number of vehicles and/or staff to respond to life-threatening emergency calls ninety percent (90%) of the time within eight (8) minutes;

(5) Insufficient financial resources~~, and~~;

(6) Falsification of Department required information;

(7) Ownership, management, or administration by principals of an entity whose license has been revoked; and

(~~7~~8) Any other reason(s) which in the opinion of the Department, may not be in the best interest of the public.

(b) An applicant shall be notified in writing within sixty (60) days, from the date the Department receives the application, of the granting or denial of a license or renewal. In the event of a denial, the specific reason(s) shall be noted, and an indication of the corrective action necessary to obtain a license or renewal shall be given, if applicable. A license application may be re-submitted, but each re-submission shall be considered an initial application.

310:641-3-14. Severance of action, amendment, and re-instatement

(a) The issuance or renewal of a license after notice of a violation(s) has been given, shall not constitute a waiver by the Department of its power to rely on the violation(s) for subsequent license revocation or other enforcement action which may arise out of the notice of violation(s).

(b) Any change in the name of the service, level, service area, or type of service shall necessitate an application to amend the license and shall be accompanied by a fee of ~~fifty ($50.00) dollars~~one hundred dollars ($100.00).

(c) If an existing license is placed on probation or suspension, a fee of one hundred ($100.00) dollars, in addition to any other provision of the action, shall be submitted prior to re-instatement of the license to full privilege.

310:641-3-15. Ground ambulance service - personnel staffing

(a) Each ground ambulance service, except for specialty care and stretcher aid vans, shall have on staff an adequate number of emergency medical personnel and a sufficient number of ambulances available in order to be en route to 90% of all emergency calls within five (5) minutes of the time the call is received in dispatch at the highest level of care for which the service is licensed.

(1) The request for emergency medical services shall be considered "received in dispatch" as soon as sufficient information has been received to allow appropriate response, i.e., location of the emergency and nature of the call.

(2) Staff licensed below the level of the ambulance service may be utilized provided ~~the request for service has been screened by a Department approved emergency medical dispatch system, or if the patient is to be transported from a higher to a lower level of care, or if the transport~~

~~is physician approved and scheduled in advance. No ambulance may be dispatched with less than a Basic level attendant.~~one or more of the following conditions have been met:

(A) The request for service has been screened by a Department approved emergency medical dispatch system, or

(B) The patient is to be transported from a higher to a lower level of care, or

(C) The transport is approved in writing by the transferring physician at a specified lower level of care and scheduled in advance.

(b) Under no circumstance during the transport of an ambulance patient shall the attendant be less than a licensed emergency medical technician basic;

(c) In addition to the requirement of licensed emergency medical technicians, each ground ambulance service shall have drivers who, at a minimum, are certified as a First Responder. All drivers of a ground ambulance service shall successfully complete an emergency vehicle operator course approved by the Department within 120 days of employment. Emergency vehicle operators shall successfully complete a refresher course approved by the Department every two (2) years.

(d) In an unique and unexpected circumstance, including a disaster, the minimum driver requirement may be altered to facilitate a transport of an ambulance patient. The attendant, who is in charge of the vehicle while a patient is on board, may request a law enforcement officer or a firefighter, familiar with the operation of an authorized emergency vehicle, to drive the vehicle. If this option is utilized, a written report of the circumstances, reason, and any other pertinent information regarding the call shall be forwarded to the Division within ten (10) working days. Abuse and/or re-occurring incidents of this nature shall require a reassessment of the service's staff and staffing patterns. The service may be required to obtain additional personnel or other action by the Department may result.

(e) Only emergency personnel authorized by this Act, except for a physician, shall be utilized by an ambulance service for pre- hospital, or on-scene, patient care and transport. In some cases, involving inter-hospital transfer of an ambulance patient(s), a physician, physician assistant (PA), nurse practitioner, respiratory care practitioner, registered nurse or licensed practical nurse may be required to assist the emergency medical technician because the medical care required exceeds the level of the ambulance service personnel. If this option is utilized, written orders by a physician, and/or documentation of orders given via radio or telephone contact with a physician, shall become a part of the ambulance patient run report.

PART 5. GROUND TRANSPORT VEHICLES

310:641-3-23. Equipment for ground transport vehicles

(a) Each ambulance vehicle, except for stretcher aid vans, shall carry the following:

(1) In addition to the on-board suction unit, a functioning portable suction apparatus with wide-bore tubing (1/4"), rigid and soft suction catheters for adults, children and infants, which may be electronically, manual or oxygen powered;

(2) A minimum of two (2) each, single use adult, pediatric and infant bag-valve mask resuscitators with an adult, child, and infant clear masks;

(3) Oropharyngeal airways, set or a minimum of one (1) of each size for adult (size 7,8,or 9), child (size 3,4,5,or 6), and infant (sizes 0,1,or 2), -- nasal pharyngeal airways are optional;

(4) Portable and wall mounted oxygen sets, with variable flow regulators and adequate length tubing, and an extra bottle of portable oxygen;

(5) A minimum of two (2) each adult, child, and infant size oxygen masks, and a minimum of two (2) adult nasal cannulas;

(6) Bandaging materials, as follows:

(A) Two (2) burn sheets, clean, wrapped, and marked in plastic bag does which not need to be sterile;

(B) Fifty (50) sterile 4"x4" dressings;

(C) Six (6) sterile 6"x8" or 8"x10" dressings;

(D) Ten (10) roller bandages, 2" or larger, such as kerlix, kling, or equivalent;

(E) Four (4) rolls of tape (1/2" and larger);

(F) Four (4) sterile occlusive dressings, 3" x 8" or larger;

(G) Eight (8) triangular bandages, and;

(H) One (1) pair of bandage scissors must be on the ambulance or must be a required personal carry item for the EMS crew.

(7) Fracture immobilization devices, as follows:

(A) One (1) traction splint for lower extremity, with limb support slings, padded ankle hitch, padded pelvic support, traction strap;

(B) Upper and lower extremity splints for joint above and below fracture (such as pneumatic, wire ladder, wood, cardboard);

(C) Short spine board or vest type immobilizer, including straps and accessories;

(D) Two (2) long spine board including straps and head immobilization device;

(E) Two (2) rigid or adjustable extrication collars in large, medium, small adult sizes, and pediatric sizes for children ages 2 years or older and one (1) infant collar. Collars shall not be foam or fiber filled.

(8) Miscellaneous medical equipment, as follows:

(A) Portable blood pressure set in adult, child, and infant sizes;

(B) Stethoscope;

(C) Obstetrical kit, ~~sterile~~ with towels, 4"x4" dressing, umbilical tape, bulb syringe, cord cutting device, clamps, sterile gloves, aluminum foil, and blanket;

(D) Universal communicable disease precaution equipment including gloves, mask, goggles, gown, and other universal precautions;

(E) Blood-glucose measurement equipment per local medical direction and Department approval;

(F) Semi-automatic advisory defibrillator (SAAD)

(9) Other mandatory equipment, as follows:

(A) Trash receptacle which shall include a sufficient number of replacement bags and a receptacle for containment of medical wastes that displays the "biological hazard" emblem.

(B) Two way radio communication equipment on VHF; with a minimum of 155.340 MHz for hospital communications.

(C) One (1) sturdy, lightweight, all-level cot for the primary patient;

(D) A crash stable side or center mounting cot fastener and/or anchorage assembly of the quick release type;

(E) At least three (3) strap type restraining devices (chest, hip, and knee), and compliant shoulder harness shall be provided per stretcher, cot, and litter (not less than two (2") inches wide, nylon, easily removable for cleaning, two (2) piece assembly with quick release buckles)

(F) Patient run reports;

(G) Two (2) fire extinguishers, mounted with quick release in cab and patient compartment (each dry powder, ABC, five (5#) pound);

(H) Two (2) operable flashlights;

(I) All ambulance equipment and supplies shall be maintained in accordance with OAC 310:641-3-60. Additionally, sterility shall be maintained on all sterile packaged items.

(J) Digital or strip type thermometers and single use probes.

(K) Six (6) instant cold packs.

(b) Intermediate equipment, in addition to the basic equipment-the ALS ambulance shall carry the following:

(1) Intravenous administration equipment in a sufficient quantity to treat multiple patients requiring this level of care;

(2) Intraosseous administration equipment if approved by local medical control;

(3) Appropriate quantities of sterile fluid as approved by local medical control;

(4) ~~Esophageal obturator airway, and at least two (2) each endotracheal tubes sizes 3.0 - 5.0 mm uncuffed and 5.5 - 8.0 mm cuffed, ten (10)cc syringe, and stylettes in both pediatric and adult sizes and forceps in adult and pediatric sizes~~Adequate advanced airway as per local medical control;

(5) Blood sampling equipment if approved by local medical control;

(6) One (1) Occupational Safety and Health Administration (OSHA) approved sharps container;

(7) Pulse oximetry device if approved by local medical control; and

(8) End tidal CO2 monitoring device.

(c) Paramedic equipment, in addition to the required basic and intermediate equipment, the ALS ambulance will carry the following:

(1) Cardiac monitor/defibrillator with printout, defibrillator pads, quick-look paddles, EKG leads, chest attachment pads. Telemetry capability is optional. Monitor must be re-calibrated every twelve months and;

(2) Drugs (pre-load when available) approved by medical control, including those which are compatible with the recommendations of the American Heart Association's Emergency Cardiac Care Committee, as reflected in the Advanced Cardiac Life Support and Pediatric Advanced Life Support guidelines. Expired medications shall be immediately removed.

(d) Extrication equipment shall be available for each ambulance service by either mutual aid assistance with a fire department, other ambulance service, rescue squad, or carried in total on the service's vehicle.

(1) All ambulance vehicles shall carry the following equipment:

(A) Three (3) reflectors (triangular) or battery powered warning lights;

(B) Two (2) OSHA approved hard hats, with goggles or face shield; and

(C) Gauntlet leather gloves, two (2) pair of heavy work gloves; and

(D) One (1) spring-loaded window punch.

(2) All ambulance services shall have available either on board the ambulance or through mutual aid agreement with a fire department rescue unit, the following extrication equipment:

(A) One (1) hammer (3# to 5# with 15" handle);

(B) One (1) fire ax, flat head

(C) One (1) crowbar, (51" pinch point)

(D) One (1) bolt cutter (minimum 18")

(E) One (1) power jack, portable, hydraulic or pneumatic, and one (1) spreader tool kit, hand powered, at least of four (4) ton capacity and one (1) air gun kit, air cutting tools, (250psi with cylinder and chisels); "Jaws of Life" may be substituted

(F) One (1) shovel, pointed blade

(G) One (1) tin snip, double action (at least 8")

(H) Two (2) ropes, synthetic, kernmantle (50' x 3/4")

(I) Protective goggles, one (1) per occupant

(J) Two (2) utility knives, curved blade

(K) Two (2) lights, portable, battery operated;

(L) One (1) blanket (large 5'x 6' for patient protection during extrication)

(M) Two (2) baling hooks;

(N) One (1) spring loaded window punch;

(O) Twelve (12) blocks, hardwood shoring, (2"x4"x12" blocks with rope handles);

(P) Four (4) blocks, hardwood cribbing, (4"x4"x12" blocks with rope handles);

(Q) Four (4) blocks, hardwood cribbing, (wedge shaped with rope handles);

(R) One (1) come-along (2 ton, chain type and two (2) pull chains, alloy steel, rescue type (10' at least with grab hooks and rings);

(S) Two (2) extrication straps, synthetic fabric, (9' with quick release buckles)

(T) One (1) loop sling, extrication, (1" wide nylon or equal x 6' circumference with closure ring)

(e) **Optional equipment:**

(1) Portable battery powered ventilator per local medical direction.

(2) Pneumatic anti shock garment (PASG), compartmentalized (legs and abdomen separate), control valves (closed/open), inflation pump per local medical direction.

PART 10. STRETCHER AID VANS

310:641-3-48. Stretcher aid van license

(a) **General.** The issuance of a license shall be in accordance with part 3 of this Subchapter.

(b) **Application.** In addition to meeting the requirements described at OAC 310:641-3-11, the applicant for stretcher aid van licensure shall be required to submit the following information along with an initial or renewal application:

(1) A map or narrative description which identifies the proposed service area;

(2) Evidence that the proposed service area is in an emergency medical service region, ambulance district, or municipality with a population in excess of three hundred thousand (300,000) people; ~~and~~

(3) The defined hours of operation for the service~~.~~; and

(4) An agreement demonstrating access to 24 hour per day emergency medical dispatch screening as required at 310:641-3-48.1(c).

310:641-3-48.1. Stretcher aid van services

(a) **Emergency transfers prohibited.** Stretcher aid van services are limited to providing non-emergency transfers of medically stable, non-emergent individuals who need to be transported in a reclining position on a stretcher or gurney but who do not require any monitoring equipment, medication other than oxygen and those other medications which are patient supplied and administered, or assistance during transfer. Stretcher aid vans are prohibited from conducting emergency transfers or providing transportation from the scene of an accident.

(b) **Hours of Operation.** Stretcher aid van services shall define the days and hours of operation during which transport services shall be available.

(c) **Centralized dispatch.** Each request for stretcher aid van service to a hospital (as defined by 63 O.S. Supp. 2000, Section 1-701) or ambulatory surgery center (as defined by 63 O.S. Supp. 2000, Section 2657) shall be screened for the clinical criteria specified at OAC 310:641-3-48.1(a) using a nationally recognized medical priority dispatch model. A certified medical dispatcher working through a regional emergency medical dispatch center shall conduct such screening. Patients requiring emergency transfer shall be referred to the appropriate licensed ambulance service. Patients requesting non-emergency transfer and meeting the definition of stretcher aid van patient as specified at OAC 310:641-3-2 shall be referred to the requested stretcher aid van service for transport. Each request for transport which does not identify a specific stretcher aid van service shall be referred to the next available stretcher aid van service on the basis of an established rotation.

(d) **Entry into the emergency system.** When the medical condition of a passenger suddenly changes which requires care to be rendered, the operator of the stretcher aid van service shall immediately divert to the nearest hospital and contact the regional emergency medical services system control to request assistance and then notify their base of operations. Appropriate emergency care shall be initiated and continued until an ambulance service has intercepted the transport, or the aid van has arrived at the hospital. If the stretcher aid van service is operating in an area in which no regional emergency medical services system control is active when an emergent episode occurs, the aid van shall contact the nearest ambulance service rather than regional system control.

(e) **Reports.** Each stretcher aid van service shall maintain a record of each patient transport including at least the patient's name, pickup location, destination, times, crew members and medical condition. Run reports shall be submitted to the Department as required.

(f) **Medications.** Stretcher aid vans are prohibited from carrying medications other than oxygen and those other medications which are patient supplied and administered.

310:641-3-48.2. Stretcher aid van vehicles

(a) Each stretcher aid van vehicle shall meet the requirements at OAC 310:641-3-22(a), (b), (c), and (e).

(b) Each vehicle shall have sufficient room for two (2) attendants and appropriate equipment to properly secure the passengers and stretcher or gurney type apparatus to prevent injury or aggravation of an existing medical condition. The stretcher or gurney and mounting device(s) shall meet or exceed current KKK-1822 specifications.

(c) Each stretcher aid van shall be equipped with side and rear mounted loading lights.

(d) Each stretcher aid van shall have the capability for communications with dispatch bases and receiving facilities, and the ability to contact emergency services as necessary.

(e) The sanitation requirements in part 13 of this Subchapter shall apply to each stretcher aid van vehicle.

(f) Each stretcher aid van shall display exterior markings identifying the vehicle as a stretcher aid van to include at least the business name or logo and the telephone number.

PART 11. MEDICAL CONTROL

310:641-3-50. Requirement

(a) While performing with a licensed ambulance service and/or a certified first response agency, emergency medical personnel shall perform authorized procedures, which may not exceed the level of license or certification.

(b) Each licensed ambulance service and/or certified first response agency shall have a physician medical director who is a fully licensed, non-restricted doctor of medicine (M.D.) or a

doctor of osteopathy (D.O.) in the State of Oklahoma. Medical direction for a certified first response agency shall be provided by or approved by the sponsoring licensed ambulance service. The Department shall be notified within twenty four (24) hours of any lapse of medical direction by the respective agency.

(1) The physician medical director of an air, ground, specialty care ambulance service and/or first response agency based in another state shall not be required to be licensed to practice in the State of Oklahoma, but shall be fully licensed in good standing in the home state of that air, ground, or specialty care ambulance service and/or certified first response agency.

(2) The physician medical director for an ambulance service and/or first response agency operated by the federal government shall be fully licensed in good standing in Oklahoma or another state. If not licensed in Oklahoma, the physician shall be actively employed by the federal agency responsible for the operation of the ambulance service or first response agency.

(c) The physician director shall:

(1) Demonstrate appropriate training and experience in adult and pediatric emergency medical services. Demonstrated training and experience may include appropriate board certification or successful completion of training programs such as Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS), and Advanced Trauma Life Support (ATLS) or other equivalent training.

(2) Be familiar with the design and operation of pre-hospital emergency medical services systems, and knowledgeable about the capabilities of the different levels of licensed personnel and of the established protocols.

(3) Have experience in the emergency department management of the acutely ill or injured patient(s), in the urban setting. In the rural setting, the physician shall routinely and actively participate in the care for acutely ill or injured patient(s).

(4) Be knowledgeable and actively involved in quality assurance and the educational activities of the emergency medical technician, by either direct involvement or appropriate designation and surveillance of his responsible designee.

(5) Have knowledge and a relationship with the licensed ambulance service(s) and/or first response agency(ies) and their primary service area coverage. A physician may be the medical director for more than one (1) licensed ambulance service and/or first responder agency.

(6) Provide a written statement, to the Department, which includes consent to be the medical director, address, an Oklahoma Bureau of Narcotics and Dangerous Drugs (OBNDD) number <u>or appropriate state equivalent, medical license and a curriculum vitae,</u> and be actively involved in pre-hospital care.

(7) Develop medical protocols for patient care techniques, both on-line and off-line standing orders and present written EMT Intermediate, EMT Advanced/Cardiac and EMT Paramedic life support protocols to the Department for approval, before use. Protocols shall include medications to be used, treatment modalities for patient care procedures, and appropriate security procedures for controlled and dangerous drugs.

(8) List all medications with quantities to be carried on each emergency vehicle.

(9) Supervise a quality assurance (QA) program. The QA program, or policy, shall be submitted with treatment protocols, for approval by the Department. Quality assurance documentation may be requested by the Department.

(10) Participate in the statewide emergency medical services system.

PART 13. SANITATION

310:641-3-60. Sanitation requirements

The following shall apply regarding sanitation standards for all ambulance services <u>facilities, vehicles,</u> and personnel:

(1) The interior of the vehicle and the equipment within the vehicle shall be sanitary and maintained in good working order, at all times;

(2) Equipment shall be of smooth and easily cleaned construction;

(3) Freshly laundered linen or disposable linen shall be used on the cots and pillows. Linen shall be changed after each patient is transported, and bagged and stored in a separate compartment;

(4) Clean linen storage shall be provided on each vehicle;

(5) Closed compartments shall be provided on each vehicle for medical supplies;

(6) Pillows and mattresses shall be kept clean and in good repair;

(7) Soiled linen shall be placed in a closed container (plastic bags with ties). Any linen which is suspected of being contaminated with blood borne pathogens or other infectious disease shall be placed in a properly marked closed container for disposal. All contaminated disposable supplies shall be placed in properly marked containers with the "biological hazard" emblem for incineration;

(8) Exterior and interior surfaces of vehicles shall be cleaned routinely;

(9) Blankets and hand towels used in any vehicle shall be clean;

(10) Implements inserted into the patient's nose or mouth shall be single-service wrapped and properly stored and handled. When multi-use items are utilized, the local health care facilities should be consulted for instructions in sanitation and handling of such items;

(11) When a vehicle has been utilized to transport a patient(s) known to the operator to have a communicable disease the vehicle shall be cleansed and all contact surfaces shall be washed with soap and water and appropriate disinfectant. The vehicle should be placed "out of service" until a thorough cleansing is conducted, and;

(12) All storage spaces used for storage of linens, equipment, medical supplies and other supplies at the base station shall be kept clean and free from unnecessary articles. The contents shall be arranged so as to permit thorough cleaning.

(13) Personnel shall be clean, especially hands and fingernails, and well groomed. Clothing worn by personnel shall be clean. ~~It is recommended that the~~The licensee shall provide in each vehicle a means of hand washing for the attendants.

(14) The oxygen humidifier shall be cleaned and placed on the vehicle dry, when not in use.

(15) All medications and equipment with expiration dates shall be current. Expired medications and equipment shall be discarded appropriately.

(16) The station facility, ambulance bays, living quarters, and office areas shall be clean, orderly, and free of safety and health hazards.

(17) Ambulance vehicles and ambulance service facilities shall be free of any evidence of use of lighted or smokeless tobacco products except in designated smoking areas, consistent with the provisions of 310:641-1-4.

PART 19. INSPECTION, CORRECTION, ACTIONS

310:641-3-91. Correction orders

(a) Violation of Oklahoma Statues, the Act or the rules constitute grounds to issue a correction order, citing the deficiency, indicating the time period in which a correction shall be made. This time period shall not exceed one hundred twenty (120) days, for any deficiency.

(b) Written notification, within the time period cited, shall be forwarded to the Department when ~~an order~~a deficiency has been corrected. If this notice is not forthcoming, then the Department shall notify the service, by certified mail, that they are out of compliance. If no ~~correction~~plan of correction is ~~made~~received within thirty (30) days, then action for remedy against the service may be undertaken by administrative procedure [Title 75 O.S., Sec. 301~~, 1981,~~ et seq.]

(c) Violations which appear to be hazardous to the health and welfare of the public and/or employees shall require immediate correction.

(1) If such a violation is not, or cannot be, corrected immediately, the vehicle shall be removed from service and the ambulance permit shall be removed until such time as the vehicle is in compliance and has been re-inspected and permitted by the Department.

(2) Violations that may justify immediate removal of an ambulance vehicle permit include:

(A) Inadequate sanitation, including the presence of contamination by blood and/or body fluids;

(B) Inoperable heater/air conditioner;

(C) Inoperable AED or defibrillator;

(D) Tires in poor condition;

(E) Inoperable emergency lighting and/or siren;

(F) Inoperable oxygen system or less than 200psi in onboard oxygen tank;

(G) Inoperable suction apparatus;

(H) Carbon monoxide levels of greater than (50 ppm) fifty parts per million, or broken exhaust pipe~~;~~.

PART 27. TRANSFER PROTOCOLS

310:641-3-130. Transfer protocols

(a) Trauma triage, transport, and transfer guidelines shall adhere to the principle of delivering time-sensitive severely injured patients to hospitals with a level I or II trauma and emergency operative service classification without overloading those hospitals with stable at-risk patients, or patients with minor-to moderate injuries.

(b) Specific triage, transport, and transfer guidelines and facility utilization protocols shall be developed by medical control for the region, area, and/or local service vicinity as specified by 310:641-3-130(c) and (d), and submitted to the Department for approval.

(c) Protocols approved by the Department shall include the following requirements:

(1) Non-emergency transports shall be transported to the facility of the patient's choice, if within reasonable service range.

(2) Emergency, non-injury related, non life threatening transports shall be transported to the facility of the patient's choice, if within reasonable service range.

(3) Emergency, injury-related transports shall adhere to the Oklahoma Triage, Transport, and Transfer Guidelines approved by the Oklahoma State Trauma Advisory Council and the Oklahoma Emergency Response Systems Development Advisory Council and shall ensure that patients are delivered to the most appropriate classified hospital, either within their region or contiguous regions.

(4) Severely injured patients as described in the Oklahoma Triage, Transport, and Transfer Guidelines shall be transported to a hospital classified at Level I or II for trauma and emergency operative services unless time and distance factors are detrimental to patient care. These patients shall be transported to the next highest level trauma and emergency operative service classified hospital, unless a Department approved regional plan has been developed, in which case the regional plan shall be followed.

(5) Stable patients at risk for severe injury or with minor-to-moderate injury as described in the Oklahoma Triage, Transport, and Transfer Guidelines shall be transported to The closest appropriate facility. These patients may be transported to the hospital of the patient's or patients legal representative's choice consistent with regional guidelines.

(6) Emergency, life threatening, non-injury transports shall be to the nearest facility that can provide evaluation and stabilization appropriate to the patient's condition

(d) In counties with populations of 300,000 or more and their contiguous communities injury related transports shall

be directed and coordinated by the trauma transfer and referral center for the region.

(1) All ambulance services providing pre-hospital emergency services in these regions shall contact the trauma transfer and referral center ~~before~~at intervals determined by the Department to register the ~~transporting~~transport of an injured patient to a hospital. ~~The trauma transfer and referral center shall direct the ambulance to the appropriate hospital based on the regional plan, the severity of the injury, and the capacity status of the hospitals in the region.~~

(2) All ambulance services transporting injured patients on a pre-hospital basis from areas outside the region to hospitals in the region shall contact the trauma transfer and referral center before entering the region. The trauma transfer and referral center shall direct the ambulance to the appropriate hospital based on the regional plan, the severity of the injury, and the capacity status of the hospitals in the region.

(3) All ambulance services transferring injured patients from hospitals outside the region to hospitals in the region shall contact the trauma transfer and referral center before entering the region to advise the center of the patient transfer. The center shall maintain a record of the transfer for regional continuous quality improvement activities.

(e) The patient has a right to refuse transport.

PART 31. FIRST RESPONSE AGENCIES

310:641-3-150. First response agencies

(a) All organizations desiring to become certified by the Department as a first response agency shall first secure a written agreement with a sponsoring licensed ambulance service, and an endorsement from the governmental authority in which the agency is located. The ambulance service shall submit an application for the proposed first response agency, and provide such documentation and other requirements to the Department, as prescribed on forms provided by the Department.

(1) Transportation of ambulance patients shall not be performed by certified first response agencies.

(2) An organization shall not be qualified, nor designate itself, as a Certified First Response Agency unless certified by the Department.

(b) The first response agency application for certification shall contain at least the following:

(1) The name, address, and officers of the organization;

(2) The name of the physician medical director of the organization;

(3) The name or names of licensed ambulance services, which shall serve as transport units for the service area;

(4) The names of all certified and licensed personnel acting or working in the organization, for this purpose;

(5) The level of care to be rendered; and

(6) A list of equipment and supplies.

(c) Applications may be approved by the Department, based upon inspection and review of the purpose and capability of the applicant, and upon a written agreement with a licensed ambulance service which shall provide transportation.

(1) The application shall be accompanied by a non-refundable fee of fifty ($50.00) dollars.

(2) Upon submission of a complete application, the Department shall have sixty (60) days to determine the ability of the agency to meet the requirements of law and these rules.

(3) A certificate shall be valid for two (2) years, The Department shall mail all certified first response agencies a "Survey/Renewal Form" in October, each year. This form shall be considered and utilized as a renewal application, if due. This form along with supplemental forms shall be returned to the Department by December 1st each year. The renewal fee shall be twenty ($20.00) dollars.

(d) Personnel of a certified first response agency may utilize procedures authorized to the extent and limitations set forth by required medical control of the first response agency and within their license and certification level.

(e) The Department may place on probation, suspend, revoke, and/or fine certified first response agencies, under the same laws governing ambulance services.

(f) ~~Unannounced inspections~~Inspections shall be made ~~by~~at the discretion of the Department.

PART 33. SERVICE AND AGENCY FILES

310:641-3-160. Ambulance service, ~~and~~ first response agency and stretcher aid van files

(a) Each licensed ambulance service and first response agency shall maintain files about the operation, maintenance, and such other required documents, at the business office. These files shall be available for review by the Department, during normal work hours. Files which shall be maintained include the following:

(1) ~~Copies~~Ambulance services and stretcher aid van services shall maintain copies of all run reports ~~shall be retained~~ for three (3) years, including copies of ~~scannable~~ run sheets and ~~its~~ narrative and;

(A) A copy of the run report shall be left with the receiving hospital at the time a patient(s) is (are) accepted at the hospital;

(B) All run reports shall contain administrative, legal, medical, community health and evaluation information required by the Department;

(C) All run reports and their narrative(s) shall be considered confidential;

(2) ~~Records~~All licensed and certified providers shall maintain records on the maintenance, and daily inspections of each vehicle;

(3) ~~Copy~~All licensed and certified providers shall maintain copies of licenses, certificates or other qualifications of staffing or personnel employed by or associated with the service or agency as required by this Act. These required documents shall be separate from other personnel records so as to ensure confidentiality of records which do

not pertain to the requirements for the license or certificate;

(4) Copies of staffing patterns, schedules, or staffing reports which indicate the ambulance service is maintaining twenty four (24) hour coverage, at the highest level of license;

(5) Copies of in-service training and continuing education records;

(6) Copies of ambulance service operational and medical protocols;

(7) A log of each call received and/or initiated, to include the number of the run report, date, all required times, name of the patient, location of the scene, and nature of the call;

~~(8) Copies of all incident reports defined as unusual occurrences which shall be forwarded to the Department within ten (10) days.~~

(~~9~~8) Copies of all Occupational, Safety, and Health Agency requirements, as required ~~and;~~; and

(~~10~~9) Such other documents which may be determined necessary by the Department.

(b) The standardized data set and an electronic submission standard for EMS data as developed by the Department shall be mandatory for each licensed ambulance service. Reports of the EMS data standard shall be forwarded to the Department by the fifteenth (15th) day following the end of each month. Exceptions to the monthly reporting requirements shall be granted only by the Director of EMS, in writing.

(c) Review and the disclosure of information contained in the ambulance service files shall be confidential, except for information which pertains to the requirements for license, certificate, or investigation issued by the Department.

(d) Department representatives shall have prompt access to files, records and property as necessary to appropriately survey the provider. Refusal to allow access by representatives of Department to records, equipment or property may result in summary suspension of licensure by the Commissioner of Health.

(e) All information submitted and/or maintained in files for review shall be accurate and consistent with Department requirements.

PART 39. ENFORCEMENT ACTION

310:641-3-190. Suspension, revocation, probation, or non-renewal of a licensee

(a) The Department may suspend or revoke a license, and/or fine or place on probation a license or licensee for the following:

(1) Violations of any of the provision of the Oklahoma Statutes, the Act or the rules and regulations promulgated by the Board;

(2) Permitting, aiding or abetting in any illegal act in connection with the ambulance service;

(3) Failure to provide emergency service to any person, unless a vehicle and/or personnel is not available, and failure to summon mutual aid;

(4) Conduct of any practice that is detrimental to the welfare of the patient or potential users of the service;

(5) Failure to operate the service on a twenty four (24) hour basis, except for the Specialty Care and/or Air Ambulance service;

(6) Placing a vehicle into service before it is properly inspected, approved and permitted by the Department, and/or;

(7) Failure to comply with a written correction order within the time frame specified by the Department.

(8) Engaging in any act which is designed or intended to hinder, impede or obstruct the investigation of any matter governed by the Act, by any lawful authority.

(9) An ambulance service who fails to renew their Oklahoma license within the time frame and other requirements as specified in these rules, shall be considered an expired or lapsed licensee, and therefore no longer licensed as an ambulance service in the State of Oklahoma.

(10) A first response agency who fails to renew their Oklahoma certification within the time frame and other requirements as specified in these rules, shall be considered an expired or lapsed certification, and therefore no longer certified as a first response agency in the State of Oklahoma.

(b) No person, company, governmental entity, or trust authority may operate an ambulance service or first response agency except in accordance with Title 63, Section 1-2501, et seq., and the rules and regulations as promulgated by the State Board. The Commissioner, District Attorney of the county wherein a violation occurs, or the Attorney General of this State, shall have the authority to enforce provisions of the law.

(c) A license/certificate/permit holder or applicant, in connection with a license application or an investigation conducted by the Department pursuant to this rule shall not:

(1) knowingly make a false statement of material fact;

(2) fail to disclose a fact necessary to correct a misapprehension known by the licensee to have arisen in the application or the matter under investigation; or

(3) fail to respond to a demand for information made by the Department or any designated representative thereof.

(d) If in the course of an investigation the Department determines that a license/certificate/permit holder or applicant has engaged in conduct that is detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent further harm, the Commissioner may order a summary suspension of the license/certificate/permit holder's license, certificate, or permit respectively. A presumption of imminent harm to the public shall exist if the Department determines probable cause exists that a violation of OAC 310:641-3-190 (a)(3) and (4) has been committed.

SUBCHAPTER 5. PERSONNEL LICENSES AND CERTIFICATION

PART 3. EMERGENCY MEDICAL PERSONNEL LICENSES

310:641-5-11. License qualification

Persons applying for initial license shall meet the requirements for qualification, application, and procedure as follows:

(1) Applicant shall be at least eighteen (18) years of age.

(2) Applicant shall within the past two (2) year period previous to examination, have successfully completed a Department approved emergency medical technician course. The two (2) year period is based upon the date of successful course completion.

(3) Applicant shall submit the following:

(A) State application that specifies true, correct and complete information as to eligibility and character.

(B) A National Registry application that has been completed on-line with the National Registry of EMTs. Grading fee shall be paid to the National Registry.

(4) An application fee of seventy-five ($75.00) dollars for EMT-B and one hundred fifty ($150.00) dollars for EMT-I and EMT-P shall be submitted with the application. EMT-I and EMT-P fees shall be one hundred fifty ($150.00) for both written and practical re- examination, one hundred ($100.00) for a full practical re-examination, fifty ($50.00) for a partial practical re-examination, and fifty ($50.00) for a written only re-examination. Fees shall be in an acceptable form, made payable to the Oklahoma State Department of Health - Emergency Medical Services Division (OSDH/EMS). Fees are non-refundable except if the application is rejected Candidates who fail to appear at the scheduled test will be charged the full fee when a new application is made.

(5) If national registration is obtained outside the State of Oklahoma the candidate must follow reciprocity requirements to obtain State licensure

(6) A license application may be denied on the basis of a felony which includes any conviction of assault, battery, or assault and battery with a dangerous weapon; aggravated assault and battery; murder or attempted murder; manslaughter, except involuntary manslaughter; rape, incest, or sodomy; indecent exposure and indecent exhibition; pandering; child abuse; abuse, neglect or financial exploitation of any person entrusted to his care or possession; burglary in the first or second degree; robbery in the first or second degree; robbery or attempted robbery with a dangerous weapon, or imitation firearm; arson, substance abuse, and such other convictions <u>or circumstances</u> which in the opinion of the Department would render the applicant unfit to provide emergency medical care to the public. Each decision shall be determined on a case-by-case basis.

(7) An applicant may request a review of adverse decisions, made within this section, by applying in writing within thirty (30) calendar days after the notice of rejection. Review, by the Department, shall be held in accordance with the Administrative Procedures Act.

(8) Candidates are required to successfully complete all sections of the National Registry of Emergency Medical Technicians practical and written examinations.

(A) Practical examinations shall adhere to the policies of the National Registry and the Department. Candidates shall demonstrate an acceptable level of competency in all respective skill areas. The Department reserves the right to review and require additional practical examination of any candidate.

(i) A candidate for EMT-B shall complete a practical examination before applying for a written examination. The practical examination may be conducted at an approved training program in accordance with National Registry policies and shall be separate from the completion of training. Verification of successful completion and the measured competency of each of the required skill areas shall be kept on file, for a period of three (3) years at the training program, and summaries submitted to the Department with the final course documentation.

(ii) A candidate for EMT-I shall apply for both the practical and written license examinations. The written and practical examinations shall be administered in accordance with policies currently established by the National Registry of Emergency Medical Technicians.

(iii) A candidate for EMT-P shall apply for both the practical and written license examinations. The written and practical examinations shall be administered in accordance with policies currently established by the National Registry of Emergency Medical Technicians.

(B) Candidates are allowed three full attempts to pass the practical examination (one "full attempt" is defined as completing all six (6) stations and two retests if so entitled). Candidates who fail a full attempt or any portion of a second retest must submit official documentation of remedial training over all skills before starting the next full attempt of the practical examination and re-examining over all six (6) stations. This official documentation must be signed by the EMT-Paramedic Training Program Director or medical director of training/operations which verifies remedial training over all skills has occurred since the last unsuccessful attempt and the candidate has demonstrated competence in all skills. Should a candidate fail the third full and final attempt of the practical examination, the candidate must complete a new, entire, state-approved EMT-Paramedic Training Program.

(C) Successful completion of the practical examination is valid for one (1) year only.

(9) The written examination is based on the respective national standard emergency medical technician curriculum, as developed and promulgated by the United States Department of Transportation including State approved changes. Each candidate shall realize an overall passing minimum score, and in the case of EMT-P a passing minimum score for each section. Candidates who fail the

written examination may re-apply, if eligible, for subsequent examination by submitting another application and fee, and meet current entry requirements.

(A) Candidates are allowed three (3) opportunities to successfully complete the written examination, within the two (2) year limitation on training and within the one (1) year limitation of the practical examination.

(B) Candidates who opt to attempt a fourth written examination shall submit proof of successful completion of a Department approved emergency medical technician refresher course, at the respective level of training.

(C) No oral examination of the written test shall be permitted. Only special examination accommodations approved by the National Registry will be provided for examinations.

(10) The Department shall administer all National Registry written examinations and EMT-I and EMT-P practical examinations. Training programs, shall administer national registry basic and first responder practical examinations. Licensed ambulance services and certified first response agencies approved by the Department shall administer National Registry first responder practical examinations. All practical examinations are administered after completion of a State approved training course at all levels.

(11) Department approved evaluators shall be used for all EMT-I and EMT-P practical examinations.

310:641-5-14. Renewal requirements

(a) An application for the renewal of all emergency medical technician licenses shall be submitted to the Department on or before March 31st, of the license expiration year if renewal is desired. A notice of expiration and application for renewal shall be mailed to each licensee, at the address of record. Licensees are solely responsible for meeting all requirements for renewal.

(1) Applicants for renewal shall submit, on an application form provided by the Department, true, correct, and complete information as to eligibility and character. Incorrect or incomplete documentation shall be cause for rejection.

(2) Requirements for renewal, in general, include current and continuous certification in basic life support (BLS), specified hours of continuing education, refresher training, and continued skill competency. In the case of EMT-I and EMT-P, skill competency shall be verified by a physician, and for EMT-P, advanced cardiac life support (ACLS) shall be documented.

(3) The EMT-B renewal requires the licensee to:

(A) Complete a basic refresher course adhering to Department standards. Ten (10) hours of the refresher may be completed through distributive education as defined at OAC 310:641-3-2.

(B) Complete at least forty eight (48) hours of Department approved continuing education training. Twenty-four (24) hours of continuing education may be obtained through distributive education as defined in OAC 310:641-3-2. The maximum number of hours allowed for any one topic is twelve (12) hours. Department pre-approved continuing education includes any subject covered in the National Standard EMT Basic course, and the following topics -- pneumatic trousers, shock management, communications, hypothermia and other environmental injuries, air ambulance emergency care, child abuse, sexual assault, industrial accidents, explosion injuries, electrical hazards, neonatal care/SIDS, domestic violence, crime scene response, athletic injuries, rappelling, hazardous materials, crisis intervention, protective breathing apparatus, farm machinery extrication, medical terminology, radioactive materials, medico-legal aspects, and special rescue (diving, aerial, mountain). Bio-terrorism, EMS Geriatrics, PALS, PPC, and Pediatric Education for the Prehospital ~~Provider~~Professional (PEPP) or any other State approved courses will be allowed the number of hours specified on the course completion certificate up to 16 hours unless otherwise approved by the Department. Successful completion of the following National Standard courses-- PHTLS (16hrs), BTLS (16hrs), Auto Extrication (16hrs), Emergency Driving (12hrs), and/or Dispatcher Training (12hrs):-- with the specified number of hours shown above may be applied to Continuing Education. These topics may be presented utilizing critiques, didactic sessions, practical drills, workshops, seminars, or other approved in-service training sessions. Any topic which is not specified above shall require prior written approval from the Division. Successful completion of a Department approved Paramedic or Intermediate course shall fulfill the refresher and all continuing education requirements for the EMT Basic;

(C) Maintain basic life support (BLS) certification for health care providers, current through March 31 of licensure expiration. The BLS course shall adhere to the current standards of the American Heart Association CPR for the Health Care Provider, the American Red Cross CPR for the Professional Rescuer, the National Safety Council CPR for the Health Care Provider, or Department approved equivalent. BLS/CPR training shall not be applied toward the forty-eight (48) hours of required continuing education training for Basic EMT's.

(D) Complete the Department renewal application with all required documentation and fee.

(4) The EMT-I renewal requires the licensee to:

(A) Complete an intermediate refresher course adhering to Department standards. Ten (10) hours of the refresher may be completed through distributive education as defined in OAC 310:641-3-2. Refresher course modules met by successfully completing ACLS (initial course), ATLS, PHTLS, BTLS, PALS, or PEPP courses disqualify these courses from being applied to continuing education hours.

(B) Complete at least thirty six (36) hours of Department approved continuing education training. Eighteen (18) hours of continuing education may be obtained through distributive education as defined at OAC 310:641-3-2. The maximum number of hours allowed for any one topic is twelve (12) hours. Department pre-approved continuing education includes any subject covered in the National Standard EMT Basic, EMT Intermediate, and/or EMT Paramedic course, and the following topics: -- air ambulance emergency care, sexual assault, industrial accidents, explosion injuries, electrical hazards, crime scene response, communications, athletic injuries, rappelling, hazardous materials, crisis intervention, domestic violence, protective breathing apparatus, farm machinery extrication, medical terminology, radioactive materials, and special rescue (diving, aerial, mountain). Bio-terrorism, EMS Geriatrics, PALS, PPC, and Pediatric Education for the Prehospital Provider (PEPP) or any other State approved courses will be allowed the number of hours specified on the course completion certificate up to 16 hours unless otherwise approved by the Department. Successful completion of the following National Standard courses--PHTLS (16hrs), BTLS (16hrs), Auto Extrication (16hrs), Emergency Driving (12hrs), and/or Dispatcher Training (12hrs)--with the specified number of hours shown above may be applied to Continuing Education. These topics may be presented utilizing critiques, didactic sessions, practical drills, workshops, seminars, or other approved inservice training sessions. Any topic which is not specified above shall require prior written approval from the Division. Successful completion of a Department approved Paramedic course shall fulfill the refresher and all continuing education requirements for the EMT Intermediate;

(C) Maintain basic life support (BLS) certification for health care providers, current through March 31 of licensure expiration. The BLS course shall adhere to the current standards of the American Heart Association CPR for the Health Care Provider, the American Red Cross CPR for the Professional Rescuer, the National Safety Council CPR for the Health Care Provider or Department approved equivalent. BLS/CPR training shall not be applied toward the thirty-six (36) hours of required continuing education training for Intermediate EMT's;

(D) Complete a skills review and maintenance verification for EMT-I by medical control, and;

(E) Complete the Department renewal application with all required documentation and fee.

(5) The EMT-P renewal requires the licensee to:

(A) Complete a paramedic refresher course adhering to Department standards. Ten (10) hours of the refresher may be completed through distributive education as defined at OAC 310:641-3-2. Refresher course modules met by successfully completing ACLS (initial course), ~~ATLS~~, AMLS, PHTLS, or BTLS, PALS, or PEPP. Use of these courses disqualify these courses from being applied to continuing education hours.

(B) Complete at least twenty four (24) hours of Department approved continuing education training. Twelve (12) hours of continuing education may be obtained through distributive education as defined at 310:641-3-2. The maximum number of hours allowed for any one topic is twelve (12) hours. Department pre-approved continuing education includes any subject covered in the National Standard EMT Paramedic course, and the following topics: -- air ambulance emergency care, sexual assault, industrial accidents, explosion injuries, electrical hazards, crime scene response, athletic injuries, hazardous materials, crisis intervention, domestic violence, hypothermia and other environmental injuries, protective breathing apparatus, farm machinery extrication, medico-legal aspects, radioactive materials, and special rescue (diving, aerial, mountain). Bio-terrorism, EMS Geriatrics, PALS, PPC, and Pediatric Education for the Prehospital ~~Provider~~Professional (PEPP) or any other State approved courses will be allowed the number of hours specified on the course completion certificate up to 16 hours unless otherwise approved by the Department. Successful completion of the following National Standard courses--PHTLS (16hrs), BTLS (16hrs), Auto Extrication (16hrs), Emergency Driving (12hrs), PALS (16 hrs.) and/or Dispatcher Training (12hrs)-- with the specified number of hours shown above may be applied to Continuing Education. These topics may be presented utilizing critiques, didactic sessions, practical drills, workshops, seminars, or other approved inservice training sessions. Any topic which is not specified above shall require prior written approval from the Division;

(C) Maintain basic life support (BLS) certification for health care providers, current through March 31 of licensure expiration. The BLS course shall adhere to the current standards of the American Heart Association CPR for the Health Care Provider, the American Red Cross CPR for the Professional Rescuer, the National Safety Council CPR for the Health Care Provider or Department approved equivalent. BLS/CPR training shall not be applied toward the twenty-four (24) hours of required continuing education training for paramedics;

(D) Complete biennial certification requirements for Advanced Cardiac Life Support (ACLS), in accordance with the American Heart Association. If a structured ACLS course is not available, the medical control may affirm, in writing, that ACLS skills and knowledge has been demonstrated;

(E) Complete a skills review and maintenance verification for EMT-P by medical control, and;

(F) Complete the Department renewal application with all required documentation and fee.

(b) Emergency medical technicians shall declare and provide documents on any felony conviction since their last issuance of a license. Denial of renewal, ~~based on a change of character, is the same as~~may be made upon any basis consistent with the provisions contained within Paragraph 310:641-5-11~~(a)(5)~~(6).

(c) The fee for renewal is ten ($10.00) dollars for EMT-B, fifteen ($15.00) for EMT-I, and twenty ($20.00) for EMT-P. Concurrent national registration is not included within the Oklahoma emergency medical technician renewal. Fees shall be in an acceptable form made payable to the Oklahoma State Department of Health - Emergency Medical Services Division (OSDH/EMS).

(d) An applicant may request a review of adverse decisions, made within this section, by applying in writing within thirty (30) calendar days after the notice of rejection. Review, by the Department, shall be held in accordance with the Administrative Procedures Act, otherwise the decision shall be considered final to both parties.

310:641-5-15. Expired license

Any person who fails to renew his Oklahoma emergency medical technician license within the time frame and other requirements as specified in Section 310:641-5-14, shall be considered an expired or lapsed licensee, and therefore no longer licensed as an emergency medical technician in the State of Oklahoma. Applications for renewal shall be postmarked no later than midnight March 31st of the respective license year of expiration. Hardships and unforeseen circumstances to the process deadline may be submitted in writing to the Department for an exception, but in no case shall an Oklahoma emergency medical technician license be renewed which has been expired more than ninety (90) calendar days. (For reinstatement see 310:641-5-17 Lapsed License).

PART 9. MEDICAL CONTROL

310:641-5-50. Requirement and utilization

(a) Emergency medical personnel, licensed, certified, or otherwise authorized by this act, may perform procedures authorized while a duty to act is in effect, only under medical control of an identifiable medical director.

(b) Emergency medical personnel may be utilized by hospitals, health care facilities, ambulance services, and first response agencies. Health care facilities may include, but not limited to, nursing homes, doctor offices or clinics, organized industrial or private health facility services, athletic training facilities, or any other organized group who may legally render patient care.

(1) While performing at a hospital and/or a health care facility, emergency medical personnel shall be limited to authorized procedures of a specific written "job description" approved by a physician, and/or medical staff, of that facility.

(2) While performing at a licensed ambulance service ~~and/or a certified first response agency~~, emergency medical personnel may perform procedures authorized, not to exceed the level of license or certification.

(3) While performing at a certified first response agency certified first responders, EMT-B, EMT-I, and EMT-P shall practice at the first responder level, unless they meet the requirements for individual protocols specified at 310:641-5-50(c).

(c) Upon application to, and approval of, the Department, EMT Basic an EMT Intermediate, ~~EMT-Advanced/Cardiac~~, and/or EMT Paramedic shall be able to practice their respective level of ~~license~~licensure while on staff at an ambulance service licensed at a lower life support level or a Certified First Response Agency. This program shall be called "Individual Protocol". Quality assurance documentation shall be completed by the ~~EMS agency~~licensed ambulance service or Certified First Response Agency on a monthly basis. The quality assurance documentation shall be maintained by the ~~EMS~~service or agency for 3 years. All participants shall adhere to Department policy for this privilege.

(d) While performing under any other condition or situation, emergency medical personnel, licensed or certified by this act, may perform only to the level of care as described for the certified First Responder, or in accordance with the Act.

(e) The Department may suspend or revoke individual protocols when a violation of the Act or rules exsist.

PART 11. EMERGENCY MEDICAL PERSONNEL CERTIFICATION

310:641-5-61. First responder

(a) No person may present himself or perform as a first responder in Oklahoma without ~~a valid certificate~~validation from the Department or certification from the National Registry of Emergency Medical Technicians. ~~All Department first responder certificates shall expire on October 31st of the expiration year. The~~Validation or ~~certificate~~certification ~~period~~ will be for a two (2) year period.

(b) Persons applying for initial certification shall meet the following requirements to be eligible for first ~~responder;~~ responder;

~~(1) Each applicant shall submit on an application form provided by the Department or National Registry of Emergency Medical Technicians, true, correct, and complete information for eligibility and character.~~

(~~2~~1) Each applicant shall have successfully completed a Department approved First Responder course;

(~~3~~2) Each applicant shall have, after completion of training, successfully completed a written and practical examination administered at the approved training facility, and based upon the First Responder curriculum objectives. Documentation of this requirement shall be submitted in writing on the final course roster, to the Department ~~and will be considered an application.~~; and

(~~4~~3) As of January 1, 2000 all new applicants shall successfully become and maintain National Registry First Responder Registration.

(A) First Responders certified by the Department before January 1,2000 shall be given the opportunity to become National Registered.

(B) First Responders certified by the Department, whose initial training is greater than two (2) years prior to January 1, 2000, shall be given the opportunity to become Nationally Registered. Candidates shall meet National Registry requirements for registration.

(C) First Responders certified by the Department prior to January 1, 2000, shall continue to be eligible for state certification renewal. First Responder renewal requirements include: successful completion of a Department approved first responder refresher course every two (2) years, and continued activity with an ambulance service, certified first response agency or other organization providing first responder care.

(D) Once an individual obtains National Registration as a First Responder, they shall maintain National Registration in order to remain certified in Oklahoma.

(c) Certified first responders may perform to the following level or standard of care:

(1) Patient assessment and triage;

(2) Basic wound management, including hemorrhage control;

(3) Bandaging and splinting of fractures;

(4) Basic life support (BLS) including use of the semi-automated external defibrillator (SAED);

(5) Such other skills contained within the Department of Transportation national standard first responder curriculum, and;

(6) Upon the approval of the Department, and recommendation of the Council, additional skills may be authorized upon the written request of a local medical director, if such skills do not exceed the scope of practice for certification.

(d) A certified first responder, while performing in the employment or association of an ambulance service or certified first response agency, or agency providing first responder care to the general public shall perform medical procedures under medical control.

(e) No other State organization, school, chapter, or association may certify First Responders.

PART 13. RECIPROCITY

310:641-5-70. Reciprocity

(a) All candidates for reciprocity privileges shall submit an application for this purpose. Applications may be obtained from the Department. Fees ~~commensurate with respective initial test fees in 310:641-5-11(4), shall be submitted for reciprocity review.~~shall be: Basic $100.00, Intermediate $200.00, Paramedic $200.00. Fees shall be in an acceptable form, made payable to the Oklahoma State Department of Health/Emergency Medical Services Division (OSDH/EMS). All fees are non-refundable.

(b) Emergency medical technician applicants for reciprocity licensing shall document National Registration in good standing.

(1) The Department may issue a license, based upon satisfactory verification by the Department, to a Nationally Registered emergency medical technician basic or emergency medical technician paramedic.

(2) The Department may issue a license to a Nationally Registered emergency medical technician intermediate, based upon satisfactory verification by the Department of completion of training and successfully passing a National Registry Practical examination on endotracheal intubation. The Department may issue an emergency medical technician basic license if the applicant meets all requirements except endotracheal intubation. The applicant may re-apply to be up-graded to the Intermediate level after all requirements have been met. Fees commensurate for re-examination as found in 310:641-5-11(4) shall be submitted with the application to up-grade to the Intermediate level. This up-grade may only occur during the initial license period.

~~(c) Emergency medical technician applicants who have received National Standard EMT training in another state, but who do not hold a current National Registry Registration, may be issued a license upon completion of the National Registry practical and written examination.~~

~~(1) A temporary nine (9) month permit may be issued to out-of-state certified or licensed individuals, who are in good standing with their respective State certifying or licensing agency. Verification of qualifications shall be conducted by the Department, before issuance.~~

~~(2) Individuals granted a temporary permit shall comply with all other requirements of Oklahoma State Law, and shall obtain an Oklahoma emergency medical technician license within a nine (9) month period. Temporary status will be terminated upon the failure of a respective first examination.~~

~~(3) Applicant shall prove employment, or potential employment in Oklahoma, and submit a fee of one hundred and fifty ($150.00) dollars, at the time of application.~~

~~(4) Individuals acting under a temporary permit shall be directly supervised by a emergency medical technician, licensed at or above the temporary permittee. Under no circumstance shall a temporary permittee be authorized to substitute for the sole requirement of a licensed emergency medical technician as required in these rules.~~

(~~d~~c) A decision to grant reciprocity to each applicant, as to qualification for Oklahoma license~~, temporary permits, First Responder certification~~, shall be determined by the Department.

PART 15. ENFORCEMENT ACTIONS

310:641-5-80. Enforcement actions

(a) Any license or certificate, or renewal of any license or certificate, issued by the Department in accordance with the Act and under the authority of emergency medical services rule may be revoked, suspended, placed on probation, or denied for violation(s) of the Act or OAC 310:641.

(b) Any license or certificate issued by the Department may voluntarily be surrendered at any time during the license period for any reason by the license/certificate holder. The voluntary surrender of a license or certificate does not preclude the Department's authority to complete any pending action against said license/certificate holder. A surrendered license / certificate shall be treated as if revoked by the Department.

(c) The Department may require a one (1) year period from the date of revocation before the license / certificate holder may apply for a license or certificate from the Department.

(d) A license/certificate/permit holder or applicant, in connection with a license application or an investigation conducted by the Department pursuant to this rule or OAC 310:641-3-190, shall not:

(1) knowingly make a false statement of material fact;

(2) fail to disclose a fact necessary to correct a misapprehension known by the licensee to have arisen in the application or the matter under investigation; or

(3) fail to respond to a demand for information made by the Department or any designated representative thereof.

(e) If in the course of an investigation the Department determines that a license/certificate/permit holder or applicant has engaged in conduct that is detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent further harm, the Commissioner may order a summary suspension of the license/certificate/permit holder's license, certificate, or permit respectively. A presumption of imminent harm to the public shall exist if the Department determines probable cause exists that a violation of OAC 310:641-3-190 (a)(3) and (4), or OAC 310:641-5-30 has been committed.

(~~d~~f) In addition to any other penalties, a civil fine of not more than one hundred ($100.00) dollars per violation per day may be assessed, for violations of the Act or OAC 310:641.

SUBCHAPTER 7. TRAINING PROGRAMS

PART 3. TRAINING PROGRAMS

310:641-7-10. Training programs

(a) All training programs shall be in compliance with the requirements of this Subchapter.

(b) Each training program shall submit to the Department an application for approval to conduct emergency medical services training. The application shall be on forms provided by the Department. Training programs must be currently certified to teach EMS in Oklahoma before beginning courses.

(c) Training programs approved for training may include colleges, universities, junior colleges, technology centers, or other institutions acceptable to the Department.

(d) An institution may apply for certification as a Basic EMT program, an Intermediate EMT Program or a Paramedic program or a combination of any of these levels. A separate certificate will be issued for each training level.

(e) Application for new advanced level programs require the following:

(1) Completion of a full basic certification period of two (2) years, of which at least three (3) full basic courses are instructed.

(2) Student average first time pass rate of 50% on the National Registry examination.

(~~e~~f) Training programs shall use Department approved curricula for all approved courses of instruction.

(~~f~~g) An application for certification as a training program constitutes agreement to participate in a Department quality assurance program.

(~~g~~h) Records shall be available for inspection by Department representatives during normal working hours.

310:641-7-11. Training program applications

(a) The application for approval to conduct emergency medical services training shall be made on forms provided by the Department and shall include but is not be limited to the following:

(1) Name of the training program, address, telephone number and fax number;

(2) Level of program to be conducted;

(3) The name of the Program Administrator and a Curriculum Vitae which includes address, telephone number, fax number and an electronic-mail address;

(4) The name of the Program Coordinator and Curriculum Vitae or Resume that includes address, telephone number, fax number and an electronic mail address;

(5) The name of the Medical Director and a Curriculum Vitae or Resume which includes address, telephone number, fax number and an electronic-mail address, copy of Oklahoma State medical license and Oklahoma Bureau of Narcotics and Dangerous Drugs expiration date;

(6) Notarized affidavit attesting that the program will be conducted according to the Act and rules;

(7) Copies of student grievance/appeal policy;

(8) List of all instructors and individual vitae for each with copies of required documentation of instructor qualifications;

(9) Copies of all current agreements for the use of equipment and facilities needed to conduct courses;

(10) Copies of all current agreements for clinical experience locations required to conduct courses;

(11) Current copies of inventories of equipment and supplies;

(12) Copies of course plans (syllabi) and curriculum objectives for the course; and

(13) Site applications for additional sites of instruction with required attachments.

(b) Department personnel may make site visits, inspections or observations, to determine the training program's ability to conduct emergency medical services training in accordance with the Act and rules.

(c) The program administrator, program coordinator or at least one paramedic level instructor shall be an Advanced Cardiac Life Support (ACLS) instructor for a Paramedic training program.

310:641-7-15. Course approval

(a) Each training program shall submit a written course application to the Department on forms provided by the Department. The application shall be submitted at least thirty (30) days prior to the course start date and shall include, but not be limited to:

(1) Course information including type of course, location, start and end date, class session days and times, course coordinator, clinical coordinator and instructors, final practical examination date, and time and location;

(2) Course outline including date and time, topic, curriculum division and section number, instructor and location if different than those listed on the application for each class session; and

(3) A list of locations and site coordinator for each location, if multiple locations via distance learning technology are used.

(b) A course application submitted by a training program in good standing which meets all course requirements will be issued a course authorization number by the Department.

(c) Courses must be instructed by Department approved emergency medical services instructors. Persons other than certified emergency medical services instructors recognized as experts in a specific area may instruct in an emergency medical services course with prior approval from the Department. The content and effectiveness of the presentation remain the responsibility of the training program and primary emergency medical services instructor.

(d) For each course conducted by a training program ~~the following~~rosters reflecting the students participating in a given course shall be submitted to the Department under the following guidelines:

(1) An initial student roster within twenty-one (21) days of the course start date;

(2) A final student roster within twenty-one (21) days of the course end date. This roster shall only identify students who have successfully completed all course requirements;

(3) ~~An addendum to the final course roster may be submitted for students who successfully complete all clinical course requirements after the final roster was submitted. All course requirements shall be complete by students within ninety (90) days of the course end date.~~In exceptional circumstances, an amended roster may be submitted within forty-five (45) days of the original filing deadline, provided that the amendment be accompanied by the following:

(A) A written request for approval by the Training Institution EMS Coordinator;

(B) A statement describing the exigency or exceptional circumstance that necessitated the amendment; and,

(C) In cases of an amendment to a final roster, evidence that any added students have satisfactorily fulfilled and completed all of the course content and requirements.

(e) The Department may conduct quality management visits to any training program. Visits may include, but not be limited to class visits, instructor evaluations, student surveys, review of required records, and visits to clinical experience sites.

(f) The Department may invalidate all or any portion of a course conducted where a violation of the Act or rules has been substantiated.

(g) For course approval requests submitted that do not meet the requirements of OAC 310:641-7-15(a) the Department may provide approval if non-approval would be detrimental to the interest of the public health and safety.

PART 5. INSTRUCTOR QUALIFICATIONS

310:641-7-21. Instructor approval and renewal

(a) Any application for approval or renewal submitted by an applicant pursuant to the Act and rules, shall constitute authorization for any inspection or investigation by the Department.

(b) The Department may deny, refuse to renew, revoke, suspend or place on probation any instructor or instructor educator for reasons which include, but are not limited to:

(1) Failure to attend Department required workshops;

(2) Failure to follow Department rules;

(3) Failure to maintain professional license or certification qualifications;

(4) Falsification of any training document, or;

(5) Failure to maintain professional conduct at all times when providing EMS instruction, or

(~~5~~6) Failure to obtain required continuing education hours:

(A) Sixteen (16) hours of instructor continuing education during the two (2) year certification period for EMS instructors.

(B) Attendance at mandatory OSDH meetings for EMS instructor educators.

SUBCHAPTER 9. TRAUMA TRANSFER AND REFERRAL CENTERS

PART 1. GENERAL PROVISIONS

310:641-9-1. Purpose

The rules of this subchapter are promulgated to establish standards for certification of trauma transfer and referral centers.

PART 2. CERTIFICATION

310:641-9-2. Certification required

No person, partnership, company, governmental authority, or other legal entity including those established by Oklahoma Constitutional authority or trust authority shall operate, advertise or hold themselves out as providing emergency medical trauma transfer and referral center services without first obtaining a certificate from the Department.

310:641-9-3. Application

(a) The applicant shall complete an application form approved by the Department to apply for a certificate.

(b) The application shall contain, but not be limited to, the following:

(1) A description of proposed trauma, transfer and referral center operations, detailing how transfers will be processed within the region and how transfers into and out of the region will be facilitated;

(2) A staffing plan and roster including an estimate of call volume and distribution;

(3) A plan for supplemental training for trauma, transfer and referral center staff;

(4) An endorsement from the physician who is providing medical control for the center;

(5) A plan that identifies methods of communication with each emergency medical service and hospital that provides trauma care or transport within the region and/or transfers patients into or out of the region;

(6) The methods of data collection, confidential storage, retrieval, and reporting of requested information related to trauma transports and transfers to the Medical Audit Committee, Department and Commissioner of Health;

(7) A copy of the medical protocols used to triage and identify the level of trauma care needed for each patient; and

(8) A continuous quality improvement plan.

(c) The Department shall approve, identify the application as incomplete or deny the application within thirty (30) days after submittal by the applicant.

310:641-9-4. Issuance of certification

(a) A certificate shall be issued to each center found to be compliant with Department requirements and shall be valid for a period of two years following the date of issuance.

(b) The certificate shall be issued to the legal operating entity for the service area given in the application.

(c) A sole provider determination for any region may be made by the Department after consideration of the following factors:

(1) The needs of the region and state for trauma transfer and referral direction and facilitation;

(2) The ability of the provider to provide adequate direction and facilitation; and,

(3) The current availability of a trauma, transfer and referral center in the region.

(d) A certificate shall be valid for the legal operating entity making application and is not assignable or transferable.

310:641-9-5. Certificate renewal

(a) At least sixty (60) days prior to the expiration of their certificate, a certified trauma transfer and referral center shall reapply for a renewal certificate using forms approved by the Department.

(b) The certified center shall identify any changes in operations from the original application.

(c) The Department shall revaluate, renew or deny the renewal certification based on the center's compliance with Department requirements for certification.

310:641-9-6. Transfer and referral center standards

(a) **Staff.** Each center shall have adequate numbers of staff to immediately respond to all calls for trauma transfers and referrals. The center shall also have a plan to activate additional staff for peak loads, regional emergencies or disasters.

(b) **Medical direction.** Each center shall have a qualified physician medical director who holds a current, unrestricted, Medical Doctor (M.D.) or Doctor of Osteopathy (D.O.) license for Oklahoma. The physician medical director shall provide medical oversight for center operations, approve triage and transfer protocols, and participate in quality improvement activities. The medical director shall be routinely available for consultation with center staff.

(c) **Administration.** The governing body for each center shall appoint an administrator who shall be responsible for center operations.

(d) **Staff training.** Training for staff shall include at least the following Department approved courses:

(1) Emergency Medical Dispatch Training;

(2) Trauma, triage, and transfer training covering current Oklahoma guidelines; and,

(3) A training course on use of Department supported software designed to identify hospital capability and capacity for all Oklahoma hospitals.

(e) **Equipment.** Each center shall maintain adequate equipment to facilitate center operations and communicate with all emergency medical service providers and hospitals. Each center shall have working communications equipment including a toll-free phone service; radios with available frequencies to communicate with fire, emergency medical providers, and hospitals; and, computer equipment with high-speed Internet access for immediate electronic communications.

(f) **Records.** Records of all trauma transfers shall be maintained in an electronic format approved by the Department. The center shall also maintain voice recordings of all phone and radio transmissions for a period of at least two (2) years. Records of patient transfer shall be confidential and shall only be used for quality improvement activities or for reports to the Medical Audit Committee and the Commissioner of Health.

310:641-9-7. Revocation

The Department may revoke or suspend any trauma transfer and referral center certificate at any time for failure to comply with requirements.

[OAR Docket #05-1080; filed 6-1-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING

[OAR Docket #05-1081]

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Subchapter 21. Applying for a license
310:663-21-2. [AMENDED]
310:663-21-4. [AMENDED]
AUTHORITY:
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ANALYSIS:
This proposal provides for assisted living license expirations and renewals to be distributed throughout the year, rather than all renewals coming due on July 31 each year. This will enable the Department to significantly reduce average response times to applicants for assisted living licenses.
CONTACT PERSON:
Darlene Simmons, Director, Health Facility Division, Health Resources Development Service, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-9444, x57267; facsimile: 405-271-7360; email: darlene@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 JULY 11, 2005:

SUBCHAPTER 21. APPLYING FOR A LICENSE

310:663-21-2. Deadlines for filing

(a) The application for establishment of a continuum of care facility or assisted living center shall be filed at or before the time when the application for an initial license is filed. Provided, however, that an application for establishment is not required in conjunction with the transfer of ownership or operation of a facility or center that is currently licensed under the Act and OAC 310:663.

(b) The license application shall be filed in accordance with the following deadlines.

(1) The application for an initial license of a new continuum of care facility or assisted living center shall be filed at least thirty (30) days before beginning operations.

(2) The application for an initial license, following a transfer of ownership or operation, shall be filed at least thirty (30) days before the final transfer. In the case of the appointment of a receiver as operator, this thirty (30) day advance filing requirement may be waived if the Department finds that an emergency exists which threatens the welfare of the residents. If an emergency is found to exist, the receiver shall file the license application before beginning operation of the assisted living center or continuum of care facility.

(3) The application for renewal of the license of an existing continuum of care facility or assisted living center, with no transfer of ownership or operation, shall be filed by the renewal date specified on the existing license. Each initial license shall be effective for one hundred eighty (180) days from the issue date. The renewal license shall ~~expire on July 31 of each year~~be issued for a period of twelve (12) months from the date of issue. Provided that licenses may be issued for a period of more than twelve (12) months, but not more than twenty-four (24) months, for the license period immediately following the effective date of this provision in order to permit an equitable distribution of license expiration dates to all months of the year.

310:663-21-4. Filing fees

(a) Each application to establish a continuum of care facility or assisted living center shall be accompanied by a non-refundable application fee of Ten Dollars ($10.00) for each bed included in the maximum bed capacity at such facility or center. The maximum application fee for each facility or center shall be One Thousand Dollars ($1000.00). The application fee for establishment of a facility or center shall be in addition to the license fee required under the Act and OAC 310:663-21-4(b).

(b) Each application for an initial license or for an annual renewal license to operate an assisted living center or a continuum of care facility shall be accompanied by a non-refundable license fee. The license fee shall be in the amount set in the Act.

(c) The application and license fees shall be paid by check to the Oklahoma State Department of Health.

(d) The fee for a license renewal following an initial license, or for a license amendment to reflect a change in bed capacity, shall be prorated based on the number of days remaining ~~in the~~

~~license year~~ until ~~July 31~~the current license expires, and, in the case of a change in bed capacity, the number of beds being added.

[OAR Docket #05-1081; filed 6-1-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 667. HOSPITAL STANDARDS

[OAR Docket #05-1082]

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Subchapter 5. Compliance With Federal, State, and Local Laws
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Centers for Disease Control and Prevention. Guidelines for preventing the transmission of *Mycobacterium tuberculosis* in health care facilities, 1994. MMWR 1994;43(No. RR-13)
Incorporating rules:
310:667-5-4
Availability:
Copies of Guidelines for preventing the transmission of *Mycobacterium tuberculosis* in health care facilities, 1994. MMWR 1994;43(No. RR-13) may be obtained from the Centers for disease control website at the following Internet address: http://www.cdc.gov/mmwr/PDF/rr/rr4313.pdf or you may contact Tom Welin, Chief, Medical Facilities, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6576; electronic mail: tomw@health.state.ok.us
ANALYSIS:
The proposed amendments transfer the responsibility for advising the Commissioner on issues related to the development of functional regional systems of providing twenty-four hour emergency hospital care from the Oklahoma Emergency Response Systems Development Advisory Council (OERSDAC) to the Oklahoma Trauma Systems Improvement and Development Advisory Council (OTSIDAC). The proposed changes clarify language covering circumstances when hospital workers must present their immunization history and, also, update the standards for tuberculin skin testing conducted as part of an overall tuberculosis control program. The changes allow each hospital flexibility to set the frequency of skin testing for various workers based on the results of a facility-specific infection control risk assessment and Centers for Disease Control guidelines.
CONTACT PERSON:
Tom Welin, Chief, Medical Facilities, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6576; electronic mail: tomw@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 JULY 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

310:667-1-3. Licensure

(a) **Application for licensure.**

(1) No person or entity shall operate a hospital without first obtaining a license from the Department. The license is not transferable or assignable.

(2) The applicant shall file a licensure application in a timely manner. The application shall be on forms provided by the Department, with a check of $10.00 for each census bed, crib and bassinet, payable to the Oklahoma State Department of Health.

(3) The entity responsible for operation of the hospital and appointment of the medical staff shall be considered the applicant for the license. This entity may be a lessee if the hospital is leased and the lessee is the operating entity. For the purposes of licensure, a company providing administrative management of a hospital, which functions by contract with the governing body of the hospital, shall not be considered the entity responsible for operation.

(4) An application is not considered to be filed unless it is accompanied by the application fee.

(b) **Application filing.** An initial license application or renewal application shall be filed as follows:

(1) The application for an initial license for a new hospital shall be filed prior to or at the time final drawings for construction are submitted to the Department for review which shall be at least thirty (30) days before a hospital begins operation.

(2) The application for an initial license for a change of ownership or operation, shall be filed at least thirty (30) days before the transfer. The sale of stock of a corporate licensee, where a majority of the governing body does not change, is not considered a change of ownership or operation. The sale or merger of a corporation that owns an operating corporation that is the licensed entity shall not be considered a change of ownership unless a majority of the governing body is replaced.

(3) The application for renewal of a license of an existing hospital shall be filed at least thirty (30) days before the expiration date of the current license.

(c) **Where to file.** The application and the license fee shall be delivered or sent to the Department. The effective date shall be the date the application and fee are received.

(d) **Forms.** The applicant for a license shall file application forms as follows:

(1) For an initial license of a new hospital, or for an existing hospital following a change in ownership or operation, the applicant shall file these forms: Application for License to Operate a Hospital or Related Institution; Board of Directors Information Sheet; and Designation of Licensed Beds Form.

(2) For renewal of a current license, the applicant shall file the Application for License to Operate a Hospital or Related Institution; Board of Directors Information Sheet; Designation of Licensed Beds Form; and a Fire Inspection Report For Hospitals.

(e) **Description of forms.** The forms used to apply for a hospital license are the following:

(1) The Application For License to Operate Hospital or Related Institution (Form 920) requests: identification of the type of license requested; the name and address of the hospital; the name and address of the operating entity; the number of beds and bassinets; the ownership of the building and grounds; the applicant's name; the chief executive officer/administrator's name; attachment for credentialed staff; and an affidavit attesting the signature of the applicant.

(2) The Board of Directors Information Form (Form AGH-2) requests: The names and addresses of the Board of Directors for the hospital.

(3) The Designation of Licensed Beds Form (Form 920-A) requests: A listing of the types of beds operated by the hospital and a total of the beds.

(4) The Fire Inspection Report for Hospitals (Form 928) requests: a check list of the annual inspection conducted by the local fire marshall.

(f) **Eligibility for license.**

(1) Hospitals making appropriate application that have been determined to be compliant with these standards are eligible for a license.

(2) A hospital may operate inpatient and outpatient facilities under one (1) license as a hospital campus as long as the following requirements are met:

(A) The facilities shall be separated by no more than fifty (50) miles. This requirement may be waived if the services of the facilities are totally integrated through telecommunication or by other means.

(B) The facilities are operated by the same governing body with one administrator.

(C) The medical staff for all facilities is totally integrated so that any practitioner's privileges extend to all facilities operated under the common license.

(3) An outpatient facility located at a different address from a hospital is eligible to be licensed as part of the hospital but is not required to be licensed.

(4) Each hospital shall participate in a functioning regional system of providing twenty-four (24) hour emergency hospital care approved by the Commissioner of Health in consultation with the ~~Oklahoma Emergency Response Systems Development Advisory Council~~ Oklahoma Trauma Systems Improvement and Development Advisory Council. Participation in a regional system may include active participation of the hospital in the provision of emergency services based upon the system plan, participation of the hospital's medical staff in the provision of emergency services at other hospitals in the system based on the system plan, or payment into a fund to reimburse hospitals providing emergency services in the system.

(5) If an area of the state fails to develop a functioning regional system of providing twenty-four (24) hour emergency hospital care necessary to meet the state's needs for trauma and emergency care as established by the state-wide trauma and emergency services plan, the Commissioner of Health, in consultation with the Oklahoma Emergency Response Systems Development Advisory Council, shall develop a system for the area. Each hospital located in the area shall participate as specified by the system plan for that region.

(g) **Regional system of emergency hospital care.**

(1) In counties and their contiguous communities with populations of 300,000 or more, a functioning regional system of providing twenty-four (24) hour emergency hospital care shall include definitive emergency care for all clinical categories specified in OAC 310:667-59-7. In these regions, a functioning system shall only transfer emergent patients out of the system when treatment or diagnostic services are at capacity unless the patient has a special treatment need not normally provided by the system. Transfers out of the system may occur based upon the patient or the patient's legal representative's request or based upon a special circumstance for the transfer.

(2) In counties and communities with populations of less than 300,000, a functioning regional system of providing twenty-four (24) hour emergency hospital care shall include definitive care based upon the classification of hospital's emergency services in the region as specified in OAC 310:667-59-7. Transfers out of the regional system may be based upon lack of diagnostic or treatment capability or capacity. A functioning system shall not permit emergent patient transfers out of the system if the system has the capability and capacity to provide care unless the patient or patient's legal representative requests the transfer.

(3) A functioning regional system of providing twenty-four (24) hour emergency hospital care shall demonstrate compliance with OAC 310:667-1-3(g)(1) or (2) through system continuous quality improvement activities. Activities shall include monitoring of patient transfers and corrective actions when inappropriate transfers are identified. Special circumstance patient transfers shall be identified and reviewed through continuous quality improvement activities.

(h) **Quality indicators.** The Department, with the recommendation and approval of the Hospital Advisory Council, shall establish quality indicators to monitor and evaluate the quality of care provided by licensed hospitals in the state.

(1) The quality indicators shall focus on the following measurement areas:

(A) Acute myocardial infarction (including coronary artery disease);

(B) Heart failure;

(C) Community acquired pneumonia;

(D) Pregnancy and related conditions (including newborn and maternal care);

(E) Surgical procedures and complications; and

(F) Patient perception measures such as satisfaction surveys.

(2) The quality indicators in use shall be periodically evaluated and revised as health care quality issues are identified and others are resolved.

(i) **Data submission requirements.**

(1) The Department shall define the parameters and scope of each quality indicator, the beginning and ending dates of the period when each indicator will be in effect, how the indicator will be measured, any inclusionary or exclusionary criteria, and the frequency and format of how the data shall be reported.

(2) Each hospital shall report applicable data related to these indicators to the Department in the specified format and within required time frames.

SUBCHAPTER 5. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

310:667-5-4. Employee and/or worker health examinations

(a) **Pre-employment.** Each employee and/or worker (with or without patient care responsibilities, paid or volunteer, full-time or part-time: physicians, nurses, emergency medical personnel, dental professionals and students, medical and nursing students, laboratory and pharmacy workers, hospital volunteers, and administrative staff, including food service workers) in the hospital shall have a pre-employment health examination, which shall include (but not be limited to):

(1) An immunization history shall be part of each pre-employment examination or application for hospital privileges. The immunization history shall include documentation of immunity to measles, mumps, rubella and varicella.

(A) Birth before 1957 is considered acceptable evidence of immunity to measles, mumps, and rubella, with the exception that birth before 1957 is not acceptable evidence of immunity to rubella for female employees and/or workers born before 1957 who can become pregnant.

(B) Persons born in 1957 or later can be considered immune to measles, mumps or rubella only if they have documentation of one of the following:

(i) measles or mumps disease diagnosed by a physician or licensed independent practitioner;

(ii) laboratory evidence of measles, mumps, or rubella immunity; or

(iii) vaccination on or after the first birthday with two doses of live measles vaccine separated by at least 28 days, at least one dose of live mumps vaccine, and at least one dose of live rubella vaccine.

(C) Persons can be considered immune to varicella if they have a reliable history of having had varicella or if they have received one dose of varicella vaccine on or after the first birthday prior to the 13th birthday, or two doses of varicella vaccine separated by at least 28 days on or after the 13th birthday.

(D) Serologic screening need not be done before vaccinating against measles, mumps, rubella and varicella unless the facility considers it cost-effective.

(E) Serologic screening is not necessary for persons who have documentation of appropriate vaccination or other acceptable evidence of immunity to measles, mumps, rubella, and varicella. (F) Contraindications to MMR or varicella vaccines should be followed.

(2) A tuberculin skin test utilizing the Mantoux technique shall be included as part of the pre-employment health examination or application for hospital privileges. Only a previous reactive tuberculin skin test or documented evidence of tuberculin skin testing within the previous twelve (12) months as a part of another licensed health care facility's tuberculosis control program would negate this requirement. If PPD (Purified Protein Derivative) is less than 10 mm., repeat PPD in one to two (1-2) weeks, if it has been more than a year since the employee's and/or worker's last non-reactive tuberculin test (Booster Effect). A history of vaccination with BCG (Bacillus of Calmette and Guerin) does not preclude initial tuberculin skin testing, and a reaction of ten (10) mm. or more should be managed in the same manner as it would be in a patient with no history of BCG vaccination.

(3) Hepatitis B vaccine shall be offered consistent with 29 CFR Section 1910.1030 (Occupational Exposure to Bloodborne Pathogens).

(4) Each hospital shall meet Occupational Safety and Health Act standards applicable to the facility.

(b) **~~Annual~~Periodic health examinations.** A tuberculin skin test utilizing the Mantoux technique shall be repeated ~~annually~~ at regular intervals on those employees and/or workers who ~~have patient contact~~ have potential for exposure to *Mycobacterium tuberculosis* unless the employee and/or worker has a previous documented reactive skin test on file. Such periodic tuberculin skin testing shall be part of a documented tuberculosis control program that is based on a facility-specific risk assessment that considers at a minimum: the type and size of the facility, the prevalence of tuberculosis in the community, the patient population served by the facility, the occupational group the person represents, the area of the facility where the person works, and the effectiveness of the facility's tuberculosis control program. The following guidelines shall be used for the information and education of facilities with regard to their tuberculosis control program: "Centers for Disease Control and Prevention. Guidelines for

preventing the transmission of *Mycobacterium tuberculosis* in health care facilities, 1994. MMWR 1994;43(No. RR-13)".

(1) Follow-up examinations for employees and/or workers who react significantly to a tuberculin skin test shall be conducted.

(2) Employees and/or workers with an initial negative chest x-ray, whether they take appropriate preventive therapy (treatment of latent tuberculosis infection) or not, shall be exempt from yearly, routine chest x-rays unless signs or symptoms suggestive of tuberculosis develop.

(3) Employees and/or workers with a documented reactive skin test and a proven negative chest x-ray, whether they have taken appropriate preventive therapy (treatment of latent tuberculosis infection) or not, shall be exempt from yearly, routine chest x-rays unless signs or symptoms suggestive of tuberculosis develop.

(4) Employees and/or workers with documented prior reactive tuberculin skin tests shall be seen yearly by medical personnel to determine if signs or symptoms are present. The results of such examinations shall be recorded on the individual employee's and/or worker's health record.

(c) **Interim health examinations.** Employees and/or workers, when found to be likely to transmit a communicable disease as determined by a physician or licensed independent practitioner, shall be removed from patient contact duties, consistent with state and federal laws, until such time as a physician or licensed independent practitioner certifies that the risk of transmission of communicable disease is within acceptable limits as defined by the infection control program in its written policies and procedures.

(d) **Follow-up examinations.** Follow-up of an employee and/or workers, who, while employed at the facility, is a contact to active tuberculosis:

(1) An employee and/or worker who is a known tuberculosis contact shall have a tuberculin skin test. If this test is reactive for the first time, the individual shall have a chest x-ray. If the individual with a reactive skin test does not take preventive medication (treatment of latent tuberculosis infection), the employee and/or worker shall be monitored.

(2) If an employee and/or worker is a known, recent tuberculosis contact, he or she shall have a tuberculin skin test and, if non-reactive, and if the individual is asymptomatic for tuberculosis, then a repeat tuberculin skin test shall be done in three (3) months. If the employee and/or worker is symptomatic, an x-ray shall be done immediately.

(3) If an employee and/or worker is a contact to active tuberculosis and has a documented previous reactive skin test, he or she shall be exempt from yearly, routine x-rays unless signs or symptoms develop suggestive of tuberculosis.

(e) **Health examination records.** A file shall be maintained for each employee and/or worker, containing the results of the evaluations and examinations specified at OAC 310:667-5-4 (a) through (d) and the dates of illnesses as relate to employment.

(f) **Credentialing records.** For credentialed non-employee workers, including physicians, hospitals may meet these requirements if as part of the credentialing process such workers provide evidence of an immunization history and tuberculin skin test, consistent with the tuberculosis control program required at 310:667-5-4(b), in the form of a signed attestation statement from the non-employee worker that documents the worker's immunization history and the date and results of the latest tuberculin skin test.

[OAR Docket #05-1082; filed 6-1-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 669. TRAUMA CARE ASSISTANCE REVOLVING FUND

[OAR Docket #05-1083]

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Subchapter 1. General Provisions
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Subchapter 3. Data Accumulations
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Subchapter 5. Reports and Financial Statements
310:669-5-1. [AMENDED]
310:669-5-2. [AMENDED]
310:669-5-4. [AMENDED]
Subchapter 7. Fund Distribution
310:669-7-1. [AMENDED]
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ANALYSIS:
The proposed amendments include physicians in the definitions of those entities eligible for reimbursement from the Trauma Care Assistance Revolving Fund ("Fund"). The proposed amendments also identify records required to be maintained and records to be submitted by physicians requesting reimbursement from the fund. Additionally, the proposed amendments

increase the number of filing periods required of distribution entities and increase the frequency of disbursements from the Fund. The changes also delete time barriers for entities filing revised data to obtain additional collections from the Trauma Fund. The proposed changes clarify the pro rata disbursements from the Fund to hospitals, ambulance services and physicians.

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 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

310:669-1-2. Definitions

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

"Ambulance service" means an entity licensed in accordance with 63 O.S. Supp. 2000, 1-2501, et seq.

"Bad debt" means the actual amount of uncollectible charges written off by a distribution entity, and arising from providing inpatient or outpatient care, or transportation service, and that is calculated as the net of bad debt recoveries applied against bad debt expenses**.**

"Charity care" means inpatient or outpatient care, or transportation services for which a distribution entity never expected to be reimbursed based on the distribution entity's determination of the patient's ability to pay based on the distribution entity's established standards.

"Commissioner" means the State Commissioner of Health.

"Cost report" means the latest annual reporting statement filed by a facility with its fiscal intermediary in compliance with requirements enforced by the Centers for Medicare and Medicaid Services.

"Cost to charge ratio" means the factor(s) calculated annually using information reported as part of a facility's cost report.

"Department" means the State Department of Health.

"Distribution entity" means a trauma facility, physician, or ambulance service that provided uncompensated care and reported the care to the pre-hospital emergency medical service database and/or the state trauma registry in accordance with OAC 310:669-3-1.

"Gross revenues" means the charges for inpatient and outpatient services uniformly applied at the regular rates established to all patients by the distribution entity prior to the application of any adjustments, allowances, discounts, or revenue deductions.

"Medicare Allowed Reimbursement" means the allowed reimbursement established by the Centers for Medicare and Medicaid Services for the geographic location where inpatient or outpatient care is provided by a physician or transportation services are provided by a freestanding ambulance service.

"Run report" means the standard report form developed by the Commissioner to facilitate the collection of a standardized data set related to the provision of emergency medical and trauma care in accordance with 63 O.S. Section 1-2511.

"Tier A Physician" means a physician credentialed by the medical staff to provide emergency care to trauma patients in the specialties of emergency medicine, neurosurgery, general surgery, maxillo-facial surgery, orthopedic surgery, anesthesiology, and trauma intensivists.

"Tier B Physician" means a physician credentialed by medical staff to provide care to trauma patients in a specialty area not defined in Tier A.

"Trauma" means bodily injury that produces injuries severe enough to cause disability or death.

"Trauma care" means treatment or transportation for treatment of a bodily injury that produces injures severe enough to cause disability or death.

"Trauma facility" means a hospital classified by the Department as providing a Level I, II, III, or IV Trauma and Emergency Operative Service.

"Trauma registry" means *the statewide emergency medical services and trauma analysis system developed pursuant to the provisions of Section 1-2511* of Title 63 of the Oklahoma Statutes. [63:330.97]

"Trauma team" means a surgeon and a specific team identified in policy and required to respond to the hospital to care for the traumatically injured within a specified period of time, monitored by a quality assurance process.

"Uncompensated care" means care provided for which no payment was received from the patient or insurer. Uncompensated care is the sum of a distribution entity's bad debt and charity care.

SUBCHAPTER 3. DATA ACCUMULATIONS

310:669-3-1. Data accumulation

(a) A trauma facility shall accumulate data in accordance with the following procedures:

(1) Within thirty (30) calendar days of receiving a run report from an ambulance service, enter transportation-related data to the trauma registry;

(2) Immediately after entering data received from an ambulance service into the trauma registry, indicate the date entered and initials of the person making the entry on the ambulance service's filing; and

(3) Periodically throughout the year make entries to the trauma registry for the facility's own total charges, total costs, or total collections.

(b) An ambulance service shall submit run reports to the Department in accordance with the requirements of OAC 310:641-3-160(b).

(c) A physician submitting claim for payment to the Trauma Care Assistance Revolving Fund shall maintain records on all trauma cases showing all charges, the Centers for Medicare

and Medicaid Services reimbursement methodology based on the appropriate procedure code, and subsequent collections.

SUBCHAPTER 5. REPORTS AND FINANCIAL STATEMENTS

310:669-5-1. Filing requirements

(a) There shall be a minimum of two filing periods annually with such filing periods to be designated by the Department. By ~~December 31st of each year~~the end of each filing period, each distribution entity requesting distribution of a pro rata share of the Trauma Care Assistance Revolving Fund shall file a report with the Commissioner for the ~~twelve month period ending as of the immediate past June 30th~~designated filing period.

(b) Each distribution entity shall use the forms established by OAC 310:669-5-2 to report the following:

(1) A link(s) to identify the trauma registry data;

(2) The dollars of gross revenues for the distribution entity's trauma care bad debts;

(3) The dollars of gross revenues for the distribution entity's trauma charity care;

(4) The cost to charge ratio calculated using the costs and charges for all departments of a trauma facility; and

(5) The trauma facility's specific ambulance department cost to charge ratio for a hospital-based ambulance service.

(c) Trauma reported to the trauma registry is described by an ICD-9 code of 800.00 to 959.9, and is limited to contacts within thirty (30) days of the injury, and is accompanied by one or more of the following events for the patient:

(1) An admission to a hospital of at least forty-eight (48) hours; or

(2) Transfer from a lower level to a higher level of trauma facility for major trauma; or

(3) Activation of a trauma team; or

(4) Admission to an intensive care unit; or

(5) Admission directly to an operating room for surgery of the head, chest, abdomen, or vascular system; or

(6) A declaration of dead on arrival; or

(7) A declaration of dead in the emergency room or elsewhere in the hospital.

(d) In addition to meeting the requirements at 310:669-5-1(c), each reportable case must also meet at least one of the following criteria as computed by the trauma registry software, unless the patient was declared dead on arrival to the hospital or died while in the hospital:

(1) Have an Abbreviated Injury Score of 3 or higher; or

(2) Have an Injury Severity Score of 9 or higher; or

(3) Have a Survival Probability of 0.90 or less.

(e) Cases meeting any of the following exclusionary conditions shall not be reported to the trauma registry or be eligible for reimbursement from the fund:

(1) Isolated orthopedic injuries to the extremities due to a same level fall;

(2) Overexertion injuries;

(3) Injuries resulting from a pre-existing condition such as osteoporosis or esophageal stricture;

(4) Injuries greater than 30 days old;

(5) Poisoning and toxic events; and

(6) Submersion injuries.

(f) Uncompensated expenses incurred by ~~licensed ambulance services that are~~a distribution entity associated with major trauma patients, and such trauma care has been reported to the state pre- hospital emergency medical service database and/or the state trauma registry, shall be eligible for reimbursement. Uncompensated expenses incurred for emergency transport to a trauma facility from the scene of the injury or from a lower level to a higher level of trauma ~~facility~~care are eligible for reimbursement when the case meets one or more of the following conditions:

(1) The extent of patient injury is verified through a hospital trauma registry as described at OAC 310:667-5-1(c), (d), and (e); or

(2) Glascow coma score equal to or less than thirteen (13); or

(3) Respiratory compromise resulting from trauma requiring intervention; or

(4) Hemodynamic compromise from trauma resulting in decreased blood pressure; or

(5) Penetrating injury above the groin; or

(6) Amputation proximal to the wrist or ankle; or

(7) Paralysis resulting from traumatic injury; or

(8) Flail chest; or

(9) Two or more proximal long bone fractures (humerus and/or femur ; or

(10) Open or depressed skull fracture; or

(11) Unstable pelvis; or

(12) Pediatric trauma score equal to or less than eight (8).

(g) A distribution entity shall exclude from its contractual adjustments gross revenue amounts written off as a result of governmental payors' set reimbursement rates that are not subject to negotiation by the entity. Contractual adjustment exclusions may include but are not limited to Medicare, Medicaid, and Indian Health Service reimbursement.

(h) A free-standing ambulance service shall calculate transportation reimbursement using the Centers for Medicare and Medicaid Services reimbursement methodology in place as of the date of transportation.

(i) A physician shall calculate procedure reimbursement using the Centers for Medicare and Medicaid Services reimbursement methodology based on the appropriate procedure code.

(~~i~~j) A distribution entity shall not include in uncompensated care any deductible or coinsurance that the patient fails to pay to the distribution entity unless the distribution entity has pursued reasonable collection efforts consistent with those generally used by similar entities. A distribution entity shall not include any amount it is not entitled to collect from the patient.

(~~j~~k) If a trauma facility transfers a major trauma patient to another facility classified to provide a higher level of care, the transfer shall be performed in accordance with the Oklahoma Triage, Transport, and Transfer Guidelines established under

OAC 310:641-3-130(b)(3). The transferring facility shall include in uncompensated care reported in accordance with OAC 310:669-5-2 only those gross revenues incurred which were necessary to provide stabilizing treatment prior to effecting an appropriate transfer. Gross revenues for inappropriate definitive diagnostic testing prior to transfer shall not be reported as uncompensated care.

310:669-5-2. Report forms

(a) Each trauma facility shall detail eligible trauma cases, cross-reference report components, detail and summarize uncompensated care, and report the facility's cost to charge ratio on a "Trauma Facility Revolving Fund Distribution Request Form" that includes the following:

(1) Demographic data downloaded from the trauma registry including:

(A) Creation number of the Trauma registry entry;

(B) Patient's Social Security Number, if available;

(C) Medical record number for the trauma facility;

(D) Patient's date of arrival at the trauma facility in the format mm/dd/yyyy;

(E) Patient last name;

(F) Patient first name;

(G) Patient date of birth in the format mm/dd/yyyy, if available;

(H) Patient age in the format of yy, if available; and

(I) Patient gender in the format "M" for male or "F" for female.

(2) Injury acuity information and patient cross-references downloaded from the trauma registry including:

(A) Creation number of the trauma registry entry;

(B) Patient's Social Security Number, if available;

(C) Patient's date of arrival at the trauma facility in the format mm/dd/yyyy;

(D) Patient date of birth in the format mm/dd/yyyy, if available;

(E) Patient age in the format yy, if available;

(F) Abbreviated Injury Score Value (AIS) calculated by the trauma registry software from data input to multiple fields;

(G) Revised Injury Severity Score (ISS) calculated by the trauma registry software from data input to multiple fields;

(H) Survival probability;

(I) Patient length of stay in the facility's intensive care unit (ICU); and

(J) Patient total length of inpatient stay in all departments of the trauma facility.

(3) Financial Information from the trauma registry and/or the financial records of the trauma facility and cross-references and calculations including:

(A) Creation number of the trauma registry entry;

(B) Patient's Social Security Number, if available;

(C) Patient's date of arrival at the trauma facility in the format mm/dd/yyyy;

(D) Patient age in the format yy, if available;

(E) Total hospital charges as reported in the trauma registry;

(F) Total collections as reported in the trauma registry;

(G) Total hospital gross revenues as reported in the trauma facility's financial records;

(H) The cost to charge ratio for all departments of the facility in place as of the patient's date of arrival at the trauma facility;

(I) Adjusted hospital gross revenues calculated by multiplying the figure in (G) of this paragraph by the ratio in (H) of this paragraph;

(J) Actual total collection for the patient's services as of the date the "Trauma Facility Revolving Fund Distribution Request Form" is prepared by the trauma facility;

(K) Contractual adjustments pertinent to the trauma services received by the patient;

(L) The trauma facility's uncompensated care services for the patient calculated by subtracting the figures in items (J) of this paragraph and (K) of this paragraph from the calculated amount in (I) of this paragraph.

(b) Each free-standing ambulance service shall detail eligible trauma cases, detail and summarize uncompensated care on a "Free Standing Ambulance Service Revolving Fund Distribution Request Form" that includes the following:

(1) Demographic data extracted from the run report including:

(A) Run report number or lithocode;

(B) Transported person's Social Security Number, if available;

(C) Transported person's last name;

(D) Transported person's first name;

(E) Transported person's date of birth in the format mm/dd/yyyy, if available;

(F) Transported person's age in the format yy, if available;

(G) Transported person's pickup date in the format mm/dd/yy or mm/dd/yyyy;

(H) The name of the delivered to facility;

(I) The encoder number of the delivered to facility; and

(J) The Glascow Coma Score and trauma criteria as reported on the run report, or information using such other uniform trauma reporting standards as the Department determines are reasonable and necessary to accurately classify each trauma case.

(2) Financial information from the free-standing ambulance financial records of the ambulance service including:

(A) Total reimbursement using the Medicare allowed reimbursement or other methodology in place on the date of transportation;

(B) Actual total collections for the transported person's services as of the date the "Free Standing Ambulance Service Revolving Fund Distribution Request Form" is prepared by the trauma facility;

(C) Contractual adjustments pertinent to the transportation services received by the transported person;

(D) The free-standing ambulance services uncompensated care for the transported person calculated by subtracting the figures in items (B) of this paragraph and (C) of this paragraph from the amount in (A) of this paragraph.

(c) Each hospital-based ambulance service shall, at a minimum, detail eligible trauma cases, detail and summarize uncompensated care ~~on a "Hospital-Based Ambulance Service Revolving Fund Distribution Request Form" that~~in a format approved by the Department which includes the following:

(1) Demographic data extracted from the run report including:

(A) Run report number or lithocode;

(B) Transported person's Social Security Number, if available;

(C) Transported person's last name;

(D) Transported person's first name;

(E) Transported person's date of birth in the format mm/dd/yyyy, if available;

(F) Transported person's age in the format yy, if available;

(G) Transported person's pickup date in the format mm/dd/yy or mm/dd/yyyy;

(H) The name of the delivered to facility;

(I) The encoder number of the delivered to facility; and

(J) The Glascow Coma Score and trauma criteria as reported on the run report, or information using such other uniform trauma reporting standards as the Department determines are reasonable and necessary to accurately classify each trauma case.

(2) Financial information from the ~~free-standing~~hospital-based ambulance financial records of the ambulance service including:

(A) Total reimbursement using the lesser of the Medicare per trip limit or the services' charges multiplied by the hospital's ambulance department specific cost to charge ratio;

(B) Actual total collections for the transported person's services as of the date the "Hospital-Based Ambulance Service Revolving Fund Distribution Request Form" is prepared by the trauma facility;

(C) Contractual adjustments pertinent to the transportation services received by the transported person;

(D) The hospital-based ambulance services uncompensated care for the transported person calculated by subtracting the figures in items (B) of this paragraph and (C) of this paragraph from the amount in (A) of this paragraph.

(3) As an alternative to the report described in (1) of this subsection, a hospital-based ambulance service may report using a ~~"Trauma Facility Revolving Fund Distribution Request Form"~~format approved by the Department by extracting from the trauma registry all information the trauma facility reports and adding to that information the ambulance-specific information from (1) of this subsection and (2) of this subsection.

(d) Each physician shall detail eligible trauma cases and summarize uncompensated care in a format approved by the Department which includes the following:

(1) Demographic data extracted from the trauma registry including:

(A) Creation number of the trauma registry entry or EMS run number;

(B) Patient's Social Security Number, if available;

(C) Patient's date of arrival at the trauma facility in the format mm/dd/yyyy;

(D) Patient date of birth in the format mm/dd/yyyy, if available;

(E) Patient age in the format yy, if available; and

(F) Physical findings and treatment as specified in the Centers for Medicare and Medicaid Services reimbursement methodology based on the appropriate procedure code.

(2) Financial information from the physician records including:

(A) Total allowable reimbursement using the Medicare methodology in place on the date of care;

(B) Actual total collections for patient services as of the date the request for revolving fund distribution is prepared in a format approved by the Department;

(C) Contractual adjustments pertinent to the services received by the patient;

(D) The physician's uncompensated care cost calculated by subtracting the figures in items (B) of this paragraph; and (C) of this paragraph from the amount in (A) of this paragraph.

(~~d~~e) Each distribution entity shall file with the appropriate request form a properly signed and notarized contract in accordance with the Central Purchasing Act (74 O.S. Supp. 2000 Section 85.1 et seq.) to permit encumbrance by the State of the funds for the distribution.

310:669-5-4. Amendments

(a) A distribution entity's data originally reported to the trauma registry may be subject to audit as established by law, contractual agreement, or for the facility's owners or operators to exercise fiscal and ~~fiducial~~fiduciary responsibility. A State or Federal agency, a fiscal intermediary, or an independent auditor may perform an audit. The audit report may also be eligible for appeal.

(b) A distribution entity may also receive an additional collection(s) for care treated as uncompensated on a prior request for distribution report.

(c) When a late collection(s) or an audit or its appeal results in revising data filed in accordance with OAC 310:669-5-1 and 5-2, the distribution entity shall report to the Department ~~using the following~~according to Department guidelines~~:~~.

~~(1) Within thirty (30) days of filing the original report, the distribution entity shall report the amendment to the Department within ten (10) days of its discovery; or~~

~~(2) After thirty (30) days of filing the original report, the distribution entity shall report the amendment to the Department by filing the amount(s) as an adjustment at the bottom of the first subsequent year's request form.~~

~~(d) To file an amendment with the Department within thirty (30) days of filing the original report, the distribution entity shall write to the Department to explain the reason(s), copy the original report filed under OAC 310:669-5-1 and 5-2, and on the copy indicate the following:~~

~~(1) Mark out the amount(s) to be revised; and~~

~~(2) Enter the revised amount(s).~~

SUBCHAPTER 7. FUND DISTRIBUTION

310:669-7-1. Calculation of pro rata share

(a) Available monies in the Trauma Care Assistance Revolving Fund shall be disbursed as follows:

(1) Seventy-percent of the total available monies shall be allotted for distribution to ambulance services and hospitals in accordance the Department's calculated pro rata share.

(2) Up to thirty (30) percent of the total available monies shall be allotted for distribution to Tier A physicians in accordance with the Department's calculated pro rata share. If the total available monies distributed to Tier A physicians is less than thirty (30) percent of the total available monies, the remainder of this thirty (30) percent shall be allotted for distribution to Tier B physicians. If the total available monies distributed to Tier A and Tier B physicians is less than thirty (30) percent of the total available monies, the remainder of the monies shall be allotted for distribution to ambulance services and hospitals.

(~~a~~b) For each distribution entity that filed a report in accordance with OAC 310:669-5-1 and 5-2, the Department shall calculate the distribution entity's pro rata share of the available monies in the Trauma Care Assistance Revolving Fund developed in accordance with 47 O.S. Supp. 2000 Section 6-101 using the following fraction:

(1) The numerator of the fraction shall equal the sum of the distribution entity's own uncompensated trauma care dollars multiplied by the cost to charge ratio of the facility; and

(2) The denominator of the fraction shall equal the sum of the uncompensated trauma care dollars for all distribution entities after each facility's cost to charge ratio is applied.

~~(b) The first distribution made by the Department shall encompass the twelve-month period ending June 30, 2000.~~

310:669-7-2. Distribution procedure

(a) The Department shall distribute ~~once in each fiscal year of the state~~ a pro rata share of the Trauma Care Assistance Revolving Fund to each distribution entity that filed a report as required by OAC 310:669-5-1 and 5-2, ~~for the previous twelve (12) months~~in accordance with the designated filing periods as described in 310:669-5-1, as follows:

(1) Calculated in accordance with OAC 310:669-7-1; and

(2) Adjusted for amendments of data filed in accordance with OAC 310:669-5-4.

(b) The Department shall notify each distribution entity in writing of the pro rata distribution share the Department calculated in accordance with OAC 310:669-7-1. The distribution notice shall include the following:

(1) The total Trauma Care Assistance Revolving Fund monies available to be distributed, and to be retained by the Department;

(2) The numerator and the denominator of the distribution entity's pro rata distribution fraction calculated in accordance with OAC 310:669-7-1; and

(3) The contact person and the address at the Department to submit questions.

(c) The Department shall ~~issue checks to distribute the~~make a pro rata distribution ~~in accordance with~~ ~~*warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance* [47:6-101]. The distribution shall be complete by April 30th of each year in which a distribution is made~~of the Trauma Care Assistance Revolving Fund.

[OAR Docket #05-1083; filed 6-1-05]

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

[OAR Docket #05-1084]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
310:670-1-2. [AMENDED]
Subchapter 3. Standards for Lockup Facilities
310:670-3-1. [AMENDED]
Subchapter 5. Standards for Jail Facilities/Detention Center
310:670-5-1. [AMENDED]
310:670-5-2. [AMENDED]
310:670-5-3. [AMENDED]
310:670-5-6. [AMENDED]
310:670-5-7. [AMENDED]
310:670-5-8. [AMENDED]
310:670-5-10. [AMENDED]
Subchapter 7. Standards for Jails Holding Juveniles
310:670-7-1. [AMENDED]

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The purpose of this proposal is to implement law changes affecting city or county facilities that house twenty or fewer prisoners, pursuant to Title 74 O.S. Section 192, effective November 1, 2004. Additionally, this proposal amends requirements in the areas of medical and mental health screenings, dietetics, medication administration, and medical services. These changes are intended to ensure the safety of jail staff and prisoners, while affording facilities more flexibility in meeting standards. This proposal adds and modifies definitions, and clarifies requirements relating to staff training, trustee supervision, health screening, backup assistance, smoking, standardized menus, prepackaged medication, and medical appointments. The proposal specifies that male and female staff must be on duty to provide sensitive functions when both male and female prisoners are housed.
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 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

310:670-1-2. Definitions

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

"ACA" means American Correctional Association.

"Available" means that the subject individual is either on site or on the premises.

"Bodily search" means any invasive examination by hand of an prisoner's person or clothing. Bodily searches do not include "pat-downs."

"Central control" means the central point within the facility where security activities are monitored and controlled.

"Dayroom" means space for activities that is situated immediately adjacent to the prisoners' sleeping area and separated from the sleeping area by a wall.

"Department" means Oklahoma State Department of Health.

"Facility administrator" means sheriff, police chief, city manager, private contractor or a designee thereof charged with maintaining and operating a holding facility, lockup facility, or jail facility.

"Grievance" means a circumstance or action considered unjust.

"Holding facility" means a facility that shall hold a person no longer than twelve (12) hours. A holding facility is not required to meet the standards for jails, so long as a trained employee of the responsible county, city or town is available to render aid to, or release any confined person in the event aid or release is required because of a health or life endangering emergency.

"Hot meal" means a measure of food served and eaten at one sitting prepared in accordance with OAC 310:256 and served at a palatable temperature range of 110° - 120° F. (43.3° - 48.8° C.).

"Indigent prisoner" means a prisoner who has a total receipt of or a balance of less than $15.00 from the first day through the last of the preceding month.

"Jail facility" means a facility that may hold a person for an indefinite period of time.

"Juvenile" means a person who is subject solely to the jurisdiction of a juvenile court or who is subject to the provisions of 10 O.S. Sections 7306-2.5 or 7306-2.6.

"Last locked/secure door" means the last secure barrier between staff and the prisoner.

"Life endangering situations" means a suicide attempt, or obvious serious injury or illness, which in the evaluation of the staff requires an immediate response.

"Living quarters" means beyond the last locked/secure door.

"Lockup facility" means a facility that may hold a person no longer than ten (10) days. It is usually operated by a town or city for the temporary detention of persons awaiting arraignment. Persons who need to be detained longer than ten (10) days shall be transferred to a jail.

"New construction" means a facility with final plans approved after January 1, 1992.

"On site" means a trained jailer or jailer being physically present within the jail facility.

"On the premises" means a trained jailer or jailer being physically present within the structure housing or incorporating the jail facility, or within a building or structure sharing the same realty or located on realty that is contiguous to the realty upon which the structure housing or incorporating the jail facility is located, provided that such remote building or structure is not located farther than 500 feet from the jail facility.

"Pat-down" means a noninvasive search of a prisoner by hand performed by lightly skimming the exterior surface of the prisoner's clothing covering the legs and torso. A pat-down of a prisoner by facility staff of the opposite gender may be conducted by using the back or dorsal surface of the hand.

"Physician or other licensed medical personnel" means a psychiatrist, medical doctor, osteopathic physician, physician's assistant, registered nurse, licensed practical nurse, emergency medical technician (paramedic level) or clinical nurse specialist.

"Prisoner" means any individual, whether in pretrial, sentenced or unsentenced status who is confined in a jail facility.

"Sensitive functions and procedures" means any bodily search or the direct supervision of any activity requiring or involving a prisoner to partially or fully disrobe.

"Substantial remodeling" means the cost to repair/replace is at least fifty (50) percent of the cost to replace the facility.

"Trained jailer" or "jailer" means a person whose training, education and/or experience specifically qualifies him or her to perform the duties indicated in the job description and the jail standards, or a person who holds a certification accorded pursuant to 70 O.S. Section 3311. The individual performing the duties must be trained in appropriate laws, codes, standards, policies and procedures.

SUBCHAPTER 3. STANDARDS FOR LOCKUP FACILITIES

310:670-3-1. Basic standards

The facility administrator shall develop and implement written policies and procedures for the operation of a lockup facility which shall include and address at a minimum, the following:

(1) Arrest and commitment papers shall be verified.

(2) A prisoner shall be searched during admission.

(3) A prisoner's property shall be inventoried and property shall be stored in a secure location.

(4) Medical screening shall be performed on all prisoners and documented and shall include at a minimum, the following information:

(A) Communicable diseases (i.e. HIV/STD, HEPATITIS, TB);

(B) Alcohol and drug abuse and treatment;

(C) Allergies;

(D) Injuries;

(E) Illnesses;

(F) Medication; and

(G) Suicide risks or attempts;

(5) A first aid kit shall be available at locations designated by the facility administrator.

(6) Two (2) completed, documented, local or collect telephone calls shall be allowed at time of booking or after a reasonable length of time as determined by the administrator or designee. The administrator or designee shall document a prisoner's refusal to make calls. In facilities where prisoners have unlimited access to operational telephones, a prisoner's refusal to make telephone calls is not required to be documented.

(7) Clean bedding and personal hygiene items shall be available and provided at the facility.

(8) Shower facilities shall be available with hot and cold running water at a ratio of at least one (1) shower for every twenty (20) prisoners.

(9) Continual supervision shall be provided by a trained employee.

(10) Hourly visual sight checks shall be conducted and documented.

(11) Male and female prisoners shall be housed separately with no visual contact between the two genders.

(12) The facility shall comply with federal, state and local health, life safety and fire safety codes.

(13) Each prisoner shall be provided at least three (3) meals each twenty-four (24) hours that meet the national recommended allowance for basic nutrition. At least two (2) hot meals shall be provided daily. There shall not be more than fourteen (14) hours between the breakfast and the evening meals.

(14) Minimum Fire Safety Requirements:

(A) **Automatic smoke detection.** The facility shall be equipped with a smoke detection system and a sprinkler system that complies with the Fire Safety Code and is approved by the Fire Marshal.

(B) **Bedding.** Polyurethane foam mattresses, pads and pillows are prohibited. Mattresses that are in compliance with the Fire Safety Code shall be used.

(C) **Emergency lighting.** Each facility shall have emergency lighting that meets the minimum standards in the Life Safety and Fire Safety Codes.

(D) **Supervision of prisoners.** Jailer posts shall be located and staffed close enough to the lockup area to permit jailers to hear and respond promptly to calls for assistance, and provide immediate response to emergencies.

(E) **Exits.** There shall be designated and marked emergency evacuation exits that comply with the Fire Safety Code.

(15) Prisoners held over twenty-four (24) hours shall be issued and required to wear a clean set of jail clothing to include at least shirt and trousers or coveralls and footwear. A prisoner shall receive a complete change of clothing at least one (1) time each week. Prisoner street clothing shall be placed in prisoner property.

(16) A trained jailer shall be on duty on each floor where prisoners are confined unless the facility is equipped with:

(A) Viewing access to all areas of the facility through closed circuit TV system; and

(B) An intercommunication system between the cell/living area and jailer post/control center to communicate with and monitor prisoners.

(17) Any lockup facility constructed or substantially remodeled after January 1, 1992 shall meet the requirements of OAC 310:670-5-11 except ~~310:650-5-11(b)~~310:670-5-11(b) (7), (8), and (13).

(18) Any lockup facility which houses twenty (20) prisoners or less *shall not be required to have more than one jailer or dispatcher on-site to provide for the security, custody and supervision of prisoners* [74:192(C)], provided the following requirements are met:

(A) The facility *provides twenty-four-hour supervision of prisoner activity that is conducted either by direct observation or electronically by closed circuit television* [74:192(C)(1)];

(B) The facility *provides an intercommunication system that terminates in a location that is staffed twenty-four (24) hours a day and is capable of providing an emergency response* [74:192(C)(2)];

(C) The on-site jailer or dispatcher providing security, custody and supervision shall have completed the training required in OAC 310:670-5-10; and

(D) Staff shall be available to perform sensitive functions and procedures as necessary to accommodate prisoner gender.

SUBCHAPTER 5. STANDARDS FOR JAIL FACILITIES/DETENTION CENTER

310:670-5-1. Admission, release and records

The following admission and release procedures shall be followed. A facility shall have written policies and procedures for the reception, orientation and release of prisoners.

(1) The admission process of new prisoners shall include at least the following:

(A) Verification of arrest or commitment papers;

(B) Complete search of the individual upon entering the facility;

(C) Medical/mental health screening by ~~qualified,~~ trained facility personnel ~~in compliance with the Oklahoma Nurse Practice Act, Title 59 of the Oklahoma Statutes; Section 567.1 et seq.;~~utilizing a questionnaire approved by the Department of Health, or a screening conducted by a physician or other licensed medical personnel;

(D) Procedures to ensure orientation and understanding of facility rules;

(E) Issue bedding, clothing, and footwear; and

(F) Classification and assignment to a housing unit.

(2) Positive identification shall be made of the arresting or committing officer, including verification of the officer's authority to make the commitment.

(3) Each newly admitted prisoner shall be permitted to complete at least two (2) local or collect telephone calls during the admission process or after a reasonable length of time as determined by the administrator. These telephone calls shall be documented and a prisoner's refusal to make telephone calls shall be documented. In facilities, where prisoners have unlimited access to operational telephones, a prisoner's refusal to make telephone calls is not required to be documented.

(4) The types of personal property prisoners may retain in their possession during confinement shall be specified in a facility's policies and procedures. Secure storage for property not authorized to be in the prisoner's possession, to include civilian street clothing shall be provided.

(5) A written itemized inventory shall be made of all personal property of a newly admitted prisoner.

(6) Before a prisoner is released, positive identification shall be made of the individual and authority for release shall be verified.

(7) After the individual is positively identified, the prisoner's personal property shall be returned. The items shall be compared with the inventory list and the prisoner shall sign for the returned property upon release.

(8) A logbook or computer record shall be maintained on all prisoners admitted to the facility. The logbook or computer record shall include at least the following:

(A) Name of the prisoner;

(B) Date and time of admission;

(C) Date and time of release;

(D) Offense charges;

(E) Arrest number;

(F) Date of birth;

(G) Race; and

(H) Gender;

(I) Social security number;

(J) Booking and intake number.

(9) An intake form shall be completed for every person admitted to a facility. The intake form shall be placed in the prisoner's file and shall contain at least the following information:

(A) Date and time of admission;

(B) Name and aliases of prisoner;

(C) Address;

(D) Name and title of arresting or delivering officer and employing agency;

(E) Charges;

(F) Date of birth;

(G) Race;

(H) Gender;

(I) Height;

(J) Weight (verified by scale);

(K) Eye color;

(L) Hair color;

(M) Scars, tattoos and other identifying markings;

(N) Special medical and mental health comment-data and recommendations;

(O) Name, relationship, address and phone number of emergency contact; and

(P) Court judgment and sentence if sentenced prisoner.

(10) Records shall be safeguarded from unauthorized disclosure. Written policies and procedures shall specify the process that prisoners and former prisoners are allowed access to their records.

(11) Individual records shall be maintained and kept current for each prisoner which shall contain at least the following information:

(A) Intake information;

(B) Commitment papers and court order;

(C) Reports of disciplinary actions or unusual occurrences;

(D) Medical, mental health and dental orders issued by the health care authority;

(E) A medical screening shall be performed and documented on all prisoners, and shall contain at a minimum the following information:

(i) Communicable diseases (i.e., HIV/STD, Hepatitis, TB);

(ii) Alcohol and drug abuse and treatment;

(iii) Allergies;

(iv) Injuries;

(v) Illnesses;

(vi) Medications;

(vii) Suicide risk or attempts;

(F) Photographs or video imaging; and
(G) Personal property inventory.

310:670-5-2. Security and control

The facility administrator shall develop and implement written policies and procedures for the safety, security and control of staff, prisoners and visitors. Policies and procedures shall address at least the following:

(1) A central control center shall be maintained to coordinate the facility's internal and external security network. The control center shall be staffed twenty-four (24) hours-a-day. The control center or other location may be designated by the facility administrator and shall be responsible for prisoner counts and key control.

(2) There shall be a prisoner count at the beginning of each shift change. The prisoner count shall be documented.

(3) There shall be at least one (1) visual sight check every hour which, shall include all areas of each cell and such sight checks shall be documented.

(4) All security perimeter entrances, control center doors, cell block doors and doors opening into a corridor shall be locked except when used for authorized entry and exit. Staff members shall know which doors should be locked and under what circumstances they should be opened.

(5) No one person shall be permitted to enter a prisoner's cell or other area in which a prisoner is confined, past the last locked door, without backup assistance. ~~At least one (1) staff member shall be of the same gender as the prisoner except in life endangering situations. Life endangering situations are defined as a suicide attempt, or obvious serious injury or illness which, in the evaluation of staff, requires an immediate response.~~ Prior to breaching the last locked/secure door, central control or another staff member who can provide assistance will be notified. Documentation shall reflect the reason for the decision to enter a cell without backup assistance and a permanent record of the event shall be maintained.

(6) A weekly security device inspection shall be performed and priority corrective action taken on any discrepancy. A weekly inspection report shall be submitted to the facility administrator.

(7) Searches of facilities and prisoners to control contraband shall be unannounced and at irregular intervals. These searches shall be documented.

(8) The availability, control and use of firearms, ammunition, chemical agents and related security equipment shall be sufficient to meet needs. The level of authority required for access to, and use of, security equipment shall be specified in policy and procedure. Chemical agents shall be used only with the authorization of the facility administrator or designee. Jailers shall be trained in the use of chemical agents as prescribed by the manufacturer's specification.

(9) Firearms, ammunition, chemical agents and related security equipment shall be stored in a secure but readily accessible depository located outside the prisoner living area. The facility may adopt policy and procedures that authorize trained and certified jailers to be equipped with chemical agent and non-lethal weapons while on duty.

(10) Firearms, chemical agents and related security equipment shall be inventoried at least one (1) time each month to determine their condition and expiration dates. Firearms shall be cleaned and fired annually and repairs shall be made as needed.

(11) In an emergency situation, supervision of armed personnel is essential and only weapons/firearms authorized by the administrator shall be used.

(12) Personnel discharging firearms or using chemical agents shall submit a written report to the facility administrator documenting the nature of the incident and the identity of the personnel and prisoners involved. All persons, employees and prisoners involved in an incident where a weapon or chemical agent or force was used shall receive an immediate medical examination and/or treatment.

(13) Except in emergency situations, a weapon shall not be permitted in the secure area. There shall be a system of checking firearms and ammunition for temporary secure storage outside the secure perimeter.

(14) All keys shall be issued from a secure location designated by the jail administrator, and a log shall be used to record the number of each key, location of the lock and the number of keys to each lock. The key control system shall include a current accounting of the location and authorized person to have each key. Keys shall be returned to the control center or a secure issue location at each shift change. There shall be at least one (1) duplicate key to each lock that is maintained in a secure location inaccessible to prisoners.

(15) Tools and utensils such as hacksaw blades, welding equipment, culinary, barber shears and all sharps of similar-type equipment shall be secured, issued and used in accordance with prescribed policy and procedure. The control system shall also provide for this type of tool and equipment brought into the facility by outside authorized persons.

(16) Prisoners shall not possess flammable, toxic or caustic materials unless they are under supervision of qualified personnel. Such materials shall be stored in secure areas that are inaccessible to prisoners.

(17) A post order shall be prepared for each post or duty assignment to be performed, and it shall specify the procedure to be followed for completing the assignment.

(18) There shall be written procedures for dealing with an escape. These procedures shall be available to all personnel and shall provide for sounding an alarm, alerting officials, mobilizing resources and ending the alert. Following an escape, the staff shall prepare an analysis of the escape and defects in the security system shall be corrected immediately.

(19) There shall be written procedures that specify what actions to take in emergency situations, i.e., fire, disturbances, and taking hostages. The procedures shall specify areas of responsibility, the staff to be involved, when and

what authorities shall be notified, how the problem may be contained and what shall be done after the incident ends. Emergency housing and supervision of prisoners shall be provided.

(20) Staff shall be knowledgeable of and trained in the implementation of the emergency plans.

(21) An emergency auxiliary power generator or battery-operated system that meets fire and life safety codes shall be provided to maintain lighting and essential equipment in an emergency.

(22) All emergency equipment shall be inspected at least one (1) time each month and corrective action taken as needed. These inspections shall be documented.

(23) The use of physical force by staff shall be restricted to instances of justifiable self-protection, protection of others, protection of property and prevention of an escape, and shall be only to the degree necessary. A written report shall be prepared and submitted to the administrator following the use of physical force. All persons, employees, and prisoners involved in an incident where a weapon, chemical agent, or physical force was used shall receive an immediate physical inspection, and if affected by the action, shall receive a medical examination and treatment.

(24) Instruments of restraint such as handcuffs, leg irons, restraint chairs, restraint beds and straitjackets, shall not be applied longer than authorized by policy and procedure and equipment manufacturers specifications. Prisoners placed in restraints shall not be left without required supervision. Instruments of restraint shall be used only as follows:

(A) As a precaution against escape during transfer;

(B) For medical/mental health reasons, by direction of the designated medical authority and jail facility administrator or designee; and

(C) To prevent prisoner self-injury, injury to others or property damage, and then only with the approval of the jail administrator or designee.

(25) Guidelines for transporting prisoners shall emphasize safety and security and shall be available to all staff involved in transporting prisoners.

(26) All entrances and exits to the facility shall be secure.

(27) In case of a death or an escape with injury, the Department shall be notified immediately.

(28) The Department shall be notified no later than the next working day if any of the following incidents occur:

(A) Extensive damage to jail property;

(B) Serious injury to staff or prisoner defined as life threatening or requiring transfer to outside medical facility;

(C) Escape;

(D) Serious suicide attempt, defined as life threatening or requiring transfer to outside medical facility.

(29) Trusties shall be either locked down or confined to the facility when not engaged in a job assignment. ~~No trusty shall be permitted outside the facility without supervision.~~ Trusties permitted outside the facility shall be supervised according to the written policy of the sheriff, chief of police, jail administrator and/or as required by state statute.

310:670-5-3. Supervision of prisoners

(a) The movement of prisoners from one location to another shall be controlled and supervised by staff.

(b) Staff shall provide twenty-four (24) hour supervision of prisoners.

(c) Jailer posts shall be located and staffed to monitor all prisoner activity either physically or electronically and close enough to the living areas to respond immediately to calls for assistance, and respond to emergency situations. A jailer shall be on duty at all times at each location where prisoners are confined or the observation shall be conducted by closed circuit TV. The location shall be equipped with an intercommunication system that terminates in a location that is staffed twenty-four (24) hours-a-day and is capable of providing an emergency response.

(d) There shall be sufficient staff to perform all assigned functions relating to security, custody and supervision of prisoners. Staff assignments shall provide for backup assistance for all employees entering locations where prisoners are confined.

(1) ~~Facilities, which house twenty (20) or less prisoners at all times shall have on site, a minimum of one(1) jailer and one (1) other employee who has successfully completed the twenty-four (24) hour training course.~~ Any city jail or county jail which houses twenty (20) prisoners or less *shall not be required to have more than one jailer or dispatcher on-site to provide for the security, custody and supervision of prisoners* [74:192(C)] provided the following requirements are met:

(A) The facility *provides twenty-four-hour supervision that is conducted either by direct observation or electronically by closed circuit television* [74:192(C)(1)];

(B) The facility *provides an intercommunication system that terminates in a location that is staffed twenty-four (24) hours a day and is capable of providing an emergency response* [74:192(C)(2)]; and

(C) The on-site jailer or dispatcher providing security, custody and supervision, shall have completed the training required in OAC 310:670-5-10.

(2) Facilities~~,~~ which house more than twenty (20) prisoners shall have on site~~,~~ one (1) dispatcher or control center operator and ~~one jailer, with proper backup~~a minimum of two (2) jailers on the premises.

(e) All prisoners shall be searched thoroughly when entering or leaving the security area.

(f) Policies and procedures shall specify a system for the supervision of female prisoners by male staff and supervision of male prisoners by female staff.

(g) ~~Staff members are not permitted in opposite gender living quarters unless accompanied by a staff member of the same gender as the prisoner.~~When both male and female prisoners are housed in a facility, at least one male and one female trained jailer shall be available to perform sensitive functions and procedures as necessary to accommodate prisoner gender.

(h) A prisoner shall be prohibited from supervising, controlling, exerting or assuming any authority over another prisoner.
(i) The name and telephone number of the practicing attorneys and bonds persons in the area shall be posted conspicuously near the telephone used by prisoners. This can be a telephone book.
(j) Direct supervision of prisoners shall be permitted if the facility has policies and procedures in place to ensure the safety of employees, prisoners and visitors and if the physical plant design lends itself to direct supervision operation.

310:670-5-6. Safety, sanitary and hygiene standards

The administrator shall develop and implement policies and procedures for the safety and maintenance of sanitation throughout the facility. These shall include at least the following:

(1) The facility shall comply with state and local sanitation and health codes, as well as the Life Safety code.
(2) There shall be a housekeeping plan for the facility that includes a cleaning schedule with specific duties. Cleaning activities performed by prisoners shall be supervised at all times.
(3) Floors shall be kept clean, dry and free of hazardous substances.
(4) Prisoners shall be provided with cleaning materials daily to clean showers, washbasins and toilets.
(5) ~~If smoking is permitted in the facility, receptacles shall be provided for disposal of smoking materials. Receptacles shall be emptied and cleaned at least daily.~~ Smoking in a county jail facility shall not be permitted in accordance with 21 O.S. Section 1247.
(6) Upon admission or after commitment by the court, each prisoner shall be issued personal hygiene items to include—soap, towel, toilet paper, toothbrush and toothpaste. Feminine hygiene articles shall be provided upon request. Razors are issued to each prisoner upon request, and collected immediately after use and disposed of or stored as specified by facility policy and procedures. Prisoners shall not share razors. With the exception of toilet paper and feminine hygiene items, prisoners who are not indigent and have funds in their prisoner account may be required to purchase hygiene items from the jail facility.
(7) Clean bedding shall be issued to each prisoner who is confined overnight in the facility. A standard issue of bedding shall include:
(A) An approved mattress with a cleanable surface; and
(B) Enough clean blankets to provide comfort under the existing weather conditions.
(8) Prisoners held over twenty-four (24) hours shall be issued a clean set of appropriately sized jail clothing to include, at least, shirts and trousers, coveralls and footwear.
(9) A prisoner shall be given an opportunity to receive a complete change of clothing at least one (1) time each week.
(10) Clean bedding and towels shall be offered at least one (1) time each week.
(11) Laundry services shall be sufficient to permit regular exchange of all prisoner clothing, bedding and towels.
(12) Blankets and mattresses shall be cleaned or sanitized before reissue.
(13) Issuance of all clothing and bedding shall be documented and prisoners shall be held accountable for these items.
(14) The supply of bedding, linens and clothing shall exceed that required for the facility's maximum prisoner rated population capacity.
(15) Under extreme circumstances it may be necessary for the administrator to authorize the removal of linens, clothing and bedding from a prisoner. Such action may be taken only as a measure to protect the prisoner from self-injury, to protect others or to prevent facility damages. Such actions shall be documented and reviewed at least daily by jail administration. A paper gown or another appropriate garment may be provided as appropriate.
(16) Sufficient showers shall be provided in housing units to provide prisoners the opportunity to bathe at least three (3) times each week. Prisoners working in food service shall be required to bathe daily.
(17) Haircuts shall be available to prisoners based on arrangements specified in facility policy and procedures.
(18) The potable water supply shall meet all state and local water quality standards. Hot and cold water shall be provided in showers and washbasins.
(19) Any condition conducive to harboring or breeding insects, rodents or other vermin shall be eliminated immediately. Licensed pest control professionals shall be contracted to perform pest control on a scheduled basis specified in the facility policy and procedure.
(20) Liquid and solid wastes shall be collected, stored and disposed of in a manner that avoids nuisance and hazards and protects the health and safety of prisoners and staff. Garbage shall be stored in rust resistant, water-tight, rodent-proof and easily cleanable containers with tight fitting lids. Biomedical waste shall be stored and destroyed in compliance with state and federal requirements.
(21) The facility's fire prevention policies and procedures shall ensure the safety of staff, prisoners and visitors. These shall include, but not be limited to an adequate fire protection service; a system of fire inspection and testing of equipment and documentation on a weekly basis; and the availability of fire hoses or extinguishers at appropriate locations throughout the facility. The facility shall have an automatic fire alarm and heat and smoke detection system approved by the Oklahoma State Fire Marshal.
(22) There shall be ~~noncombustible receptacles for smoking and separate~~ containers for ~~other~~ refuse in prisoner living quarters and in other locations throughout the facility. ~~Receptacles for smoking materials and containers for trash~~ Containers shall be fire retardant and approved for use in a jail facility.
(23) The facility shall have a written evacuation plan in the event of fire or major emergency. Prisoners shall be instructed on emergency procedures.

(24) There shall be a reliable means to permit prompt release of prisoners from locked areas in case of emergency. The route of evacuation shall be posted in conspicuous locations throughout the facility.

(25) Facility furnishings, walls, ceilings and floors shall be constructed of material that meets the Oklahoma Fire Safety Code.

(26) Heating systems shall be capable of maintaining a temperature of at least sixty-five (65) degrees Fahrenheit. Open-faced or un-vented heaters are not permitted.

(27) Air circulation and ventilation shall be capable of maintaining a temperature of at least eighty-five (85) degrees Fahrenheit or lower. If temperature exceeds eighty-five (85) degrees Fahrenheit, positive air movement shall be provided by use of fans, coolers, or air conditioning units. New facilities or substantially remodeled facilities shall be equipped with central air conditioning or individual air conditioning units which are capable of maintaining a temperature of eighty-five (85) degrees Fahrenheit.

310:670-5-7. Food services and dietary requirements

The jail administrator shall comply with OAC 310:256.

(1) Each prisoner shall be provided at least three (3) meals each twenty-four (24) hours that meet the national recommended allowance for basic nutrition. At least two (2) hot meals shall be provided daily. There shall not be more than fourteen (14) hours between the breakfast and evening meals.

(2) Special diets shall be available for prisoners upon a physician's or dentist's authorization. Special diets shall be planned and prepared by one who is skilled in preparing special diets according to a physician's or dentist's authorization. Special diets shall conform as closely as possible to the food served other prisoners.

(3) If it is a requirement of a prisoner's religious beliefs that the prisoner adhere to dietary practices, reasonable provision shall be made for such diets from meals that are currently being served.

(4) A uniform record keeping system shall be developed to record the items served for each meal.

(5) Food shall not be used as a reward or disciplinary action, nor shall the menu be varied for the same reason.

(6) All meals shall be served under the direct supervision of staff. A prisoner's refusal to eat shall be documented at each meal and reported to jail administration.

(7) Any prisoner assigned to food service shall be closely supervised and shall maintain a high degree of personal hygiene. Each prisoner, providing food service or acting as a food employee, shall be screened for communicable diseases. Each prisoner, providing food service or acting as a food employee, shall wear a hairnet or hat, beard guard, and gloves while preparing and serving food.

(8) Ice machines that are available to the prisoners shall be dispenser-type.

(9) Menus shall be reviewed and approved in advance by a registered dietician or a request may be made to the Department of Health for a standardized menu.

310:670-5-8. Medical care and health services

Adequate medical care shall be provided in a facility. The administrator shall develop and implement written policies and procedures for complete emergency medical and health care services. Policies and procedures shall include at least the following:

(1) The administrator shall be responsible for the facility's medical services and shall develop, with the assistance of a designated medical authority, the facility's health care plan. Security restrictions shall be considered in the development of the plan, and any medical personnel included in the plan shall have their responsibilities regulated by written job descriptions. The health care plan shall cover at least the standards outlined in this section.

(2) Medical triage screening shall be performed on all prisoners immediately upon admission to the facility and before being placed in the general population or housing area. Those individuals who appear to have a significant medical or psychiatric problem, or who may be a suicide risk, shall be transported to the supporting medical facility as soon as possible. They shall be housed separately in a location where they can be observed frequently by the staff at least until the appropriate medical evaluation has been completed. If after stringent evaluation by the highest-ranking mental health professional, in conjunction with a senior detention supervisor, these prisoners may be authorized to share the same cell.

(A) Medications in the possession of the prisoner at the time of the booking, whether prescription or over-the-counter shall be logged, counted and secured. Prescription medications shall be provided to the prisoner as directed by a physician or designated medical authority. The prisoner shall be observed to ensure the prisoner takes the medication. Neither prescription or over-the-counter medications shall be kept by a prisoner in a cell with the exception of prescribed nitroglycerin tablets and prescription inhalers. Over-the-counter medications shall not be administered without a physician's approval unless using prepackaged medications.

(B) Medical reception information shall be recorded on a printed screening form approved by the designated medical authority which shall include inquiry into:

(i) Current illnesses and health problems including medications taken and any special health requirements;

(ii) Behavioral observation, including state of consciousness and mental status;

(iii) Notation of body deformities, trauma markings, i.e., bruises, lesions, ease of movement, and jaundice;

(iv) Condition of skin and visible body orifices, including infestations; and

(v) Disposition/referral of prisoners to qualified medical personnel on an emergency basis.

(3) Delousing procedures shall be developed in coordination with the designated medical authority and used whenever vermin are detected.

(4) Prisoners are informed upon admission to the facility about the procedures for gaining access to medical and health care services. These procedures shall be posted in a conspicuous place.

(5) Each facility shall have a plan and provide twenty-four (24) hour emergency medical and dental care. Emergency plans shall at least include arrangements for:

(A) The use of one (1) or more hospital emergency rooms or other appropriate health care facility;

(B) The use of an emergency medical vehicle; and

(C) An emergency on-call physician and dentist when the emergency health care facility is not located in a nearby community.

(6) If the need is indicated by the medical screening at booking, prisoners held for forty-eight (48) hours or more, shall undergo a medical examination which shall be conducted by licensed medical personnel.

(7) ~~Sick call, conducted by a physician and/or other licensed medical personnel, shall be available to each prisoner within forty-eight (48) hours of a valid written request. Qualified medical personnel will see each prisoner within 48 hours of triage, unless a more immediate visit is indicated.~~An appointment shall be made with a physician or other licensed medical personnel within forty-eight (48) hours of a valid written request unless more immediate action is dictated by the severity of the current situation.

(8) If medical services are delivered in the facility, adequate space, equipment, supplies and materials as determined by the designated medical authority, shall be provided for primary health care delivery.

(9) First aid kits approved by the designated medical authority, shall be available in each facility. They shall be located in an area(s) also approved by the designated medical authority.

(10) Referral sources shall be identified in advance by the designated medical authority or administrator.

(11) The administration of medications, and the date, time and place of medical encounters shall be documented.

(12) Copies of the medical record, or a discharge summary if any, shall accompany a prisoner upon transfer to another facility.

(13) Any remaining medications shall accompany the prisoner upon transfer to another facility or upon release. The amount of medications provided shall be documented. The count at that time shall be logged.

(14) Staff shall wear disposable gloves when dealing with possible exposure to a prisoner's body fluids.

(15) Biomedical waste shall be stored and destroyed in compliance with state and federal requirements.

(16) Sharps, i.e., needles, lancets and scalpels shall be disposed of in a puncture-proof container.

(17) Staff shall receive a TB skin test as a part of the pre-employment evaluation and each twelve (12) months as long as the test is negative. Individuals with positive skin tests shall be referred to the local health department or personal physician for evaluation. Employees will also be offered hepatitis B vaccination within one month of employment, at no cost to the employee.

(18) Universal precautions shall be used at all times by all employees.

310:670-5-10. Training and staff development

The administrator shall develop policies and procedures for staff orientation and training. The training program shall be supervised by a designated employee. A facility with more than one-hundred (100) employees shall employ a full-time person for staff orientation and training. Policies and procedures shall include at least the following:

(1) A new employee shall receive orientation and training prior to job assignment by the employing agency.

(2) ~~Any employee~~All employees, including the jail administrator and all supervisors, who ~~works~~ work in direct contact with prisoners during the first year of their employment shall receive at least twenty-four (24) hours of training that covers at least the following:

(A) Security procedures;

(B) Supervision of prisoners;

(C) Report writing and documentation;

(D) Prisoner rules and regulations;

(E) Grievance and disciplinary procedures;

(F) Rights and responsibilities of prisoners;

(G) Emergency procedures;

(H) First aid and cardiopulmonary resuscitation; and

(I) Requirements of this Chapter.

(3) After the first year of employment, an employee who works in direct contact with prisoners shall receive at least the following training. This training shall be in addition to any requirements for completion of first aid and cardiopulmonary resuscitation. Before training begins a training schedule shall be provided to the Department for approval, listing subjects, number of hours, date, time, location and instructor.

(A) Four (4) hours review of the required training items.

(B) Eight (8) hours training provided by the administrator; content and instructors shall be selected by the administrator.

(C) A test shall be given by the Department that covers this Chapter.

(4) A documentation log shall be sent to the Department for each person who completes the required training.

(5) Training may be given through other programs that have first been reviewed and approved by the Department.

(6) A passing score on the test given by the Department shall be seventy (70) percent or higher. Any person scoring less than seventy (70) percent shall not be considered to have satisfactorily completed training and may retest as necessary for a period of up to one year.

SUBCHAPTER 7. STANDARDS FOR JAILS HOLDING JUVENILES

310:670-7-1. Standards for jails holding juvenile offenders

(a) A juvenile shall be incarcerated only in a county or city jail authorized by the Oklahoma State Department of Health. A juvenile shall not be detained in any holding facility or lockup facility. This requirement does not preclude juveniles being held in non-secure areas until a parent or other responsible party arrives to take custody of the juvenile.

(b) Prior to a juvenile being placed in an eligible jail, permission shall be obtained from the appropriate judicial or juvenile bureau authority. A record of permission shall be maintained at the facility.

(c) Sight checks of juvenile prisoner living areas shall be performed at least one (1) time each hour. The check shall include all areas of each cell and the prisoners shall be visually observed. Checks shall be documented in writing on a form provided by the administrator.

(d) An adult prisoner who is assigned trusty status shall not be permitted visual contact with a juvenile prisoner. A staff member shall serve a juvenile prisoner's meals.

(e) In addition to existing visitation privileges, juvenile prisoners shall be permitted visits from authorized juvenile agency personnel. Visits from family members, who are unable to visit during normal visiting hours shall be allowed so long as arrangements for them are made in advance, with the administrator, and provided they do not jeopardize security. Each facility that holds a juvenile shall have written policies and procedures for such visits.

(f) A juvenile prisoner shall be able to communicate with staff members at all times. This can be either by voice or electronic means. If electronic systems are used, there shall be a backup plan to insure communication ability is maintained.

(g) No staff member shall be permitted to enter a juvenile prisoner living area i.e., past the last locked door, without backup assistance being available from another staff member. At least one (1) staff member shall be of the same sex as the juvenile prisoner except in life endangering situations. Life endangering situations are defined as a suicide attempt, obvious injury or illness, which in the opinion of staff, requires immediate attention. Anytime a decision is made to enter the living area without appropriate backup assistance as defined above, the action shall be documented. Documentation shall show the reason for the decision and a permanent record shall be maintained.

(h) A juvenile charged with a crime which would constitute a felony if committed by an adult, or a juvenile who is an escapee from a juvenile training school or from a Department of Human Services group home, may be detained in any certified jail, police station or similar law enforcement office for a period of six (6) hours or less for identifying, processing or arranging for transfer to a juvenile detention facility or alternative program. In no other circumstances shall a juvenile be securely detained in an adult jail.

[OAR Docket #05-1084; filed 6-1-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 675. NURSING AND SPECIALIZED FACILITIES

[OAR Docket #05-1085]

RULEMAKING ACTION:
PERMANENT final adoption
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Subchapter 3. Licenses
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ANALYSIS:
Requirements for license application forms are modified to ensure that all persons with ownership, operation, management or supervision of the facility are fully and accurately disclosed as required under the Nursing Home Care Act. Notice requirements are modified to ensure that changes affecting disclosures submitted for a facility's ownership, operation, management or supervision are timely and accurately reported to the State Health Department.
CONTACT PERSON:
Darlene Simmons, Director, Health Facility Division, Health Resources Development Service, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-9444, x57267; facsimile: 405-271-7360; email: darlene@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 JULY 11, 2005:

SUBCHAPTER 3. LICENSES

310:675-3-5.1. Description of forms

(a) The forms used to apply for a facility license are the following.

(1) The License Application for a Nursing or Specialized Facility (Form 953-A) ~~requests~~requires: identification of the type of license; the name and address of the facility; the administrator's name; the number and type of beds; the applicant's name; confirmation of changes in the owner, lessee, manager or any person or entity disclosed pursuant to 310:675-3-1.1(e); a zoning statement for new facilities; and an ~~affidavit attesting to~~oath affirming the truth, correctness and completeness of the information provided.

(2) The Disclosure Statement of Owner, Lessee and Manager for a Nursing or Specialized Facility (Form 953-B) ~~requests~~ requires: the names and types of legal entities for the owner, lessee and manager; name, address and tax identification number for any person or entity disclosed pursuant to 310:675-3-1.1(e); and an ~~affidavit attesting to~~oath affirming the truth, correctness and completeness of the information provided.

(3) The Detail Attachment (Form 953-C) supplements the Disclosure Statement (Form 953-B) and ~~requests~~requires the ~~following: the~~ names and addresses ~~of any persons holding at least a five percent (5%) interest in the entity which owns, operates, or manages.~~for the following as applicable:

(A) All shareholders and officers of a corporate entity;

(B) All partners of a general or limited partnership;

(C) All managers and members of a limited liability company;

(D) The trustees and beneficiaries of a trust;

(E) All persons or entities that own an interest of a joint venture;

(F) All persons or entities that own an interest of an association;

(G) The owners of any other type of legal entity;

(H) Each shareholder that owns, at the time of application, 5% or more of the outstanding stock of any corporation that is publicly traded and is required to file annual reports with the Securities and Exchange Commissioner;

(I) Any other person holding at least a five percent (5%) interest in the entity which owns, operates, or manages the facility; and

(J) The owners of any shareholder, partner, member or other person or entity disclosed in (A) through (G) of this paragraph that is in turn an entity described in (A) through (G) of this paragraph. The disclosure shall be made at each level of the organization.

(4) The Affirmation Attachment (Form 953-D) supplements the Disclosure Statement (Form 953-B) and ~~requests~~requires the following: the names and addresses of individuals, members, officers and/or registered agents for the applicant; and an affirmation from each of the above concerning their age, character and health.

(5) The Staffing Projection and Professional Certification for a Nursing or Specialized Facility (Form 953-E) ~~requests~~ requires: a projected staffing pattern; and a certification from the director of nursing, the physician on call for medical emergencies, and the pharmacist providing consultation and emergency pharmacy services.

(6) The Periodic Report for Suspended License (Form 953-F) requires: the name and address of the facility; the applicant's name and address, contact person and address; report of progress in reopening the facility; request for extension based on extenuating circumstances; and an ~~affidavit attesting to~~ oath affirming the truth, correctness and completeness of the information provided.

(7) The Certification of Tax Liens and Timely Payment of Taxes (Form 953-G) requires: certification of compliance with OAC 310:3-1-1(g).

(8) The Federal Tax Waiver (Form 953-H) requires authorization from the applicant and any person or entity disclosed pursuant to 310:675-3-1.1(e) to allow the Internal Revenue Service to provide tax return information to the Department to verify current compliance with the filing and payment requirements for federal ~~income taxes,~~ Form 941 employment taxes, and Form 940 unemployment taxes and to verify that there are no notices of federal tax liens that have been filed against the applicant or any person or entity disclosed pursuant to 310:675-3-1.1(e).

(b) The Notice of Change requests information on the name and address of the facility; the administrator; the number and type of beds; the applicant; confirmation of changes in the owner, lessee or manager; any change in disclosure of persons or entities pursuant 310:675-3-1.1(e); and any change in compliance status with the tax certification requirements specified in 310:675-3-1.1(g).

310:675-3-8. Notice of change

(a) If~~, after issuance of a license and before a renewal application is due,~~ changes occur so that information previously submitted in a facility's license application is no longer correct, the facility shall notify the Department. Notice is required of changes to the following information:

(1) Facility identification including facility business name, mailing address, telephone number or facsimile number;

(2) Changes in licensed bed capacity, including proposed increases;

(3) The administrator;

(4) Owner, lessee or manager disclosure or detail information that does not otherwise necessitate an initial license;

(5) Disclosure of persons or entities pursuant 310:675-3-1.1(e); and

(6) Compliance status with the tax filing and payment requirements certified pursuant to 310:675-3-1.1(g).

(b) The facility shall file the Notice of Change form with the Department on or before the effective date of the change, with the following exceptions.

(1) When a change is unexpected or beyond the control of the facility, the facility shall provide notice to the Department within five (5) working days after the change.

(2) For an increase in licensed bed capacity, the facility shall file the notice of change prior to the requested license amendment date. The notice of change shall be accompanied by the $10 per-bed license fee pursuant to 63 O.S. Section 1-1905(A), prorated by the number of beds to be added and the proportion of time remaining on the license until expiration. Prior to occupying additional beds, the facility shall obtain an amended license from the Department.

(c) Following receipt of information that an applicant or any person or entity disclosed pursuant 310:675-3-1.1(e) is not in compliance with the tax filing, payment or disclosure requirements of 310:675-3-1.1. or 63 O.S. Section 1-1930.1, the Department may require an applicant or licensee to submit:

(1) Such additional Federal Tax Waivers as are necessary to ensure compliance with federal tax laws for the above; and

(2) Proof that the applicant or person or entity disclosed pursuant to 310:675-3-1.1(e) is in compliance with state or federal taxes. Such proof may include a letter from the taxing agency, a file-stamped copy of a return, a receipt for a tax payment, or a tax transcript or account.

[OAR Docket #05-1085; filed 6-1-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 677. NURSE AIDE TRAINING AND CERTIFICATION

[OAR Docket #05-1086]

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n/a
ANALYSIS:
This proposal provides for permanent implementation of rules required by 63 O.S. Supp. 2004 Section 1-1950.3(A)(2)(b). The proposed rule is intended to supercede the emergency rule adopted by the State Board of Health on September 16, 2004 and approved by Governor Henry on October 31, 2004.

The proposed rule implements temporary emergency waivers for nursing facilities, specialized facilities, continuum of care facilities, assisted living centers, adult day care centers, and residential care homes that are unable to meet the nurse aide certification and registration requirements pursuant to 63 O.S. Section 1-1950.3(A). The rules specify requirements relating to eligibility for receipt of the waiver, and the process and conditions for obtaining the waiver.
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 JULY 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

310:677-1-6. Temporary emergency waiver

(a) **Purpose.** This section implements temporary emergency waivers authorized in 63:1-1950.3(A)(2) for nursing facilities, specialized facilities, continuum of care facilities, assisted living centers, adult day care centers, and residential care homes.

(b) **Eligibility for waiver.** A facility, center or home is eligible to receive a waiver if it:

(1) Makes diligent efforts to recruit and retain certified nurse aides, to be evidenced by one or more of the following:

(A) Employment advertisements;

(B) Competitive salaries;

(C) Retention incentives; or

(D) Recruitment incentives; and

(2) Has not been cited with a deficiency or violation that:

(A) Was identified by the department during an investigation or inspection conducted on or after the effective date of this section; and

(B) Relates to one or more of the following areas of noncompliance:

(i) Failure to develop and implement policies and procedures that prohibit mistreatment, neglect, abuse and misappropriation of property;
(ii) Failure to implement infection control procedures;
(iii) Failure to ensure that staff observe resident rights and responsibilities;
(iv) Failure to comply with criminal history background checks in 63:1-1950.1;
(v) Failure of a nurse aide to perform proficiently on nursing or personal care services;
(vi) Incompetence of a nurse aide; or
(vii) Failure to conduct performance appraisals or training as required for nurse aides; and

(C) Is associated with one or both of the following aggravating circumstances:
(i) The deficiency or violation has not been corrected within required time frames; and/or
(ii) The deficiency or violation is based on activity or inactivity of an uncertified nurse aide that caused a resident serious injury, harm, impairment or death.

(c) **Process.** This subsection specifies the process to obtain a waiver.

(1) A facility, center or home shall submit a written request on an application form made available by the Department. The form shall require:
(A) Identifying information for the facility;
(B) Documentation that the facility complies with the eligibility requirements specified in OAC 310:677-1-6(b);
(C) Numbers of certified nurse aides, uncertified nurse aides, and other direct care staff persons projected to be employed by the facility during the effectiveness of the waiver;
(D) A narrative describing the reasons why the facility is unable to meet the staffing requirements of 63:1-1950.3, the means by which uncertified nurse aides shall be trained and evaluated during the waiver, and the anticipated duration of the waiver, not to exceed six months; and
(E) An attestation of the truth of the information provided in the application.

(2) If the Department finds that an application is incomplete, the Department shall advise the applicant in writing and offer an opportunity to submit additional or clarifying information.

(3) Within thirty days after receipt of a completed request for a waiver, the Department shall approve or disapprove the request and send written notice of the decision to the facility, center or home.

(4) The Department shall provide notice to the Office of the Oklahoma Long Term Care Ombudsman established under section 307(a)(12) of the Older Americans Act of 1965 of the Department's action on each waiver application.

(5) The facility, center or home shall notify residents, clients or participants (or, where appropriate, the guardian or legal representative) and members of their immediate families of the Department's action on the waiver application. A copy of the notice shall be posted in an easily accessible and conspicuous place in the facility, center or home.

(6) An applicant who disagrees with the Department's disapproval of the waiver application may file a written petition requesting review by an administrative law judge in an individual proceeding under the Oklahoma Administrative Procedures Act.

(d) **Conditions for obtaining waiver.** The following additional conditions apply.

(1) To remain eligible for a waiver, the facility must continue after November 1, 2004 to comply with the substantive training limitations specified in 63:1-1950.3(A)(1), (B), (C) and (D).

(2) A waiver approved by the Department is effective for the period specified by the Department and not to exceed six months, unless sooner withdrawn by the Department for failure to meet eligibility requirements.

(3) If a facility, center or home applies for a subsequent waiver it shall submit another application for waiver in accordance with (c) of this section and include the following additional information on each uncertified nurse aide employed during the preceding waiver period:
(A) Name and date of birth;
(B) Date the facility began using the person as a nurse aide;
(C) Date the person entered training and competency evaluation; and
(D) Date the person completed training and competency evaluation, or, if training and evaluation have not been completed, the person's status at the time of application and the projected date when evaluation will be completed.

[OAR Docket #05-1086; filed 6-1-05]

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

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ANALYSIS:
Medical Providers-Fee for Service rules are revised to allow for the use of extrapolation when calculating provider overpayments. During the six month period of October 2003 through March 2004, Surveillance Utilization Review Subsystem (SURS) audits/reviews using statistical sampling resulted in error rates ranging from 0% to 98%. While the agency should not be overly concerned about those providers whose reviews resulted in low error rates (overpayments noted should be recouped and education should be provided), the agency does have a responsibility to take further action with those providers whose error rates indicate more serious issues. During the same six month period, just over 50% of the reviews resulted in error rates in excess of 20% and 20% of the reviews indicated error rates in excess of 50%. The agency would be remiss, in the eyes of the public and our federal partner, if based on a sample with a large error rate indicating significant overpayments, the agency only recovered the overpayment attributable to the sample. Sound audit/review practices alone would require additional work. Those providers who do take the risk of inappropriately billing Medicaid really do not take much of a risk at all under the current system - the risk of repayment of a small overpayment with little chance of further recourse for other inappropriate billings (Medicaid overpayments) for the same period of time. At this point, the agency (SURS) can either use their limited staff and expand their samples for the same time periods for these providers, with a 95% probability that the results will be the same. Or, the agency can choose to extrapolate, using the original error rate, across the universe from which the sample was selected and calculate the overpayment. Rule revisions are needed to allow for the use of extrapolation when calculating provider overpayments.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-2.1. Program Integrity Audits/Reviews

(a) This section applies to all contractors/providers:

(1) **"Contractor/provider"** means any person or organization that has signed a provider agreement with OHCA.

(2) **"Extrapolation"** means the methodology of estimating an unknown value by projecting, with a calculated precision (i.e., margin of error), the results of a probability sample to the universe from which the sample was drawn.

(3) **"Probability sample"** means the standard statistical methodology in which a sample is selected based on the theory of probability (a mathematical theory used to study the occurrence of random events).

(b) An OHCA audit/review includes the following:

(1) An examination of provider records, by either an on-site or desk audit. Claims may be examined for compliance with relevant federal and state laws and regulations, written provider billing instructions, numbered memoranda, and/or medical necessity.

(2) A draft audit/initial review report, which contains preliminary findings.

(3) An informal reconsideration period in which the provider may supply relevant information to clear any misunderstandings and/or findings.

(4) The right to a formal appeal, if the contractor/provider requests it.

(5) A final audit/review report.

(c) When OHCA conducts a probability sample audit, the sample claims are selected on the basis of recognized and generally accepted sampling methods. If sampling reveals patterns of inappropriate coding, failure to adhere to Medicaid policies, issues related to medical necessity, consistent patterns of overcharging, lack of appropriate documentation, or other fiscal abuse of the Medicaid program, with an error rate of more than 10%, the provider may be required to reimburse OHCA the extrapolated amount.

(1) When projecting the overpayment, using statistical sampling, OHCA uses a sample that is sufficient to ensure a minimum 95% confidence level.

(2) When calculating the amount to be recovered, OHCA ensures that all overpayments and underpayments reflected in the probability sample are totaled and extrapolated to the universe from which the sample was drawn.

(3) OHCA does not consider non-billed services or supplies when calculating underpayments and overpayments.

(d) If sampling reveals an error rate of 10% or less, the provider will be required to reimburse OHCA for any overpayments noted during the review.

(e) In those instances when the probability sample results in an error rate in excess of 10%, the results of a probability sample may be used by OHCA to extrapolate the amount to be recovered.

(f) Burden of Proof. When the provider disagrees with the findings based on the sampling and extrapolation methodology

that was used, the burden of proof of compliance rests with the provider.

(1) The provider must present evidence to show that the sample was invalid. The evidence must include an additional sample of claims, from the same universe, selected on the basis of recognized and generally accepted sampling methods sufficient to ensure a minimum 95% confidence level.

(2) The provider's intent to perform additional audit/review work must be communicated to the agency within the time constraints of the designated appeal. Any such audit must:

(A) be arranged and paid for by the provider;

(B) be conducted by an independent certified public accountant or peer review organization;

(C) demonstrate that a statistically significant higher number of claims and records not reviewed in the agency's sample were in compliance with program regulations; and

(D) be submitted to the agency with all supporting documentation within 120 days of the agency's original final report. Time extensions may be granted, for an additional period not to exceed ninety days, upon written request from the provider.

[OAR Docket #05-1090; filed 6-2-05]

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

[OAR Docket #05-1131]

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ANALYSIS:
Medical Providers-Fee for Service rules are issued to establish a formal appeals process specifically for pharmacy providers. The procedures allow appeals to findings of audits conducted by the Oklahoma Health Care Authority Pharmacy department. Aggrieved providers may appeal to a subcommittee of the Drug Utilization Review Board.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-20.1. Pharmacy grievance procedures and processes

This section shall apply to Pharmacy Providers for appeals to findings of audits conducted by the OHCA Pharmacy department. Aggrieved providers may appeal to a subcommittee of the Drug Utilization Review Board.

(1) If a provider disagrees with a decision of the OHCA Pharmacy department audit team which has determined that the provider has received an overpayment, the provider may appeal, within 20 days of the date of that decision, the decision to a three member subcommittee of the Drug Utilization Review Board (DURB). The subcommittee shall consist of three of the four pharmacist members of the DURB. In the event that there are less than three pharmacist members appointed at any given time, the panel will be completed with other DURB members.

(2) The appeal from the OHCA Pharmacy department audit team decision shall be commenced by the receipt of a letter from the appellant provider. The letter must set out with specificity the overpayment decision to which the provider objects along with the grounds for appeal. The letter should explain in detail, the factual and/or legal basis for disagreement with the allegedly erroneous decision. The letter shall also include all relevant exhibits the provider believes necessary to decide the appeal.

(3) Upon the receipt of the appeal by the docket clerk, the matter shall be docketed for the next meeting of the DURB. Any appeal received less than three weeks before a scheduled DURB meeting will be set for the following DURB meeting.

(4) The appeal shall be forwarded to the OHCA Pharmacy Department Audit Team by the docket clerk for distribution to the members of the subcommittee and for preparation of the OHCA's case.
(5) At the discretion of the DURB, witnesses may be called and information may be solicited from any party by letter, telephonic communication, fax, or other means. The subcommittee may request that members of the Authority be present during their consideration of the appeal. Members of the Authority's Legal Division may be asked to answer legal questions regarding the appeal.
(6) The subcommittee shall issue a recommendation regarding the appeal, in writing, within 30 days of the hearing. An exception to the 30 day rule will apply in cases where the subcommittee sets the cases over until its next scheduled meeting in order to gather additional evidence. The written recommendation shall list the members of the subcommittee who participated in the decision. In cases where an appeal must be continued, the subcommittee shall issue a letter within 30 days of the initial hearing to inform the appellant of the continuance.
(7) The recommendation, after being formalized, shall be sent to the docket clerk for review by the State Medicaid Director. The State Medicaid Director shall issue a decision regarding the appeal within 10 days of the docket clerk's receipt of the recommendation from the DURB. The decision shall be issued to the appellant or his/her authorized agent.
(8) If the provider is dissatisfied with the Medicaid Director's decision, it may be appealed to the OHCA CEO under OAC 317:2-1-4(1).

[OAR Docket #05-1131; filed 6-8-05]

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

[OAR Docket #05-1112]

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Part 3. General Medical Program Information
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Subchapter 5. Individual Providers and Specialties
Part 51. Habilitation Services
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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. 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 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

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 #05-1112; filed 6-6-05]

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

[OAR Docket #05-1091]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacists
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ANALYSIS:
Medical Providers-Fee for Service, Pharmacy specific, rules are revised to establish an exclusion from the prescription drug benefit for individuals who qualify for the Medicare Part D benefit. This exclusion is effective January 1, 2006, or the date Medicare Part D is implemented, whichever is later. This revision is necessary as there will be no federal match for the pharmacy benefit for these individuals once the Medicare Part D benefit is implemented.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 5. PHARMACISTS

317:30-5-72. Categories of service eligibility
(a) **Coverage for adults.** Prescription drugs for categorically needy adults are ~~covere d~~ covered as set forth in this subsection.
(1) With the exception of (2) and (3) of this subsection, categorically needy adults are eligible for a maximum of six covered prescriptions per month with a limit of three brand name prescriptions.
(2) Subject to the limitations set forth in OAC 317:30-5-72.1, OAC 317:30-5-77.2, and OAC 317:30-5-77.3, exceptions to the six medically necessary prescriptions per month limit are:
(A) Unlimited monthly medically necessary prescriptions for categorically related individuals who are residents of Nursing Facilities or Intermediate Care Facilities for the Mentally Retarded; and
(B) seven additional medically necessary prescriptions which are generic products per month to the six covered under the State Plan are allowed for adults receiving services under the §1915(c) Home and Community Based Services Waivers. Medically necessary prescriptions beyond the three brand name or thirteen total prescriptions will be covered with prior authorization.
(3) Drugs exempt from the prescription limit include: Antineoplastics, anti-retroviral agents for persons diagnosed with Acquired Immune Deficiency Syndrome (AIDS) or who have tested positive for the Human Immunodeficiency Virus (HIV), certain prescriptions that require frequent laboratory monitoring, birth control prescriptions, over the counter contraceptives, hemophilia drugs, compensable smoking cessation products, low-phenylalanine formula and amino acid bars for persons with a diagnosis of PKU, certain solutions used in compounds (i.e. sodium chloride, sterile water, etc.), and drugs used for the treatment of tuberculosis. For purposes of this Section, exclusion from the prescription limit means claims

filed for any of these prescriptions will not count toward the prescriptions allowed per month.

(b) **Coverage for children.** Prescription drugs for Medicaid eligible individuals under 21 years of age are not limited.

(c) **Individuals eligible for Part B of Medicare.** Individuals eligible for Part B of Medicare are eligible for a prescription drug benefit provided that the dispensing pharmacy has exhausted payment from the Medicare intermediary for any Part B compensable drugs.

(d) **Individuals eligible for a prescription drug benefit through a Prescription Drug Plan (PDP) or Medicare Advantage - Prescription Drug (MA-PD) plan as described in the Medicare Modernization Act (MMA) of 2003.** Individuals who qualify for enrollment in a PDP or MA-PD are specifically excluded from coverage under the Medicaid pharmacy benefit. This exclusion applies to these individuals in any situation which results in a loss of Federal Financial Participation for the Medicaid program. The exclusion will become effective January 1, 2006, or the date Medicare Part D is implemented for dual eligible individuals, whichever is later. This exclusion shall not apply to items covered at OAC 317:30-5-72.1(2) unless those items are required to be covered by the prescription drug provider in the MMA or subsequent federal action.

[OAR Docket #05-1091; filed 6-2-05]

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

[OAR Docket #05-1129]

RULEMAKING ACTION:
PERMANENT final adoption
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Part 9. Long Term Care Facilities
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Part 57. Hospice Care
317:30-5-525. through 317:30-5-527. [REVOKED]
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ANALYSIS:
Rules revisions are needed to correct scrivener errors, reorganize rules to reflect current practice and align rules with other rules within the Administrative code.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

317:30-5-129. Required monthly notifications

(a) The Notification Regarding Patient in a Nursing Facility or ICF/MR ~~or Hospice~~ form is completed and forwarded to the local DHS office by the facility each time a recipient is admitted to or discharged from the facility except for therapeutic leave or hospital leave.

(b) A Computer Generated Notice or the Notice to Client Regarding Long-Term Medical Care form is used by the county office to notify the recipient and the facility of the amount of money, if any, the recipient is responsible for paying to the facility and the action taken with respect to the patient's eligibility for nursing facility care. This form reflects dates of transfer between facilities and termination of eligibility for any reason.

PART 57. HOSPICE CARE

317:30-5-525. Eligible providers [REVOKED]

~~Hospice providers must be Medicare certified as a hospice agency and have entered into a contract with the Oklahoma Health Care Authority.~~

317:30-5-526. Coverage by category [REVOKED]

~~Payment is made to hospice providers as set forth in this Section.~~

~~(1) Adults. Payment for adults is made for hospice care provided to individuals who are dually eligible for Medicare and Medicaid residing in a nursing facility. They must be considered to be terminally ill and have elected the hospice option under Medicare. An individual is considered terminally ill if he/she has a medical prognosis that~~

~~his or her life expectancy is six months or less. When such an individual elects the Medicare hospice benefit, the hospice and the facility must have a written agreement under which the hospice is responsible for the professional management of the individual's hospice care. The facility agrees to provide room and board to the individual.~~

~~(2) Children. Hospice care for children is the same as for adults.~~

317:30-5-527. Hospice reimbursement [REVOKED]

~~The hospice will be reimbursed an additional amount (in addition to the Medicare reimbursement) by Medicaid equal to 95% of the per diem rate that would have been paid to the nursing facility for that individual in that facility.~~

[OAR Docket #05-1129; filed 6-8-05]

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

[OAR Docket #05-1105]

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ANALYSIS:
Medical Providers-Fee for Service, Long Term Care Facilities specific, rules are revised to comply with Section 1-1925.2 of Title 63 of the Oklahoma Statutes which was amended by House Bill 2218 of the 2nd Session of the 48th Legislature (2002) related to the Quality of Care Fund reporting process. Revisions are needed to provide reference to the Oklahoma State Department of Health recently revised rules which allow the implementation of flexible staff scheduling. Other revisions provide instructions to facilities regarding the completion of the newly revised Quality of Care Report.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

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

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

(1) **"Nursing Facility and Intermediate Care Facility for the mentally retarded"** means any home, establishment, or institution or any portion thereof, licensed by the State Department of Health as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes.

(2) **"Quality of Care Fee"** means the fee assessment created for the purpose of quality care enhancements pursuant to Section 2002 of Title 56 of the Oklahoma Statutes upon each nursing facility and intermediate care facility for the mentally retarded licensed in this State.

(3) **"Quality of Care Fund"** means a revolving fund established in the State Treasury pursuant to Section 2002 of Title 56 of the Oklahoma Statutes.

(4) **"Quality of Care Report"** means the monthly report developed by the Oklahoma Health Care Authority to document the staffing ratios, total patient gross receipts, total patient days, and minimum wage compliance for specified staff for each nursing facility and intermediate care facility for the mentally retarded licensed in the State.

(5) **"Staffing ratios"** means the minimum direct-care-staff-to-resident ratios pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statutes <u>and pursuant to OAC 310:675-1 et seq</u>.

(6) **"Peak In-House Resident Count"** means the maximum number of in-house residents at any point in time during the applicable shift.

(7) **"Staff Hours worked by Shift"** means the number of hours worked during the applicable shift by direct-care staff.

(8) **"Direct-Care Staff"** means any nursing or therapy staff who provides direct, hands-on care to residents in a nursing facility and intermediate care facility for the mentally retarded pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statues, pursuant to OAC 310:675-1 et seq., and as defined in subsection (c) of this Section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) The Quality of Care fund ~~shall contain~~ contains assessments collected excluding penalties and interest as described in this subsection and any interest attributable to investment of any money in the fund ~~shall~~ must be deposited in a revolving fund established in

the State Treasury. The funds will be used pursuant to Section 2002 of Title 56 of the Oklahoma Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Should a facility discover an error in its submitted report for the previous month only, the facility ~~shall~~ must provide to the Provider Compliance Audits Unit written

notification with adequate, objective and substantive documentation within five ~~(5)~~ business days following the submission deadline. Any documentation received after the five ~~(5)~~ business day period ~~shall~~ will not be considered in determining compliance and for reporting purposes by the Oklahoma Health Care Authority.

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

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

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

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

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

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

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

[OAR Docket #05-1105; filed 6-6-05]

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

[OAR Docket #05-1107]

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Part 2. Physician Assistants
317:30-5-30. through 317:30-5-31. [AMENDED]
317:30-5-34. [REVOKED]
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ANALYSIS:
Medical Providers-Fee for Service rules are revised to allow Physician Assistant reimbursement at the same allowable as Physicians and Advance Practice Nurses, thereby improving access to medical care for Medicaid recipients. Revisions allow reimbursement to Physician Assistants at 100% of the Physicians fee schedule, consistent with reimbursement to Physicians and Advance Practice Nurses. Revisions are needed to improve access to medical care for Medicaid recipients.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 2. PHYSICIAN ~~ASSISTANTS~~ ASSISTANT

317:30-5-30. Eligible providers

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

(1) The application for a Medicaid Provider agreement must be accompanied by copies of the physician assistant's current written authorization to practice from the Oklahoma State Board of Medical Licensure and Supervision. The Application to Practice must be jointly filed by the supervising physician and physician assistant and include a description of the physician's practice, methods of supervision and utilization of the physician assistant, and the name of alternate supervising physician(s) who will supervise the physician assistant in the absence of the primary supervising physician. At any time that the supervising physician(s) change, an updated copy of the certification must be submitted to OHCA, Provider Enrollment.

(2) All services provided by a Physician ~~Assistants~~ Assistant must be within the current practice guidelines for the State of Oklahoma.

~~(3) Payment for Physician Assistant services will be made to the employing entity (i.e. hospital, rural health clinic, clinic, physician, etc.).~~

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

~~(a) **Adults.** For persons ages 21 to 65, payment is made to the employing entity of a Physician Assistant for medical and surgical services within the scope of the Authority's medical programs, provided the services are reasonable and necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. All services must be within the current Physician Assistant practice guidelines for the State of Oklahoma. In addition,~~ Physician Assistant services are subject to all rules and guidelines which apply to Physician services as specified at OAC 317:30-5, Part 1, Physicians.

~~(b) **Children.** Payment is made to a Physician Assistant for medical and assistant surgical services for persons under the age of 21 within the scope of the Authority's medical programs, provided the services are medically necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services for children are comparable to those listed for adults. In addition, Physician Assistant services are subject to all rules and guidelines which apply to Physician services for children as specified at OAC 317:30-5, Part 1, Physicians.~~

~~(c) **Vocational rehabilitation coverage.** Vocational rehabilitation services performed by Physician Assistants are subject to all rules and guidelines which apply to Physician services as specified at OAC 317:30-5-2(c).~~

~~(d) **Individuals eligible for Part B of Medicare.** Payment of Physician Assistant services to individuals eligible for Part B of Medicare are subject to all rules and guidelines which apply to Physician services as specified at OAC 317:30-5-2(d).~~

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

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

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

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

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

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

~~(2) EPSDT Screenings.~~

~~(3) Authorized examinations.~~

[OAR Docket #05-1107; filed 6-6-05]

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

[OAR Docket #05-1110]

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ANALYSIS:
Medical Providers-Fee for Service, Long Term Care Facilities specific, rules are revised to establish maximum reimbursement for Nurse Aide Training costs that coincide with the established maximum reimbursement rate. Existing rules provide that the cost of books and course material is paid directly to the nurse aide on a prorated basis. The current limitations involve limiting billing to a period of one year after training has occurred and limits payment to a prorated cost based upon the amount of employment within that one year. Revisions would allow the payment to be made in the daily per diem rate paid the nursing facility if the nurse aid is trained and tested in that Medicaid contracted nursing facility's training program. Requirements for the nurse aide to receive reimbursement for private training courses are delineated in these rules and provide for more clarity regarding the payment of nurse aide training costs. For every month employed in a nursing facility (up to a maximum of twelve months), the agency will reimburse 1/12 of the sum of the eligible expenses incurred by the nurse aide. Revisions to Long Term Care Facilities rules are needed to establish maximum reimbursement for Nurse Aide Training costs.

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 11, 2005:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

317:30-5-134. Nurse Aide Training Reimbursement

(a) ~~Under the authority of Title IV, Section 4801 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), the Medical Services Division will provide reimbursement by direct payment to any nurse aide who has incurred costs for nurse aide training and/or competency evaluation programs, and is employed by (or received an offer of employment from) a nursing facility not later than 12 months after completing either such program. Reimbursement will be made on a pro rata basis according to the following schedule:~~ Nurse Aide training programs and competency evaluation programs occur in two settings, a nursing facility setting and private training courses. Private training includes, but is not limited to, certified training offered at vocational technical institutions. This rule outlines payment for training in either setting.

~~(1) Length of employment equals a minimum of three months, the eligible reimbursement amount is 1/4 of eligible expenses;~~

~~(2) Length of employment equals a minimum of six months, the eligible reimbursement amount is 1/2 of eligible expenses;~~

~~(3) Length of employment equals a minimum of nine months, the eligible reimbursement amount is 3/4 of eligible expenses; and~~

~~(4) Length of employment equals a minimum of 12 months, the eligible reimbursement amount is full reimbursement of eligible expenses.~~

(b) In the case of nurse aides trained and tested in a Medicaid contracted nursing facility training program, payment is made by the Oklahoma Health Care Authority in the daily per diem rate paid the nursing facility. In the case a nursing facility provides training and competency evaluation in a program that is not properly certified under federal law, the Oklahoma Health Care Authority may offset the nursing facility's payment for monies paid to the facility for these programs. Such action shall occur after notification to the facility of the period of non-certification and the amount of the payment by the Oklahoma Health Care Authority.

(c) In the case of nurse aide training provided in private training courses, reimbursement is made to nurse aides who have paid a reasonable fee for training in a certified training program at the time training was received. The federal regulations prescribe applicable rules regarding certification of the program and certification occurs as a result of certification by the State Survey Agency. For nurse aides to receive reimbursement for private training courses, all of the following requirements must be met:

(1) the training and competency evaluation program must be certified at the time the training occurred;

(2) the nurse aide has paid for training;

(3) a reasonable fee was paid for training (however, reimbursement will not exceed the maximum amount set by the Oklahoma Health Care Authority);

(4) the Oklahoma Health Care Authority is billed by the nurse aide receiving the training within 12 months of the completion of the training;

(5) the nurse aide has passed her or his competency evaluation; and

(6) the nurse aide is employed at a Medicaid contracted nursing facility as a nurse aide during all or part of the year after completion of the training and competency evaluation.

(d) If all the conditions in subsection (c) are met, then the Authority will compensate the nurse aide based upon the following pro-rata formula:

(1) For every month employed in a nursing facility, OHCA will pay 1/12 of the sum of eligible expenses incurred by the nurse aide. The term "every month" is defined as a period of 16 days or more within one month.

(2) The maximum amount paid by the Oklahoma Health Care Authority may be set by the Rates and Standards Committee. The rate paid by the nurse aide, up to the maximum set by the Oklahoma Health Care Authority, will be paid in the event a nurse aide was employed all 12 months after completion of the training program.

(~~b~~ e) The claimant must submit a completed Nurse Aide Training Reimbursement Program Form and FIN-12 claim voucher. ~~The Nurse Aide Training Reimbursement Program Form must be signed by the nursing facility administrator (or designee) verifying that the nurse aide meets the employment requirements.~~ Documentation of eligible expenses must also be provided. Eligible expenses include course training fees, textbooks ~~and/or other required course materials~~ and exam fees. ~~Form ADM-12 must be signed and notarized for each schedule of reimbursement.~~

(f) No nurse aide trained in a nursing facility program that has an offer of employment or is employed by the nursing facility in any capacity at the inception of the training program may be charged for the costs associated with the nurse aide training or competency evaluation program.

[OAR Docket #05-1110; filed 6-6-05]

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

[OAR Docket #05-1093]

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317:30-5-243. [REVOKED]
317:30-5-247. [REVOKED]
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ANALYSIS:
Outpatient Behavioral Health Services rules are revised to better describe appropriate Alcohol and Other Drug (AOD) treatment services, establish separate service descriptions and allow AOD providers a window to contract to be a provider. Revisions also add Behavioral Health Aide services to the array of outpatient behavioral health rehabilitation services. Additional revisions would require Mental Health Professionals and Behavioral Health Rehabilitation Specialists who perform services in contracted Outpatient Behavioral Health agencies to obtain individual provider numbers and use them when billing for services. Further revisions would: (1) add additional detail regarding the prior authorization process; (2) remove obsolete language regarding Vocational Rehabilitation; (3) remove billing information from rules that is found in the Provider Billing Manual; and (4) clarify existing language that has been identified as unclear or confusing.
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 11, 2005:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 21. OUTPATIENT BEHAVIORAL HEALTH SERVICES

317:30-5-240. Eligible providers

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

(1) **"AOA"** means American Osteopathic Association.

(2) **"AOD"** means Alcohol and Other Drug.

(3) **"AODTP"** means Alcohol and Other Drug Treatment Professionals.

(4) **"ASAM"** means the American Society of Addiction Medicine.

(5) **"ASI"** means the Addiction Severity Index.

(6) **"BHRS"** means Behavioral Health Rehabilitation Specialist.

(7) **"CARF"** means Commission on Accreditation of Rehabilitation Facilities.

(8) **"CMHCs"** means Community Mental Health Centers.

(9) **"COA"** means Council on Accreditation of Services for Families and Children, Inc.

(10) **"DSM"** means the Diagnositc and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(11) **"ICF/MR"** means Intermediate Care Facility for the Mentally Retarded.

(12) **"JCAHO"** means Joint Commission on Accreditation of Healthcare Organizations.

(13) **"MHP"** means Mental Health Professional.

(14) **"OAC"** means Oklahoma Administrative Code, the publication authorized by 75 O.S. 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. 256(A)(1)(a) and maintained in the Office of Administrative Rules.

(15) **"ODMHSAS"** means the Oklahoma Department of Mental Heatlh and Substance Abuse Services.

(16) **"ODMHSAS Contracted Facilties"** means those providers that have a contract with the ODMHSAS to provide mental health or substance abuse treatment services, and also contract directly with the Oklahoma Healthcare Authority to provide Outpatient Behavioral Health Services.

(17) **"OHCA"** means Oklahoma Health Care Authority.

(18) **"Private Facilities"** means those providers that contract directly with the Oklahoma Healthcare Authority to provide Outpatient Behavioral Health Services.

(19) **"Public Facilities"** means those providers who are regionally based Community Mental Health Centers who are also contract directly with the Oklahoma Healthcare Authority to provide Outpatient Behavioral Health Services.

(20) **"RBMS"** means Residential Behavioral Management Services within a group home or therapeutic foster home.

(~~a~~b) **Accredited outpatient organizations.** Rehabilitative services are provided by:

(1) Community based outpatient behavioral health organizations, that have a current accreditation status as a provider of behavioral health services, from the ~~Commission on the Accreditation of Rehabilitative Facilities (~~CARF~~)~~, ~~or the Joint Commission on the Accreditation of Healthcare Organizations (~~JCAHO~~)~~, or ~~the Council on Accreditation (~~COA~~)~~. Providers accredited by CARF/JCAHO/COA must be able to demonstrate that the Scope of the current accreditation includes all programs, services and sites where Medicaid compensated services are rendered. CARF/JCAHO/COA accredited providers will only receive Medicaid reimbursement for services provided under the programs, which are accredited.

(~~2~~A) Psychiatric Hospitals appropriately licensed and certified by the State Survey Agency as meeting Medicare psychiatric hospital standards including JCAHO accreditation. Psychiatric Hospitals must be able to demonstrate the scope of the current accreditation includes all programs and sites where Medicaid Outpatient Behavioral services will be performed.

(~~3~~B) Acute Care Hospitals appropriately licensed and certified by the State Survey Agency as meeting Medicare standards, including a JCAHO or ~~American Osteopathic Association (~~AOA~~)~~ certification. Acute Care Hospitals must be able to demonstrate the scope of the current accreditation includes all programs and sites where Medicaid Outpatient Behavioral Health Services will be performed.

(C) Providers of Alcohol and other Drug Treatment Disorders certified by the designated state certifying agency, the ODMHSAS, on or before December 31, 2005. Providers certified by ODMHSAS must be actively working toward accreditation by one of the three recognized accrediting bodies. Providers in this category must have achieved accreditation from JCAHO, CARF, or COA for the provision of outpatient alcohol and other drug treatment services by January 1, 2007.

(~~4~~2) Eligible ~~providers~~ organizations must meet one of the following standards and criteria:

(A) Be an incorporated organization governed by a board of directors; or

(B) A state-operated program under the direction of the ~~Department of Mental Health and Substance Abuse Services (DMHSAS)~~ ODMHSAS.

(~~5~~3) ~~All eligible~~ Eligible organizations must meet each of the following:

(A) Have a well-developed plan for rehabilitation services designed to meet the ~~outpatient behavioral healthcare~~ recovery needs of the ~~population to be~~ individuals served.

(B) Have a multi-disciplinary, professional team. This team must include all of the following:

(i) An allopathic or osteopathic Physician licensed in the state in which the service is delivered.

(ii) One of the following licensed mental health professionals:

(I) A Psychologist, Clinical Social Worker, Professional Counselor, Behavioral Practitioner, or Marriage and Family Therapist licensed in the state in which the services are delivered, or

(II) An Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided, or

(III) An allopathic or osteopathic physician with a current license and board certification in psychiatry in the state in which the service is delivered, or board eligible.

(iii) A Behavioral Health Rehabilitation Specialist as described in subsection ~~(d)~~ (e) of this section, if individual or group rehabilitative services for mental illnesses are provided.

(iv) A Certified Alcohol and Drug Counselor if treatment of alcohol and other drug disorders is provided.

(~~iv~~ v) A registered nurse or physician assistant, with a current license to practice in the state in which the services are delivered if Medication Training and Suppport service is provided.

(C) Demonstrate the ability to provide each of the following outpatient behavioral health treatment services as described in OAC 317:30-5-241. Sites as identified by ~~DMHSAS~~ ODMHSAS as exclusively providing Community-based structured emergency care, or Program for Assertive Community Treatment services are exempted from this requirement.

(i) Mental Health Assessments and/or Alcohol and Drug assessments;

(~~i~~ ii) Individual, Group, and Family ~~Counseling~~ Psycho Therapy;

(~~ii~~ iii) Individual and Group Rehabilitative services relevant to the population to be served and Alcohol and other Drug Related Services Skill development services if offered by the provider;

(~~iii~~ iv) ~~Treatment plan development and review~~ Mental Health Services Plan done by a non-physician (moderate and low complexity; and

(~~iv~~ v) Crisis Intervention services~~; and~~

~~(v) Medical Review~~.

(D) ~~Crisis Intervention Services must be~~ Be available 24 hours a day, seven days a week, for Crisis Intervention services.

(E) ~~The provider must be able to provide~~ Provide physician services necessary for the treatment of the behavioral disorders of the population served.

(F) Comply with all applicable Federal and State Regulations.

(G) Have appropriate written policy and procedures regarding confidentiality and protection of information and records, patient grievances, patient rights and responsibilities, and admission and discharge criteria, which shall be posted publicly and conspicuously.

(H) Demonstrate the ability to keep appropriate records and documentation of services performed.

(I) Maintain and furnish, upon request, a current report of fire and safety inspections of facilities clear of any deficiencies.

(J) Maintain and furnish, upon request, all required staff credentials including certified transcripts documenting required degrees.

(~~6~~ 4) Provider Specialties.

(A) Public and ODMHSAS Contracted Programs Facilities - Public facilities are the regionally based Community Mental Health Centers and ODMHSAS contracted programs are providers that have a contract with the ODMHSAS to provide Mental Health or Substance Abuse Treatment Services. ~~The Department of Mental Health and Substance Abuse is responsible for the State's share of adult Medicaid services.~~

~~(B) DMHSAS Contracted Programs - DMHSAS Contracted facilities are those facilities who contract with the Department of Mental Health and Substance Abuse Services to provide services. The State's share of Medicaid services is included in the budget of DMHSAS.~~

(~~C~~ B) Private Programs - Private facilities are those facilities that contract directly with the Oklahoma Healthcare Authority to provide Outpatient Behavioral Health Services. ~~The State's share of Medicaid services is included in the OHCA budget.~~

(~~b~~ c) **Provider enrollment and contracting.**

(1) Organizations who have JCAHO, CARF, COA or AOA accreditation will supply the documentation from the accrediting body, along with other information as required for contracting purposes to the OHCA. If the application is approved, a separate provider identification number for each outpatient Behavioral Health Service site will be assigned. The contract must include copies of all required state licenses, accreditation and Medicaid certifications.

(2) Each site operated by an outpatient mental health facility must have a separate provider number. A site is defined as an office, clinic, or other business setting where outpatient behavioral health services are routinely performed. When services are rendered at the patient's residence, a school, or ~~other~~ when provided occasionally at an appropriate community based setting, a site is determined according to where the professional staff perform administrative duties and where the patient's chart and other records are kept. Failure to obtain and utilize site specific provider numbers will result in disallowance of services.

~~(3) Memorandum of Agreement - A memorandum of Agreement between the Oklahoma Health Care Authority~~

~~and the Oklahoma Department of Mental Health and Substance Abuse Services for Medicaid reimbursement for DMHSAS Rehabilitative Services as defined in 42 CFR 440.130 must be in effect before reimbursement can be made for compensable services. The agreement outlines the contractual and subcontractual requirements for reimbursement. This agreement provides that the DMHSAS will be responsible for the Medicaid State share required for federal financial participation. DMHSAS agrees to be responsible for the Medicaid State share for all services provided to adults by Public and DMHSAS Contracted facilities.~~

(3) Each MHP, AODTP, BHRS, Nurse, or Physician Assistant performing services for any contracted Outpatient Behavioral Health agency must obtain an individual practitioner identification number. This number is submitted on the claim for each treatment service performed by that practitioner beginning July 1, 2005.

(~~c~~d) **Mental Health Professional.** Mental Health Professionals (MHPs) are defined as follows for the purpose of Outpatient Behavioral Health Services:

(1) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry practicing as described in OAC 317:30-5-2. ~~Other licensed allopathic or osteopathic physicians experienced in behavioral health counseling practices may apply to the OHCA Behavioral Health Services, Medicaid Operations Division for consideration for status as an MHP.~~

(2) Practitioners with a license to practice in the state in which services are provided or those actively and regularly receiving board approved supervision to become licensed by one of the licensing boards listed in (A) through (E) below. The exemptions from licensure under 59 §1353(4) (Supp. 2000) and (5), 59 §1903(C) and (D) (Supp. 2000), 59 §1925.3(B) (Supp. 2000) and (C), and 59 §1932(C) (Supp. 2000) and (D) do not apply to Outpatient Behavioral Health Services.

(A) Psychology,
(B) Social Work (clinical specialty only),
(C) Professional Counselor,
(D) Marriage and Family Therapist, or
(E) Behavioral Practitioner.

(3) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

(~~d~~e) **Behavioral Health Rehabilitation Specialist.** The definition of a Behavioral Health Rehabilitation Specialist (BHRS) is as follows:

(1) Bachelor or master in a mental health related field including, but not limited to, psychology, social work, occupational therapy, family studies; or

(2) A current license as a registered nurse in Oklahoma; or

(3) Certification as an Alcohol and Drug Counselor. Allowed to provide substance abuse rehabilitative treatment to those with alcohol and/or other drug dependencies or addictions as a primary or secondary DSMIV Axis I diagnosis; or

(4) Current certification as a Behavioral Health Case Manager from ~~DMHSAS~~ ODMHSAS and meets OHCA requirements to perform case management services, as described in OAC 317:30-5-585(1).

(f) **Alcohol and other Drug (AOD) Treatment Professionals (AODTP).** Alcohol and other Drug Treatment Professionals are defined as practitioners who are:

(1) Licensed to practice as an Alcohol and Drug Counselor in the state in which services are provided, or those actively and regularly receiving board approved supervision to become licensed;

(2) Certified as an Advanced Alcohol and Drug Counselor as recognized and approved by an ODMHSAS AOD treatment certifying and/or licensing body;

(3) Certified as an Alcohol and Drug Counselor as recognized by an ODMHSAS recognized and approved AOD treatment certifying and/or licensing body; or

(4) A MHP with a current license to practice who can demonstrate competency in the area of alcohol and drug counseling and treatment.

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

(a) **Service descriptions and conditions.** Outpatient behavioral health services are covered for adults and children as set forth in this Section, unless specified otherwise, and when provided in accordance with a documented individualized service plan, developed to treat the identified mental health and/or substance abuse disorder(s). All services are to be for the goal of improvement of functioning, independence, or well being of the client. The client must be able to actively participate in the treatment. Active participation means that the client must have sufficient cognitive abilities, communication skills, and short-term memory to derive a reasonable benefit from the treatment. The assessment must include a DSM multi axial diagnosis completed for all five axes from the most recent DSM version. All services will be subject to medical necessity criteria. For ~~DMHSAS~~ ODMHSAS Contracted and Private facilities, an agent designated by the Oklahoma Health Care Authority will apply the medical necessity criteria. For public facilities (regionally based ~~CMHCS~~ CMHCs), the medical necessity criteria will be self-administered following the same required elements as the private and contracted (ODMHSAS) agencies under OAC 317:30-5-241(b)(4)(B)(i). Non prior authorized services will not be Medicaid compensable with the exception of Mental Health Assessment by a Non-Physician, Mental Health Service Plan Development, Crisis Intervention Services (by a MHP and Facility based), and Program of Assertive Community Treatment Services (PACT). Payment is not made for Outpatient Behavioral Health Services for children who are receiving Residential Behavioral Management Services in a Group Home or Therapeutic Foster Care with the exception of Psychotherapy services which must be authorized by the OHCA or its designated agent as medically necessary

and indicated, and Crisis Intervention Services (facility based). Residents of nursing facilities are not eligible for Outpatient Behavioral Health services.

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

(2) **Alcohol and Drug Assessment.** Alcohol and Drug Assessment includes an assessment of past and present alcohol and other drug use. The ASI is to be completed. This service includes an evaluation of current and past functioning in all major life areas and an evaluation of potential mental illnesses that may also impact treatment. It includes a full five axes diagnosis. The service must also include an evaluation of the client strengths and weaknesses and information regarding the client's treatment preferences. For adults, it may include interviews and/or communication with family, caretakers or other support persons as permitted by the client. For children under the age of 18, it must include an interview with a parent or other adult caretaker. For children, the assessment must also include information on school performance and school based services. This service is performed by an AODTP. The minimum face to face time spent in assessment with the client (and other family or caretakers as previously described in this paragraph) for a low complexity is one and one-half hours. For a moderate complexity it is two hours or more. This service is compensable on behalf of a client who is seeking services for the first time from the contracted agency. The service is not compensable if the client has previously received or is currently receiving services from the agency, unless there has been a gap in services of more than six months and it has been more than one year since the previous assessment. This service is not allowed for Mental Health Providers.

(~~2~~3) **Mental Health Services Plan Development by a Non-Physician (moderate complexity).** Mental Health Services Plan Development by a Non-Physician (moderate complexity) is to be performed by the practitioners and others who will comprise the treatment team. It is performed with the direct active participation of the client and a client support person or advocate if requested by the client. In the case of children under the age of 18, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate. The Mental Health Services Plan is developed based on information obtained in the mental health assessment and includes the evaluation of assessment by the practitioners and the client of all pertinent information. It includes a discharge plan. It is a process whereby an individualized rehabilitation plan is developed that addresses the client's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited. For adults, it must be focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training. For children, the service plan must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care. Each type of service to be received must be delineated in the service plan and the practitioner who will be providing and responsible for each service must be identified. In addition, the anticipated frequency of each type of service must be included. This service is provided by the client treatment team. This includes all staff responsible for the treatment services delineated in the plan, the client (if over age 14), and the parent/guardian if under age 18. The service plan is not valid until it is signed and dated by the responsible MHP, the treating physician, the client, the guardian (if applicable), and any other direct service provider, and all requirements have been met. Each signature must have the date written by the signing party on the date of signing. One unit per Medicaid recipient per provider is allowed without prior authorization. If determined by OHCA or its designated agent, one additional unit per year may be authorized.

(~~3~~4) **Mental Health Services Plan Development by a Non-Physician (low complexity).** Mental Health Services Plan Development by a Non-Physician (low complexity) is for the purpose of reviewing, revising and updating an established Mental Health Services Plan. All elements of the plan must be reviewed with the client and treatment progress assessed. When significant progress toward recovery and the treatment goals is not occurring, the service plan must be altered in order to support and maximize progress toward recovery. When significant progress has been made, the plan must be updated to reflect the improved client's abilities and strengths and services adjusted accordingly. Mental Health Services Plan Development by a Non-Physician (low complexity)

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

(5) **Alcohol and/or Substance Abuse Services, Treatment Plan Development (moderate complexity).** Alcohol and Substance Abuse Treatment Plan Development (moderate complexity) is to be performed by the AODTP practitioners and others who will comprise the treatment team. The current edition of the ASAM criteria is to be utilized and followed. The service is performed with the direct active participation of the client and a client support person or advocate if requested by the client. In the case of children under the age of 18, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate. The Plan is developed based on information obtained in the assessment and includes the evaluation of all pertinent information by the practitioners and the client. The service includes a discharge plan. The service is a process whereby an individualized rehabilitation plan is developed that addresses the client's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited. For adults, it must be focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training. For children, the service plan must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care. Each type of service to be received must be delineated in the service plan and the practitioner who will be providing and responsible for each service must be identified. In addition, the anticipated frequency of each type of service must be included. This service is provided by the client treatment team. This includes all staff responsible for the treatment services delineated in the plan, the client (if over age 14), and the parent/guardian if under age 18. The service plan is not valid until it is signed and dated by the responsible AODTP, the treating physician, the client, the guardian (if applicable), and any other direct service provider, and all requirements have been met. Each signature must have the date written by the signing party on the date of signing. One unit per Medicaid recipient per provider is allowed without prior authorization. If determined by OHCA or its designated agent, one additional unit per year may be authorized.

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

(~~4~~7) **Individual/Interactive Psychotherapy.**

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

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

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

The counseling must be goal directed, utilizing techniques appropriate to the service plan and the client's developmental and cognitive abilities.

(D) Individual/Interactive counseling must be provided by a MHP when treatment is for a mental illness and by an AODTP when treatment is for an alcohol or other drug disorder.

(~~5~~8) **Group Psychotherapy.**

(A) Group ~~Ppsychotherapy~~ psychotherapy is a method of treating behavioral disorders using the interaction between the MHP when treating mental illness or the AODTP when treating alcohol and other drug disorders, and two or more individuals to promote positive emotional or behavioral change. The focus of the group must be directly related to the goals and objectives in the individual client's current service plan. This service does not include social or daily living skills development as described under Individual and Group Psychosocial Rehabilitation Services, or Alcohol and/or Substance Abuse Services Skills Development.

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

(C) Group psychotherapy will be provided by a MHP when treatment is for a mental illness and by an AODTP when treatment is for an alcohol or other drug disorder.

(~~6~~9) **Family Psychotherapy.**

(A) Family Psychotherapy is a face-to-face psychotherapeutic interaction between a MHP or an AOD and the client's family, guardian, and/or support system. It is typically inclusive of the identified client, but may be performed if indicated without the client's presence. When the client is an adult, his/her permission must be obtained. Family psychotherapy must be provided for the direct benefit of the Medicaid recipient to assist him/her in achieving his/her established treatment goals and objectives and it must take place in a confidential setting.

(B) The length of a Family Psychotherapy session is one hour. No more than two hours of Family Psychotherapy are allowed per day. ~~Half~~ Partial units are acceptable. Family Psychotherapy must be provided by a MHP when treatment is for a mental illness and by an AODTP when treatment is for an alcohol or other drug disorder.

(~~7~~10) **Psychosocial Rehabilitation Services (group).**

(A) Psychosocial Rehabilitation Services (PSR) are behavioral health remedial services which are necessary to improve the client's ability to function in the community. They are performed to improve the skills and abilities of clients to live interdependently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. This service may take the form of a ~~psychosocial clubhouse and promote the principles and practices of a work ordered day~~ work units component in a General PSR program certified through the ODMHSAS. Each day of PSR must be reflected by documentation in the client records, and must include the following:

(i) date;

(ii) start and stop time(s) for each day of service;

(iii) signature of the rehabilitation clinician;

(iv) credentials of the rehabilitation clinician;

(v) specific goal(s) and/or objectives addressed (these must be identified on recovery plan);

(vi) type of skills training provided;

(vii) progress made toward goals and objectives;

(viii) client satisfaction with staff intervention; and

(ix) any new needed supports identified during service.

(B) Compensable Psychosocial Rehabilitation Services are provided to clients who have the ability to benefit from the service. The services performed must have a purpose that directly relates to the goals and objectives of the client's current service plan. A client who at the time of service is not able to cognitively benefit from the treatment due to active hallucinations, substance use, or other impairments is not suitable for this service.

(~~B~~C) Travel time to and from ~~Psychosocial Rehabilitative~~ PSR treatment is not compensable. Breaks, lunchtime and times when the client is unable or unwilling to participate are not compensable. The minimum staffing ratio is fourteen clients for each BHRS or MHP for adults and eight to one for children under the age of eighteen. Countable professional staff must be appropriately trained in a recognized ~~anger~~ behavioral/management intervention program such as MANDT or CAPE. ~~This service may be performed by a BHRS using a curriculum approved by a licensed MHP clinician.~~ In order to develop and improve the client's community and interpersonal functioning and self care abilities, rehabilitation may take place in settings away from the Outpatient Behavioral Health agency site. When this occurs, the BHRS or MHP must be present and interacting, teaching, or supporting the defined learning objectives of

the client for the entire claimed time. The service is a fifteen minute time frame and may be billed up to a maximum of 24 units per day for adults and 16 units per day for children. The rate of compensation for this service includes the cost of providing transportation for recipients who receive this service, but do not have their own transportation or do not have other support persons able to provide or who are responsible for the transportation needs. The OHCA transportation program will arrange for transportation for those who require specialized transportation equipment. Residents of ~~an~~ ICF/MR facilities ~~or~~ and children receiving ~~Residential Behavioral Management Services~~ RBMS in a ~~Group~~ group home or ~~Therapeutic~~ therapeutic Foster ~~Care setting~~ Home are not eligible for this service.

(~~C~~ D) ~~Group Psychosocial Rehabilitation Services are provided utilizing a treatment curriculum approved by a MHP.~~ A BHRS, AODTP (when treatment is for an alcohol or other drug disorder), or MHP may perform group psychosocial rehabilitation services, using a treatment curriculum approved by a MHP.

(~~8~~ 11) **Psychosocial Rehabilitation Services (individual).**

(A) Psychosocial Rehabilitation (PSR) Services (individual) is performed for the same purposes and under the same description and requirements as Psychosocial Rehabilitation Services (group) [Refer to paragraph ~~(7)~~ (10) of this subsection]. ~~It~~ The service is generally performed with only the client present, but may include the client's family or support system in order to educate them about the rehabilitative activities, interventions, goals and objectives.

(B) A BHRS, AODTP (when treatment is for an alcohol or other drug disorder, or MHP must provide this service. Residents of ICF/MR facilities and children receiving ~~Residential Behavioral Management Group services~~ RBMS in a group home or therapeutic Foster ~~or~~ Home ~~setting~~ are not eligible for this service. This billing unit is fifteen minutes and no more than six units per day are compensable. Children under an ODMHSAS Systems of Care program may be prior authorized additional units as part of an intensive transition period.

(~~9~~ 12) **Psychological testing.**

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

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

(13) **Alcohol and/or Substance Abuse Services, Skills Development (group).**

(A) Alcohol and/or Substance Abuse Services, Skills Development (group) consists of the therapeutic education of clients regarding their AOD addiction or disorder. The service may also involve teaching skills to assist the individual in how to live independently in the community, improve self care and social skills and promote and support recovery. The services performed must have a purpose that directly relates to the goals and objectives of the client's current service plan. A client who at the time of service is not able to cognitively benefit from the treatment due to active hallucinations, substance use, or other impairments is not suitable for this service.

(B) Travel time to and from Alcohol and/or Substance Abuse Services, Skills Development is not compensable. Breaks, lunchtime and times when the client is unable or unwilling to participate are not compensable. The minimum staffing ratio is fourteen clients for each AODTP for adults and eight to one for children under the age of eighteen. This service may be performed by an AODTP or a BHRS. In order to develop and improve the client's community and interpersonal functioning and self care abilities, services may take place in settings away from the Outpatient Behavioral Health agency site. When this occurs, the AODTP or BHRS must be present and interacting, teaching, or supporting the defined learning objectives of the client for the entire claimed time. The service is a fifteen minute time frame and may be billed up to a maximum of 24 units per day for adults and 16 units per day for children. The rate of compensation for this service includes the cost of providing transportation for recipients who receive this service, but do not have their own transportation or do not have other support persons able to provide or who are responsible for the transportation needs. The OHCA transportation program will arrange for transportation for those who require specialized transportation equipment. Residents of ICF/MR facilities and children receiving RBMS in a group home or therapeutic Foster Home are not eligible for this service.

(C) Alcohol and/or Substance Abuse Services, Skills Development are provided utilizing a treatment curriculum approved by an AODTP.

(14) **Alcohol and/or Substance Abuse Services, Skills Development (individual).**

(A) Alcohol and/or Substance Abuse Services, Skills Development (individual) is performed for the same purposes and under the same description and requirements as Alcohol and/or Substance Abuse Services, Skills Development (group) [Refer to paragraph (13) of this subsection]. It is generally performed with only the client present, but may include the client's family or support system in order to educate them about the rehabilitative activities, interventions, goals and objectives.

(B) An AODTP or BHRS must provide this service. Residents of ICF/MR facilities and children receiving RBMS in a group home or therapeutic Foster Home are not eligible for this service. This billing unit is fifteen minutes and no more than six units per day are compensable.

(~~10~~ 15) **Medication Training and Support.**

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

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

(~~11~~ 16) **Crisis Intervention Services.**

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

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

(~~12~~ 17) **Crisis Intervention Services (facility based stabilization).** Crisis Intervention Services (facility based stabilization) are emergency psychiatric and substance abuse services to resolve crisis situations. The services provided are emergency stabilization, which includes a protected environment, chemotherapy, detoxification, individual and group treatment, and medical assessment. Crisis Intervention Services (facility based stabilization) will be under the supervision of a physician aided by a licensed nurse, and will also include ~~mental health professionals~~ MHPs for the provision of group and individual treatments. A physician must be available. This service is limited to providers who contract with or are operated by the ~~Oklahoma Department of Mental Health and Substance Abuse Services (~~ODMHSAS~~)~~ to provide this service within the overall behavioral health service delivery system. Crisis Intervention Services (facility based stabilization) are compensable for child and adult Medicaid recipients. ~~Only children who are enrolled and approved through a Community Based Systems of Care Program are eligible for this service.~~ The unit of service is per hour. ~~The ODMHSAS is responsible for providing the State match for this service.~~ Providers of this service must meet the requirements delineated in the Oklahoma Administrative Code.

(~~13~~ 18) **Program of Assertive Community Treatment (PACT) Services.**

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

(i) Assessment and evaluation;

(ii) Treatment planning;

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

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

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

(~~v~~ vi) Rehabilitation services;

(~~vi~~ vii) Substance abuse treatment services;

(~~vii~~ viii) Activities of daily living training and supports;

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

(~~ix~~ x) Case management services.

(B) Providers of PACT services are specific teams within an established ~~mental health delivery~~ organization and must be operated by or contracted with and must be certified by the ODMHSAS in accordance with 43A O.S. 319 and Oklahoma Administrative Code ~~540:55~~ 450:55. The unit is a per diem inclusive of all services provided by the PACT team. No more than 12 days of service per month may be claimed. Medicaid recipients who are enrolled in this service may not receive other Outpatient Behavioral Health Services except for Crisis Intervention Services (facility based stabilization). ~~The ODMHSAS is~~

~~responsible for providing the state match for this service.~~

(19) **Behavioral Health Aide.** This service is limited to children with serious emotional disturbance who are in an ODMHSAS contracted systems of care community based treatment program who need intervention and support in their living environment to achieve or maintain stable successful treatment outcomes. Behavioral Health Aides provide behavior management and redirection and behavioral and life skills remedial training. The behavioral aide also provides monitoring and observation of the child's emotional/behavioral status and responses, providing interventions, support and redirection when needed. Training is generally focused on behavioral, interpersonal, communication, self help, safety and daily living skills.

(A) Behavioral Health Aides must have completed 60 hours or equivalent of college credit to meet the requirement as a BHRS or may substitute one year of relevant employment and/or responsibility in the care of emotionally disturbed children for up to two years of college experience, and:

(i) must have successfully completed the specialized training and education curriculum provided by the ODMHSAS; and

(ii) must be directly and closely supervised by a licensed Mental Health Professional; and

(iii) function under the general direction of the established systems of care team and the current treatment plan.

(B) These services must be prior authorized by OHCA (or its designated agent).

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

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

~~(A) Pertinent demographic and identifying information;~~

~~(B) Complete and current (within 30 days of the date submitted to OHCA or its designated agent) CAR assessment (CAFAS or other recognized functional assessment tools may be substituted in some instances when authorized by OHCA or its designated agent);~~

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

~~(D) Psychiatric and treatment history;~~

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

~~(F) Services requested.~~

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

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

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

(1) **General requirement.**

(A) All Medicaid providers who provide outpatient behavioral health services are required to have the services they provide either prior authorized or retroactively reviewed by a contractor of OHCA. Private behavioral health providers and providers identified by the ODMHSAS as contracted providers are required to have all services prior authorized with the exception of the three services listed in paragraph (2)(A) of this subsection.

(B) CMHC's, as identified by the ODMHSAS, are required to have all services retroactively reviewed by a contractor of OHCA.

(2) **Prior authorization and review of services.**

(A) All Medicaid services identified in subsection (a) of this Section must be prior authorized or reviewed as set forth in paragraph (1) of this subsection except for the following services:

(i) Mental Health Assessment by a Non-Physician [see subsection (a)(1) of this Section];

(ii) Mental Health Services Plan Development by a Non-Physician (moderate complexity) [see subsection (a)(2) of this Section]; and

(iii) Crisis Intervention Services and Adult Facility Based Crisis Intervention [see subsection (a)(17) and (18) of this Section]. Children's Facility Based Stabilization requires prior authorization.

(B) Prior authorization means the authorization of services prior to services being rendered. Should a provider perform services prior to the authorization, those services are performed at the risk of nonpayment by OHCA.

(3) **Contractor for prior authorization and review of services.** The contractor who performs the services identified in paragraph (1) of this subsection uses its independent medical judgment to perform both the review of services and the prior authorization of services. OHCA does retain final administrative review over both prior authorization and review of services as required by 42 CFR 431.10.

(4) **Prior authorization process.**

(A) **Definitions.** The following definitions apply to the process of applying for an outpatient behavioral health prior authorization.

(i) **"Outpatient Request for Prior Authorization"** means the form used to request the OHCA contractor to approve services.

(ii) **"Authorization Number"** means the number that is assigned per recipient and per provider that authorizes payment after services are rendered.

(iii) **"Initial Request for Treatment"** means a request to authorize treatment for a recipient that has not received outpatient treatment in the last six months.

(iv) **"Extension Request"** means a request to authorize treatment for a recipient who has received outpatient treatment in the last six months.

(v) **"Modification of Current Authorization Request"** means a request to modify the current array or amount of services a recipient is receiving.

(vi) **"Correction Request"** means a request to change a prior authorization error made by OHCA's contractor.

(vii) **"Provider change in demographic information notification"** means a request to change a provider's name, address, phone, and/or fax numbers, or provider identification numbers. Change in demographics will require contractual changes with OHCA. Providers should contact OHCA's Contracts Services Division for more information.

(viii) **"Status request"** means a request to ask the OHCA contractor the status of a request.

(ix) **"Important notice"** means a notice that informs the provider that information is lacking regarding the approval of any prior authorization request.

(x) **"Letter of collaboration"** means an agreement between the recipient and two providers when a recipient chooses more than one provider during a course of treatment.

(B) **Process.** A provider must submit an Initial Request for Treatment, an Extension Request, a Modification of Current Authorization Request, or a Correction Request on a form provided by the OHCA contractor, prior to rendering the initial services or any additional array of services, with the exception of the three services noted in paragraph (2) of this subsection.

(i) These request forms must be fully completed including the following:

(I) pertinent demographic and identifying information;

(II) complete and current Client Assessment Record (CAR) unless another appropriate assessment tool is authorized by contractor;

(III) complete multi axial, Diagnostic and Statistical Manual (DSM) diagnosis using the most current edition;

(IV) psychiatric and treatment history;

(V) service plan with goals, objectives, treatment duration;

(VI) services requested;

(VII) signature of client on service plan; and

(VIII) appropriate provider signature on all forms.

(ii) The OHCA contractor may also require supporting documentation for any data submitted by the provider. The request may be denied if

such information is not provided within ten calendar days of notification of the Important Notice.

(iii) Failure to provide a complete request form may result in a delay in the start date of the prior authorization.

(C) **Authorization for services.**

(i) Services are authorized by the contractor exercising independent medical judgment based upon the medical data provided by the provider. The medical data provided, including the functional assessment (including frequency, duration and severity of behaviors), diagnosis and other medical history, is of paramount importance. If services are authorized, a treatment course of one to six months will be authorized. The authorization of services is based upon six levels of care for children and five levels of care for adults. The numerically based levels of care are designed to reflect the client's acuity as each level of care, in ascending order, provides for more services for the recipient's care. For example, a Level I (adult) designation provides for 1-12 RVU's while a Level II provides for 1-20 RVU's per month. The range of RVU's between the Level I and Level IV for both children and adults is 1 RVU per month to 62 RVU's per month. Other levels of care are known as Exceptional Case, 0-36 months, ICF/MR, and RBMS.

(ii) If the provider requests services beyond the initial prior authorization period, additional documentation is required in the Extension Request.

(D) **Appeals process.**

(i) After the contractor issues a decision regarding an Initial Prior Authorization request, an Extension Request, a Modification Request or a Correction Request, the provider has five business days of receipt of the decision to request the contractor to reconsider its decision. The issues which a provider may ask for reconsideration are the number and type of services designated by the contractor and the length of treatment approved by the contractor. The reasoning or propriety of an Important Notice or a denial based upon insufficient data may not be reconsidered.

(ii) If a reconsideration request is made, the contractor's decision is a final decision and notice is sent to the client as required by 42 CFR 431.211. Notice is also sent to the provider. If a reconsideration request is not made, the initial decision of the contractor constitutes the final decision regarding the authorization and notice is sent to the recipient as required by 42 CFR 431.211.

(iii) In the event a recipient disagrees with the decision by OHCA's contractor, it may appeal the decision regarding the prior authorization under OAC 317:2-1-2. An appeal must commence within 20 calendar days of the prior authorization reconsideration decision (in the event the provider asks for reconsideration) or within 20 days of the initial decision (in the event no reconsideration request is filed).

317:30-5-243. Vocational rehabilitation coverage [REVOKED]

~~Payment is made for outpatient behavioral health services for vocational rehabilitation as authorized by the patient's counselor.~~

317:30-5-247. Billing [REVOKED]

~~Billing for outpatient behavioral health services will be on Form HCFA-1500.~~

~~(1) Claims should not be submitted until Medicaid eligibility of the individual has been determined by DHS. However, a claim must be received by the fiscal agent within 12 months of the date of service. If the eligibility of the individual has not been determined after ten months from the date of service, a claim should be submitted in order to assure that the claim is timely filed and reimbursement from Title XIX funds can be made should the individual be determined eligible at a later date.~~

~~(2) Private and DMHSAS Contract providers billing for prior authorized services must include a prior authorization number in block 23 of the HCFA-1500.~~

~~(3) Billable time is the time spent in face to face interaction with the client and does not include time spent in documentation and planning.~~

~~(4) Transportation time and expenses is not billable as an outpatient behavioral health service.~~

317:30-5-248. Documentation of records

All outpatient behavioral health services must be reflected by documentation in the patient records.

(1) ~~Individual, group and family counseling and individual and group rehabilitative~~ All assessment and treatment services must include the following:

(A) date;

(B) start and stop time for each timed treatment session;

(C) signature of the ~~therapist~~ therapist/service provider;

(D) credentials of ~~therapist~~ therapist/service provider;

(E) specific problems(s), goals and/or objectives addressed (~~problem~~ these must be identified on master treatment plan);

(F) methods used to address problem(s), goals and objectives;

(G) progress made toward goals and objectives;

(H) patient response to the session or intervention; and

(I) any new problem(s), goals and/or objectives identified during the session.

(2) In addition to the items listed in (1) of this subsection:

(A) Crisis Intervention Service notes must also include:

(i) a detailed description of the crisis; and

(ii) level of functioning assessment.

(B) For each Group rehabilitative or counseling session a list of participants and facilitating BHRS, ~~or~~ MHP, or AODTP must be maintained.

(C) For ~~medical review~~ medication training and support, vital signs must be recorded in the progress note, but are not required on the mental health services plan.

[OAR Docket #05-1093; filed 6-2-05]

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

[OAR Docket #05-1092]

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ANALYSIS:
Medical Providers-Fee for Service, Pharmacists specific, rules are revised to better define Disease State Management criteria and to reflect the desired practice. Individuals with chronic medical conditions such as diabetes or asthma and who wish to learn to better control their health status through education and monitoring will benefit from the opportunity to improve their health status. The Centers for Medicare and Medicaid Services have encouraged state Medicaid agencies to develop and implement plans to address chronic disease as they report that 80% of Medicaid costs are related to chronic illness.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 5. PHARMACISTS

317:30-5-86.1. Disease state management

OHCA contracts with ~~a~~ designated ~~agent~~ agents to provide disease state management for individuals ~~whose drug utilization falls within certain established guidelines for drug utilization~~ diagnosed with certain chronic conditions. Disease state management ~~will be~~ treatments are based on ~~step-wise treatment~~ protocols developed ~~by clinicians specializing in the treatment of disease~~ using evidence-based guidelines for treatment.

[OAR Docket #05-1092; filed 6-2-05]

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

[OAR Docket #05-1130]

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ANALYSIS:
Medical Providers-Fee for Service, Inpatient Psychiatric Hospitals specific, rules are revised to reflect the exclusion for payment of crossover for individuals over 21 and under 65 years of age. The revisions are necessary to reflect a clarification from CMS that payment cannot be made for inpatient coinsurance and/or the deductible for dual eligible individuals between the ages of 21 and 65 for services in a freestanding psychiatric hospitals.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-95.3. Medicare eligible individuals

Payment is made to hospitals for services to Medicare eligible individuals as set forth in this section. Payment is not made to freestanding psychiatric hospitals for inpatient coinsurance and/or deductible for individuals between 21 and 65 years of age.

(1) **Individuals eligible for part A and part B.**

(A) Payment is made utilizing the Medicaid allowable for comparable Part B services.

(B) Payment is made for the ~~coinsurance and/or~~ inpatient deductible for Part A services for categorically needy individuals under the age of 21 or age 65 and over.

(2) **Individuals who are not eligible for part A services.**

~~(A) The Part B services are to be filed with Medicare. Any monies received from Medicare and any coinsurance and/or deductible monies received from OHCA must be shown as a third party resource in Block 54 of the UB-92 for inpatient per diem. The inpatient per diem should be filed with the fiscal agent along with a copy of the Medicare Payment Report.~~

~~(B)~~ For individuals who have exhausted Medicare Part A benefits, claims must be accompanied by a statement from the Medicare Part A intermediary showing the date benefits were exhausted.

[OAR Docket #05-1130; filed 6-8-05]

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

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ANALYSIS:
Medical Providers-Fee for Service, Inpatient Psychiatric Hospitals specific, rules are revised to change the reimbursement methodology for state owned Residential Treatment Centers. In order to insure access at these facilities (whose patient level is primarily Medicaid), the agency is proposing to change the reimbursement system from prospective payment to a cost-based retrospective method. At the current rates, only 60% of the cost of these facilities is being reimbursed. Revisions will help to adequately fund these state owned and operated facilities and recognize the uniqueness of their operating circumstances (i.e., state mandated salary raises, etc.). The change will allow the state to utilize federal funds rather than totally state funds in paying for these reimbursement shortages. Rule revisions are needed to change the reimbursement methodology for state owned Residential Treatment Centers.
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 11, 2005:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-96. Reimbursement for inpatient services

(a) **Reimbursement for inpatient hospital services.** Reimbursement for inpatient hospital services is made based on a prospective per diem level of care payment system. The per diem includes all non-physician services furnished either directly or under arrangements. This does not include reimbursement for services in Residential Psychiatric Treatment Facilities.

(1) **Components.** There are three distinct payment components under this system. Total per diem reimbursement under the new reimbursement system will equal the sum of two rate components:

(A) Level of care per diem; plus

(B) Fixed capital per diem.

(2) **Level of care per diem rates.** The level of care per diem rate is payment for operating costs and movable capital costs. Hospitals with actual costs above the statewide median level of care will be limited to reimbursement of the statewide median level of care rate. The median was calculated by level of care using FY 1988 base year operating and moveable capital costs trended forward to the beginning of the third quarter FY 1991. Beginning July 1, 1993, when a hospital's actual costs are less than the statewide median level of care, 25 percent of the difference between the statewide median level of care rate and the hospital's specific level of care cost will be added to the level of care rate.

(A) **Level of care.** The only level of care is psychiatric care (Level 6). The range of primary diagnosis codes is 290 through 316.

(B) **Adjustments.** Level of care per diem rates will be reviewed periodically and adjusted as necessary through a public process.

(3) **Fixed capital per diem.**

(A) **Fixed capital per diem methodology for freestanding psychiatric hospitals.** Inpatient psychiatric hospitals fixed rate capital cost will be reimbursed using the average fixed capital cost of all Medicaid enrolled freestanding psychiatric inpatient hospitals from calendar year 1991 cost reports.

(B) **Adjustments.** The statewide fixed capital per diem average of all freestanding psychiatric hospitals will be reviewed periodically and adjusted as necessary through a public process.

(4) **Disproportionate share hospitals (DSH).**

(A) **Eligibility.** A hospital shall be deemed a disproportionate share hospital, as defined by Section 1923 of the federal Social Security Act, if the hospital's Medicaid inpatient utilization rate is at least one standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state or if the hospital's low-income utilization rate exceeds 25%.

(i) Eligibility for disproportionate share hospital payments will be determined annually by the OHCA before the beginning of each federal fiscal year based on cost and revenue survey data completed by the hospitals. The survey must be received by OHCA each year by April 30. The information used to complete the survey must be extracted from the hospital's financial records and fiscal year cost report ending in the most recently completed calendar year, for entities that meet the Medicare Provider designation (refer to Medicare Program Memorandum No. A-96-7 for requirements). A hospital may not include costs or revenues on the survey which are attributable to services rendered in a separately licensed/certified entity. Hospitals found to be ineligible for disproportionate share status upon audit shall be required to reimburse the Authority for any disproportionate share payment adjustments paid for the period of ineligibility.

(ii) Beyond meeting either of the tests found in (i) of this subparagraph, there are three additional requirements which are:

(I) Any hospital offering non-emergency obstetrical services must have at least two obstetricians with staff privileges who have agreed to provide services to Medicaid beneficiaries. This requirement does not apply to children's hospitals.

(II) In the case of an urban hospital, a hospital located in an MSA, an "obstetrician" is defined as any board-certified obstetrician with staff privileges who performs non-emergency obstetrical services at the hospital. In the case of a rural hospital, an "obstetrician" is defined to include any physician with staff privileges who performs non-emergency obstetrical services at the hospital.

(III) A hospital must have a Medicaid inpatient utilization rate of at least one percent.

(B) **Payment adjustment.**

(i) Beginning federal fiscal year 1993 and each year thereafter, DSH payment adjustments will be capped by the federal government. Financial participation from the federal government will not be allowed for expenditures exceeding the capped amount. Eligible DSH hospitals will be assigned to one of the three following categories:

(I) public-private acute care teaching hospital which has 150 or more full-time equivalent residents enrolled in approved teaching programs (using the most recently completed

annual cost report) and is licensed in the state of Oklahoma. Public-private hospital is a former state operated hospital that has entered into a joint operating agreement with a private hospital system;

(II) other state hospitals; or

(III) private hospitals and all out-of-state hospitals.

(ii) Payment adjustments will be made on a quarterly basis for federal fiscal year 1994 and thereafter using the following formula that determines the hospital's annual allocation:

(I) Step 1. The Medicaid revenue and imputed revenue for charity are totaled for each hospital qualifying for disproportionate share adjustments.

(II) Step 2. A weight is assigned to each qualifying hospital by dividing each hospital's revenue total (Medicaid and charity) by the revenue total of the public-private acute care teaching hospital, which has the assigned weight of 1.0.

(III) Step 3. A weighted value is then determined for each hospital by multiplying the hospital's assigned weight by the hospital's total Medicaid and charity revenue.

(IV) Step 4. The weighted values of all hospitals qualifying for disproportionate share adjustments are totaled.

(V) Step 5. The percentage of the public-private acute care teaching hospital's weighted value is determined in relation to the weighted values of all qualifying disproportionate share hospitals.

(VI) Step 6. The weighted values of all state hospitals (except public-private acute care teaching hospital) are totaled.

(VII) Step 7. The weighted values of all private and out-of-state hospitals qualifying for disproportionate share adjustments are totaled.

(VIII) Step 8. The percentage of the total weighted values of the hospitals included in Step 6 (State hospitals except public-private acute care teaching hospital) is calculated in relation to the total weighted values (sum of Step 6 and 7) of all remaining hospitals qualifying for disproportionate share adjustment.

(IX) Step 9. The percentage of weighted values of the hospitals included in Step 7 (private hospitals and all out-of-state hospitals) is calculated in relation to the total weighted values (sum of Steps 6 and 7) of all remaining hospitals qualifying for disproportionate share adjustment.

(X) Step 10. The weighted percentages for the three hospital groups are next applied to the capped disproportionate share amount allowed by HCFA for the federal fiscal year. The amount of disproportionate share to be paid to the public-private acute care teaching hospital is determined by multiplying the state disproportionate share allotment by the weighted percentage of the public-private acute care teaching hospital. Beginning FFY 96, the weighted percentage amount to be paid will not exceed 82.82%. Payment of disproportionate share funds to public/private hospitals will be made to the public entity that is organizationally responsible for indigent care. The weighted percentage amount is then subtracted from the state disproportionate share allotment. Once the public-private acute care teaching hospital's share of the state disproportionate share allotment has been subtracted, the state hospitals' weighted percentage is applied to the remainder. Beginning FFY 96, the State hospital's weighted percentage (from VIII of this subunit) will not be less than 75.3%. The balance of the disproportionate share allotment is distributed to private hospitals and all out-of-state hospitals. Distribution of funds within each group will be made according to the relationship of each hospital's weighted value to the total weighted value of the group.

(iii) Payment adjustments to individual hospitals will be limited to 100 percent of the hospital's costs of providing services (inpatient and outpatient) to Medicaid recipients and the uninsured, net of payments received from Medicaid (other than DSH) and uninsured patients.

(5) **Out-of-state hospitals.**

(A) Out-of-state hospitals, for which the Authority has on file a fiscal year 1989 or more recent cost report, shall be reimbursed as follows:

(i) the level of care per diem rate

(ii) a fixed capital per diem

(iii) a hospital-specific per diem direct medical education rate.

(B) Hospitals, for which the Authority does not have a fiscal year 1989 or more recent cost report on file, will also receive the level of care per diem rates; however, capital and direct medical education rate components will not be reimbursed on a hospital-specific basis. Instead, these hospitals shall receive the statewide median capital per diem amount. The statewide median direct medical education per diem rate will be paid to qualifying hospitals.

(b) **Reimbursement for residential psychiatric treatment facilities.** Effective July 1, 1998, reimbursement for residential psychiatric treatment facilities is at a state-wide per diem system according to the facility category. There are two distinct payment components under this system. Total per diem reimbursement will equal a statewide median per diem operating and movable capital amount plus a statewide median per diem fixed capital amount.

(1) **In-State facilities.** The rates were calculated using peer grouped residential treatment facility 1989 or 1990 audited cost reports. Costs were inflated to a common point in time prior to calculation of the median cost per day.

(A) **Hospital Based and Freestanding.**

(i) **Accreditation.** Hospital-Based and Free-standing facilities must be fully accredited by JCAHO, AOA, or CARF as a psychiatric facility or program and be licensed as a residential child care facility.

(ii) **Reimbursement (Private).** The reimbursement rate is an all-inclusive per diem. The facility must furnish, either directly or under arrangements, all non-physician services, including prescribed drugs.

(iii) **Reimbursement (State Owned and Operated).** Facilities owned and operated by the State of Oklahoma will be reimbursed using either the statewide or facility specific interim rates and settled to total allowable costs as determined by analyses of the cost reports (HCFA 2552) filed with the OHCA.

(B) **Community Based.**

(i) **Accreditation.** Community based facilities must be fully accredited by JCAHO, AOA, or CARF as a psychiatric facility or program and licensed as a child placing agency.

(ii) **Reimbursement.** Payment shall be for routine per diem services, exclusive of ancillary and physician services. Ancillary and physician services are reimbursed separately on a fee for service basis.

(2) **Out-of-state facilities.**

(A) **Accreditation.** Out-of-state facilities must be fully accredited by JCAHO, AOA, or CARF as a psychiatric facility or program and be appropriately state licensed.

(B) **Reimbursement.** Facilities shall be reimbursed in the same manner as in-state residential psychiatric treatment centers. In the event comparable services cannot be purchased from an Oklahoma facility and the current payment levels are insufficient to obtain access for the recipient, OHCA may negotiate an all-inclusive per diem rate.

[OAR Docket #05-1111; filed 6-6-05]

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

[OAR Docket #05-1106]

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

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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 11, 2005:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

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

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

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

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

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

(i) A licensed nurse from ~~DHS~~ OKDHS;

(ii) The nursing facility administrator or co-administrator;

(iii) A licensed nurse from the nursing facility, hospital, or physician's office;

(iv) A social service director from the nursing facility or hospital; or

(v) A social worker from the nursing facility, or the hospital.

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

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

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

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

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

(i) The patient has no current indication of mental illness or mental retardation or other related condition and there is no history of such condition in the patient's past.

(ii) The patient does not have a diagnosis of mental retardation or related condition, and a primary or secondary diagnosis of dementia including dementia of the Alzheimer's type is documented in writing by a physician.

(iii) The patient has indications of mental illness or mental retardation or other related condition, but is not a danger to self and/or others, and is being released from an acute care hospital as part of a medically prescribed period of recovery. If an individual is admitted to an NF based on **Exempted Hospital Discharge**, it is the responsibility of the NF to ensure that the individual is either discharged by the 30th day or that a Level II has been requested and is in process. Exempted Hospital Discharge is allowed if the following three conditions are met:

(I) The individual must be admitted to the NF directly from a hospital after receiving acute inpatient care at the hospital (not including psychiatric facilities);

(II) The individual must require NF services for the condition for which he/she received care in the hospital; and

(III) The attending physician must certify in writing before admission to the facility that the individual is likely to require less than 30 days of nursing facility services.

(B) If the patient has current indications of mental illness or mental retardation or other related condition, or if there is a history of such condition in the patient's past, the patient cannot be admitted to the

nursing facility. Instead, a Level II PASRR Assessment must be performed and the results must indicate that nursing facility care is appropriate prior to allowing the patient to be admitted.

(C) The State Mental Retardation (MR) (~~DHS/Developmental~~ OKDHS/Developmental Disabilities Services Division) and Mental Illness (MI) (Department of Mental Health and Substance Abuse Services) authorities have developed **Advance Group Determinations** by category that take into account certain diagnoses, levels of severity of illness, or need for a particular service which clearly indicate that admission to an NF is normally needed, and that the provision of specialized services is not normally needed. These determinations are actual Level II decisions and not exemptions from the screening process. For those for whom a categorical determination is made, both the level of care determination and the specialized services determination must be addressed. All positive determinations concerning the need for specialized services must be based on a more extensive individualized evaluation.

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

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

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

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

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

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

(I) In rare instances, such as illness of the caregiver, an exception may be granted to allow 30 consecutive days of respite care. However, in no instance can respite care exceed 30 days per calendar year.

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

(4) **Resident Review.**

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

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

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

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

mental retardation or related conditions. Evaluations are delivered to the LOCEU to process formal, written notification to patient, guardian, NF and interested parties.

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

(7) **PASRR appeals process.**

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

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

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

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

(2) **Medical eligibility for ICF/MR services.** Within 30 calendar days after services begin, the facility must submit the original of the Long Term Care Assessment form (LTC-300) to LOCEU. Required attachments include current (within 90 days of requested approval date) medical information signed by a physician, a current (within 12 months of requested approval date) psychological evaluation, a copy of the pertinent section of the Individual Developmental Plan or other appropriate documentation relative to discharge planning and the need for ICF/MR level of care, and a statement that the client is not an imminent threat of harm to self or others (i.e., suicidal or homicidal). If pre-approval was determined by LOCEU and the above information is received, medical approval will be entered on MEDATS.

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

[OAR Docket #05-1106; filed 6-6-05]

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

[OAR Docket #05-1108]

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ANALYSIS:
Medical Providers-Fee for Service, Dentists specific, rules are revised to improve access for Medicaid eligible children to orthodontic services. Revised rules allow general or pediatric dentists, under certain conditions, to be reimbursed for orthodontic services. Without revisions, Medicaid eligible children with handicapping malocclusions determined to be severe enough to warrant medically necessary treatment are often unable to obtain medically necessary services. Revisions will increase the availability of specialized services for Medicaid eligible children.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 79. DENTISTS

317:30-5-700. Orthodontic services

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

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

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

(b) Reimbursement for Orthodontic services is limited to:

(1) Orthodontists, or

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

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

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

(~~b~~c) The following limitations apply to orthodontic services:

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

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

(~~3~~2) All orthodontic procedures require prior authorization for payment;

(~~4~~3) Prior authorization for orthodontic treatment is not a notification of the patient's eligibility and does not guarantee payment. Payment for authorized services will depend on the client's eligibility at the beginning of each treatment year;

(~~5~~4) The client must be Medicaid-eligible and under 21 years of age at the time the request for prior authorization for treatment is received by OHCA and on the date that the last year of orthodontic service is to begin. Services cannot be added or approved after eligibility has expired:

(A) Clients receive a permanent Medical Identification Card;

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

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

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

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

[OAR Docket #05-1108; filed 6-6-05]

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

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Medical Providers-Fee for Service rules are issued to establish guidelines for the payment of diagnostic procedures performed by Independent Diagnostic Testing Facilities and Mobile X-Ray entities. Independent Diagnostic Testing Facilities are currently billing their charges under the provider contract for the supervising physician's provider number. At present, mobile x-ray entities are receiving payment for services provided Medicaid clients; however, no rules are in place. Both entities are recognized by Federal Statutes as eligible providers. Rules are needed to clarify billing procedures for these types of services.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 90. DIAGNOSTIC TESTING ENTITIES

317:30-5-907. Eligible providers

Diagnostic testing entities must be Medicare certified as Mobile X-ray or Independent Diagnostic Testing Facilities (IDTF). Providers must have a current contract on file with the Oklahoma Health Care Authority.

317:30-5-907.1. Coverage by category

(a) **Adults.** Payment is made for the technical component on outpatient diagnostic procedures in accordance with the guidelines set forth in OAC 317:30-5-24.
(b) **Children.** Coverage is the same as adults.

317:30-5-907.2. Individuals eligible for Part B of Medicare

Payment is made utilizing the Medicaid allowable for comparable services.

317:30-5-907.3. Reimbursement

Reimbursement will be based on the current allowed charge for radiological procedures.

[OAR Docket #05-1109; filed 6-6-05]

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

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Subchapter 1. General Provisions
317:35-1-2. [AMENDED]
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Part 1. Determination of Qualifying Categorical Relationships
317:35-5-4. [AMENDED]
317:35-5-4.1. [NEW]
Part 5. Countable Income and Resources
317:35-5-41. through 317:35-5-42. [AMENDED]
317:35-5-49. [NEW]
Subchapter 7. Medical Services
Part 5. Determination of Eligibility for Medical Services
317:35-7-36. [AMENDED]
Part 7. Certification, Redetermination and Notification
317:35-7-61. [AMENDED]
317:35-7-61.1. [NEW]
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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.

Medical Assistance for Adults and Children-Eligibility rules are revised to establish a new Medicaid program for the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 (Public Law 97-248). TEFRA provides coverage to certain disabled children living in the home who would qualify for Medicaid if residents of Nursing Facilities or Intermediate Care Facilities for the Mentally retarded. Financial eligibility is based solely on the child's income and assets. Individuals approved for TEFRA will have access to the standard list of services covered under the Medicaid State Plan. In order for the child to be approved for TEFRA, it must be feasible for the child to be care for in the home and the annual cost of State Plan services provided to the child may not exceed the cost of care of institutionalized individuals.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

317:35-1-2. Definitions

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

"Acute Care Hospital" means an institution that meets the requirements of 42CFR, Section 440.10 and:

(A) is maintained primarily for the care and treatment of patients with disorders other than mental diseases;

(B) is formally licensed or formally approved as a hospital by an officially designated authority for state standard setting; and

(C) meets the requirements for participation in Medicare as a hospital.

"Administrative agent" means the Long-Term Care Authority who is under contract with the Oklahoma Department of Human Services (OKDHS) to perform certain administrative functions related to the ADvantage Waiver.

"AFDC" means Aid to Families with Dependent Children.

"Aged" means an individual whose age is established as 65 years or older.

"Aid to Families with Dependent Children" means the group of low income families with children described in Section 1931 of the Social Security Act. The Personal Responsibility and Work Opportunity Act of 1996 established the new eligibility group of low income families with children and linked eligibility income and resource standards and methodologies and the requirement for deprivation for the new group to the State plan for Aid to Families with Dependent Children in effect on July 16, 1996. Oklahoma has elected to be less restrictive for all Medicaid clients related to AFDC.

"Area nurse" means a registered nurse in the OKDHS Aging Services Division, designated according to geographic areas who evaluates the UCAT and determines medical eligibility for Personal Care, ADvantage Waiver, and Nursing Facility services. The area nurse also approves care plan and service plan implementation for Personal Care services.

"Area nurse designee" means a registered nurse selected by the area nurse who evaluates the UCAT and determines medical eligibility for Personal Care, ADvantage Waiver, and Nursing Facility services.

"Authority" means the Oklahoma Health Care Authority (OHCA).

"Blind" means an individual who has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens.

"Board" means the Oklahoma Health Care Authority Board.

"Buy-in" means the procedure whereby the Authority pays the client's Medicare premium.

(A) **"Part A Buy-in"** means the procedure whereby the Authority pays the Medicare Part A premium for individuals determined eligible as Qualified Medicare Beneficiaries Plus (QMBP) who are enrolled in Part A and are not eligible for premium free enrollment as explained under Medicare Part A. This also includes individuals determined to be eligible as Qualified Disabled and Working Individuals (QDWI).

(B) **"Part B Buy-in"** means the procedure whereby the Authority pays the Medicare Part B premium for categorically needy individuals who are eligible for Part B Medicare. This includes individuals who receive TANF or the State Supplemental Payment to the Aged, Blind or Disabled, and those determined to be Qualified Medicare Beneficiary Plus ~~(QMBP)/Specified~~ (QMBP, Specified Low Income Medicare Beneficiaries (SLMB) or Qualifying Individual-1 (QI-1). Also included are individuals who continue to be categorically needy under the PICKLE amendment and those who retain eligibility after becoming employed.

"Caretaker relative" means a person other than the biological or adoptive parent with whom the child resides who meets the specified degree of relationship within the fifth degree of kinship.

"Case management" means the activities performed for client's to assist them in accessing services, advocacy and problem solving related to service delivery.

"Categorically needy" means that income and when applicable, resources are within the standards for the category to which the client is related.

"Categorically related" or "related" means the individual is:

(A) aged, blind, or disabled;

(B) pregnant;

(C) an adult individual who has a minor child under the age of 18 and who is deprived of parental support due to absence, death, incapacity, unemployment; or

(D) a child under 19 years of age.

"Certification period" means the period of eligibility extending from the effective date of certification to the date of termination of eligibility or the date of the next periodic redetermination of eligibility.

"County" means the Oklahoma Department of Human Services' office or offices located in each county within the State.

"Deductible/Coinsurance" means the payment that must be made by or on behalf of an individual eligible for Medicare before Medicare payment is made. The coinsurance is that part of the allowable medical expense not met by Medicare, which must be paid by or on behalf of an individual after the deductible has been met.

(A) For Medicare Part A (Hospital Insurance), the deductible relates to benefits for in-patient services while the patient is in a hospital or nursing facility. After the deductible is met, Medicare pays the remainder of the allowable cost.

(B) For Medicare Part B (Supplemental Medical Insurance), the deductible is an annual payment that must be made before Medicare payment for medical services. After the deductible is met, Medicare pays 80% of the allowable charge. The remaining 20% is the coinsurance.

"Disabled" means an individual who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted (or can be expected to last) for a continuous period of not less than 12 months.

"Disabled child" means for purposes of Medicaid Recovery a child of any age who is blind, or permanently and totally disabled according to standards set by the Social Security Administration.

"Estate" means all real and personal property and other assets included in the recipient's estate as defined in Title 58 of the Oklahoma Statutes.

"Gatekeeping" means the performance of a comprehensive assessment by the LTC nurse utilizing the Uniform Comprehensive Assessment Tool (UCAT) for the determination of Medical eligibility, care plan development, and the determination of Level of Care for Personal Care, ADvantage Waiver and Nursing Facility services.

"Local office" means the Oklahoma Department of Human Services' office or offices located in each county within the State.

"LOCEU" means the Oklahoma Health Care Authority's Level of Care Evaluation Unit.

"LTC nurse" means a registered nurse in the OKDHS Aging Services Division who meets the certification requirements for UCAT Assessor and case manager, and who conducts the uniform assessment of individuals utilizing the Uniform Comprehensive Assessment Tool (UCAT) for the purpose of medical eligibility determination. The LTC nurse also develops care plans and service plans for Personal Care services based on the UCAT.

"Medicare" means the federally funded health insurance program also known as Title XVIII of the Social Security Act. It consists of two separate programs. Part A is Hospital Insurance (HI) and Part B is Supplemental Medical Insurance (SMI).

(A) **"Part A Medicare (HI)"** means Hospital Insurance that covers services for inpatient services while the patient is in a hospital or nursing facility. Premium free enrollment is provided for all persons receiving OASDI or Railroad Retirement income who are age 65 or older and for those under age 65 who have been receiving disability benefits under these programs for at least 24 months.

(i) Persons with end stage renal disease who require dialysis treatment or a kidney transplant may also be covered.

(ii) Those who do not receive OASDI or Railroad Retirement income must be age 65 or over and pay a large premium for this coverage. Under Authority rules, these individuals are not required to enroll for Part A to be eligible for Medicaid benefits as categorically needy. They must however, enroll for Medicare Part B. Individuals eligible as a QMBP or as a Qualified Disabled and Working Individual (QDWI) under Medicaid are required to enroll for Medicare Part A. The Authority will pay Part A premiums for QMBP individuals who do not qualify for premium free Part A and for all QDWI's.

(B) **"Part B Medicare (SMI)"** means Supplemental Medical Insurance that covers physician and related medical services other than inpatient or nursing facility care. Individuals eligible to enroll in Medicare Part B are required to do so under Authority policy. A monthly premium is required to keep this coverage in effect.

"Minor child" means a child under the age of 18.

"Nursing Care" for the purpose of Medicaid Recovery is care received in a nursing facility, an intermediate care facility for the mentally retarded or other medical institution providing nursing and convalescent care, on a continuing basis, by professional personnel who are responsible to the institution for professional medical services.

"OHCA" means the Oklahoma Health Care Authority.

"OKDHS" means the Oklahoma Department of Human Services.

"Qualified Disabled and Working Individual (QDWI)" means individuals who have lost their Title II OASDI benefits due to excess earnings, but have been allowed to retain Medicare coverage.

"Qualified Medicare Beneficiary Plus (QMBP)" means certain aged, blind or disabled individuals who may or may not be enrolled in Medicare Part A, meet the Medicaid QMBP income and resource standards and meet all other Medicaid eligibility requirements.

"Qualifying Individual" means certain aged, blind or disabled individuals who are enrolled in Medicare Part A, meet the Medicaid Qualifying Individual income and resource standards and meet all other Medicaid eligibility requirements.

"Qualifying Individual-1" means a Qualified Individual who meets the Qualifying Individual-1 income and resource standards.

"Recipient lock-in" means when a recipient is restricted to one primary physician and/or one pharmacy. It occurs when the OHCA determines that a Medicaid recipient has used multiple physicians and/or pharmacies in an excessive manner over a 12-month period.

"Scope" means the covered medical services for which payment is made to providers on behalf of eligible individuals. The Oklahoma Health Care Authority Provider Manual (OAC 317:30) contains information on covered medical services.

"Specified Low Income Medicare Beneficiaries (SLMB)" means individuals who, except for income, meet all of the eligibility requirements for QMBP eligibility and are enrolled in Medicare Part A.

"TEFRA" means the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248). TEFRA provides coverage to certain disabled children living in the home who would qualify for Medicaid if residents of nursing facilities, ICF/MRs, or inpatient acute care hospital stays expected to last not less than 60 days.

"Worker" means the OKDHS worker responsible for Medicaid eligibility determinations.

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 1. DETERMINATION OF QUALIFYING CATEGORICAL RELATIONSHIPS

317:35-5-4. Determining categorical relationship to the disabled

An individual is related to disability if he/she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted (or can be expected to last) for a continuous period of not less than 12 months.

(1) **Determination of categorical relationship to the disabled by SSA.** The procedures outlined in (A) through (G) of this paragraph are applicable when determining categorical relationship based on a SSA disability decision:

(A) **Already determined eligible for Social Security disability benefits.** If the applicant states he/she is already receiving Social Security benefits on the basis of disability, the information is verified by seeing the applicant's notice of award or the Social Security benefit check. If the applicant states an award letter approving Social Security disability benefits has been received but a check has not been received, this information is verified by seeing the award letter. Such award letter or check establishes categorical relationship. The details of the verification used are recorded in the case record.

(B) **Already determined eligible for SSI on disability.** If the applicant, under age 65, states he/she is already receiving SSI on the basis of his/her disability (or that a written notice of SSI eligibility on disability has been received but has not yet received a check) this information is verified by seeing the written notice or check. If neither are available, the county clears on the terminal system for the Supplemental Data Exchange (SDX) record. The SDX record shows, on the terminal, whether the individual has been approved or denied for SSI. If the individual has been approved for such benefits, the county uses

this terminal clearance to establish disability for categorical relationship. The details of the verification used are recorded in the case record.

(C) **Pending SSI/SSA application or has never applied for SSI.** If the applicant says he/she has a pending SSI/SSA application, an SDX record may not appear on the terminal. Therefore, it is requested that the applicant bring the notice regarding the action taken on his/her SSI/SSA application to the county office as soon as it is received. The other conditions of eligibility are established while awaiting the SSI/SSA decision. When the SSI/SSA notice is presented, the details of the verification are recorded in the case record and the indicated action is taken on the Title XIX application. If the applicant says he/she has never applied for SSI/SSA but appears potentially eligible from the standpoint of unearned income and has an alleged disability which would normally be expected to last for a period of 12 months, he/she is referred to the SSA office to make SSI/SSA application immediately following the filing of the Title XIX application.

(D) **Already determined ineligible for SSI.** If the applicant says he/she has been determined ineligible for SSI, the written notice of ineligibility from SSA is requested to determine if the denial was based on failure to meet the disability definition. If the SSI notice shows ineligibility was due to not meeting the disability definition, and the applicant says the medical condition has not worsened since the SSI denial, the Title XIX application is denied for the same reason. If written notice is not available, the SDX record on the terminal system is used. This record shows whether the individual has been determined eligible or ineligible for SSI. If he/she has been determined ineligible, the payment status code for ineligibility is shown. The definition of this code is found on ~~DHS~~ OKDHS Appendix Q in order to determine the reason for SSI ineligibility. If the reason for SSI ineligibility was based on failure to meet the disability definition, the Title XIX application is denied for the same reason and the details of the verification are recorded in the case record. If the reason for SSI ineligibility was based on some reason other than failure to meet the disability definition (and therefore, a determination of disability was not made), the Level of Care Evaluation Unit (LOCEU) must determine categorical relationship. In any instance in which an applicant who was denied SSI on "disability" states the medical condition has worsened since the SSI denial, he/she is referred to the SSA office to reapply for SSI immediately following the filing of the Title XIX application.

(E) **Already determined ineligible for Social Security disability benefits.** If the applicant says he/she has been determined ineligible for Social Security disability benefits, he/she is requested to provide written notice of ineligibility to determine if the denial was based on failure to meet the disability definition. If the SSA notice shows ineligibility was due to not meeting the disability definition, and the applicant says the medical condition has not worsened since the denial, the Title XIX application is denied for the same reason. The details of the verification used are recorded in the case record. If the written notice is not available, TPQY procedure is used to verify the denial and the reason for ineligibility. If the reason for ineligibility was based on failure to meet the disability definition, the Title XIX application is denied for the same reason and the details of the verification are recorded in the case record. If the reason for ineligibility was based on some reason other than failure to meet the disability definition (and a determination of disability was, thus, not made), the LOCEU must determine categorical relationship. In any instance in which an applicant who was denied Social Security benefits on disability states the medical condition has worsened since the denial, he/she is referred to the SSA office to reapply immediately following the filing of the Title XIX application.

(F) **Determined retroactively eligible for SSA/SSI due to appeal.** If an individual becomes retroactively eligible for SSA/SSI due to a decision on an appeal, categorical relationship is established as of the effective date of the retroactive disability decision. Payment will be made for medical services only if the claim is received within 12 months from the date of medical services. If the effective date of the retroactive disability decision does not cover the period of the medical service because the SSA/SSI application was made subsequent to the service, a medical social summary with pertinent medical information is sent to the LOCEU for a categorical relationship decision for the time period of the medical service.

(G) **SSA/SSI appeal with benefits continued.** A Title XIX recipient who has filed an appeal due to SSA's determination that he/she is no longer disabled may continue to receive SSA benefits. The recipient has the option to have Title XIX benefits continued until the appeal decision has been reached. After the decision has been reached, the appropriate case action is taken. If SSA's decision is upheld, an overpayment referral is submitted for any Title XIX benefits the recipient received beginning with the month that SSA/SSI determined the recipient did not meet disability requirements.

(H) **Applicant deceased.** Categorical relationship to the disabled is automatically established if an individual dies while receiving a medical service or dies as a result of an illness for which he/she was hospitalized if death occurs within two months after hospital release. The details of the verification used are recorded in the case record.

(2) **Determination of categorical relationship to the disabled by the LOCEU.**

(A) A disability decision from the LOCEU to determine categorical relationship to the disabled is

required only when SSA makes a disability decision effective after medical services were received or when the SSA will not make a disability decision. The LOCEU is advised of the basis for the referral. SSA does not make disability decisions on individuals who:

(i) have been determined ineligible by SSA on some condition of eligibility other than disability,

(ii) have unearned income in excess of the SSI standard and, therefore, are not referred to SSA, or

(iii) do not have a disability which would normally be expected to last 12 months but the applicant disagrees.

(B) A disability decision from the LOCEU is not required if the disability obviously will not last 12 months and the individual agrees with the short term duration. The case record is documented to show the individual agrees with the short term duration.

(C) The local ~~DHS~~ OKDHS office is responsible for submitting a medical social summary on ~~DHS~~ OKDHS form ABCDM-80-B with pertinent medical information substantiating or explaining the individual's physical and mental condition. The medical social summary should include relevant social information such as the worker's personal observations, details of the individual's situation including date of onset of the disability, and the reason for the medical decision request. The worker indicates the beginning date for the categorical relationship to disability. Medical information submitted might include physical exam results, psychiatric, lab, and x-ray reports, hospital admission and discharge summaries, and/or doctors' notes and statements. Copies of medical and hospital bill and ~~DHS~~ OKDHS Form MS-MA-5 are not normally considered pertinent medical information by themselves. Current (less than 90 days old) medical information is required for the LOCEU to make a decision on the client's current disability status. If existing medical information cannot be obtained without cost to the client, the county administrator authorizes either payment for existing medical information or one general physical examination by a medical or osteopathic physician of the client's choice. The physician cannot be in an intern, residency or fellowship program of a medical facility, or in the full-time employment of Veterans Administration, Public Health Service or other Agency. Such examination is authorized by use of ~~DHS~~ OKDHS form ABCDM-16, Authorization for Examination and Billing. The ~~DHS~~ OKDHS worker sends the ABCDM-16 and ~~DHS~~ OKDHS form ABCDM-80, Report of Physician's Examination, to the physician who will be completing the exam.

(i) **Responsibility of Medical Review Team in the LOCEU.** The responsibilities of the Medical Review Team in the LOCEU include:

(I) The decision as to whether the applicant is related to Aid to the Disabled.

(II) The effective date (month and year) of eligibility from the standpoint of disability. (This date may be retroactive for any medical service provided on or after the first day of the third month prior to the month in which the application was made.)

(III) A request for additional medical and/or social information when additional information is necessary for a decision.

(IV) Authorizing specialists' examinations as needed.

(V) Setting a date for re-examination, if needed.

(ii) **Specialist's examination.** If, on receipt of the medical information from the county office, the LOCEU needs additional medical information, the LOCEU may, at their discretion, make an appointment for a specialist's examination by a physician selected by the medical member of the team and authorize it on Form M-S-32, Request to Physician for Examination and Authorization for Billing, routing the original of the form to the examining physician and a copy to the county office. As soon as the county receives a copy of Form M-S-32, the worker immediately notifies the individual of the appointment and explains that failure to keep the appointment with the specialist without good cause will result in denial of the application (or closure of the case in instances of determination of continuing disability). The worker assists the individual in keeping the appointment, if necessary.

(I) If the specialist requires additional laboratory work or X-rays, he/she should call the LOCEU for authorization. The LOCEU is responsible for making the decision regarding the request. If additional medical services are authorized, another Form ~~M_S-32~~ M-S-32 will be completed.

(II) If the individual notifies the worker at least 24 hours prior to the date of the examination that he/she cannot keep the appointment, this constitutes good cause. In such an instance, the worker cancels the appointment, makes a new appointment, and submits information regarding the cancellation and the date of a new appointment to the LOCEU.

(III) When the individual fails to keep the appointment without advance notice, good cause must be determined. The worker determines the reasons and submits a memorandum to the LOCEU for a decision on good cause.

(IV) If the appointment was missed due to illness, the illness must be supported by a written statement from a physician. If missed for some reason other than illness, the reason must be supported by an affidavit signed by someone other than the individual or his/her representative and sworn to before a notary public or

other person authorized to administer oaths. If, in the opinion of the LOCEU, good cause is established, the LOCEU and the county follow the same procedures as outlined in (2)(C)(ii) of this Section for any other specialist's examination. If, in the opinion of the LOCEU, good cause is not established, the LOCEU notifies the local office. The local office is responsible for denying the application or closing the case with notification to individual in accordance with OHCA and Department policy.

(D) When the LOCEU has made a determination of categorical relationship to disability and SSA later renders a different decision, the county uses the effective date of the SSA approval or denial as their date of disability approval or denial. No overpayment will occur based solely on the SSA denial superseding the LOCEU approval.

(E) Public Law 97-248, the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, provides coverage to certain disabled children living in the home if they would qualify for Medicaid as residents of nursing facilities, ICF/MRs, or inpatient acute care hospital stays expected to last not less than 60 days. In addition to disability LOCEU determines the appropriate level of care and cost effectiveness.

(3) **Determination of categorical relationship to the disabled based on TB infection.** Categorical relationship to disability is established for individuals with a diagnosis of tuberculosis (TB). An individual is related to disability for TB related services if he/she has verification of an active TB infection established by a medical practitioner.

(4) **Determination of categorical relationship to the disabled for TEFRA.** Section 134 of TEFRA allows states, at their option, to make Medicaid benefits available to children, under 19 years of age, living at home who are disabled as defined by the Social Security Administration, even though these children would not ordinarily be eligible for SSI benefits because of the deeming of parental income or resources. Under TEFRA, a child living at home who requires the level of care provided in an acute care hospital (for a minimum of 60 days), nursing facility or intermediate care facility for the mentally retarded, is determined eligible using only his/her income and resources as though he/she were institutionalized.

317:35-5-4.1. Special level of care and cost effectiveness application procedures for TEFRA

(a) In order for a child to be eligible for TEFRA he/she must require a level of care provided in an acute care hospital for a minimum of 60 days, or a nursing facility or intermediate care facility for the mentally retarded for a minimum of 30 days. It must also be appropriate to provide care to the child at home. The level of care determination is made by LOCEU. The level of care certification period may be for any number of months that the LOCEU determines appropriate. At the time of application, an assessment form is provided to the applicant for completion by the child's physician. Once completed by the physician and returned to the OKDHS worker, the Assessment form is forwarded to the LOCEU along with the request for a disability determination (if needed).

(b) The estimated cost of caring for the child at home must not exceed the estimated cost of treating the child within an institution at the appropriate level of care, i.e., hospital, NF, or ICF/MR. The initial cost analysis is established by LOCEU based on the information provided by the TEFRA-1 Assessment form, OKDHS worker, and medical information used in the relationship to disability determination.

(c) The level of care determination and cost effectiveness analysis are posted by LOCEU on MEDATS.

PART 5. COUNTABLE INCOME AND RESOSURCES

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) Only the resources of the child determined eligible for TEFRA are considered in determining eligibility.

(~~4~~5) Household equipment used for daily living is not considered a resource.

(~~5~~6) 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, <u>or</u> 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:

(A) ~~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; or

(B) under age 19 is eligible for TEFRA, the parent's(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.

317:35-5-42. Determination of countable income for individuals categorically related to aged, blind and disabled

(a) **General.** The term income is defined as that gross gain or gross recurrent benefit which is derived from labor, business, property, retirement and other benefits, and many other forms which can be counted on as currently available for use on a regular basis. When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is counted as income.

(1) If it appears the applicant or recipient is eligible for any type of income (excluding SSI) or resources, he/she must be notified in writing by the Agency of his/her potential eligibility. The notice must contain the information that failure to file for and take all appropriate steps to obtain such benefit within 30 days from the date of the notice will result in a determination of ineligibility.

(2) If a husband and wife are living in their own home, the couple's total income and/or resource is divided equally between the two cases. If they both enter a nursing facility, their income and resources are considered separately.

(3) If only one spouse in a couple is eligible and the couple ceases to live together, consider only the income and resources of the ineligible spouse that are actually

contributed to the eligible spouse beginning with the month after the month which they ceased to live together.

(4) In calculating monthly income, cents are included in the computation until the monthly amount of each individual's source of income has been established. When the monthly amount of each income source has been established, cents are rounded to the nearest dollar (1¢ - 49¢ is rounded down, and 50¢ - 99¢ is rounded up). For example, an individual's weekly earnings of $99.90 are multiplied by 4.3 and the cents rounded to the nearest dollar ($99.90 x 4.3 = $429.57 rounds to $430). See rounding procedures in OAC 340:65-3-4 when using BENDEX to verify OASDI benefits.

(b) **Income disregards.** In determining need, the following are not considered as income:

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

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

(3) Educational grants (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;

(4) 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 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 was from 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;

(5) One-third of child support payments received on behalf of the disabled minor child;

(6) 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 made 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 funds after distribution is considered as any other income;

(7) Special allowance for school expenses made available upon petition (in writing) for funds held in trust for the student;

(8) Title III benefits from State and Community Programs on Aging;

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

(10) Payments 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;

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

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

(13) Reimbursements from an employer for out-of-pocket expenditures and allowances for travel or training to the extent the funds are used for expenses directly related to such travel or training and uniform allowance if the uniform is uniquely identified with company names or logo;

(14) Assistance or services from the Vocational Rehabilitation program such as transportation expenses to a rehabilitation center, extra clothing, lunches, grooming needed for a training program and any other such complementary payments;

(15) 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;

(16) Payments made by a public or private non-profit child care agency for a child placed in foster care or subsidized adoption;

(17) Governmental rental or housing subsidies by governmental agencies, e.g., HUD (received in-kind or in cash) for rent, mortgage payments or utilities;

(18) LIHEAP payments for energy assistance and payments for emergency situations under Emergency Assistance to Needy Families with Children;

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

(20) 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;

(21) 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;

(22) Income of a sponsor to the sponsored eligible alien;

(23) The BIA frequently puts an individual's trust funds in an Individual Indian Money (IIM) account. To determine the availability of funds held in trust in an IIM account, the social worker must contact the BIA in writing and ascertain if the funds, in total or any portion, are available to the individual. If any portion of the funds is disbursed to the individual client, guardian or conservator, such funds are considered as available income. If the BIA determines the funds are not available, they are not considered in determining eligibility. Funds held in trust by the BIA and not disbursed are considered unavailable.

(A) In some instances, BIA may determine the account is unavailable; however, they release a certain amount of funds each month to the individual. In this instance the monthly disbursement is considered as unearned income.

(B) When the BIA has stated the account is unavailable and the account does not have a monthly disbursement plan, but a review reveals a recent history of disbursements to the individual client, guardian or conservator, these disbursements must be resolved with the BIA. These disbursements indicate all or a portion of the account may be available to the individual client, guardian or conservator. When the county office is unable to resolve the situation with the BIA, the county submits a referral to the appropriate section in OKDHS Family Support Services Division (FSSD). The referral must include specific details of the situation, including the county's efforts to resolve the situation with the BIA. If FSSD cannot make a determination, a legal decision regarding availability will be obtained by FSSD, and then forwarded to the county office by FSSD. When a referral is sent to FSSD, the funds are considered as unavailable with a legal impediment until the county is notified otherwise.

(C) At each reapplication or redetermination, the social worker is to contact BIA to obtain information regarding any changes as to the availability of the funds and any information regarding modifications to the IIM account. Information regarding prior disbursements is also obtained at this time. All of this information is reviewed for the previous six or twelve-month period, or since the last contact if the contact was within the last certification or redetermination period.

(D) When disbursements have been made, the worker determines whether such disbursements were made to the client or to a third party vendor in payment for goods or services. Payments made directly from the BIA to vendors are not considered as income to the client. Workers should obtain documentation to verify services rendered and payment made by BIA.

(E) Amounts disbursed directly to the clients are counted as non-recurring lump sum payments 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;

(24) Income up to $2,000 per year received by individual Indians, which are derived from leases or other uses of individually-owned trust or restricted lands;

(25) Income that is 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 income 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;

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

(27) 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; and

(28) 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. However, if the payments are placed in an interest-bearing account, or some other investment medium that produces income, the income generated by the account may be countable as income to the individual.

(c) **Determination of income.** The client is responsible for reporting information regarding all sources of available income. This information is verified and used by the worker in determining eligibility.

(1) Gross income is listed for purposes of determining eligibility. It may be derived from many sources, and some items may be automatically disregarded by the computer when so provided by state or federal law.

(2) If a client is determined to be categorically needy and is also an SSI recipient, any change in countable income, (see OAC 317:35-5-42(d)(3) to determine countable income) will not affect receipt of medical assistance and amount of SSP as long as the amount does not cause SSI ineligibility. Income which will be considered by SSI in the retrospective cycle is documented in the case with computer update at the time that SSI makes the change (in order not to penalize the client twice). If the SSI change is not timely, the worker updates the computer using the appropriate date as if it had been timely. If the receipt of the income causes SSI ineligibility, the income is considered immediately with proper action taken to reduce or close the medical assistance and SSP case. Any SSI overpayment caused by SSA not making timely changes will result in recovery by SSI in the future. When the worker becomes aware of income changes which will affect SSI eligibility or payment amount, the information is to be shared with the SSA office.

(3) Some of the more common income sources to be considered in determining eligibility are as follows:

(A) **Retirement and disability benefits.** These include but are not limited to OASDI, VA, Railroad Retirement, SSI, and unemployment benefits. Federal and State benefits are considered for the month they are intended when determining eligibility.

(i) Verifying and documenting the receipt of the benefit and the current benefit amount are achieved by:

(I) seeing the client's award letter or warrant;

(II) obtaining a signed statement from the individual who cashed the warrant; or

(III) by using BENDEX and SDX.

(ii) Determination of OASDI benefits to be considered (disregarding COLA's) for former State Supplemental recipients who are reapplying for medical benefits under the Pickle Amendment must be computed according to OKDHS Appendix C-2-A.

(iii) The Veterans Administration allows their recipients the opportunity to request a reimbursement for medical expenses not covered by Medicaid. If a recipient is eligible for the readjustment payment, it is paid in a lump sum for the entire past year. This reimbursement is disregarded as income and a resource in the month it is received; however, any amount retained in the month following receipt is considered a resource.

(iv) Government financial assistance in the form of VA Aid and Attendance or Champus payments is considered as follows:

(I) **Nursing facility care.** VA Aid and Attendance or Champus payment whether paid directly to the client or to the facility, are considered as third party resources and do not affect the income eligibility or the vendor payment of the client.

(II) **Own home care.** The actual amount of VA Aid and Attendance payment paid for an attendant in the home is disregarded as income. In all instances, the amount of VA Aid and Attendance is shown on the computer form.

(v) Veterans or their surviving spouse who receive a VA pension may have their pension reduced to $90 by the VA if the veteran does not have dependents, is Medicaid eligible, and is residing in a nursing facility that is approved under Medicaid. Section 8003 of Public Law 101-508 allows these veterans' pensions to be reduced to $90 per month. None of the $90 may be used in computing any vendor payment or spenddown. The $90 payment becomes the monthly maintenance standard for the veteran. Any vendor payment or spenddown will be computed by using other income minus any applicable medical deduction(s). Veterans or their surviving spouse who meet these conditions will have their VA benefits reduced the month following the month of admission to a Medicaid approved nursing facility.

(B) **SSI benefits.** SSI benefits may be continued up to three months for a recipient who enters a public medical or psychiatric institution, a Medicaid approved hospital, extended care facility, intermediate care facility for the mentally retarded or nursing facility. To be eligible for the continuation of benefits, the SSI recipient must have a physician's certification that the institutionalization is not expected to exceed three months and there must be a need to maintain and provide expenses for the home. These continued payments are intended for the use of the recipient and do not affect the vendor payment.

(C) **Lump sum payments.**

(i) Any income received in a lump sum (with the exception of SSI lump sum) covering a period of more than one month, whether received on a recurring or nonrecurring basis, is considered as income in the month it is received. Any amount from any lump sum source, including SSI (with the exception of dedicated bank accounts for disabled/blind children under age 18), retained on the first day of the next month is considered as a resource. Such lump sum payments may include, but are not limited to, accumulation of wages, retroactive OASDI, VA benefits, Workers' Compensation, bonus lease payments and annual rentals from land and/or minerals.

(ii) Lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for disabled/blind children under age 18 are excluded as income. The interest income generated from dedicated bank accounts is also excluded. The dedicated bank account consisting of the retroactive SSI lump sum payment and accumulated interest is excluded as a resource in both the month received and any subsequent months.

(iii) A life insurance death benefit received by an individual while living is considered as income in the month received and as a resource in the following months to the extent it is available.

(iv) Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment.

(D) **Income from capital resources and rental property.** Income from capital resources can be derived from rental of a house, rental from land (cash or crop rent), leasing of minerals, life estate, homestead rights or interest.

(i) If royalty income is received monthly but in irregular amounts, an average based on the previous six months' royalty income is computed and used to determine income eligibility. Exception: At any time that the county becomes aware of and can establish a trend showing a dramatic increase or decrease in royalty income, the previous two

month's royalty income is averaged to compute countable monthly income.

(ii) Rental income may be treated as earned income when the individual participates in the management of a trade or business or invests his/her own labor in producing the income. The individual's federal income tax return will verify whether or not the income is from self-employment. Otherwise, income received from rent property is treated as unearned income.

(iii) When property rental is handled by a leasing agent who collects the rent and deducts a management fee, only the rent actually received by the client is considered as income.

(E) **Earned income/self-employment.** The term "earned income" includes income in cash earned by an individual through the receipt of wages, salary, commission or profit from activities in which he/she is engaged as a self-employed individual or as an employee. See subparagraph (G) of this paragraph for earnings received in fluctuating amounts. "Earned Income" is also defined to include in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages. Such benefits received in-kind are considered as earned income only when the employee/employer relationship has been established. The cash value of the in-kind benefits must be verified by the employer. Income from self-employment also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in his/her business enterprise. An exchange of labor or services; e.g., barter, is considered as an in-kind benefit. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind but is recorded on the case computer input document for coordination with Medicaid benefits.

(i) Advance payments of EITC or refunds of EITC received as a result of filing a federal income tax return are considered as earned income in the month they are received.

(ii) Work study received by an individual who is attending school is considered as earned income with appropriate earned income disregards applied.

(iii) Money from the sale of whole blood or blood plasma is considered as self-employment income subject to necessary business expense and appropriate earned income disregards.

(iv) Self-employment income is determined as follows:

(I) Generally, the federal or state income tax form for the most recent year is used for calculating the self-employment income to project income on a monthly basis for the certification period. The gross income amount as well as the allowable deductions are the same as can be claimed under the Internal Revenue code for tax purposes.

(II) Self-employment income which represents a household's annual support is prorated over a 12-month period, even if the income is received in a short period of time. For example, self-employment income received by crop farmers is averaged over a 12-month period if the income represents the farmer's annual support.

(III) If the household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise is averaged over the period of time the business has been in operation to establish the monthly income amount.

(IV) If a tax return is not available because one has not been filed due to recent establishment of the self-employment enterprise, a profit and loss statement must be seen to establish the monthly income amount.

(V) The purchase price and/or payment(s) on the principal of loans for capital assets, equipment, machinery, and other durable goods is not considered as a cost of producing self-employed income. Also not considered are net losses from previous periods, depreciation of capital assets, equipment, machinery, and other durable goods; and federal, state and local income taxes, FICA, money set aside for retirement purposes, and other work related personal expenses, such as meals and necessary transportation (these expenses are accounted for by the work related expense deduction given in OAC 340:10-3-33(1)).

(v) Countable self-employment income is determined by deducting allowable business expenses to determine the adjusted gross income. The earned income deductions are then applied to establish countable earned income.

(F) **Inconsequential or irregular income.** Inconsequential or irregular receipt of income in the amount of $10 or less per month or $30 or less per quarter is disregarded. The disregard is applied per individual for each type of inconsequential or irregular income. To determine whether the income is inconsequential or irregular, the gross amount of earned income and the gross minus business expense of self-employed income are considered.

(G) **Monthly income received in fluctuating amounts.** Income which is received monthly but in irregular amounts is averaged using two month's income, if possible, to determine income eligibility. Less than two month's income may be used when circumstances (e.g., new employment, unpaid sick leave, etc.) would indicate that previous income amounts would not be appropriate to use in determining future income amounts. Income received more

often than monthly is converted to monthly amounts as follows:

(i) **Daily.** Income received on a daily basis is converted to a weekly amount then multiplied by 4.3.

(ii) **Weekly.** Income received weekly is multiplied by 4.3.

(iii) **Twice a month.** Income received twice a month is multiplied by 2.

(iv) **Biweekly.** Income received every two weeks is multiplied by 2.15.

(H) **Non-negotiable notes and mortgages.** Installment payments received on a note, mortgage, etc., are considered as monthly income.

(I) **Income from the Job Training and Partnership Act (JTPA).** Unearned income received by an adult, such as a needs based payment, cash assistance, compensation in lieu of wages, allowances, etc., from a program funded by JTPA is considered as any other unearned income. JTPA earned income received as wages is considered as any other earned income.

(J) **Other income.** Any other monies or payments which are available for current living expenses must be considered.

(d) **Computation of income.**

(1) **Earned income.** The general income exclusion of $20 per month is allowed on the combined earned income of the eligible individual and eligible or ineligible spouse. See paragraph (6) of this subsection if there are ineligible minor children. After the $20 exclusion, deduct $65 and one-half of the remaining combined earned income.

(2) **Unearned income.** The total gross amount of unearned income of the eligible individual and eligible or ineligible spouse is considered. See paragraph (6) if there are ineligible minor children.

(3) **Countable income.** The countable income is the sum of the earned income after exclusions and the total gross unearned income.

(4) **Deeming computation for disabled or blind minor child(ren).** An automated calculation is available for computing the income amount to be deemed from parent(s) and the spouse of the parent to eligible disabled or blind minor child(ren) by use of transaction CID. The ineligible minor child in the computation regarding allocation for ineligible child(ren) is defined as: a dependent child under age 18. ~~However, a~~

(A) A mentally retarded child living in the home who is ineligible for SSP due to the deeming process may be approved for Medical Assistance under the Home and Community Based Waiver (HCBW) Program as outlined in OAC 317:35-9-5.

(B) For TEFRA, the income of child's parent(s) is not deemed to him/her.

(5) **Premature infants.** 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 income 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.

(6) **Procedures for deducting ineligible minor child allocation.** When an eligible individual has an ineligible spouse and ineligible minor children (not receiving TANF), the computation is as follows:

(A) Each ineligible child's allocation (OKDHS Appendix C-1, Schedule VII. C.) minus each child's gross countable income is deducted from the ineligible spouse's income. Deeming of income is not done from child to parent.

(B) The deduction in subparagraph (A) of this paragraph is prior to deduction of the general income exclusion and work expense.

(C) After computations in subparagraphs (A) and (B) of this paragraph, the remaining amount is the ineligible spouse's countable income considered available to the eligible spouse.

(7) **Special exclusions for blind individuals.** Any blind individual who is employed may deduct the general income exclusion and the work exclusion from the gross amount of earned income. After the application of these exclusions, one-half of the remaining income is excluded. The actual work expense is then deducted from the remaining half to arrive at the amount of countable income. If this blind individual has a spouse who is also eligible due to blindness and both are working, the amount of ordinary and necessary expenses attributable to the earning of income for each of the blind individuals may be deducted. Expenses are deductible as paid but may not exceed the amount of earned income. To be deductible, an expense need not relate directly to the blindness of the individual, it need only be an ordinary and necessary work expense of the blind individual. Such expenses fall into three broad categories:

(A) transportation to and from work;

(B) job performance; and

(C) job improvement.

317:35-5-49. Determination of income and resources for categorical relationship to TEFRA

Countable income and resources for a child categorically related to disability for TEFRA are determined in accordance with rules for individuals determined aged, blind, or disabled (see OAC 317:35-5-41, 317:35-5-42, and 317:35-7-36). Income and resources may not exceed the maximum standards as shown on OKDHS Appendix C-1, Schedules VIII. B. and D.

SUBCHAPTER 7. MEDICAL SERVICES

PART 5. DETERMINATION OF ELIGIBILITY FOR MEDICAL SERVICES

317:35-7-36. Financial eligibility of individuals categorically related to ABD

In determining financial eligibility for Medical Services for an individual related to ABD, the income and resources of the individual and spouse (if any) are considered. However, consideration is not given to the income and resources of a spouse included in a TANF case. Income of an ineligible spouse may be deemed to the minor dependent child as explained in OAC 317:35-7-38(1)(D). The income and resources of a minor dependent child are not considered in determining financial eligibility for the individual related to ABD. The minor dependent child is defined as any biological or adopted child under 18 years of age and residing in the home.

(1) If an individual and spouse cease to live together because of institutionalization or any other reason, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the eligible individual after the mutual consideration has ended are considered.

(2) If the individual related to Aid to the Blind or Aid to the Disabled is a minor child living in the home of parent(s) or spouse of a parent, the parent'(s) or spouses' income and resources are deemed to the child. ~~Exception:~~

(A) Income is not deemed if the parent or spouse is included in a TANF case or determined categorically needy for Medicaid benefits only. A minor is defined as a child under 18 years and residing in the home. At the point that the minor child no longer resides in the home of the parent(s) or spouse of the parent, the deeming of income and resources ceases with the month after the month of separation. No longer residing in the home includes not only residing in the home of another, but also confinement in a medical facility if the confinement lasts, or is expected to last, 30 days. Any amounts which are actually contributed to the minor child after deeming ends are considered.

(B) For TEFRA children, the income and resources of the parent(s) are not considered.

(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 parent's income and 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. While an infant born below this birth weight is considered disabled under SSI disability provisions, SSI cash payments are only effective the month the parent or legal guardian files an SSI application. If the SSI effective date does not go back to the month of birth, it will not be necessary to request a decision from the Level of Care Evaluation Unit at OHCA in order to consider the infant disabled effective the date of birth.

PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION

317:35-7-61. Redetermination of eligibility for persons receiving ABD or TANF

A periodic redetermination of eligibility for Medical Services is required every twelve months on all categorically needy cases which also receive a money payment, ~~or~~ QMBP ~~benefit~~, SLMB, QI-1, QDWI, or TEFRA.

317:35-7-61.1. Special redetermination procedures for TEFRA

The OHCA conducts an annual cost effectiveness review for all active TEFRA children. The local county office is notified of the results of the review for any necessary case action. If OHCA determines the estimated cost of care in the home is greater than the estimated cost of care in an institution, at the appropriate level of care, the case is closed.

[OAR Docket #05-1094; filed 6-2-05]

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

[OAR Docket #05-1132]

RULEMAKING ACTION:
PERMANENT final 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)
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Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
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Subchapter 5. Eligibility and Countable Income
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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]
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05-625
INCORPORATIONS BY REFERENCE:
N/A
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. Other revisions related to the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 are incorporated into these revisions. (Permanent rule APA WF 04-20 submitted for adoption this same date.)
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 1. DETERMINATION OF QUALIFYING 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.

(7) **Certification of individuals Related to Aid to the Disabled for TEFRA.** The certification period for individuals categorically related to the Disabled for TEFRA is 12 months.

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 #05-1132; filed 6-8-05]

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

[OAR Docket #05-1113]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 6. Soonercare Health Benefits for Categorically Needy Pregnant Women and Families with Children
Part 7. Certification, Redetermination and Notification
317:35-6-64.1. [NEW]
(Reference APA WF # 04-02)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 1925(b)(3)(iii)(III) of the Social Security Act
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ANALYSIS:
Medical Assistance for Adults and Children-Eligibility rules are issued to comply with federal regulations by establishing guidelines that implement Transitional Medical Assistance (TMA). Section 1925(b)(3)(iii)(III) of the Social Security Act requires states to provided continued Medical Assistance to a Medicaid Only or a Temporary Assistance for Needy Families (TANF) benefit group who loses eligibility due to the receipt of new or increased child or spousal support, or new or increased earnings of the caretaker relative. The Act further requires the continued Medicaid coverage to be of the same amount, duration, and scope as was received prior to the new or increased child support or income. Therefore, rules are needed to conform to federal regulations.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

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

PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION

317:35-6-64.1. Transitional Medical Assistance (TMA)

(a) **Conditions for TMA.**

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

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

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

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

(2) **Closure due to child support or spousal support.** Health benefits are continued if the case closure is due to the receipt of new or increased child support or payments for spousal support in the form of alimony. The needs of the parent(s)or caretaker relative must be included in the benefit group at the time of closure. The health benefits are continued for four months.

(3) **Closure due to new or increased earnings of parent(s) or caretaker relative.** Health benefits are continued if the closure is due to the new or increased earnings of the parent(s) or caretaker relative. The needs of the parent(s)or caretaker relative must be included in the benefit group at the time of closure. The parent(s) or caretaker relative is required to cooperate with Child Support Enforcement Division during the period of time the family is receiving TMA.

(4) **Eligibility period.** Health benefits may be continued for a period up to 12 months if the reason for closure is new or increased earnings of the parent(s) or caretaker relative. This period is divided into two six-month periods with eligibility requirements and procedures for each period.

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

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

(I) an eligible child remains in the home;

(II) the parent(s) or caretaker relative remains the same; and

(III) the benefit group remains in the state.

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

(I) moves out of the state,

(II) dies,

(III) becomes an inmate of a public institution,

(IV) leaves the household,

(V) does not cooperate, without good cause, with the Child Support Enforcement Division or third party liability requirements.

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

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

(I) an eligible child remains in the home;

(II) the parent(s) or caretaker relative remains the same;

(III) the benefit group remains in the state;

(IV) the benefit group was eligible for and received TMA for each month of the initial six-month period;

(V) the benefit group has complied with reporting requirements in subsection (g) of this Section;

(VI) the benefit group has average monthly earned income (less child care costs that are necessary for the employment of the parent or caretaker relative) that does not exceed the 185% of the Federal Poverty Level (see OKDHS Appendix C-1, Schedule I.A); and

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

(ii) An individual benefit group family member remains eligible for the additional six-month period unless the individual meets any of the items listed in (4)(A)(ii) of this paragraph.

(b) **Income and resource eligibility.**

(1) The unearned income and resources of the benefit group are disregarded in determining eligibility for TMA. There is no earned income test for the initial six-month period.

(2) Health benefits are continued for the additional six-month period if the benefit group's countable earnings less child care costs that are necessary for the employment of the parent(s) or caretaker relative are below 185% of the Federal Poverty Level (see OKDHS Appendix C-1, Schedule I.A) and the benefit group meets the requirements listed in (a)(4)(B).

(A) The earnings of all benefit group members are used in determining the earned income test. The only exception is that earnings of full time students included in the benefit group are disregarded.

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

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

(D) All individuals whose earnings are considered are included in the benefit group. The family size remains the same during both reporting periods.

(c) **Eligible child.** When the regular health benefit is closed and TMA begins, the benefit group must include an eligible child whose needs were included in the health benefit at the time of closure, unless the only eligible child is a SSI recipient. After the TMA begins, the benefit group must continue to include an eligible child. Age is the only requirement an eligible child must meet.

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

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

(f) **Notification.**

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

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

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

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

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

(g) **Reporting.** The benefit group is required to periodically report specific information. The information may be reported by telephone, in an office interview, or by letter.

(1) The benefit group must report:

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

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

(C) changes in members of the benefit group;

(D) residency; and

(E) third party liability.

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

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

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

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

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

(i) **Receipt of health benefits after TMA ends.** To ensure continued medical coverage a computer generated recertification form is mailed to the benefit group during the third month of TMA for benefits closed due to the receipt of child or spousal support or the 11th month of TMA for benefits closed due to increased earnings. The benefit group must return the form prior to the termination of the TMA benefits. When determined eligible, health benefits continue as health benefits not TMA. If the benefit group fails to return the recertification form, TMA benefits are terminated.

[OAR Docket #05-1113; filed 6-6-05]

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

[OAR Docket #05-1096]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Medical Services
Part 5. Determination of Eligibility for Medical Services
317:35-7-38. [AMENDED]
Subchapter 10. Medical Aid to Families with Dependent Children
Part 5. Income
317:35-10-38. [NEW]
(Reference APA WF # 04-25 and 04-26B)
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Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
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ANALYSIS:
Rules are revised to clarify who may be considered temporarily absent from the home when determining financial eligibility for the benefit group. Rules revisions are needed to better state rules used by the Oklahoma Department of Human Services workers when determining financial eligibility for Medicaid in order to ensure the accuracy of those determinations. Other revisions correct scrivener errors, reorganize rules to reflect current practice and align rules with other rules within the Administrative code.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 7. MEDICAL SERVICES

PART 5. DETERMINATION OF ELIGIBILITY FOR MEDICAL SERVICES

317:35-7-38. Financial eligibility of categorically needy individuals related to ABD

(a) **Income and resources below State Supplemental Payment (SSP) standard.** Individuals whose income and resources meet SSP requirements on ~~DHS~~ OKDHS Appendix C-1, Schedules VIII. A. and D., are considered categorically needy.

(1) **Categorical Relationship.** For an individual categorically related to ABD to be categorically needy at the SSP standard, the countable income must be less than the standards on ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. A. and the equity in capital resources cannot exceed the maximum allowable resources on ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. D. for the following groups:

(A) An eligible individual. An eligible individual is a single individual who is aged, blind or disabled and has total countable income less than the "Categorically Needy Standard for an Eligible Individual";

(B) An eligible individual and essential spouse. An essential spouse is defined as having been continuously included in the case since prior to 1974. The total countable income of both must be less than the "Categorically Needy Standard for Eligible Individual with Essential or Ineligible Spouse";

(C) An eligible individual and ineligible spouse. An ineligible spouse does not meet the definition of aged, blind or disabled nor the requirement as "essential". The total countable income of the eligible individual must be less than the "Categorically Needy Standard for Eligible Individual", and the total countable income of both must be less than the "Categorically Needy Standard for Eligible Individual with Essential or Ineligible Spouse";

(D) An eligible individual with a spouse ineligible for ABD and dependent children.

(i) If the spouse and dependent children are included in a TANF diversion payment or ongoing TANF benefits, their income is not deemed to the ABD eligible individual.

(ii) If the spouse's needs are not included in the TANF case for the children, the portion of the spouse's income that is considered in determining the grant for the children is not considered in the SSP case;

(E) An eligible couple. An eligible couple means a husband and wife who are both either aged, blind or disabled and have total countable income less than the "Categorically Needy Standard for Eligible Couple".

(2) **Verification.** Verification of receipt of SSI establishes financial eligibility with these exceptions:

(A) Countable income including SSI cannot be equal to or exceed the appropriate Categorically Needy Standards on ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. A.

(B) The individual must meet the OHCA's requirements on irrevocable burial funds.

(3) **Related to ABD.** Individuals who meet the definition of categorically needy with income below the SSP standard and categorically related to ABD are:

(A) Individuals in an active ABD case.

(B) Individuals categorically related to ABD whose countable income and resources are within current SSP standards for eligibility but who do not choose to receive financial assistance.

(C) Individuals in ABD cases who are eligible for Medicaid due to the disregard of Social Security cost of living increases (COLA) under the Pickle Amendment. An individual is eligible under the Pickle Amendment if the following conditions are met:

(i) is currently receiving OASDI;

(ii) has been eligible for and simultaneously received both OASDI and SSP for at least one month since April, 1977;

(iii) lost eligibility for SSP since April, 1977; and

(iv) would be eligible for SSP if OASDI COLA increases received since the closure of SSP case were deducted from countable income.

(D) Spouses "grandfathered in" as essential persons to ABD recipients when the ABD case load was converted to SSI on January 1, 1974, so long as they continue as an essential person to an eligible ABD recipient converted to SSI (even though there is a change in category within ABD).

(E) Individuals in ABD cases who continue to be eligible for Medicaid because the Social Security Administration has determined that they still qualify as "disabled" (by classifying as ~~1619B~~ 1619(b) of the Social Security Act) even though they become employed and lose eligibility for SSI benefits due to the earned income. To retain Medicaid eligibility, the individual must have received ~~SSP~~ Medicaid for the month prior to the determination by SSA. Income and resources excluded by SSA are also disregarded by ~~DHS~~ OKDHS for these individuals. The county is responsible for the periodic redetermination of eligibility. The individual who meets all other factors of eligibility without consideration of income, resources or disability remains eligible until the SSI status changes.

(F) Individuals in blind or disabled cases who have become ineligible for SSP because of becoming entitled to or receiving an increase in OASDI (Title II) Widow's/Widower's benefits. They may continue to qualify for Medicaid as categorically needy until age

65 or upon entitlement to Medicare Part A benefits if they also meet the following criteria:

(i) Are at least 60 but not yet 65;

(ii) Are not entitled to Medicare;

(iii) Received SSI prior to age 60; and

(iv) Meet all other factors of eligibility.

(G) Individuals in blind or disabled cases who become ineligible for SSP due to entitlement of OASDI (Title II) Disabled Widow's/Widower's and Disabled Surviving Divorced Spouse's benefits. This group's eligibility as categorically needy terminates at age 65 or upon entitlement to Medicare Part A benefits. Each month the individual received SSI/SSP will count toward meeting the 24-month Medicare waiting period. This may greatly reduce or even eliminate the normal waiting period of Medicare. Care must be taken to determine if and when these individuals become eligible for Medicare Part A benefits. This group's Medicaid eligibility may continue if they also meet the following criteria:

(i) Received SSP for the month prior to the month they began receiving the OASDI benefits;

(ii) Not entitled to Medicare Part A; and

(iii) Meet all other factors of Medicaid eligibility.

(H) A, B or D recipients (who are at least 18 years of age) who have become ineligible for an SSP due to the receipt of or increase in OASDI child's benefits [Disabled Adult Child (DAC)] which are based on their own disability.

(I) A, B or D recipients who lost their SSP eligibility due to a reduction in the maximum SSP payment. (~~DHS~~ OKDHS Appendix C-1, Schedule VIII.) These individuals remain eligible for Medicaid benefits.

(4) **SSP eligible.** If a categorically needy applicant for Medicaid is also eligible for a State Supplemental Payment, the certification includes both Medicaid and the state payment.

(5) **Potentially Qualified Medicare Beneficiary Plus eligible.** The individual determined as categorically needy is also potentially eligible as a Qualified Medicare Beneficiary Plus (QMBP) (refer to subsection (b) of this Section). A determination is done to decide if income and resources are within standards on ~~DHS~~ OKDHS Appendix C-1, Schedule VI., in which the income standards are based on 100% of the Federal Poverty Level. If the individual exercises the option of choosing QMBP coverage only, he/she is not certified to receive the State Supplemental Payment.

(b) **Income and resources at or above the SSP standard.** Individuals whose income and resources are at or above the SSP standard but less than the standards on ~~DHS~~ OKDHS Appendix C-1, Schedule VI. are considered categorically needy.

SUBCHAPTER 10. MEDICAL AID TO FAMILIES WITH DEPENDENT CHILDREN

PART 5. INCOME

317:35-10-38. Temporary absence from the home.

An individual who is temporarily absent from the home for the purpose of receiving training or education for employment, certain medical services, etc., may be considered part of the benefit group.

(1) Individuals temporarily absent from the home, receiving training or education for employment are considered part of the benefit group during the period of time the training or educational activities are taking place.

(2) Children temporarily absent from the home to attend boarding school are considered part of the benefit group during the school term.

(3) Individuals temporarily absent from the home because of entrance into a private facility for counseling, rehabilitation, behavioral problems or special training, etc., are considered part of the benefit group. If care is projected for a period exceeding 90 days, the absence is not considered temporary. At any time an absence is determined as not temporary or no longer temporary, the needs of the individual cannot be included in the benefit group.

(4) Individuals temporarily absent from the home for medical services, other than institutionalization for treatment of mental illness, mental retardation, or tuberculosis, are considered part of the benefit group for up to six months. Six-month extensions may be allowed when the worker's verification indicates the individual may return to the home within the next six months.

[OAR Docket #05-1096; filed 6-2-05]

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

[OAR Docket #05-1114]

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Medical Assistance for Adults and Children-Eligibility, Long Term Care Facilities specific, rules are revised to comply with Federal Pre-Admission Screening and Resident Review requirements, which outline the states' responsibility for screening all individuals for mental illness or mental retardation or related conditions who apply to or reside in Title XIX certified nursing facilities. Nursing facilities which inappropriately admit an individual without a PASRR Screen are subject to recoupment of funds. Currently, facilities are not required to report on residents who are transferred from one nursing facility to another which results in gaps in the data available to LOCEU to evaluate PASRR compliance, as well as resulting in an inconsistently applied recoupment process. Nursing home residents will benefit from the proposed rule revisions as a PASRR screening would be required for all residents just prior to admission, thus helping to assure safety by reducing the number of inappropriate nursing home placements. Rule revisions are needed to comply with Federal Pre-Admission Screening and Resident Review requirements.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 19. NURSING FACILITY SERVICES

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

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

[OAR Docket #05-1114; filed 6-6-05]

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

[OAR Docket #05-1115]

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317:35-21-1. through 35-21-13. [NEW]
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Medical Assistance for Adults and Children-Eligibility rules are issued to establish criteria that implements the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (BCCPTA) program. The BCCPTA gave states the option of providing Medicaid benefits to uninsured women under age 65

who are in need of treatment for breast and/or cervical cancer and do not have creditable health insurance coverage. Eligible participants must be identified through the Centers for Disease Control and Prevention's (CDC) National Breast and Cervical Cancer Early Detection Program (NBCCEDP) as needing treatment for breast or cervical cancer, including pre-cancerous conditions and early stage, recurrent or metastatic cancer. In May, 2001, the Oklahoma Legislature approved Senate Bill 741 which directed the Agency to coordinate with the State Commissioner of Health to develop procedures to implement a program for Medicaid eligibility and services for individuals who are in need of breast or cervical cancer treatment, contingent upon funds becoming available. Funding has since been provided to implement the program. Women found eligible for medical benefits under this program will receive the full scope of Medicaid coverage as coverage is not limited to treatment of breast and/or cervical cancer.

CONTACT PERSON:

Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 21. BREAST AND CERVICAL CANCER TREATMENT PROGRAM

317:35-21-1. Breast and Cervical Cancer Treatment program

(a) The Breast and Cervical Cancer Prevention and Treatment Act of 2000 (BCCPTA) allows states to provide Medicaid to uninsured women under age 65 who are in need of treatment for breast and/or cervical cancer. Medical eligibility is determined through the Centers for Disease Control and Prevention's (CDC) National Breast and Cervical Cancer Early Detection Program (NBCCEDP) as needing treatment for breast and/or cervical cancer, including pre-cancerous conditions and early stage, recurrent or metastatic cancer.

(b) To receive Breast and Cervical Cancer (BCC) Treatment services, the woman must meet all of the following conditions.

(1) The woman must have been screened for BCC under the CDC Breast and Cervical Cancer Early Detection Program (see OAC 317:35-21-3) established under Title XV of the Public Health Service (PHS) Act, and found to be in need of treatment, including abnormal finding on screening examination, precancerous conditions and early stage, recurrent or metastatic cancer (see OAC 317:35-21-5).

(2) The woman must:

(A) not have creditable insurance coverage that covers BCC (see OAC 317:35-21-4),

(B) not be eligible for any other categorically needy Medicaid eligibility group,

(C) be under 65 years of age,

(D) be a US citizen or qualified alien (see OAC 317:35-21-7),

(E) be a resident of Oklahoma,

(F) declare her Social Security number,

(G) assign her rights to Third Party Liability if she has insurance that is not creditable, and

(H) declare her household income for the purpose of determining that she is not otherwise eligible for Medicaid. For the BCC treatment program, income is not a condition of eligibility and verification of income is not required.

317:35-21-2. Scope of coverage

The BCC program provides the full scope of Medicaid coverage. Coverage is not limited to treatment of breast and/or cervical cancer.

317:35-21-3. CDC screening

(a) To be eligible for the Breast and Cervical Cancer Treatment program, a woman must be screened under the CDC Breast and Cervical Cancer Early Detection Program. A woman is considered screened under the CDC program if her screening was provided all or in part by CDC Title XV funds, or the service was rendered by a provider funded at least in part by CDC Title XV funds, and/or if she is screened by another provider whose screening activities are pursuant to CDC Title XV of the Public Health Service (PHS) Act.

(b) Prior to certification of the BCC application, the OKDHS worker must verify that the BCC applicant was screened by a CDC provider and found to be in need of treatment.

317:35-21-4. Creditable coverage

(a) Creditable coverage when used in this subchapter means any insurance that pays for medical bills incurred for the diagnosis and/or treatment of breast or cervical cancer. A woman having any one of the following types of coverage is considered to have creditable coverage and would normally be ineligible for the Breast and Cervical Cancer Treatment program:

(1) Coverage under a group health plan;

(2) Health insurance coverage, i.e., benefits consisting of medical care under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer;

(3) Medicare Part A and/or B;

(4) Medicaid;

(5) Armed Forces insurance; and/or

(6) A state health risk pool.

(b) If a woman has limited coverage, such as limited drug coverage or limits on the number of outpatient visits, or high deductibles, she is still considered to have creditable coverage. However, if she has a policy with limited scope coverage such as those that only cover dental, vision, or long term care, or a policy that covers only a specific disease or illness, she is not considered to have creditable coverage, unless the policy provides coverage for breast or cervical cancer.

(c) There may be some circumstances when a woman has creditable coverage but that coverage does not actually cover treatment of breast or cervical cancer. In instances such as pre-existing condition exclusions, or when the annual or lifetime limit on benefits has been exhausted, a woman is not considered to have creditable coverage for this treatment. In these types of circumstances the woman may be eligible for Breast

and Cervical Cancer services if she meets all other eligibility criteria.

(d) There is no requirement that a woman be uninsured for any specific length of time before she is found eligible for Medicaid under this program. If a woman loses creditable coverage for any reason and satisfies all other eligibility requirements for the BCC program it is possible for her to become immediately eligible for coverage in this program.

(e) The CDC screener determines whether or not the woman has creditable coverage. All health insurance, creditable or not, is listed on the OKDHS computer system in order for OHCA Third Party Liability Unit to verify insurance coverage.

317:35-21-5. In need of treatment

In need of treatment, when used in this subchapter, means an abnormal screen determined as a result of a screening for BCC under the CDC BCC Early Detection Program established under Title XV of the Public Health Service Act, including pre-cancerous conditions and early stage, recurrent or metastatic cancer.

317:35-21-6. Age requirements

To be eligible for Breast and Cervical Cancer services, a woman must be under 65 years of age. If a woman turns 65 during the certification period, eligibility ends effective the last day of her birth month. The OKDHS worker assists the woman in determining if eligibility may continue in another Medicaid category.

317:35-21-7. Citizenship and Residence

The requirements for citizenship and residence found at OAC 317:35-5-25 and 317:35-5-26 apply to the BCC treatment program.

317:35-21-8. Social security number

Federal regulations require a woman furnish her Social Security number at the time of application for Breast and Cervical Cancer services.

317:35-21-9. Income

(a) There is no income limit imposed by state or federal law for the Breast and Cervical Cancer Treatment program. However, the CDC Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service (PHS) Act does allow CDC program grantees to set maximum income limits.

(b) Even though there is no income limit, the woman is required to declare her household income so that the OKDHS worker may determine if she is otherwise eligible for Medicaid.

317:35-21-10. Resources

There is no resource test for the Breast and Cervical Cancer Treatment program.

317:35-21-11. Certification for BCC

(a) In order for a woman to receive BCC treatment services she must first be screened for BCC under the CDC Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and found to be in need of treatment. Once determined to be in need of treatment the CDC screener determines that the woman:

(1) does not have creditable health insurance coverage,
(2) is under age 65,
(3) is a self declared US citizen or qualified alien,
(4) is a self declared Oklahoma resident,
(5) has provided her social security number,
(6) is willing to assign medical rights to TPL, and
(7) has declared all household income.

(b) If all of the conditions in subchapter (a) are met, the CDC screener assists the woman in completing the BCC application (OHCA BCC-1). The completed BCC-1 is forwarded to the OKDHS office.

(c) If all of the conditions in subchapter (a) are not met, an application is not completed.

(d) The OKDHS worker verifies that the screener is a CDC screener. The worker also establishes whether or not the woman is otherwise eligible for Medicaid. If the woman is not otherwise eligible for Medicaid, she is certified for the BCC program. If the woman is eligible under another Medicaid category, the application is certified in the other Medicaid category.

(e) If a woman does not cooperate in determining her eligibility for other Medicaid programs, her BCC application is denied and the appropriate notice is computer generated. For example, a woman otherwise eligible for Medicaid, related to the low income families with children category, refuses to cooperate with child support enforcement without good cause would not be eligible for the BCC program.

(f) If a woman in treatment for breast or cervical cancer contacts
the OKDHS office and has not been through the CDC screening process, she is referred to the BCC program.

(g) An individual determined eligible for BCC may be certified the first day of the month of application or, if the individual had a medical service within three months prior to the application date, the first day of the first, second or third month prior to the month of application, provided the date of certification is not prior to the CDC Screen.

317:35-21-12. Changes after certification/continued need for treatment

(a) A woman found to be in need of treatment as the result of an abnormal BCC screen receives diagnostic testing to determine if she has breast and/or cervical cancer. When diagnostic testing is complete, the OKDHS is notified if the woman was found not to have BCC including pre-cancerous conditions and early stage, recurrent or metastatic cancer. When the woman is found not to have breast or cervical cancer, the case is closed by OKDHS and appropriate notification is computer generated.

(b) If it is determined at any time during the certification period that the woman has creditable health insurance coverage,

the OKDHS worker closes the case and appropriate notification is computer generated.

(c) If it is determined at any time during the certification period that the woman is no longer in need of treatment, the OKDHS worker closes the case and appropriate notification is computer generated.

(d) If the OKDHS worker later determines that the woman is otherwise eligible for Medicaid, the worker takes necessary actions to certify her for the appropriate category of Medicaid coverage.

317:35-21-13. Redetermination

A periodic redetermination of eligibility is required every 12 months. The computer generated redetermination form is mailed to the woman during her 11th month of eligibility. The woman is responsible for having her BCC provider/case manager complete the statement certifying that she continues to be in need of treatment.

(1) If the completed forms are not returned, the case is closed and appropriate notice is computer generated.

(2) When the completed forms are returned timely and the woman remains eligible for the BCC program, the computer is updated to show her continued eligibility.

[OAR Docket #05-1115; filed 6-6-05]

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

[OAR Docket #05-1133]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
317:40-1-1. [AMENDED]
Subchapter 5. Client Services
Part 1. ~~Agency Companion Services~~Companion/Adult Foster Care Services by Agency
317:40-5-1. [AMENDED]
317:40-5-3. through 317:40-5-6. [AMENDED]
317:40-5-7. [REVOKED]
317:40-5-8. through 317:40-5-11. [AMENDED]
317:40-5-12. [REVOKED]
317:40-5-13. [AMENDED]
317:40-5-14. through 317:40-5-15. [REVOKED]
Part 3. Guidelines to Staff
317:40-5-37. through 317:40-5-39. [REVOKED]
317:40-5-40. [NEW]
Subchapter 7. Waiver Employment Services
317:40-7-1. through 317:40-7-8. [AMENDED]
317:40-7-11. through 317:40-7-13. [AMENDED]
317:40-7-15. [AMENDED]
317:40-7-19. [REVOKED]
317:40-7-20. through 317:40-7-21. [AMENDED]
(Reference APA WF # 04-17)
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ANALYSIS:
Revisions to Developmental Disabilities Services rules are needed to: (1) clarify determination of eligibility for Waiver services for persons with mental retardation; (2) simplify rules on relief time for agency companions; (3) address retirement for people receiving Waiver employment services; (4) clarify coordination with the Department of Rehabilitation Services; (5) clarify activities eligible for authorization as community-based vocational services; (6) remove the limit of 15 hours per week on center-based services for all but Homeward Bound class members; (7) revise stabilization services; (8) allow claims for job development after three months; and (9) add updates.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

317:40-1-1. Home and Community-Based ~~Waiver~~ Services (HCBS) Waivers providing services for persons with certain developmental disabilities

(a) **Applicability.** The rules in this Section apply to services funded through Medicaid Home and Community-Based Services (HCBS) Waivers ~~(HCBW)~~ as defined in Section 1915(c) of the Social Security Act and administered by the Oklahoma Department of Human Services ~~DHS~~ (OKDHS), Developmental Disabilities Services Division (DDSD). The specific waivers are the In-Home Supports ~~Waivers~~ Waiver (IHSW) for Adults, the In-Home Supports Waiver (IHSW) for Children, the Community Waiver, and the Homeward Bound Waiver.

(b) **Program Administration.** Services funded through a Home and Community-Based Services Waiver for persons with mental retardation or for certain persons with related conditions are administered by DDSD, under the oversight of the Oklahoma Health Care Authority (OHCA), the State Medicaid agency. The rules in this subsection shall not be construed as a limitation of the rights of class members set forth

in the Consent Decree in Homeward Bound vs. The Hissom Memorial Center.

(1) ~~HCBW~~ HCBS Waiver services are subject to annual appropriations by the Oklahoma Legislature.

(2) DDSD must limit the utilization of the ~~HCBW~~ HCBS Waiver services based on:

(A) the federally-approved recipient capacity ~~of the HCBW services~~ for the individual HCBS Waivers;

(B) the cost-effectiveness of the ~~HCBW services for the~~ individual HCBS Waivers as determined according to federal requirements; and

(C) State appropriations.

(3) DDSD must limit enrollment when utilization of services under the ~~HCBW~~ HCBS Waiver ~~services program~~ programs is projected to exceed the spending authority.

(c) **Program provisions.** Each individual requesting ~~HCBW~~ HCBS Waiver services and his or her family or guardian are responsible for:

(1) accessing, with the assistance of ~~DHS~~ OKDHS staff, all benefits available under Oklahoma's Medicaid State Plan or other payment sources prior to accessing funding for those same services under ~~the Home and Community-Based~~ a HCBS Waiver program;

(2) cooperating in the determination of medical and financial eligibility, including prompt reporting of changes in income or resources; and

(3) choosing between ~~Home and Community-Based~~ HCBS Waiver services and institutional care.

(d) **Waiver Eligibility.**

(1) ~~HCBW~~ HCBS Waiver services are available to Oklahoma residents meeting Medicaid eligibility requirements established by law, regulatory authority, and policy within funding available through State or Federal resources. To be eligible for and receive services funded through any of the Waivers listed in subsection (a) of this Section, a person must first be determined financially eligible for Medicaid through the ~~DHS~~ OKDHS Family Support Services Division. The Medicaid eligible individual may not simultaneously be enrolled in any other Medicaid Waiver program or receiving services in an institution including a hospital, nursing facility, residential care facility as described in Section 1-819 of Title 63 of Oklahoma Statutes, or ICF/MR facility. The individual may also not be receiving DDSD state-funded services such as the Family Support Assistance Payment, sheltered workshop services, community integrated employment services, or assisted living without waiver supports as described in OAC 340:100-5-22.2. The individual must also meet other Waiver-specific eligibility criteria.

(A) **In-Home Supports Waivers.** To be eligible for services funded through the In-Home Supports Waivers (IHSW), a person must:

(i) meet all criteria for ~~HCBW~~ HCBS Waiver services given in subsection (d) of this Section;

(ii) be determined to have a disability, with a diagnosis of mental retardation, by:

(I) the Social Security Administration; or

(II) the Oklahoma Health Care Authority, Level of Care Evaluation Unit;

(iii) be three years of age or older;

(iv) be determined by the Oklahoma Health Care Authority, Level of Care Evaluation Unit, to meet the ICF/MR Institutional Level of Care requirements in accordance with OAC 317:30-5-122;

(v) reside in:

(I) the home of a family member or friend;

(II) his or her own home;

(III) ~~a DHS~~ an OKDHS Children and Family Services Division (CFSD) foster home; or

(IV) a CFSD group home; and

(vi) have critical support needs that can be met through a combination of non-paid, non-Waiver, and State Plan resources available to the individual, and with HCBS Waiver resources that are within the annual per capita Waiver limit agreed between the State of Oklahoma and the Centers for Medicare and Medicaid Services (CMS).

(B) **Community Waiver.** To be eligible for services funded through the Community Waiver, the person must:

(i) meet all criteria given in subsection (d) of this Section;

(ii) be age three or older;

(iii) have critical support needs that can be met by the Community Waiver and cannot be met by IHSW services or other service alternatives, as determined by the DDSD Division Director or designee;

(iv) be determined, in accordance with either subunit I or both subunits II and III of this unit:

(I) to have mental retardation or a related condition by the Mental Retardation Authority and to ~~have resided in a nursing facility, in accordance with the provisions of 42 CFR 483.100 *et seq*~~ be covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act; or

(II) to have a disability, with a diagnosis of mental retardation, by the Social Security Administration or the Oklahoma Health Care Authority, Level of Care Evaluation Unit; and

(III) to meet the ICF/MR Institutional Level of Care requirements by the Oklahoma Health Care Authority, Level of Care Evaluation Unit.

(C) **Homeward Bound Waiver.** To be eligible for services funded through the Homeward Bound Waiver, the person must:

(i) be certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in *Homeward Bound et al. v. The Hissom Memorial Center*, Case No. 85-C-437-E;

(ii) meet all criteria for ~~HCBW~~ HCBS Waiver services given in subsection (d) of this Section; and

(iii) be determined to:

(I) have mental retardation or a related condition by the Mental Retardation Authority and to ~~have resided in a nursing facility, in accordance with the provisions of 42 CFR 483.100 et seq~~ be covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act; or

(II) meet the ICF/MR Institutional Level of Care requirements by the Oklahoma Health Care Authority, Level of Care Evaluation Unit.

(2) The person desiring services through any of the Waivers listed in subsection (a) of this Section participates in diagnostic evaluations and provides information necessary to determine ~~HCBW~~ HCBS Waiver services eligibility, including:

(A) a psychological evaluation, current within one year, ~~which~~ that includes:

(i) a functional assessment; and

(ii) a statement of age of onset of the disability;

(B) a social service summary, current within one year, ~~which~~ that includes a developmental history; and

(C) a medical evaluation current within 90 days.

(3) The Oklahoma Health Care Authority reviews the diagnostic reports listed in paragraph (2) of this subsection and makes a determination of eligibility for DDSD services and ICF/MR level of care for the services funded through ~~the~~ an IHSW or the Community Waiver.

(4) For individuals who are determined to have mental retardation or a related condition by the Mental Retardation Authority in accordance with ~~the provisions of 42 CFR 483.100 *et seq*~~ the State's alternative disposition plan adopted under Section 1919 (e)(7)(E) of the Social Security Act, DDSD reviews the diagnostic reports listed in paragraph (2) of this subsection and, on behalf of the OHCA, makes a determination of eligibility for DDSD services and ICF/MR level of care.

(5) A determination of need for ICF/MR Institutional Level of Care does not limit the opportunities of the person receiving services to participate in community services. Individuals are assured of the opportunity to exercise informed choice in the selection of services.

(e) **Waiting list.** When State DDSD resources are unavailable for new persons to be added to services funded through a Home and Community-Based Services Waiver, persons are placed on a statewide waiting list for services.

(1) The waiting list is maintained in chronological order based on the date of receipt of a written request for services.

(2) The waiting list for persons requesting ~~HCBW~~ HCBS Waiver services is administered by DDSD uniformly throughout the state.

(3) An individual is removed from the waiting list if the individual:

(A) is found to be ineligible for services;

(B) cannot be located by ~~DHS~~ OKDHS;

(C) does not provide required information to ~~DHS~~ OKDHS;

(D) is not a resident of the state of Oklahoma; or

(E) is offered Waiver services through either ~~the~~ an In-Home Supports Waiver or the Community Waiver and declines services.

(f) **Applications.** When resources are sufficient for initiation of ~~HCBW~~ HCBS Waiver services, DDSD action regarding a request for services occurs within 45 days. If action is not taken within the required 45 days, the applicant may seek resolution as described in OAC 340:2-5.

(1) Applicants are allowed 60 days to provide information requested by DDSD to determine eligibility for services.

(2) If requested information is not provided within 60 days, the applicant is notified that the request has been denied, and the individual is removed from the waiting list.

(g) **Admission protocol.** Initiation of services funded through a Home and Community-Based Services Waiver occurs in chronological order from the waiting list in accordance with subsection (e) of this Section based on the date of DDSD receipt of a completed request for services, as a result of the informed choice of the person requesting services or his or her legal guardian, and upon determination of eligibility, in accordance with subsection (d) of this Section. Exceptions to the chronological requirement may be made when:

(1) an emergency situation exists in which the health or safety of the person needing services, or of others, is endangered, and there is no other resolution to the emergency. An emergency exists when:

(A) the person is unable to care for himself or herself and:

(i) the person's caretaker, as defined in Section 10-103 of Title 43A of the Oklahoma Statutes:

(I) is hospitalized;

(II) has moved into a nursing facility;

(III) is permanently incapacitated; or

(IV) has died; and

(ii) there is no caretaker to provide needed care to the individual; or

(iii) an eligible person is living at a homeless shelter or on the street;

(B) the ~~Department of Human Services~~ OKDHS finds that the person needs protective services due to experiencing ongoing physical, sexual, or emotional abuse or neglect in his or her present living situation, resulting in serious jeopardy to the person's health or safety;

(C) the behavior or condition of the person needing services is such that others in the home are at risk of being seriously harmed by the person. For example, the person is routinely physically assaultive to the caretaker or others living in the home and sufficient supervision cannot be provided to ensure the safety of those in the home or community; or

(D) the person's medical, psychiatric, or behavioral challenges are such that the person is seriously injuring or harming himself or herself, or is in imminent danger of doing so.

(2) the Legislature has appropriated special funds with which to serve a specific group or a specific class of individuals under the provisions of a HCBS Waiver;

(3) Waiver services are required for people who transition to the community from a public intermediate care facility for persons with mental retardation (ICF/MR) or who are children in the State's custody receiving services from ~~DHS~~ OKDHS; or

(4) individuals residing in nursing facilities prior to January 1, 1989, who are determined by PASRR evaluation conducted pursuant to the provisions of 42 CFR 483.100 ~~*et seq*~~ et seq to have mental retardation or a related condition, who are covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act, choose to receive services funded through the Community Waiver.

(h) **Movement ~~within~~ between DDSD ~~HCBW services~~ HCBS Waiver programs.** A person's movement from services funded through one Home and Community-Based Services Waiver to services funded through another DDSD-administered HCBS Waiver is explained in this subsection.

(1) When a child receiving services funded through the IHSW for children becomes 18 years of age, ~~IHSW~~ services under the IHSW for adults become effective.

(2) Change to services funded through the Community Waiver from services funded through the IHSW occurs only when:

(A) a person has critical support needs ~~which~~ that cannot be met by IHSW services, non-Waiver services, or other resources as determined by the DDSD Director or designee; and

(B) funding is available in accordance with subsection (b) of this Section.

(3) Change to services funded through the IHSW from services funded through the Community Waiver may only occur when an individual's history of annual service utilization has been within the per capita allowance of the IHSW.

(4) When an individual served through the Community Waiver has support needs that can be met within the per capita Waiver allowance of the applicable IHSW and through a combination of non-Waiver resources, the individual may choose to receive services through the IHSW.

(i) **Continued eligibility for ~~HCBW~~ HCBS Waiver services.** Eligibility for children receiving ~~HCBW~~ HCBS Waiver services is re-determined if a determination of disability due to mental retardation has not been made by the Social Security Administration when:

(1) a child who is receiving ~~HCBW~~ HCBS Waiver services prior to age six reaches age six. The child must be determined to continue to have a disability with a diagnosis of mental retardation. The determination must be made no later than the first Plan of Care review after the seventh birthday. A new diagnostic evaluation is required in accordance with paragraph (d)(2) of this subsection;

(2) a child who is receiving ~~HCBW~~ HCBS Waiver services reaches age 18. The service recipient must be determined to continue to have a disability with a diagnosis of mental retardation ~~if a determination has not been made by Social Security~~. The determination must be made at the first Plan of Care review after the nineteenth birthday. A new diagnostic evaluation is required in accordance with paragraph (d)(2) of this subsection; and

(3) required by DDSD. DDSD may require a new diagnostic evaluation in accordance with paragraph (d)(2) of this subsection and re-determination of eligibility at any time when a significant change of condition, disability, or psychological status determined under paragraph (d)(2) of this Section has been noted.

(j) **~~HCBW~~ HCBS Waiver services case closure.** ~~HCBW~~ HCBS Waiver services are terminated when an individual receiving services:

(1) or the service recipient's legal guardian chooses to no longer receive Waiver services;

(2) is incarcerated;

(3) is financially ineligible to receive Waiver services;

(4) is determined by the Social Security Administration to no longer have a disability qualifying the individual for services under these Waivers;

(5) is determined by the Oklahoma Health Care Authority Level of Care Evaluation Unit to no longer be eligible;

(6) moves out of state, or the custodial parent or guardian of a minor moves out of state;

(7) is admitted to a nursing facility, ICF/MR, residential care facility, or mental health facility for more than 30 consecutive days;

(8) or the guardian of a minor or adjudicated adult fails to cooperate during the annual review process as described in OAC 340:100-5-50 through 100-5-58;

(9) or the guardian of a minor or adjudicated adult fails to cooperate in the implementation of ~~DHS~~ OKDHS policy or service delivery in a manner that places the health or welfare of the service recipient at risk, after efforts to remedy the situation through Adult Protective Services or Child Protective Services have not been effective; or

(10) is determined to no longer be Medicaid eligible.

(k) **Reinstatement of services.** Waiver services are reinstated when:

(1) the situation resulting in case closure of a Hissom class member is resolved;

(2) a service recipient is incarcerated for 90 days or less;

(3) a service recipient is admitted to a nursing facility, ICF/MR, residential care facility, or mental health facility for 90 days or less; or

(4) a service recipient's Medicaid eligibility is re-established within 90 days of the date of the DDSD Notice of Action.

SUBCHAPTER 5. CLIENT SERVICES

PART 1. ~~AGENCY COMPANION SERVICES~~ COMPANION/ADULT FOSTER CARE SERVICES BY AGENCY

317:40-5-1. Purpose of Agency Companion Services

(a) The Agency Companion Services (ACS) program serves ~~consumers~~ persons with developmental disabilities who are 18 years of age or older.

(b) ~~Consumers~~ Persons under the age of 18 years may be served with approval from the Developmental Disabilities Services Division (DDSD) ~~administrator~~ director or designee.

(c) Agency Companion services ~~are~~ provides an individualized living ~~arrangements~~ arrangement with ~~friends, peers, or family members~~ a companion eligible according to OAC 317:40-5-4, ~~which offer to consumers~~ that offers up to 24 hour supervision, supportive assistance, and training in daily living skills.

317:40-5-3. Scope of Agency Companion Services

(a) Agency Companion Services (ACS) are provided through private agencies ~~who~~ that have current contracts with the Oklahoma Health Care Authority ~~(Authority) or the Department of Human Services (Department)~~ (OHCA).

(b) Persons ~~making application~~ desiring to be ~~direct providers of ACS services~~ companions are employed by or contract with a provider agency and are approved by the Developmental Disabilities Services Division (DDSD) of the Oklahoma Department of Human Services.

(c) The ~~consumer~~ service recipient receives ~~services~~ ACS in his or her own home, the ~~provider's~~ companion's home, or in a mutually rented or owned home.

(d) Services are based on the ~~consumer's~~ service recipient's need for support as described in the ~~consumer's~~ Individual Plan detailed in OAC 340:100-5-50 through 100-5-58, and are available to ~~eligible consumers who have a broad range of needs~~ individuals eligible for services through the Community Waiver or the Homeward Bound Waiver.

(e) Services provide ~~to~~ the ~~consumer~~ service recipient with a ~~family life with a~~ nurturing home environment ~~or a roommate or friend to share living expenses~~.

(f) Services ~~in all settings~~ support visitation desired by the service recipient with ~~the consumer's~~ his or her natural family and friends.

(g) Each service recipient may receive up to 60 days per year of therapeutic leave without reduction in the companion's salary. Therapeutic leave is a Medicaid payment made to the contract provider to enable the service recipient to retain services.

(1) Therapeutic leave is claimed when the service recipient does not receive ACS for 24 consecutive hours because of:

(A) a visit with family or friends without the companion;

(B) vacation without the companion; or

(C) hospitalization, whether the companion is present or not.

(2) An individual may receive therapeutic leave for no more than 14 consecutive days per event, not to exceed 60 days per Plan of Care year.

(3) The payment for a day of therapeutic leave is the same amount as the per diem rate for ACS.

(4) The provider agency pays to the companion the salary that he or she would have earned if the service recipient were not on therapeutic leave.

(5) Therapeutic leave cannot be accrued from one Plan of Care year to the next.

(h) The companion may not have employment, volunteer activities, or personal commitments that prevent the companion from fulfilling his or her responsibilities to the service recipient, as listed in OAC 317:40-5-5.

(1) Serving as the service recipient's companion is the companion's primary employment.

(2) The companion may have other employment when:

(A) the Team has documented in the Individual Plan their efforts to address possible related concerns; and

(B) the other employment has been approved in advance by the DDSD area manager or designee.

(3) No companion can have a job that requires on-call duties.

(4) If, after receiving approval for other employment, authorized DDSD staff determine that the employment interferes with the care, training, or supervision needed by the service recipient, the companion must determine if he or she wants to terminate the other employment or terminate his or her employment as an agency companion.

(5) Homemaker, Habilitation Training Specialist, and Respite Services are not provided in order for the companion to perform other employment.

(~~g~~ i) The ~~criteria for levels~~ level of support~~, which describe the needs of the consumer and determine the rate of pay to the provider are explained in~~ is determined by authorized DDSD staff in accordance with this subsection.

(1) **Intermittent level of support.** Intermittent level of support ~~includes the attributes listed in (A) - (D) of~~ is described in this paragraph.

(A) The ~~consumer~~ service recipient is able to ~~independently~~ perform basic daily living skills such as:

(i) bathing, dressing, and eating;

(ii) ~~dressing~~ independent toileting;

~~(iii) preparing simple meals;~~

(~~iv~~ iii) basic survival skills; and

(~~v~~ iv) awareness of danger to self and others.

(B) The ~~provider~~ companion:

(i) assists the ~~consumer~~ service recipient in:

(I) money management; ~~and in~~

(II) accessing and participating in generic ~~service system~~ services such as transportation, and recreational opportunities; and

(ii) may provide limited assistance in such areas as:

(I) daily living skills;

(II) medication administration; and

(III) instrumental activities of daily living such as shopping, cleaning, and preparing meals.

(C) The ~~provider~~ companion assists the ~~consumer~~ service recipient in establishing long term relationships. ~~The provider responds to the consumer as the provider would respond to a family member.~~

(2) **Regular level of support.** Regular level of support ~~includes the attributes given in (A) - (E) of~~ is described in this paragraph.

~~(A) The consumer participates in education, employment, and leisure activities outside the home environment within a supervised setting.~~

(~~B~~ A) The ~~provider~~ companion is responsible for regular and sometimes constant supervision and support ~~in assisting~~ to assist the ~~consumer~~ service recipient in participation ~~of~~ in daily living skills, ~~therapies,~~ leisure activities, and personal relationships.

(~~C~~ B) The ~~provider~~ companion is trained and competent to meet the service recipient's needs ~~of the consumer who has episodic~~ which may include behavioral or medical occurrences ~~which require~~ requiring increased supports for limited periods of time~~, and which may require the implementation of a Behavioral Support Program~~.

(~~D~~ C) The ~~provider~~ companion is trained and competent to provide supports for a ~~consumer~~ service recipient who ~~may receive~~ receives medication for altering behavior. When the ~~consumer's~~ service recipient's record documents no more than episodic behavioral occurrences, the ~~provider~~ companion receives the regular support level of pay.

(~~E~~ D) The ~~provider~~ companion ensures the ~~consumer~~ service recipient has on-going daily supervision in a stable environment.

(3) **Enhanced level of support.** Enhanced level of support ~~includes the attributes listed in (A) - (D) of~~ is described in this paragraph.

(A) The ~~provider~~ companion is highly skilled and competent to ~~deal with~~ meet the service recipient's needs that include on-going ~~severe~~ complex medical or behavioral situations~~. which~~ that require the highest level of supports and ~~provider~~ companion expertise. ~~The provider is trained and competent to meet such needs. The consumer has a Behavior Support Program or has medical needs which require constant oversight.~~

(B) The ~~provider~~ companion receives extensive ~~on-going~~ specialized training in order to meet the ~~intense~~ complex needs of the ~~consumer~~ service recipient. The ~~provider~~ companion demonstrates the competency to meet the integral needs of the ~~consumer~~ service recipient.

~~(C) The provider is competent to follow professional order in order to provide the intensive daily support system necessary to establish and maintain the consumer in a community setting.~~

(~~D~~ C) The provider of services at the enhanced rate may not have other employment.

317:40-5-4. Selection of Agency Companion Services provider

(a) The matching of ~~a provider's lifestyle, personality,~~ the lifestyles and personalities of a companion and a service recipient and the overall compatibility of the companion with ~~those of a consumer~~ the service recipient ~~is~~ are the most critical ~~element~~ elements of the Agency Companion Services (ACS) program. The past and present relationship the ~~consumer~~ service recipient has with the potential ~~provider~~ companion is the most important consideration in the ~~provider~~ companion selection process.

(b) In addition to considering the ~~consumer's~~ relationship ~~with~~ between the service recipient and the ~~provider~~ companion, the ~~Department~~ case manager, the ~~consumer~~ service recipient or legal guardian, and the ~~consumer's~~ service recipient's provider agency must reach consensus ~~in the provider selection process~~ regarding the criteria listed in this Section before the approval process described in OAC 317:40-5-40 begins.

(1) The ~~provider~~ companion must have ~~worked with or had an ongoing~~ a relationship with the ~~consumer~~ service recipient ~~for a minimum of six months~~.

~~(A)~~ Exceptions may be made by the ~~consumer's~~ service recipient's personal support team (Team) upon the recommendation of the ~~Department~~ Developmental Disabilities Services Division (DDSD) case manager, ~~or Department~~ Division of Children and Family Services (DCFS) worker, or the Adult Protective Services (APS) worker, ~~for consumers who are in the Department's custody~~ when appropriate.

~~(B) The provider must have worked for the consumer's provider agency for three of the six months.~~

~~(i) The provider agency may choose to waive the three months' employment requirement.~~

~~(ii) The provider who is currently living with the consumer, and who will continue to live with the consumer but work for a new agency, is exempt from the three month employment requirement.~~

(2) The ~~provider~~ companion must have the commitment and skills to meet the individual needs of the ~~consumer~~ service recipient.

(3) The ~~provider~~ companion must understand the level of commitment required for the ACS program and how the commitment will affect the ~~provider's~~ companion's personal life.

(4) The ~~provider~~ companion must understand how the commitment to the ACS program will impact the ~~provider's~~ companion's family ~~when the consumer becomes a member of that family~~.

(5) The ~~provider~~ companion must demonstrate the ability to establish and maintain a positive relationship with the ~~consumer~~ service recipient, particularly when ~~dealing with~~ stressful situations occur.

(6) The ~~provider~~ companion must demonstrate the ability to work collaboratively with others in the service process.

(7) ~~A family member may serve as an ACS provider, with the exception of parents, spouse, son, daughter, or legal.~~ Neither a service recipient's spouse nor the parent of a minor child may serve as that person's companion. A family member serving as companion must meet all requirements for the ACS program given in this Subchapter.

~~(A) The Division Administrator of Developmental Disabilities Services Division (DDSD) may, in extraordinary situations, grant exceptions.~~

~~(B) Family members must meet all DDSD qualifications for the ACS program.~~

~~(C) Family members eligible to serve as companions must be a part of the consumer's current life.~~

(8) The Chief Executive Officer (CEO) of a provider agency may not serve as a ~~paid provider~~ companion.

317:40-5-5. Agency Companion Services ~~Provider~~ provider responsibilities

(a) Providers of Agency Companion Services (ACS) are required to meet all applicable standards outlined in this subchapter and competency-based training ~~outlined in this Subchapter~~ described in OAC 340:100-3-38. The provider agency ensures that all companions meet the criteria in this Section.

(b) Failure to follow any rules or standards, failure to promote the independence of the ~~consumer~~ service recipient, or failure to follow ~~team~~ recommendation(s) of the personal support team (Team) results in ~~a Plan of Action, explained in OAC 317:40-5-39~~ problem resolution, as described in subsection (b) of OAC 340:100-3-27, for the ~~provider~~ companion and, if warranted, revocation of approval of the ~~home~~ companion.

(c) ~~Responsibilities of providers of ACS are listed in this Subsection.~~ In addition to the criteria given in OAC 317:40-5-4, the companion:

(1) ~~The provider~~ ensures no other adult or child ~~from another source~~ is served in the home on a regular or part-time basis without prior written authorization from the Oklahoma Department of Human Services' Developmental Disabilities Services Division (DDSD) area manager or designee~~.~~ ;

(2) ~~The provider has a valid driver's license and maintains a car that is in working order~~ meets the requirements of OAC 317:40-5-103, Transportation. Neither the companion nor the provider agency may claim transportation reimbursement for vacation travel;

~~(A) The vehicle is equipped with working seat belts that are used by the consumer at all times while being transported.~~

~~(B) The vehicle has a current Oklahoma vehicle safety inspection sticker properly displayed, as required.~~

~~(C) The provider carries Oklahoma statutorily mandated liability insurance of 10/20/10 minimum coverage.~~

(3) transports or arranges transportation for the service recipient to and from school, employment programs, recreational activities, medical appointments, and therapy appointments;

(~~3~~ 4) ~~The provider~~ delivers services in a manner ~~which~~ that contributes to the ~~consumer's~~ service recipient's enhanced independence, self sufficiency, community inclusion, and well-being~~.~~ ;

(~~4~~ 5) ~~The provider~~ participates as a member of the ~~consumer's~~ service recipient's Team and assists in the development ~~and implementation~~ of the ~~consumer's~~ service recipient's Individual Plan for service provision~~.~~ ;

(~~5~~ 6) ~~The provider,~~ with assistance from the ~~Department~~ DDSD case manager and the provider agency program coordination staff, develops, implements, evaluates, and revises the training strategies corresponding to the relevant ~~goals and objectives~~ outcomes for which the ~~provider~~ companion is responsible, as identified in the ~~consumer's~~ Individual Plan~~.~~ ;

(A) The ~~provider~~ companion develops and gives monthly data collection and health care summaries to the provider agency program coordination staff.

(B) The agency staff provides monthly reports to the ~~Department~~ DDSD case manager or ~~the Department~~ nurse.

(~~6~~ 7) ~~The provider~~ delivers services at appropriate times as directed in the ~~consumer's~~ Individual Plan~~.~~ ;

(~~7~~ 8) ~~The provider~~ does not deliver services ~~which~~ that duplicate the services mandated to be provided by the public school district pursuant to the Individuals with Disabilities Education Act (IDEA)~~.~~ ;

(~~8~~ 9) ~~The provider~~ is sensitive to and assists the ~~consumer~~ service recipient in participating in the ~~consumer's~~ service recipient's chosen religious faith. No ~~consumer~~ service recipient is expected to attend any religious service against his or her wishes~~.~~ ;

(~~9~~ 10) ~~The provider~~ participates in and supports visitation and contact with the ~~consumer's~~ service recipient's natural family, ~~or legal~~ guardian, and friends, provided this visitation is desired by the ~~consumer.~~ service recipient;

(~~10~~ 11) ~~The provider~~ obtains permission from the ~~consumer's~~ service recipient's legal guardian, if a guardian is assigned, and notifies the family, the provider agency program coordination staff, and the ~~Department~~ case manager prior to:

(A) traveling out of state~~,~~ ;

(B) ~~for~~ overnight visits~~,~~ ; ~~and~~ or

(C) ~~prior to~~ involvement of the ~~consumer~~ service recipient in any publicity~~.~~ ;

~~(11) The provider transports or arranges transportation for the consumer to and from school, vocational programs, recreational activities, medical appointments and therapy appointments.~~

~~(12) Neither provider nor the provider agency may claim for transportation outside the state of Oklahoma without written approval from the Department area manager or designee. Requests for transportation reimbursement for~~

~~out of state travel must be submitted in writing at least 10 working days in advance of the travel.~~ serves as the service recipient's health care coordinator in accordance with OAC 340:100-5-26;

~~(13) Neither the provider nor the provider agency may claim transportation reimbursement for vacation travel.~~

(~~14~~ 13) ~~The provider~~ ensures the monthly room and board contribution received from the ~~consumer~~ service recipient as reflected on OKDHS Form DDS-SAB-1, ~~the~~ Service Authorization Budget (SAB), is used toward the cost of operating the household~~.~~ ;

(~~15~~ 14) ~~The provider~~ assists the ~~consumer~~ service recipient to access entitlement programs for which the ~~consumer~~ service recipient may be eligible and maintains records required for the ~~consumer's~~ service recipient's ongoing eligibility~~.~~ ;

(~~16~~ 15) ~~The provider~~ works closely with the provider agency program coordination staff and the ~~Department~~ DDSD case manager to ensure all aspects of the ~~consumer's~~ service recipient's program are implemented to the satisfaction of the ~~consumer~~ service recipient, ~~or when appropriate,~~ the ~~consumer's~~ service recipient's family or legal guardian, when appropriate, and the ~~consumer's~~ service recipient's Team~~.~~ ;

(~~17~~ 16) ~~The provider~~ assists the ~~consumer~~ service recipient in achieving the ~~consumer's~~ service recipient's maximum level of independence~~.~~ ;

(~~18~~ 17) ~~The provider~~ submits, in a timely manner, to the provider agency program coordination staff all necessary information regarding the ~~consumer.~~ service recipient;

(~~19~~ 18) ~~The provider~~ ensures that the service recipient's confidentiality ~~regarding the consumer~~ is maintained in accordance with OAC 340:100-3-2~~.~~ ;

(~~20~~ 19) ~~The provider~~ supports the ~~consumer~~ service recipient in forming and maintaining friendships with neighbors, co-workers, and peers, including people who do not have disabilities~~.~~ ;

(~~21~~ 20) ~~The provider~~ implements training and provides supports ~~which~~ that enable the ~~consumer~~ service recipient to actively join in community life~~.~~ ;

(~~22~~ 21) ~~The provider~~ does not serve as representative payee for the ~~consumer~~ service recipient without a written exception approval from the ~~Department~~ DDSD area manager or designee~~.~~ ;

(A) The written approval is retained in the ~~consumer's~~ service recipient's home record.

(B) When serving as payee, the companion complies with the requirements of OAC 340:100-3-4.1.

(~~23~~ 22) ~~The provider~~ ensures the ~~consumer's~~ service recipient's funds are properly safeguarded. ~~When handling the consumer's funds, the provider complies with OAC 340:100-3-4.1.~~

(~~24~~ 23) ~~The provider is familiar with and follows the Department's behavior support rules at OAC 340:100-3-7.~~ must obtain prior approval from the provider agency when making a purchase of over $50.00 with the service recipient's funds;

(~~25~~ 24) ~~A provider serving a consumer who needs the enhanced level of service may not have other employment.~~ allows the provider agency staff and DDSD staff to make announced and unannounced visits to the home;

(~~26~~ 25) ~~The provider may not have ongoing volunteer activities or personal commitments that prevent the provider from fulfilling his or her responsibilities to the consumer.~~ develops an Evacuation Plan, OKDHS Form DDS-20, for the home and conducts training with the service recipient;

(~~27~~ 26) ~~The provider who receives the intermittent or regular support service rate may have other employment, if approved in advance by the Department District Supervisor of Residential Services.~~ conducts fire and weather drills at least quarterly and maintains the Fire and Weather Drill Record, OKDHS Form DDS-21, available for review:

~~(A) If, after receiving approval for other employment it is found that the employment interferes with the care, training, or supervision needed by the consumer, the provider must determine if he or she wants to terminate the employment or have the consumer removed from the home.~~

~~(B) Homemaker, Habilitation Training Specialist, or respite services are not provided in order for the provider to perform other employment.~~

~~(C) Serving as the consumer's companion is the provider's primary employment.~~

(~~28~~ 27) ~~No provider may have a job that requires 24 hour on-call duties.~~ develops and maintains a Personal Possession Inventory, OKDHS Form DDS-22, documenting the service recipient's possessions and adaptive equipment;

(~~29~~ 28) ~~The provider supports the consumer in furnishing and decorating the consumer's living area(s) in accordance with the consumer's wishes.~~ supports the service recipient's employment program by:

(A) assisting the service recipient to wear appropriate work attire; and

(B) contacting the service recipient's employer only as outlined by the Team and in the Individual Plan; and

(~~30~~ 29) ~~The provider ensures that the consumer's medication is monitored and, if the consumer is unable to independently take medication, that the medication is given only by a person who has successfully completed a Department-approved training course for medication administration.~~ follows all applicable rules promulgated by the Oklahoma Health Care Authority or DDSD, including:

(A) OAC 340:100-3-40, Community records system;

(B) OAC 340:100-5-50 through 100-5-58, Individual planning;

(C) OAC 340:100-5-26, Health services;

(D) OAC 340:100-5-34, Incident reporting;

(E) OAC 340:100-5-32, Medication administration;

(F) OAC 340:100-5-22.1, Community residential supports;

(G) OAC 340:100-3-24, Quality assurance; and
(H) OAC 340:100-3-38, Staff training.

~~(31) The provider ensures medication is stored in accordance with procedures outlined in the medication administration courses approved by the Department.~~

~~(32) The provider agrees to allow the provider agency staff and Department staff to make announced and unannounced visits to the home. The visits occur at least monthly and are not intended to be intrusive but to ensure the safety and well-being of the consumer.~~

~~(33) The provider develops an evacuation plan for the home (DDS-20) and conducts training with the consumer.~~

~~(34) The provider conducts fire and weather drills at least quarterly. Documentation from the drills (DDS-21) is available for review.~~

~~(35) The provider develops and maintains a Personal Possession Inventory (DDS-22) documenting the consumer's possessions and adaptive equipment.~~

~~(36) The provider develops and maintains a consumer in-home record as directed by ACS staff.~~

~~(37) The provider supports the consumer's vocational program by:~~

~~(A) assisting the consumer to wear appropriate work attire; and~~

~~(B) contacting the consumer's employer only as outlined by the consumer's Team and in the consumer's Plan.~~

~~(38) The provider must obtain prior approval from the provider agency when making a purchase of over $50.00 with the consumer's funds.~~

317:40-5-6. Agency Companion Services ~~Provider~~ provider requirements

(a) The ~~consumer~~ service recipient or legal guardian, the ~~consumer's~~ provider agency, and the ~~consumer's~~ Oklahoma Department of Human Services' Developmental Disabilities Services Division (DDSD) case manager identify an applicant to be screened for approval to serve as the ~~consumer's provider~~ companion.

(b) ~~Provider approval~~ Approval by ~~the Department~~ DDSD for a person to provide Agency Companion Services (ACS) requires that the applicant:

(1) is 21 years of age or older;

(2) has attended the ~~Department~~ DDSD or provider agency ACS orientation;

(3) ~~has successfully completed a Department or provider agency pre-screening, in accordance with OAC 317:40-5-7~~ is employed by, or contracts with, a provider agency having a current contract with the Oklahoma Health Care Authority to provide ACS;

(4) ~~has completed all required Department and provider agency pre-employment training, as described in OAC 317:40-5-7~~ submits the completed DDSD application packet in accordance with OAC 317:40-5-40 within the required time period to designated DDSD staff or the provider agency staff;

(5) ~~is employed by, or contracts with, a provider agency having a current contract with the Department to provide ACS services~~ cooperates with the designated DDSD staff or the provider agency staff in the development and completion of the home profile approval process described in OAC 317:40-5-40; and

(6) ~~is completing Department required on-the-job training hours and consumer specific training, as described in the consumer's plan, and Department required residential training modules;~~ has completed all training required by OAC 340:100-3-38, including medication administration training, and all provider agency pre-employment training as described in OAC 317:40-5-40.

~~(7) submits the completed Department application packet in accordance with OAC 317:40-5-7 within the required time period to the Department ACS staff or the provider agency staff;~~

~~(8) cooperates with the Department ACS staff or the provider agency staff in the development and completion of the home profile within the required time period;~~

~~(9) submits to the Department ACS staff or the provider agency staff employment references for the last ten years, or for the length of the person's employment history, if less than ten years;~~

~~(10) submits to the Department ACS staff or the provider agency staff information regarding all personal income and expenses (Form DDS-9), for verification by ACS staff;~~

~~(11) obtains a medical check-up (DDS-10) when the health history information (DDS-11) given to the ACS staff or the provider agency staff indicates medical problems that could potentially interfere with providing ACS services;~~

~~(12) submits to the ACS staff or the provider agency staff evidence that all pets living inside or outside the home have up-to-date rabies vaccinations; and~~

~~(13) will provide ACS services in a home that meets the health, safety, and environmental requirements listed in this paragraph.~~

~~(A) The home does not present a hazard to the safety of the consumer.~~

~~(B) The home is comfortable, maintained in good condition, and presents a positive image in the neighborhood.~~

~~(C) The home is modified and equipped with specialized equipment, supplies, or architectural modifications as stated in the consumer's Plan. (Addition of square footage to any existing structure is not allowable.)~~

~~(D) The home shared by the provider and the consumer is accessible to school, employment, church, day programming, recreational activities, health facilities, and other community resources as needed.~~

~~(E) The provider maintains a telephone that is in working order at all times and keeps the provider agency and the Department advised of the correct phone number.~~

~~(F) The provider installs and maintains a working fire extinguisher and at least one smoke alarm that is operational (more as appropriate for the structure).~~

~~(G) The home has a bedroom for the consumer that has a minimum of 80 square feet of space and two means of exit.~~

~~(H) The home provides space for the consumer's personal possessions, and allows for the consumer's privacy.~~

~~(I) The home is covered by home owner's or renter's insurance including personal liability.~~

~~(J) All firearms and weapons in the home are stored in a way which is safe for each individual consumer.~~

317:40-5-7. Process for approval or disapproval of Agency Companion Services applicants [REVOKED]

~~(a) Any provider agency which contracts with an individual to provide Agency Companion Services (ACS) uses a home profile process which meets the requirements of this Subchapter and which has been approved by the District Supervisor of Residential Services.~~

~~(b) The criteria listed in this Section serve as a framework to assist the Department or the provider agency in the evaluation and approval or disapproval of the provider applicant. Since it is recognized that each applicant has varying strengths and capabilities, a careful study based on the essentials given in this Section offers protection and an assurance of maximum opportunities for growth and development to the consumer.~~

~~(c) The Department ACS staff approve or disapprove an ACS provider applicant who is employed by a provider agency by completing the steps in this subsection.~~

~~(1) The ACS staff provides the ACS applicant with ACS program orientation and pre-screening information, which includes:~~

~~(A) facts, description, and guiding principles of the ACS program;~~

~~(B) an explanation of:~~

~~(i) the home profile process;~~

~~(ii) basic qualifications for the ACS provider;~~

~~(iii) health, safety, environmental issues; and~~

~~(iv) Department and Oklahoma Health Care Authority required training.~~

~~(C) Orientation Attendance Sheet (DDS-49), which lists the name, address, telephone number, area of residence, source of referral, and name of consumer identified to serve, if known, for each person who attends the orientation;~~

~~(D) Orientation Attendance Verification (DDS-50), which documents that the person attended the ACS orientation. The Orientation Attendance Verification is signed by the ACS staff and is presented to the provider agency when the person makes application to be employed by the provider agency to provide ACS services;~~

~~(E) Specialized Foster Care/Agency Companion Information Sheet (DDS-12), which asks various questions regarding the person's interest in becoming an ACS provider and gives a brief description of the person's household and the person's skills in providing services to consumers with developmental disabilities;~~

~~(F) Request for Background Check (DDS-14), which gives permission for the Department to receive required checks from the person's Oklahoma State Bureau of Investigation (OSBI) criminal record, the Division of Children and Family Services (DCFS) abuse record, and information from the person's traffic record from the Department of Public Safety.~~

~~(i) The findings of the background check become part of the home profile report and summary.~~

~~(ii) The background check is repeated every three years.~~

~~(G) Agency Companion/Specialized Foster Care Employment Record (DDS-15), which requires the person to provide names of all employers from the last 10 years of employment, with permission for the Department to request information from each employer listed;~~

~~(H) DDSD Reference Information Waiver (DDS-16), which give the Department permission to request specific information from a variety of sources. The DDS-16 is time-limited, information specific, and ensures confidentiality of the information received;~~

~~(I) Employer Reference Letter (DDS-29), which requests information from the employer regarding past and current work performance;~~

~~(J) a list of all provider agencies having a current contract with the Department and Oklahoma Health Care Authority to provide ACS services; and~~

~~(K) Pre-screening for Specialized Foster Care/Agency Companion Services (DDS-13), which is completed by the Department ACS staff at the home of the person desiring to become an ACS provider. The DDS-13 provides basic information to determine if a home profile is to be started.~~

~~(2) The provider agency gives the Department Application packet to the potential provider, after the potential provider has:~~

~~(A) completed the Department ACS required pre-employment training (Foundation, Cardio-Pulmonary Resuscitation (CPR), First Aid, and Medication Administration Training;~~

~~(B) become an employee of a contract provider agency; and~~

~~(C) begun working to complete the required on-the-job training hours with the identified consumer.~~

~~(3) The applicant completes the Department application packet in full and returns the entire packet to the Department address shown in the packet. The application packet contains the documents listed in this paragraph.~~

~~(A) Written documentation from the agency verifying the employment of the applicant with the agency and the date the applicant received the packet from the provider agency.~~

~~(B) The Specialized Foster Care/Agency Companion Services Application (DDS-8) provides additional~~

~~personal information and identifies four references to be contacted by Department ACS staff;~~

~~(C) Assessment of Financial History (DDS-9) documents the applicant's current and past financial history. The Assessment of Financial History includes verification of all income and expenses including utility companies.~~

~~(D) Family Health History (DDS-11) provides current and past medical information to determine the applicant's health status.~~

~~(E) Self Study Questionnaire (DDS-18), one to be completed by each adult living in the home, includes information regarding the person's:~~

~~(i) background;~~

~~(ii) life skills;~~

~~(iii) training;~~

~~(iv) religious preferences;~~

~~(v) relationships;~~

~~(vi) experiences, and~~

~~(vii) attitudes.~~

~~(F) Child's Questionnaire (DDS-19), to be completed by or for each child living in the home, includes questions about the child's home, school, and leisure environment.~~

~~(G) Medical Examination Report (DDS-10) is completed if the Family Health History (DDS-11) indicates conditions which could interfere with the provision of ACS services.~~

~~(H) Agency Companion/Specialized Foster Care Insurance Information (DDS-17) is completed by the applicant verifying the home and automobile insurance coverage of the applicant.~~

~~(I) Evacuation/Escape Plan (DDS-20) includes a drawing of the applicant's home reflecting the planned evacuation to a safe place for that home, with an example escape plan provided for the applicant's assistance.~~

~~(4) If an incomplete application packet is received, the ACS staff send a letter to the provider agency listing information still needed to complete the application packet. The packet is not processed unless the packet is complete.~~

~~(5) The ACS staff begin the home profile when:~~

~~(A) a completed application packet has been received; and~~

~~(B) the applicant has become an employee of, or contracts with, the provider agency.~~

~~(6) The home profile process includes the steps listed in this paragraph.~~

~~(A) The ACS staff completes a Reference Letter (DDS-29) for each reference provided by the applicant, asking questions dealing with the applicant as a potential care giver and the applicant's family. The DDS-29 requests the person providing the reference information to sign, date, and return the letter to the Department.~~

~~(B) The ACS staff, through interviews, visits, and phone calls, gathers the information required to complete the Home Profile Notes (DDS-47). The DDS-47 contains information about the applicant regarding:~~

~~(i) interest and motivation;~~

~~(ii) life skills;~~

~~(iii) behavior support policy;~~

~~(iv) marital status and background;~~

~~(v) income and money management;~~

~~(vi) home living standards;~~

~~(vii) report of reference checks;~~

~~(viii) working as a team member; and~~

~~(ix) assessment and recommendation of the ACS staff.~~

~~(C) The Policy and Procedure Review (DDS-24a) documents that the ACS staff has explained and the applicant understands the required rules. The DDS-24a is dated and signed by the applicant and the ACS staff.~~

~~(D) The applicant completes consumer specific training required by the consumer's Plan and residential modules recommended by the consumer's team.~~

~~(E) A provider approval letter is sent from the Department to the applicant confirming the applicant is approved to serve the identified consumer, or a denial letter is sent stating the applicant is denied to serve as a provider for the identified consumer.~~

~~(F) Release of Home Profile (DDS-52) is signed by the applicant giving consent for the home profile report and ACS case file to be given to the persons named on the DDS-52.~~

~~(G) Department staff records the dates each part of the home profile process was completed.~~

317:40-5-8. Development of the Agency Companion Services Service Authorization Budget

Upon approval of the home profile as described in OAC 317:40-5-40, the ~~provider~~ companion, the provider agency, the Oklahoma Department of Human Services' Developmental Disabilities Services Division (DDSD) case manager, Agency Companion Services (ACS) staff, and others as appropriate meet to develop a Service Authorization Budget (SAB), ~~DHS~~ OKDHS form DDS-SAB-1. The SAB is used to develop the individual service budget for the ~~consumer's~~ service recipient's program and is updated annually ~~at~~ by the ~~consumer's~~ service recipient's ~~annual~~ Team ~~meeting~~.

(1) ~~Under provisions of the Department and Authority contracts, the provider~~ The companion receives a salary based on the level of support needed by the ~~consumer~~ service recipient. The ~~salary must coincide with the specific individual needs of the consumer as reflected in the consumer's Plan, and~~ level of support is determined by authorized DDSD staff as defined in the criteria for support (OAC 317:40-5-3).

~~(2) When the needs of the consumer warrant two full-time providers, the second provider is paid at the salary below the salary of the primary provider. For example,if~~

~~the primary provider is paid at the enhanced rate, the second staff member is paid at the regular rate of pay.~~

(~~3~~ 2) ~~Under provisions of the Department and Authority contracts and as reflected on the SAB, funding to the provider agency is authorized for the provision of benefits to the provider.~~ The ACS rate includes funding for the provider agency for the provision of benefits to the companion.

~~(A) At the time the SAB is developed, the provider agency presents documentation of benefits to be funded by the SAB and provided by the agency to the provider. The documentation of benefits the provider will receive is attached to the SAB.~~

~~(B) When benefits are not provided by the provider agency to the provider, the budget is reduced by that amount.~~

(~~4~~ 3) ~~Since the ACS program relies on 24 hour service from the provider, based upon the needs of the consumer, the provider~~ The companion receives ~~accrued and unaccrued~~ 660 units per year of any combination of Habilitation Training Specialist, Homemaker, Respite, and Homemaker Respite Services in order to provide relief time to the companion as reflected on the SAB beginning from the date the service recipient and the companion begin living together.

(A) ~~The unaccrued relief time is available each month and must be taken within a 30 day period.~~ Additional relief time may be approved by the DDSD director or designee if providing ACS with additional relief represents the most cost-effective placement for the service recipient and:

(i) the service recipient has an on-going pattern of not sleeping at night; or

(ii) the service recipient has an on-going pattern of not working or attending employment services, in spite of continuing efforts by the Team.

(B) ~~Additional relief time is accrued monthly and must be taken during the current Plan of Care year.~~ The additional relief time given must be reduced when the on-going situation changes.

(C) ~~Each provider is entitled to 25 hours per month of unaccrued relief time.~~ Additional relief time given must be reviewed annually or more often if needed.

~~(i) Unaccrued relief time must be used each month, not saved up, or it is lost.~~

~~(ii) If more than 25 hours per month of unaccrued relief is recommended by the Team, the additional time recommended must be justified in a memo to the District Supervisor of Residential Services, who documents agreement or disagreement.~~

~~(iii) The District Supervisor then forwards the Team's justification and the District Supervisor's comments to the Programs Supervisor in the DDSD State Office for final approval or disapproval.~~

~~(D) Unaccrued relief time begins from the date the consumer and the provider begin living together.~~

~~(5) The provider agency receives payment for program oversight and administrative expenses that are based on the consumer's level of support. The payment is reflected on the SAB.~~

(~~6~~ 4) ~~The SAB reflects the maximum amount allowed monthly for transportation costs.~~ The OKDHS Form DDS-SAB-1 reflects the amount of room and board the service recipient pays to the companion. If the amount exceeds $400, the increase must be:

(A) ~~The allowed amount cannot be increased, unless approved by the DDSD Division Administrator or designee.~~ agreed to by the service recipient and legal guardian, if any;

(B) ~~The monthly allowance is utilized by all residential staff providing transportation services to the consumer.~~ recommended by the personal support team (Team); and

(C) ~~Transportation is claimed only when the consumer is in the vehicle and the trip is for an activity which is part of the implementation of the consumer's Plan, such as recreation, community integration, or training.~~ submitted with written justification attached to the DDS-SAB-1 to the DDSD area manager or designee for approval.

~~(D) Transportation to medical and therapy appointments is claimed through Title XIX.~~

(~~7~~ 5) Prior to the SAB meeting, a back-up support plan identifying relief staff is developed by the provider agency program coordination staff and the ~~provider~~ companion.

(A) The back-up plan is submitted to the ~~Department~~ DDSD case manager for approval, and attached to the completed ~~SAB~~ OKDHS Form DDS-SAB-1.

(B) The back-up plan describes expected and emergency back-up support and program monitoring for the home.

(C) The plan is signed by the ~~provider~~ companion, the provider agency representative and the ~~Department~~ DDSD case manager.

(D) The ~~provider~~ companion and the provider agency program coordination staff equally share the responsibility to work together in identifying approved relief staff who:

(i) are knowledgeable of the ~~consumer~~ service recipient; ~~and~~

(ii) trained to implement the ~~consumer's~~ service recipient's Plan;

(iii) have completed training required by OAC 340:100-3-38; and

(iv) are involved in the service recipient's daily life.

~~(E) The provider and the provider agency identify relief staff who have completed Department required training and who are involved in the consumer's daily life.~~

(~~F~~ E) ~~No spouse or other adults living in the provider home may serve as paid relief staff. However, the provider is encouraged to utilize other friends or family members to provide relief.~~ The

spouse or other adult residing in the home may provide companion services in the absence of the companion, if trained in accordance with OAC 340:100-3-38. The spouse or other adult residing in the home cannot serve as paid relief staff and cannot be paid simultaneously with the companion.

~~(G) Relief staff are required to have completed Department required training including consumer specific training.~~

~~(H) Emergency situations are reported to the Department ACS staff who developed the home profile, the Department case manager, and the provider agency staff responsible for program coordination.~~

~~(I) The back-up plan is reviewed monthly by the agency program coordination staff, the Department case manager, and the ACS staff.~~

(~~J~~ F) The ~~provider~~ companion and relief staff are responsible for the cost of their meals and entertainment during recreation and leisure activities. The activities selected are to be affordable to the ~~consumer~~ service recipient and the relief staff. Concerns about affordability are brought to the Team for resolution.

~~(K) When changes occur in the back-up plan, the provider notifies the provider agency program coordination staff of, and submits to the Department case manager for approval, the changes and what new plans are in place.~~

(~~L~~ G) The ~~provider~~ companion plans ~~accrued~~ relief time and gives sufficient notice to the provider agency so that the ~~provider~~ companion and the provider agency have relief staff available.

~~(M) The provider maintains and gives to the provider agency a report of the amount of time and dates on which relief time is taken.~~

(~~8~~ 6) The ~~consumer~~ service recipient is allowed ~~60 days per year of~~ therapeutic leave ~~without reduction in the provider's salary~~ in accordance with OAC 317:40-5-3.

~~(A) In extraordinary circumstances, up to 60 additional days for hospitalization may be allowed following prior written Department approval.~~

~~(B) Therapeutic leave cannot be accrued from one Plan of Care year to the next.~~

~~(9) Upon approval of the SAB by the District Supervisor of Residential Services, the Department case manager convenes the consumer's Team to revise the consumer's Plan to include ACS services.~~

~~(10) The plan of care is revised within two working days to reflect the additional services.~~

317:40-5-9. Payment authorization for Agency Companion Services

Authorization for payment of Agency Companion Services (ACS) is made upon the completion of:

(1) the letter ~~identifying the provider and consumer, which~~ that approves the applicant to provide ACS for the identified ~~consumer~~ service recipient;

(2) an approved service authorization budget (SAB) in accordance with OAC 317:40-5-8;

(3) an approved relief and emergency back-up plan;

(4) ~~a list of provider agency benefits reflecting the percentage of salary to be received as benefits compensation by the provider~~ revision of the Individual Plan;

(5) ~~a revised consumer's Plan and~~ revision of the service recipient's Plan of Care; and

(6) the placement of the ~~consumer~~ service recipient in the ACS home.

317:40-5-10. ~~Annual~~ Agency companion services (ACS) annual review

(a) ~~A review of the Agency Companion Services (ACS) provider home is completed annually by the~~ In addition to the requirements of OAC 317:40-5-40, Oklahoma Department of Human Services ~~(Department)~~ Developmental Disabilities Services Division (DSSD) ACS staff annually review services provided by the companion to determine:

(1) ~~determine the provider's~~ continued compliance of the companion and home environment with ~~Department~~ DDSD and Oklahoma Health Care Authority ~~program policy~~ rules; ~~and~~

(2) ~~to determine consumer~~ the satisfaction of the service recipient with the living arrangement; and

(3) continued use of the home.

(b) The annual review contains:

~~(1) written comments about the provider home from:~~

~~(A) the provider;~~

~~(B) the provider agency program coordination staff;~~

~~(C) the Department case manager; and~~

~~(D) other individuals involved in the consumer's life over the past year.~~

(~~2~~ 1) written comments of the ACS staff from interviews with the ~~consumer~~ service recipient that highlight the ~~consumer's~~ service recipient's thoughts and feelings about his or her companion and the ACS placement;

(~~3~~ 2) written comments from the ~~provider~~ companion regarding program changes and issues of concern;

(~~4~~ 3) summaries of the information obtained from the ~~provider~~ companion, the ~~consumer~~ service recipient, the provider agency program coordination staff, and the ~~Department~~ DDSD case manager;

(~~5~~ 4) recommendations for continued service;

(5) information received from Child Welfare or Adult Protective Services, if available; and

(6) identified areas of service that need improvement as well as areas of service that have been beneficial.

(c) A copy of the annual review is maintained in the ~~Department's~~ DDSD area ~~and state offices~~ office with copies to the DDSD state office and the provider agency. ~~:~~

~~(1) the consumer;~~

~~(2) the provider; and~~

~~(3) the provider agency.~~

317:40-5-11. Termination of Agency Companion services

~~When the consumer, through no fault of the provider, chooses to terminate the placement without giving 30 day notice to the provider, the steps listed in this Section are followed.~~ Designated Developmental Disabilities Services Division (DDSD) staff may terminate an individual placement for reasons including, but not limited to:

(1) ~~From the date the consumer leaves the home, a maximum of 20 days is allowed for a determination by the consumer's Team to be made if the consumer will return to live with the provider.~~ the service recipient's decision to move to a different residence. A Team meeting is held to develop an orderly transition plan;

~~(A) The provider's salary continues until the determination is made by the consumer's Team that the consumer will not return to the living arrangement and that the provider will no longer serve the consumer.~~

~~(B) The provider's salary ends immediately upon the Team's determination.~~

(2) ~~If a final determination is made by the consumer's Team that the consumer is not returning to the placement, a written notice is presented by the Department case manager to the provider agency's program coordination staff and the provider.~~ request of the companion. A Team meeting is held to develop an orderly transition plan;

(3) ~~Any unused accrued relief time is applied to the new placement or used by the provider immediately. If a new placement is not developed, the provider is paid accrued relief time by the last employer.~~ failure of the companion to complete tasks related to problem resolution, as described in OAC 340:100-3-27, as agreed;

(4) ~~Upon termination of the placement, the property of the consumer or the state is removed immediately by the consumer or designee.~~ confirmed abuse, neglect, or exploitation of any person;

(5) ~~This Section does not apply if the placement has been terminated by the Department in accordance with OAC 317:40-5-39 due to the provider's violation of policy or contract requirements.~~ breach of confidentiality;

(6) involvement of the companion in criminal activity, or criminal activity in the home;

(7) failure to provide for the care and well-being of the service recipient;

(8) continued failure to implement the Individual Plan, as described in OAC 340:100-5-50 through 100-5-58;

(9) failure to complete and maintain training as described in OAC 340:10-3-38;

(10) failure to report changes in the household resulting in the failure of the home to meet standards given in OAC 317:40-5-40;

(11) continued failure to follow applicable Oklahoma Department of Human Services or Oklahoma Health Care Authority rules;

(12) decline of the companion's health to the point that he or she can no longer meet the needs of the service recipient;

(13) employment by the companion without prior approval by the DDSD area programs manager for residential services; or

(14) domestic disputes which result in emotional instability of the person receiving services.

(c) Upon termination of the placement, the property of the service recipient or the state is removed immediately by the service recipient or his or her designee.

317:40-5-12. Selection of a provider agency [REVOKED]

~~(a) The selection of a provider agency to provide Agency Companion Services (ACS) is the consumer's choice.~~

~~(b) The provider agency currently serving the consumer is the preferred provider agency.~~

~~(c) If the selected provider and the consumer do not agree on the current provider agency continuing service, the Department of Human Services (Department) case manager convenes a meeting with the current provider agency, the selected provider, the consumer and legal guardian, if any, to discuss concerns.~~

~~(d) If results from the meeting are not satisfactory to the participants, an additional meeting is held and chaired by the Department area manager or designee.~~

~~(e) The final decision regarding a provider agency is made by the consumer or the consumer's legal guardian.~~

317:40-5-13. ~~Provider~~ Agency Companion Services provider agency responsibilities

(a) The agency providing Agency Companion Services (ACS) complies with Oklahoma Health Care Authority and Oklahoma Department of Human Services ~~(Department) approved~~ policies and procedures governing all aspects of service provision.

(b) The provider agency is responsible for all employee or contract provider related activities detailed in this Subchapter.

(c) ~~The provider agency is responsible for planning and documenting the applicant's on-the-job training hours.~~ In the event the provider agency wishes to discontinue services immediately due to an emergency, the provider agency cooperates with the Developmental Disabilities Services Division (DDSD) to secure alternative services in the least restrictive environment.

(d) ~~The provider agency and the Department ACS worker communicate weekly throughout the development of the home profile. The provider agency's input is crucial in the completion of the home profile.~~ The provider agency ensures that services provided meet requirements of OAC 340:100-5-22.1, unless different requirements are stated in this Section.

(e) ~~In the event the provider agency wishes to discontinue services to a consumer immediately due to an emergency, the provider agency cooperates with the Department to secure alternative services in the least restrictive environment.~~ If the agency serves as the service recipient's representative payee, the agency must adhere to the requirements of OAC 340:100-3-4.1.

(f) The provider agency acts immediately to remedy any situation posing a risk to the health, well-being, or provision of specified services to the ~~consumer~~ service recipient.

(1) In the event of such a risk, the provider agency immediately notifies ~~the Department~~ DDSD of the nature of the situation and notifies ~~the Department~~ DDSD upon the resolution of the threatening situation.

(2) The provider agency's program coordination staff contacts and informs the ~~Department~~ DDSD case manager within 24 hours of an incident or injury. The provider agency completes and submits incident and injury reports to ~~the Department within one week of the occurrence~~ DDSD in accordance with OAC 340:100-3-34.

(g) The provider agency ensures that only one ~~consumer~~ service recipient is served in a provider home. Exceptions may be approved by the ~~Department District Supervisor of Residential Services~~ DDSD area manager or designee.

(h) When the provider agency has knowledge of problems occurring in the placement, the provider agency's program coordination staff immediately schedules a meeting with the ~~provider~~ companion, the ~~consumer~~ service recipient, the ~~consumer's~~ service recipient's legal guardian or advocate, the ~~Department~~ DDSD case manager and other ~~Department~~ appropriate DDSD staff ~~as identified~~ to resolve the issues involved. If resolution of the issues does not occur at the meeting, any participant is to contact the ~~Department~~ DDSD area manager or designee and the provider agency for resolution.

(i) When a ~~different~~ change in the provider agency is requested by the ~~consumer~~ service recipient or the ~~provider~~ companion, ~~the consumer's team and the Department case manager~~ all participants attempt to resolve the issues. No change in the provider agency occurs unless the DDSD area manager or designee agrees that all issues have been discussed.

(j) The decision to remain or terminate services with the provider agency is the choice of the ~~consumer~~ service recipient or ~~the consumer's~~ his or her legal guardian.

(k) When a ~~consumer~~ service recipient transfers from a provider agency, the provider agency ensures that the ~~consumer~~ service recipient has a 30-day supply of medication and a seven-day supply of food, household supplies, and personal supplies.

(l) The responsibilities of the provider agency's program coordination staff are:

(1) to visit the provider home daily during the first week of placement;

(2) to visit the home a minimum of ~~once each week~~ three times per month in accordance with OAC 340:100-5-22.1;

(3)to allow the needs of the ~~consumer~~ service recipient to determine the frequency of all other visits;

(4) to coordinate and submit monthly reports to the provider agency for submission to the ~~Department~~ DDSD area office; and

(5) to communicate regularly with the ~~Department~~ DDSD case manager regarding any changes in the household or any other program issues or concerns~~;~~ .

~~(6) to contact and inform the Department Case manager within 24 hours of an incident or injury, or sooner in accordance with the terms of the Homeward Bound Consent Decree; and~~

~~(7) to complete and submit incident and injury reports to the Department by the next working day after the occurrence.~~

317:40-5-14. Department case manager role and responsibilities [REVOKED]

~~The Department case manager serving a consumer receiving Agency Companion Services (ACS) is responsible for:~~

~~(1) visiting the provider home:~~

~~(A) within one week from the time the consumer and the provider begin living together;~~

~~(B) weekly for the first month that the consumer and the provider are living together;~~

~~(C) a minimum of one time during each 30 day period after the first month of placement; and~~

~~(D) at least once each quarter on an unannounced basis.~~

~~(2) participating and assisting the provider agency program coordination staff and the provider in the development of the consumer's Plan and the coordination of professional services;~~

~~(3) submitting monthly QMRP reports written from observations and from the information received from the provider agency;~~

~~(4) attending court hearings or meetings as required by the court.~~

~~(5) coordinating with the provider agency program coordination staff and the provider when a change in the living arrangement is necessary;~~

~~(6) Communicating regularly with the Department ACS staff regarding any changes in the provider household or any other program concerns; and~~

~~(7) submitting to the Department ACS staff written comments for inclusion in the annual review.~~

317:40-5-15. Department Agency Companion Services (ACS) staff role and responsibilities [REVOKED]

~~Agency Companion Services (ACS) staff employed by the Department of Human Services (Department) or by a provider agency which contracts with providers of ACS services have the responsibility for:~~

~~(1) orientation and prescreening of ACS applicants;~~

~~(2) making contact with an applicant within 5 working days of receipt of a completed ACS application to schedule interviews and start the home profile process described in OAC 317:40-5-7;~~

~~(3) completing the home profile within 50 working days after assignment of the application;~~

~~(4) maintaining regular contact with the provider by making a monitoring visit and completing the Monitoring Report (DDS-23) every six months;~~

~~(5) making at least one telephone contact with the provider each month;~~

~~(6) completing an annual re-evaluation of each provider home by renewal date;~~
~~(7) attending meetings of the consumer's Team;~~
~~(8) responding to requests for ACS services;~~
~~(9) providing technical assistance and in-service training to providers regarding resolution of problems such as household dynamics or Department rules;~~
~~(10) speaking to groups, individuals, and organizations for the purpose of recruitment and community education;~~
~~(11) maintaining assigned case records which include narrative entries and forms as required in this Subchapter;~~
~~(12) making unannounced home visits to ensure homes and providers are in compliance with Department rules;~~
~~(13) maintaining the placement record in the area office case file;~~
~~(14) communicating regularly with the Department case manager regarding all aspects of the consumer's program;~~
~~(15) assisting the provider and Department case manager in setting up the consumer's in-home record;~~
~~(16) assisting the provider to set up the ACS in-home record;~~
~~(17) completing monthly reports to supervisor on status of work assignments and statistical information; and~~
~~(18) ensuring accurate information is reported monthly to the supervisor on provider logs.~~

PART 3. GUIDELINES TO STAFF

317:40-5-37. Investigations of alleged abuse or neglect of a consumer in a home [REVOKED]

~~Any referral regarding alleged abuse, neglect, or exploitation of a consumer by a provider is reported immediately to the appropriate investigative office. Allegations concerning a Homeward Bound class member are referred for investigation to the Office of Client Advocacy and are reported to the Guardian Ad Litem Office when the consumer is served by the Guardian ad litem.~~

317:40-5-38. Evaluation process [REVOKED]

~~(a) Department Agency Companion Services (ACS) staff begin an evaluation process upon receipt of a referral or observation of program concern(s) or policy violation(s) by the provider. Concerns may include:~~
~~(1) the provider's judgment;~~
~~(2) the provider's provision of program supervision to the consumer;~~
~~(3) the provider's non-compliance with Department of Human Services (Department) or Oklahoma Health Care Authority rules or contracts; or~~
~~(4) other issues related to the consumer's placement in the provider's home.~~
~~(b) When abuse, neglect, or exploitation is suspected, appropriate authorities are contacted in accordance with OAC 317:40-5-37.~~
~~(c) If a program concern or violation of policy, rather than abuse, neglect, or exploitation, is indicated, the evaluation is conducted and documented by Department staff.~~
~~(d) The evaluation includes interviews with:~~
~~(1) the consumer;~~
~~(2) the Department case manager;~~
~~(3) the provider agency program coordination staff;~~
~~(4) the provider;~~
~~(5) any other person(s) living in the home; and~~
~~(6) any other person(s) who may have relevant information.~~
~~(e) When the evaluation findings indicate a program concern(s) or violation(s) of rules or contract, a meeting involving the consumer, when appropriate, the Department ACS staff, Department case manager, the provider, and the provider agency program coordination staff is held to develop a Plan of Action in accordance with OAC 317:40-5-39.~~

317:40-5-39. Plan of action [REVOKED]

~~When there is a finding in the evaluation described in OAC 317:40-5-38 of reported concerns or policy or contract violation(s) by a provider of Agency Companion Services (ACS), a Plan of Action (DDS-28) is initiated.~~
~~(1) The Plan of Action is a joint effort between the provider, the provider agency program coordination staff, the Department of Human Services (Department) case manager and ACS staff to ensure that necessary services to consumer are not interrupted.~~
~~(2) The Plan of Action states:~~
~~(A) the issue(s);~~
~~(B) the necessary resolution(s);~~
~~(C) the person(s) responsible for implementing the resolution;~~
~~(D) the date due; and~~
~~(E) staff responsible to monitor the Plan of Action.~~
~~(3) The Plan of Action is time limited and is agreed upon by the Department, the provider, and the provider agency.~~
~~(4) Unless the Plan of Action is initiated for short-term outcome, reviews of the corrective action plan are conducted at a minimum of each 90 days. Department staff, the provider, and the provider agency program coordination staff participate in the review.~~
~~(5) If new allegations occur or circumstances change while a Plan of Action is in place, an evaluation is made of the existing plan to redefine the action steps, time frames, and recommendations, if necessary.~~
~~(6) At the completion of the Plan of Action, a resolution is documented to confirm the action steps that have been completed. If all action steps are not completed but a satisfactory resolution is obtained, an addendum explaining the satisfactory resolution is attached to the Plan of Action.~~
~~(7) If the provider is unwilling or unable to satisfactorily complete the Plan of Action, the provider's approval to provide ACS services is revoked.~~

317:40-5-40. Home profile process

(a) **Applicability.** This Section contains the procedures for a home profile that are used for:

(1) Agency Companion Services;
(2) Specialized Foster Care;
(3) Respite Services delivered in the provider's home:
(4) approving a Habilitation Training Specialist or other provider for an overnight visit; and
(5) any other situation in which rules require a home profile.

(b) **Pre-screening.** Designated staff of the Developmental Disabilities Services Division (DDSD) prescreen an applicant in accordance with this subsection. The findings of the background check described in this subsection become part of the home profile report and summary.

(1) Designated DDSD staff provides the applicant with program orientation and pre-screening information that includes:

(A) facts, description, and guiding principles of the program;

(B) an explanation of:

(i) the home profile process;
(ii) basic qualifications of the provider;
(iii) health, safety, and environmental issues; and
(iv) training required by OAC 340:100-3-38;

(C) the Specialized Foster Care/Agency Companion Information Sheet, OKDHS DDS-12. Form DDS-12 requires the applicant to provide information regarding his or her interest in becoming a provider and gives a brief description of the composition of the applicant's household and the applicant's skills in providing services to individuals with developmental disabilities;

(D) the Request for Background Check, OKDHS Form ADM-130, which gives permission for DDSD to receive required checks including the applicant's;

(i) Oklahoma State Bureau of Investigation (OSBI) criminal record;
(ii) Division of Children and Family Services (DCFS) abuse record;
(iii) Department of Public Safety traffic record;
(iv) Community Services Registry check; and
(v) finger print check, if the service recipient is a child.

(E) Agency Companion/Specialized Foster Care Employment Record, OKDHS Form DDS-15, which requires the applicant to provide names of all employers from the last 10 years of employment, with permission for DDSD to request information from each employer listed;

(F) DDSD Reference Information Waiver, OKDHS Form DDS-16, which gives DDSD permission to request specific information from a variety of sources. The DDS-16 is time limited, information-specific, and ensures confidentiality of the information received;

(G) Employer Reference Letter, OKDHS Form DDS-29, which requests information from the employer regarding past and current work performance;

(H) Pre-Screening for Specialized Foster Care/Agency Companion Services, OKDHS Form DDS-13, which is completed by designated DDSD staff at the home of the person desiring to become a provider. The DDS-13 provides basic information to determine if a home profile is to be started.

(c) **Approval process.** If the applicant meets the requirements of the prescreening, the approval process described in this subsection is initiated.

(1) The DDSD application packet is given to the applicant after the applicant has completed Foundation training, First Aid, and Cardio-Pulmonary Resuscitation (CPR).

(2) The applicant completes the DDSD application packet in full and returns the entire packet to the DDSD address shown in the packet. The application packet contains:

(A) the Specialized Foster Care/Agency Companion Services Application, OKDHS Form DDS-8, providing additional personal information and identifying four references to be contacted by designated DDSD staff;

(B) Assessment of Financial History, OKDHS Form DDS-9, documenting the applicant's current and past financial history, including verification of all income and expenses including utilities;

(C) Family Health History, OKDHS Form DDS-11, providing current and past medical information to determine the applicant's health status;

(D) Self Study Questionnaire, OKDHS Form DDS-18, one to be completed by each adult living in the home, including information regarding the person's:

(i) background;
(ii) life skills;
(iii) training;
(iv) religious preferences;
(v) relationships;
(vi) experiences; and
(vii) attitudes;

(E) Child's Questionnaire, OKDHS Form DDS-19, completed by or for each child living in the home, including questions about the child's home, school, and leisure environment. A check of the Juvenile On-line Tracking System (JOLTS) is performed for each child living in the home;

(F) Medical Examination Report, OKDHS Form DDS-10, completed if the DDS-11 indicates conditions which could interfere with the provision of services;

(G) Agency Companion/Specialized Foster Care Insurance Information, OKDHS Form DDS-17, completed by the applicant verifying the home and automobile insurance coverage of the applicant; and

(H) Evacuation/Escape Plan, OKDHS Form DDS-20, showing a drawing of the applicant's home with the planned evacuation to a safe place for that

home. An example escape plan is provided for the applicant's assistance.

(3) If an incomplete application packet is received, designated DDSD staff sends a letter to the provider or provider agency listing information still needed to complete the application packet. The packet is not processed until the packet is complete.

(4) Designated DDSD staff begin the home profile when a completed application packet has been received.

(d) **Home profile process.** The home profile process includes the steps listed in this subsection.

(1) For each reference provided by the applicant, the designated DDSD staff completes a Reference Letter, OKDHS Form DDS-29, which includes questions dealing with the applicant as a potential care giver, and the applicant's family.

(2) The designated DDSD staff, through interviews, visits, and phone calls, gathers the information required to complete the Home Profile Notes, OKDHS Form DDS-47. The DDS-47 contains information about the applicant regarding:

(A) interest and motivation;

(B) life skills;

(C) behavior support practices;

(D) marital status and background;

(E) income and money management;

(F) home living standards;

(G) report of reference checks;

(H) participating as a member of the service recipient's Team; and

(I) assessment and recommendation of the designated DDSD staff.

(3) The Policy and Procedure Review, OKDHS Form DDS-24a, documents that the designated DDSD staff has explained, and the applicant understands, the required rules, including the home requirements given in subsection (f) of this Section. The DDS-24a is dated and signed by the applicant and the designated DDSD staff.

(4) The DDSD area residential services programs manager sends to the applicant:

(A) a provider approval letter confirming the applicant is approved to serve as a provider; or

(B) a denial letter stating the application is denied.

(5) Persons applying to serve members of the Homeward Bound class sign OKDHS Form DDS-52, Release of Home Profile, which gives consent for the home profile report and case file to be given to the persons named in the DDS-52.

(6) DDSD staff records the dates of completion of each part of the home profile process.

(e) **Child-placing agencies.** Agencies licensed by the Oklahoma Department of Human Services as child-placing agencies may be authorized to complete the home profile process.

(f) **Home requirements.** The physical facilities of the home do not present hazards to the safety or welfare of the service recipient.

(1) The home is comfortable, clean, maintained in good condition, and presents a positive image in the neighborhood.

(2) The provider receives assistance from DDSD to secure required specialized equipment, supplies, or architectural modifications as stated in the service recipient's Plan. (Addition of square footage to any existing structure is not allowable).

(3) The home shared by the provider and the service recipient is accessible to school, employment, church, day programming, recreational activities, health facilities, and other community resources as needed.

(4) The provider maintains a telephone in working order at all times and keeps the provider agency, if applicable, and DDSD advised on the correct phone number.

(5) The provider maintains a working fire extinguisher, carbon monoxide detector, flashlight, and at least on operational smoke alarm, or more as appropriate for the structure. The provider maintains an evacuation plan for the residence and conducts training with the service recipient. Fire drills are performed quarterly and are documented. Fire drill documentation is available for review.

(6) The bedroom for one service recipient must have a minimum of 80 square feet of space and two means of exit. Each additional service recipient in a bedroom must have a minimum of 60 square feet of space.

(7) The home provides space for the service recipient's personal possessions and for his or her privacy.

(8) The provider assists the service recipient in furnishing and decorating his or her room.

(9) If the service recipient is unable to independently take his or her medication, the medication is given only by a person who has successfully completed a DDSD approved training for medication administration in accordance with OAC 340:100-3-38.10.

(10) Medication is stored in accordance with procedures outlines in OAC 340:100-5-32.

(11) The household is covered by home owner's or renter's insurance including personal liability.

(12) Animals or household pets are permitted in the home provided there is proof of annual vaccinations for each animal.

(13) The service recipient's bedroom has adequate heating and air-conditioning.

(14) A bed must be provided for each person receiving services.

(15) It is preferred that no more than two service recipients share a bedroom. Consideration is given to related service recipients sharing a room, according to age and emotional needs of each.

(16) Separate bedrooms must be provided to service recipients over age six who are of opposite sex.

(17) Children receiving services must not share sleeping quarters with adults in the household. Any exceptions must have prior approval from the DDSD area manager or designee.

(18) Sanitary facilities are adequate, including toilet and bathing facilities, water supply, garbage and sewer disposal, especially if the home is not on a municipal system.

(19) Provisions for the safety of the service recipient are present as needed, such as:

(A) guards and rails on stairways, wheelchair ramps, grab bars, wide doorways, if needed;

(B) heating and air conditioning equipment, guarded and installed in accordance with manufacturer requirements; and

(C) yard area protected from hazards, such as ponds, traffic, creeks, and swimming pools.

(g) **Evaluating the applicant(s) and the home.** The guidelines presented in this subsection assist DDSD staff in evaluating the applicant(s) and the home. The profile includes, but is not limited to, the areas listed in this Subsection.

(1) **Interest and motivation.** An applicant's motivation for wanting to provide services may be based on reasons which are recognized and verbalized.

(A) Circumstances which prompted the applicant to apply at the particular time of their application can help clarify their reasons for desiring to provide services.

(i) The source of information about the program may be the key to the decision, as related on the Provider Application, DDS-8.

(ii) During the process of the profile, underlying needs of the applicant which were not previously stated or recognized may be revealed and should be assessed realistically and honestly with the applicant.

(B) When an applicant(s) specifically requests to provide services to a person with developmental disabilities, the motivations of the applicant(s) are explored in depth.

(i) Family or work background may have familiarized the applicant with people with developmental disabilities.

(ii) If the applicant(s) has not had experience with people with developmental disabilities, the applicant(s) is made aware of the physical and emotional requirements of the person for whom the applicant would be caring.

(2) **Life skills.**

(A) **Service providers, and any other adult in household.** Knowledge of past experience and influences is vital in understanding the adults' current functioning not only as individuals, but also as members of a family. Significant areas of study are:

(i) life skills and general attitudes of the adult(s), including what each person is like as an individual;

(ii) childhood relationships with parents, siblings, relatives, or other meaningful persons, asking what each adult's childhood was like;

(iii) experiences, such as death, illness(es), divorce(s), or poverty, which had an impact on each person's attitudes, feelings, and expectations;

(iv) whether the adult(s) has ever known anyone who was sexually or physically abused. If so, the applicant's experience is explored in depth and information included in the written profile;

(v) concepts of appropriate behavior support and discipline and the manner in which behavior supports should be administered, especially as applied to individuals with developmental disabilities;

(vi) the meaning of education and training to the adults;

(vii) general physical and emotional health of members of the household;

(I) Medical Exam Report, Form DDS-10, or a written statement from a physician must be obtained for each member of the household.

(II) Adult family members must complete the Family Health History (DDS-11).

(III) If a physical disability exists, does the disability affect the ability to function as a provider of services in giving adequate care and supervision If so, in what manner

(IV) Do any members of the household experience a medical or emotional condition(s) Is any member of the household under professional care for any condition which requires the use of prescribed drugs or narcotics If any member of the household uses prescribed drugs or narcotics, what is the extent of the use

(viii) emotional ability of family members to provide services;

(I) If any members of the household previously received psychiatric or psychological counseling, the circumstances and results must be explored in depth.

(II) A Release of Information is obtained allowing contact with the person who provided the counseling;

(ix) physical description;

(x) employment record with respect to stability of work and satisfaction derived from employment;

(xi) social relationships with members of the community, including hobbies, skills, talents, and special interests;

(xii) religious influences, affiliations, and activities;

(I) Does the applicant have any specific religious beliefs which might affect a service recipient in areas such as dress code, holiday observances, medical care, daily living, or social activities

(II) Will the applicant assure that a service recipient is able to attend the church of the service recipient's choice as often as desired and practice religion as desired

(xiii) reaction to stressful situations;

(xiv) current relationships within the family, including marital and parent-child relationships;
(xv) relationship with children living outside the home;
(xvi) special training, ability, or experience in working with or caring for individuals with special needs, such as physical disabilities, mental retardation, behavior problems, or emotional disturbances;
(xvii) explanation of any arrests or convictions, including status of parole or probation, from information obtained from:
(I) the Oklahoma State Bureau of Investigation (OSBI);
(II) the Central Child Abuse Registry checks;
(III) information on the Specialized Foster Care/Agency Companion Services Application, DDS-8; and
(IV) Community Services Worker Registry;
(xviii) explanation of any allegations of abuse, neglect, exploitation of child, adult, or animal;
(xix) If there were no findings on the background checks, the absence of findings is stated in the summary of the profile. A cope of the OSBI check is included in the local and State Office records.
(B) **Children in the home.** DDSDS staff describes the children in the home as to:
(i) age and physical appearance;
(ii) personality, interests, and skills;
(iii) strengths or problems in parent-child relationships, school adjustment, behavior, and health;
(iv) ability to get along with other individuals, especially individuals with developmental disabilities;
(v) physical or developmental disabilities;
(vi) attitude toward having a relationship with an individual who has developmental disabilities; and
(vii) depending on age, attitude towards persons receiving services.
(3) **Behavior support and discipline.** The applicants are advised of the rules of OKDHS on discipline, OAC 340:110-5-62, Discipline and behavior management, and OAC 340:100-5-50 through 100-5-57, Individual Planning and Protective Intervention.
(A) The DDSD staff discusses with the applicant(s) how he or she disciplines his or her natural children.
(i) If there is a divergence between OKDHS policy and the methods used to discipline natural children, the DDSD staff explores how the applicant(s) will deal with any problems which might result from this difference.
(ii) In addition, the DDSD staff discusses with the applicant(s) how he or she was disciplined as a child and any effects it has had on his or her attitudes toward discipline.
(iii) From information obtained through training and discussion with the applicant(s), the DDSD staff indicates the applicant's understanding and acceptance of the policy in the written report. This information is considered in the final recommendation.
(iv) The DDSD staff member determines if there is agreement among all adults in the household on methods of discipline.
(v) Any applicant who does not agree to abide by OKDHS policy is not approved to provide services.
(B) Service recipients may require behavior supports. An Individual Plan (IP) is developed by the Team which includes the service provider.
(C) OAC 340:100-5-58, Prohibited procedures, must be upheld in the home.
(4) **Marital status and background.** The DDSD staff documents aspects of the applicant's marital status, as described in this paragraph.
(A) **Current marital status.** The DDSD staff describes the applicant's marriage as to:
(i) length of present marriage;
(ii) stability of marriage;
(iii) method of resolution of marital problems; and
(iv) whether the decision to become a provider is a joint decision.
(B) **Previous marriage, if applicable.** The DDSD staff describes previous marriage(s) as to:
(i) number and length of previous marriages;
(ii) reason marriage(s) ended, if applicable;
(iii) children involved, visitation, and child support arrangements, if applicable.
(C) **Single or never married.** If the applicant is not married, the DDSD staff discusses:
(i) the best and most difficult aspects of being single;
(ii) on whom the applicant relies for support; and
(iii) significant adult relationships in the applicant's life.
(5) **Income and money management.** Verification of income and expenses is required.
(A) The Provider Financial Assessment Form, DDS-9, must be completed.
(B) Any financial problem areas will be discussed and included in the written report.
(C) The applicant, and family if applicable, shows financial stability by being able to pay their bills and to live within their financial means.
(6) **Teamwork and supervision, Back-up Plan review, and use of relief.** The profile is to include a summation of the DDSD staff's explanation and the applicant's understanding of:
(A) the fundamental responsibility of the OKDHS to meet the physical, emotional, and medical needs of the service recipient;

(B) the responsibility of the provider for the service recipient's daily care so that all areas of need are met;
(C) the primary responsibility of the Division of Children and Family Services (DCFS) staff and the DDSD case manager as the liaison in all planning among the service recipient, the natural family, the provider, the Team, the provider agency, and the court, where applicable;
(D) situations necessitating placement;
(E) varying lengths of time for which service recipients require services;
(F) characteristics of service recipients requiring services;
(G) differences between service provision and adoption;
(H) the importance of teamwork in:
(i) working toward reunification of the service recipient with his or her biological family, if appropriate; or
(ii) if reunification is not possible, developing an alternative permanent plan for the service recipient; and
(I) OKDHS policies and procedures regarding:
(i) payment of room and board;
(ii) provision of clothing;
(iii) medical care;
(iv) behavior support;
(v) confidentiality;
(vi) education; and
(vii) religious training.

(7) **Assessment and recommendation.** It is the duty of the DDSD staff to evaluate the ability of the applicant(s) to provide services. The DDSD staff has the right and duty to approve only those applicants who can fulfill the expectations of the role of service provider. In addition, it is the DDSD staff's responsibility not to approve any applicant who, in the DDSD staff's professional judgment, is not qualified to provide services. In the event assistance is needed to reach a decision, consultation is obtained from the DDSD area residential programs manager or area manager. In addition, consultation is available from the DDSD State Office residential programs manager. The applicant is notified in writing of the final determination. In the written summary all areas are addressed.
(A) **Completed profile meets standards.** If, as a result of the profile process, a determination is made that the applicant meets standards given in this Section, the final assessment includes:
(i) the applicant's understanding and acceptance of the purpose of service provision and willingness to cooperate in adhering to OKDHS and OHCA rules;
(ii) areas in which the applicant shows special strength and areas in which he or she needs help and training;
(iii) a delineation of the number, age range, sex, and special areas of need of consumers for whom the applicant is qualified to provide care; and
(iv) the effective date for opening the home.
(B) **Completed study does not meet standards.** If, as a result of the profile process, a determination is made that the applicant does not meet standards given in this Section, the final assessment includes:
(i) a detailed analysis of the basis for the decision; and
(ii) the effective date for determining the applicant as not meeting standards.
(C) **Application withdrawn or canceled before profile completed.** If an application is canceled or withdrawn prior to completion of the profile, DDSD staff takes the steps listed in this paragraph.
(i) If an application is withdrawn or canceled before the profile is completed, the final assessment includes:
(I) the reason the application was canceled or withdrawn;
(II) the DDSD staff's impression of the applicant based on information obtained; and
(III) the effective date of cancellation or withdrawal.
(ii) A written notice is sent to the applicant to confirm cancellation or withdrawal of the application, a copy of which is included in the local and State Office records.

(h) **Annual evaluation.** The annual evaluation is a comprehensive review of the provider's continued ability to meet standards.
(1) The annual evaluation consists of information specifically related to the provider's home.
(A) An assessment is made of the manner in which the provider dealt with each service recipient during the evaluation period.
(B) A summary, identified with the service recipient's first name and age, outlines:
(i) the service recipient's progress in the home;
(ii) any difficulties encountered during the evaluation period; and
(iii) reasons why a service recipient left the home, if applicable. A detailed explanation is given if the provider requested the service recipient's removal.
(C) Evaluation of the successful or ineffective means used by the provider in serving the service recipient enables OKDHS to determine what type of service recipient the provider can best serve.
(D) Areas in which the provider needs additional help from the DDSD staff to strengthen his or her abilities are recorded.
(2) Medical Examination Report, DDS-10, must be completed for providers a minimum of every three years following the initial approval, unless medical circumstances warrant more frequent completion.
(3) Input from the DDSD case Manager, DCFS Child Welfare Specialist, Adult Protective Services, and Office

of Client Advocacy staff is included in the evaluation, if applicable.

(4) All changes since the original profile or latest evaluation are included in the evaluation.

(5) An updated recommendation as to the number, age range, sex, and special needs of service recipients for whom the provider is approved to provide care is included in the evaluation report.

(6) The background check described in subsection (b) of this Section is repeated every year, except the finger print check.

(7) Providers are informed of the continued recommendation of the use of the home.

(8) Copies of the evaluation report, and DDS-10, if appropriate, are included in the local and State Office records.

SUBCHAPTER 7. WAIVER EMPLOYMENT SERVICES

317:40-7-1. Overview of Waiver Employment Services

~~(a) There may be instances resulting from a variety of factors when service recipients have not achieved the goal of full employment. The provider agency makes available those supports needed for the service recipient to achieve full employment.~~

(~~b~~ a) ~~In the past, people were usually either fully employed, idle, or involved in nonproductive activities.~~ There are many ~~more~~ employment service options available. The options given in (1) through (4) of this subsection are not a continuum, but are prioritized as most desirable by people with and without disabilities. Provider agencies assess each service recipient in maximizing employment options.

(1) The optimum goal is full-time employment at prevailing wage in business or industry at an occupation of the service recipient's choice with natural supports ~~meeting the service recipient's needs~~. If prevailing wage is not available, then employment is at minimum wage with or without paid supports.

(2) If a service recipient cannot secure enough work hours through a single job of the service recipient's choice, then two part-time jobs or a job that is not the service recipient's first preference may need to be sought to equal a full time job.

(3) If a fully integrated placement is not currently available, employment of the service recipient's choice in an enclave in a business or industry, with or without paid supports, is an option.

(4) If there are no paid jobs to be found, temporary unpaid training or volunteer service in accordance with Department of Labor regulations, with or without paid supports, may be an option for the purpose of resume building or job exploration, or temporary participation in real work in a center-based setting can be obtained.

(b) There may be instances resulting from a variety of factors when people served have not achieved the goal of full employment. The provider agency makes available those supports needed for the service recipient to achieve full employment.

(c) Employment services are prescribed in accordance with OAC 340:100-17, Part 1, and OAC 340:100-3-33.1.

(d) People receiving services may choose retirement to pursue activities according to each person's interests, including employment or integrated community activities for senior citizens. If the service recipient is age 62 or older, an exception as described in OAC 317:40-7-21 is not required.

317:40-7-2. Definitions

The following words and terms, when used in this Subchapter shall have the following meaning, unless the context clearly indicate otherwise.

"Commensurate Wage" means wages paid to a worker with a disability based on the worker's productivity in proportion to the wages and productivity of workers without a disability performing essentially the same work in the same geographic area. Commensurate wages must be based on the prevailing wage paid to experienced workers without disabilities doing the same job.

"Employment Assessment" means the evaluation that identifies the unique preferences, strengths, and needs of the service recipient in relation to work. The assessment determines work skills and work behaviors, is supplemented by personal interviews and behavioral observations, and incorporates information that addresses the service recipient's desired medical, physical, psychological, social, cultural, and educational outcomes, as well as present and future employment options. The assessment, which is updated annually or more frequently as needed, includes support needs, environmental preferences, and possible accommodations.

"Enhanced Rate" means a differential rate established to provide an incentive to agencies to provide community employment services to service recipients with significant needs.

"Group Placement" means two to eight ~~or fewer~~ service recipients situated close together, who are provided ~~on-going~~ continuous, long-term training and support in an integrated job site. Service recipients may be employed by the company or by the provider agency. The terms "work crew" and "enclave" also describe a group placement.

"Integrated Employment Site" means an activity or job that provides regular interaction with people without disabilities, excluding service providers, to the same extent that a worker without disabilities in a comparable position interacts with others.

"Job Coach" means an individual who holds a ~~Department approved~~ DDSD-approved training job coach certification and provides ongoing support services to eligible persons in supported employment placements. Services directly support the service recipient's work activity including marketing and job development, job and work site assessment, training and worker assessment, job matching procedures, development of co-worker natural and paid supports, and teaching job skills.

"Job Sampling" means a paid situational assessment whereby a service recipient performs a job at a prospective

employer's integrated job site, in order to determine the service recipient's interests and abilities. Situational assessments adhere to the Department of Labor (DOL) regulations regarding wages. The Team determines the appropriate type and number of situational assessments for each service recipient.

~~**"Job Share"** means two service recipients in supported employment sharing one job coach and one job.~~

"On-Site Supports" means a situation in which the job coach is physically at the job site providing job training to a service recipient.

"Situational assessment" means a comprehensive community-based evaluation of the service recipient's functioning in relation to the supported job, including the job site, the community through which the service recipient must travel to and from the job, and the people at the job site such as the job coach, co-workers, and supervisor.

"Sub-Contract With Industry" means the provider agency enters into a sub-contract with an industry or business to pay industry employees to provide supports to service recipients. If the industry agrees, the provider agency may contract with an employee(s) of the industry directly to provide the services. The state continues to pay the provider agency and the agency provides all pertinent information that is required for persons served by the agency. The Team determines what, if any, training is required for the employees of the industry providing services.

"Supported Employment" means competitive work in an integrated work setting with ongoing support services for service recipients for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of disabilities.

"Unpaid Training" means unpaid experience in integrated employment sites in accordance with DOL regulations. Service recipients do a variety of tasks, which do not equal the full job description of a regular worker.

"Volunteer Job" means an unpaid activity in which a service recipient freely participates.

317:40-7-3. Eligibility for Waiver Employment Services

(a) Individuals served through Waiver Employment Services must be:

(1) 16 years of age or older for persons receiving services through the Community Waiver, or 18 years of age or older for persons receiving services through the In Home Supports Waiver or the Homeward Bound Waiver; and

(2) approved for ~~a Home and Community Based Waiver~~ waiver services in accordance with OAC 317:40-1-1.

(b) Services available to the service recipient through the Department of ~~Rehabilitative~~ Rehabilitation Services (DRS) or through the state or local education agency are not funded under Waiver Employment Services.

(1) Service recipients may utilize waiver employment services during times when school is not in session, ~~if not participating in~~ unless an IEP approved program through the school system is in place.

(2) All service recipients seeking supported competitive employment make application to DRS. Prior to the authorization of Waiver Employment Services, the case manager completes ~~DHS~~ OKDHS Form DDS-55, Documentation of Application for ~~D.R.S.~~ DRS Supported Employment Services, to be maintained as a permanent entry in the local case record.

(3) Since services provided by DRS are time-limited by federal law, DDSD provides long term, on-going supports for individuals who need long-term supports, as described in OAC 317:40-7-11.

317:40-7-4. Services provided through Waiver Employment Services

(a) Employment Services are offered under the Medicaid Home and Community-Based Waiver for persons with mental retardation at rates prescribed by the Oklahoma Health Care Authority.

(b) Types of Waiver Employment Services offered~~, with their procedure codes,~~ include:

(1) Vocational Habilitation Training Specialist (VHTS), Supplemental Support;

(2) Employment Training Specialist (ETS);

(3) Center-Based Services;

(4) Community-Based Services;

(5) Enhanced Community-Based Services~~, enhanced rate~~;

(6) Job Coaching;

(7) Enhanced Job Coaching~~, Enhanced Services~~; and

(8) Stabilization Services.

(c) State-funded services described in OAC 340:100-17-30 may supplement Employment Services funded through the Community Waiver.

~~(d) The unit of service for Waiver Employment Services is one hour, paid based on the number of hours the person receiving services is engaged in activities, except as described in subparagraphs of OAC 317:40-7-12.~~

317:40-7-5. Community-Based Services

Community-Based Services are provided in sites and at times typically used by others in the community and promote independence, inclusion within the community, and the creation of natural supports. Community-based services must reflect the service recipient's choice and values in situations that are typical for age and culture.

(1) Approved Community-Based Services are individualized work-related supports targeting inclusion into integrated experiences. Community-Based Services are pre-planned, documented activities relating to the service recipient's identified employment outcomes. Approved activities include:

(A) active participation in volunteer activities;

(B) active participation in paid or unpaid work experience sites in community settings;

(C) training through generic entities such as trade schools, Vo Techs, junior colleges, or other community groups. The provider is paid for the time during which direct supports are necessary and provided;

~~(D) interviewing for a job;~~

(~~E~~ D) stamina-enhancing programs ~~supported by an occupational therapist, physical therapist, or physician~~ that occur in integrated settings;

(~~F~~ E) transportation to and from employment or community-based activities; ~~and~~

(~~G~~ F) meals and breaks which must occur during the conduct of the service recipient's employment activities;

(G) job tours or job shadowing scheduled with and provided by a community business entity;

(H) using Workforce OK services; and

(I) attending job fairs.

(2) Any other work-related community-based activities must be approved through the exception process described in OAC 317:40-7-21.

(3) Community-Based Services continue if the service recipient has to go to a center-based facility for support such as repositioning or personal care, as long as the service recipient returns immediately to a planned community-based activity. The amount of time for the repositioning and personal care are based upon a health care positioning plan approved by the Team.

(4) Community-Based Services are provided to groups of no more than five people.

317:40-7-6. Center-Based Services

(a) Center-Based Services are provided in segregated settings, where the majority of people served have a disability. Any employment service provided where a majority of the people at the site are persons with a disability is billed as Center-Based Services.

(b) Center-Based Services are pre-planned, documented activities that relate to the service recipient's identified employment outcomes.

(c) Examples of Center-Based Services are active participation in:

(1) paid contract work which occurs in a workshop or other center-based setting.

(2) Team-prescribed therapy programs such as speech, physical therapy, or switch activation which are implemented by employment provider staff in the workshop or other center-based setting.

(3) unpaid training or paid work experience which occurs in a setting without opportunities for regular daily interactions with co-workers without disabilities or the general public.

(4) computer classes, GED preparation, job club, interviewing skills, or other classes whose participants all have disabilities, even if the location is in the community.

(d) Paid contract work is usually subcontracted, and the persons receiving services earn commensurate wage according to Department of Labor regulations.

(e) For Medicaid reimbursement in Center-Based Services, a service recipient's pay cannot exceed 50% of minimum wage.

(f) Participation in Center-Based Services is limited to 15 hours per week for persons receiving services through the ~~Community~~ Homeward Bound Waiver, unless approved through the exception process explained in OAC 317:40-7-21.

317:40-7-7. Job Coaching Services

Job Coaching Services are pre-planned, documented activities related to the service recipient's identified employment outcomes that include training at the work site and ~~all other activities~~ support by an agency staff member certified as a job coach. Job Coaching Services promote a person's capacity to secure and maintain integrated employment at a job of the person's choice paying at or above minimum wage, or working to achieve minimum wage. Job Coaching Services provide active participation in paid work.

(1) Job Coaching Services are available both for individual and group placements.

(2) Group placements of two to eight individuals needing continuous support at an integrated work site are included in Job Coaching Services even though the individuals may earn less than minimum wage.

(3) Job Coaching Services for individual placements are authorized when on-site supports by a certified job coach are provided more than 20% of the individual's compensable work time. The Job Coaching Services rate continues until a ~~person~~ service recipient reaches 20% or less job coach intervention for ~~10~~ four consecutive weeks, at which time Stabilization Services begin.

~~(4) It is anticipated that Job Coaching Services will enable many people served to acquire capacities necessary for transition to Stabilization Services.~~

(~~5~~ 4) Job Coaching Services are ~~paid at the rate of one hour for each hour of work~~ based on the amount of time for which the ~~person receiving services~~ service recipient is compensated by the employer, except as explained in subparagraph (1)(A) of Stabilization Services, OAC 317:40-7-11.

(5) For service recipients in individual placements, the Team evaluates the need for job coach services at least annually and documents a plan for fading as the service recipient's independence increases.

317:40-7-8. Employment Training Specialist Services

Employment Training Specialist (ETS) Services may be used ~~to supplement Job Coaching Services~~ as described in this Section.

(1) Employment Training Specialist Services:

(A) must be provided by a certified Job Coach; and

(B) are not available when subcontracting.

(2) Employment Training Specialist Services may be used for:

(A) ~~intensive~~ training of service recipients employed in individual placements or two service recipients on the same job site on new jobs when the service

recipient(s) receives at least minimum wage and the employer is not the employment services provider;

(i) ~~Intensive training~~ ETS is used to help a service recipient with a new job. ~~Intensive training~~ ETS is not available if the service recipient held the same job for the same employer in the past.

(ii) ~~Intensive training~~ ETS is available for up to the number of hours the service recipient works per week for six weeks in each Plan of Care year, as long as the job coach provides 100% on-site intervention.

~~(iii) Intensive training is only accessed while the job coach is providing 100% intervention at the job site. Job Coaching Services are accessed when:~~

~~(I) intensive training is no longer necessary;~~

~~(II) intensive training units are depleted; or~~

~~(III) the intensity or frequency of services lessens.~~

(~~iv~~ iii) If the service recipient does not use all of the ~~intensive~~ training units on the first job placement in the Plan of Care year, the balance of the ~~intensive~~ training units may be used on a subsequent job placement with the current provider, or with a new provider.

(B) assessment and outcome development for service recipients residing in the community who are new to the agency;

(i) The ~~units which may be claimed for initial assessment are limited to~~ provider may claim a documented maximum of 20 hours per service ~~recipients~~ recipient for initial assessment. The assessment must be approved in advance by the Team and relate to the service recipient's desired outcomes.

(ii) If a service recipient changes agencies within the Plan of Care year, an additional 20 ~~units~~ hours may be prescribed for assessment when determined necessary by the Team.

(iii) A provider cannot claim the same period of time for more than one type of service.

(C) Team meetings, when the case manager has requested participation of direct service employment staff in accordance with OAC 340:100-5-52, up to 20 ~~units~~ hours per year;

(D) job development for a service recipient on a one-person or two-person job site upon the service recipient's completion of ~~six~~ three consecutive months on the job. Up to 40 ~~units~~ hours may be used during a Plan of Care year after documentation of job development activities has been submitted to the case manager. If the job site involves two service recipients, the job development units are claimed against one service recipient's Plan of Care or shared between the two service recipients' Plans of Care. The job(s) must:

(i) pay at least minimum wage;

(ii) employ each service recipient at least 15 hours per week; and

(iii) be provided by an employer who is not the service recipient's contract provider;

(E) ~~implementation~~ development of ~~an approved~~ a Plan for Achieving Self-Support (PASS) up to 40 ~~units~~ hours per Plan of Care year after documentation of PASS development, if not developed by an Oklahoma Benefit Specialist or the Department of Rehabilitation Services, and implementation of an approved PASS after documentation has been submitted to the case manager; ~~and~~

(F) ~~implementation~~ development of an ~~approved~~ Impairment Related Work Expense (IRWE) up to 20 ~~units~~ hours per Plan of Care year after documentation of IRWE development and implementation of an approved IRWE after documentation has been submitted to the case manager; and

(G) interviewing for a job that is eligible for ETS services.

317:40-7-11. Stabilization Services

Stabilization Services are ongoing support services needed to maintain one or two service recipients in an integrated competitive employment site. Stabilization Services are provided for up to two years per job. Stabilization Services continue until the next Plan of Care following the end of two years of Stabilization Services. If the service recipient needs job coach services after the expiration of Stabilization Services, Job Coach Services may be authorized for the hours necessary to provide direct support to the service recipient or consultation to the employer as described in outcomes and methods in the Individual Plan.

(1) Stabilization Services are provided when the job coach intervention time required at the job site is 20% or less of the service recipient's total work hours for ~~10~~ four consecutive weeks or when the service recipient moved from Department of Rehabilitation Services (DRS) services.

(A) If, after the service recipient moves to Stabilization, the Team determines that support is needed above 20% for longer than ~~one week~~ two weeks, the Team may revise the service recipient's Plan of Care to reflect the need for Job Coaching Services.

(B) A person receiving services from DRS moves to services funded by DDSD upon completion of the Job Stabilization milestone. The employment provider agency submits the request for transfer of funding during the Job Stabilization milestone as described in the DRS Supported Employment contract.

(2) Stabilization Services must:

(A) identify the supports needed, including development of natural supports; ~~and~~

(B) ~~include at least twice monthly job coach monitoring at the service recipient's work site to assess employment stability~~ specify, in a measurable manner, the services to be provided.

~~(3) The requirement for twice monthly on-site monitoring explained in paragraph (2) of this subsection may be waived if off-site monitoring is determined by the Team to be more appropriate. If the Team determines that off-site monitoring is appropriate, the job coach must, at a minimum, provide:~~

~~(A) two meetings with the service recipient each month, and~~

~~(B) one contact with the employer each month.~~

(~~4~~3) Reimbursement for Stabilization Services is based upon the number of hours the service recipient is employed at a rate of minimum wage or above ~~or working to achieve minimum wage~~.

~~(5) When job coaching services are funded by the Department of Rehabilitative Services (DRS), Stabilization Services paid through a Home and Community Based Waiver begin when the service recipient meets criteria set forth in DRS rules, OAC 612:10-7.~~

317:40-7-12. Enhanced rates

An Enhanced Rate is available for both Community-Based Services and Job Coaching Services.

(1) Eligibility for an enhanced rate is determined by Team assessment as detailed in OAC 340:100-5-56, OAC 340:100-5-57, and subsection (d) of OAC 340:100-5-26 of the service recipient's needs.

(2) To be eligible for the enhanced rate, the service recipient must have:

(A) a protective intervention plan that:

(i) contains a restrictive or intrusive procedure as defined in OAC 340:100-1-2 implemented in the employment setting;

(ii) has been approved by the State Behavior Review Committee (SBRC) in accordance with OAC 340:100-3-14 or by the Developmental Disabilities Services Division (DDSD) staff in accordance with subsection ~~(d)~~ (g) of OAC 340:100-5-57; and

(iii) has been reviewed by the Human Rights Committee (HRC) in accordance with OAC 340:100-3-6;

(B) procedures included in the Individual Plan which address dangerous behavior that places the service recipient or others at risk of serious physical harm but are neither restrictive or intrusive procedures as defined in OAC 340:100-1-2. The Team submits documentation of this risk and the procedures to the positive support field specialist to assure that positive approaches are being used to manage dangerous behavior;

(C) a visual impairment that requires assistance for mobility or safety; or

(D) two or more of the circumstances given in this subparagraph.

(i) The service recipient has medical support needs which are rated at Level 4, Level 5, or Level 6 on the Physical Status Review (PSR), explained in OAC 340:100-5-26.

(ii) The service recipient has nutritional needs supported by the PSR requiring tube feeding or other dependency for food intake which must occur in the employment setting.

(iii) The service recipient has mobility needs, supported by the PSR, such that he or she requires two or more people for lifts, transfers, and personal care. Use of a mechanical ~~life~~ lift or other assistive technology has been evaluated for the current employment program and determined not feasible by the DDSD division director or designee.

(3) The enhanced rate can be claimed only if the person providing services fulfills all applicable training criteria specified in OAC 340:100-3-38.

(4) Persons residing in alterative group homes, as described in OAC 317:40-15-152 are eligible to receive the enhanced rate. Employment providers fulfill all applicable criteria given in OAC 317:40-5-152.1.

(~~4~~5) There are no exceptions for the enhanced rate other than as allowed in this Section.

317:40-7-13. Supplemental Supports for Center-Based Services

(a) In those instances when a service recipient receiving Center-Based Services needs additional supports, the provider ~~is encouraged to assign~~ assigns staff in patterns that most effectively meet the needs of each service recipient.

(b) If re-arranging staff patterns is not sufficient to meet the service recipient's needs, the provider may file a request and plan for Supplemental Supports utilizing Vocational Habilitation Training Specialist Services. Supplemental Supports can be claimed only if provided by a staff member who has completed all specialized training and individual-specific training prescribed by the Team in accordance with OAC 340:100-3-38 ~~or through the Physical Status Review (PSR) as described in OAC 340:100-5-26~~.

(c) Supplemental Supports for Center-Based Services include two types of services, behavioral continuous support, and personal care intermittent support.

(1) **Continuous Supplemental Supports.** Continuous Supplemental Supports cannot exceed 15 hours per week for persons receiving services through the Homeward Bound waiver unless specifically approved through the exception process described in OAC 317:40-7-21.

(A) To be eligible for continuous supplemental supports, the service recipient must have:

(i) a protective intervention plan that:

(I) contains a restrictive or intrusive procedure as defined in OAC 340:100-1-2 implemented in the employment setting;

(II) has been submitted to the Human Rights Committee (HRC) in accordance with OAC 340:100-3-6; and

(III) has been approved by the State Behavior Review Committee (SBRC) in accordance with OAC 340:100-3-14 or by the Developmental Disabilities Services Division (DDSD)

staff in accordance with subsection (d) of OAC 340:100-5-57; or

(ii) procedures included in the protective intervention plan which address dangerous behavior that places the service recipient or others at risk of serious physical harm. The Team submits documentation of this risk and the procedures to the DDSD positive support field specialist to assure that positive approaches are being used to manage dangerous behavior.

(B) The Team documents discussion of the need for continuous Supplemental Supports.

(2) **Intermittent Supplemental Supports.** To receive personal care intermittent support, a service recipient must have a personal care need which requires staffing of at least one-to-one during that time frame when the support is needed.

(A) If a service recipient needs intermittent personal care support during Center-Based Services, the Team documents discussion of:

(i) the specific support need(s) of the service recipient, such as staff-assisted repositioning, lifting, transferring, individualized bathroom assistance, or nutritional support;

(ii) the number of staff necessary to provide the support; and

(iii) the calculations which combine the time increments of support to determine the total number of units needed on the Plan of Care.

(B) The case manager sends the documentation to the case management supervisor for approval.

(C) The case management supervisor signs and forwards a copy of the approval, denial, or recommended modifications to the case manager within two working days of receipt.

(D) A service recipient may receive Center-Based Services and Intermittent Supplemental Supports at the same time.

(d) Supplemental Support for Center-Based Services described in this Section cannot be accessed in Community-Based Services.

~~(e) Approved hours for supplemental support or enhanced rates remain in effect throughout the Plan of Care year, even if the service recipient's support needs appear to decrease.~~

(~~f~~e) Sufficient staff must be available in the center-based facility to provide the supplemental support in order for a provider to claim the units.

317:40-7-15. Service requirements for Waiver Employment Services

~~(a) Each person receiving residential supports as defined in OAC 340:100-5-22.1, receives a minimum of 30 hours of employment services each week, excluding transportation to and from the person's residence.~~

~~(1) The 30 hours of employment service each week can be a combination of Community-Based Services, Center-Based Services, ETS Intensive Training Services, Stabilization Services, and Job Coaching Services, as long as Center-Based Services do not exceed 15 hours per week.~~

~~(2) Fewer than 30 hours of employment activities per week requires approval through the process specified in OAC 317:40-7-21.~~

(~~b~~a) The case manager, the ~~person receiving services~~ service recipient, a family member or guardian as appropriate, and the provider develop a preliminary plan of services including:

(1) the site and amount of the services to be offered;

(2) the types of services to be delivered; and

(3) the expected outcomes.

(~~c~~b) To promote community integration and inclusion, employment services are only delivered in non-residential sites.

(1) Waiver Employment Services cannot be reimbursed if those services occur in the residence or property of the ~~person receiving services~~ service recipient or of a provider-paid staff member, including garages and sheds, whether or not the garage or shed is attached to the home.

(2) No exceptions to this subsection can be authorized.

(~~d~~c) Providers of Waiver Employment Services comply with rules at OAC 340:100-17, Part 1, General Employment Expectations.

(~~e~~d) The service provider is required to notify the case manager in writing when the ~~person receiving services~~ service recipient:

(1) is placed in a new job;

(2) loses his or her job. A Team meeting must be held if the ~~person~~ service recipient loses the job;

(3) experiences significant changes in the community-based schedule or employment schedule; or

(4) experiences other circumstances, as ~~required by~~ described in OAC 340:100-5-34, Incident Reporting.

(~~f~~e) The provider submits an Employment Progress Report, ~~DDS-41~~ OKDHS Form DDS-66, for each person receiving employment services through the Community Waiver or the Homeward Bound Waiver, to the DDSD case manager by the tenth of each month for the previous month's services, and semi-annually for each person receiving services through the In-Home Supports Waivers.

(~~g~~f) The cost of a person's employment services, excluding transportation and state-funded services explained in OAC 340:100-17-30, cannot exceed $25,000 per Plan of Care year.

(g) Each person receiving residential supports as defined in OAC 340:100-5-22.1 or group home services is employed for 30 hours per week or receives a minimum of 30 hours of employment services or adult day services each week, excluding transportation to and from the person's residence.

(1) The 30 hours of employment service each week can be a combination of Community-Based Services, Center-Based Services, ETS Intensive Training Services, Stabilization Services, and Job Coaching Services. Center-Based Services cannot exceed 15 hours per week for persons receiving services through the Homeward Bound waiver.

(2) Fewer than 30 hours of employment activities per week requires approval through the process specified in OAC 317:40-7-21.

317:40-7-19. Changing Waiver Employment Services providers [REVOKED]

~~(a) When a person receiving services decides to change employment providers, the current provider is notified by the case manager.~~

~~(b) The current provider and the new provider work together to coordinate the person's transition.~~

317:40-7-20. Waiver Employment Services provider staff qualifications and training

(a) The provider designates a program manager to supply work-site supervision, guidance, and oversight of job coach specialists and paraprofessional staff providing direct services in the waiver employment program. Prior to assuming program management duties, the program manager:

~~(1) is certified through the DDSD-approved job coach training course;~~

(~~2~~ 1) has completed all required training specified in OAC 340:100-3-38; and

(~~3~~ 2) has a minimum of four years of any combination of college level education and "full time equivalent" experience in serving persons with disabilities.

(b) A job coach addresses the person's needs as identified in the service recipient's chosen employment outcomes under the professional oversight of the program manager.

(1) The provider designates job coaches whose minimum level of education includes a high school diploma or general equivalency diploma (G.E.D.) and certification through the Division's approved training course.

(2) Individuals who do not meet the educational requirement but who were certified job coaches prior to July 1, 1995, continue to be approved to provide Job Coaching Services.

(c) The provider agency ensures that all staff comply with ~~Department~~ DDSD-approved training requirements specified in OAC 340:100-3-38.

317:40-7-21. Exception process for Waiver Employment Services

(a) All exceptions to the rules in this Subchapter are:

(1) approved in accordance with this Section prior to service implementation;

(2) ~~based on the needs of the service recipient~~ intended to result in the Team's development of an employment plan tailored to meet the needs of the service recipient;

(3) identified in the Individual Plan (IP) process explained in OAC 340:100-5-50 through 100-5-58; and

(4) documented by the case manager after Team approval.

(b) Within 10 working days of the annual IP or the interim meeting, the case manager sends requests for exceptions dealing with individual needs listed in this subsection to the area employment services staff, who reviews the request to ensure that all criteria listed have been met. If criteria are not met, the employment services staff returns the exception request to the case management supervisor for further documentation. If all criteria are met, the employment services staff returns the request to the case management supervisor to resume the approval process and input of units on the Plan of Care.

(1) If the exception involves the requirement found in subsection (a) of OAC 317:40-7-15 of a minimum of 30 hours per week of employment services, the case manager sends documentation of the Team's:

(A) discussion of the specific situation(s) that require an exception;

(B) discussion of other possibilities to avoid an exception, and the reasons that those possibilities do not adequately meet the service recipient's needs;

(C) plan with specific steps and target dates to address the situation throughout the Plan of Care year so the exception may not be required or lessened at the end of the Plan of Care year; and

(D) specific residential schedule to provide integrated activities outside the home while the plan to increase to 30 hours is being implemented.

(2) A request by a person receiving services through the Homeward Bound Waiver for an exception to the maximum limit of 15 hours per week for center-based services or continuous supplemental support as described in OAC 317:40-7-6 and 317:40-7-13 includes documentation of the Team's:

(A) discussion of the specific situation(s) that require an exception;

(B) discussion of other possibilities to avoid an exception and the reasons that those possibilities do not adequately meet the service recipient's needs; and

(C) decision(s) which include specific steps and target dates to address the situation throughout the Plan of Care year so the exception may not be required or may be lessened at the end of the Plan of Care year.

~~(3) Exceptions are not given to the rules regarding enhanced rates given in OAC 317:40-7-12.~~

(~~4~~ 3) A request for an alternative(s) to the required community-based activities as defined in OAC 317:40-7-5 requires documentation of the Team's:

(A) discussion of the specific situation(s) that require an exception;

(B) discussion of other possibilities to avoid an exception and the reasons that those possibilities do not adequately meet the service recipient's needs;

(C) specific steps and target dates to address the situation throughout the Plan of Care year so the exception may not be required or may be lessened at the end of the Plan of Care year.

(c) The exception requests listed in this subsection are documented by the case manager after Team consensus and submitted directly to the DDSD area manager within 10 working days after the annual IP or interim Team meeting. The case manager retains a copy in the case manager's record. The area

manager approves or denies the request based on the thoroughness of the Team's discussion of possible alternatives and the reasons for rejection of the other possible alternatives.

(1) State dollar reimbursement for absences of a person receiving services through the Community Waiver in excess of 150 units is approved for medical reasons only. The request includes:

(A) the Team's discussion of the specific situation(s) that require an exception;

(B) the specific medical issues necessitating the exception request; and

(C) a projection of the number of units needed to complete the State fiscal year.

(2) A request for any other exception to the rules in this Subchapter that are not specifically listed in this subsection require documentation of the Team's discussion of:

(A) the specific situation(s) that require an exception; and

(B) other possibilities to avoid an exception specifying the reasons that those possibilities do not adequately meet the service recipient's needs.

(d) The DDSD division director or designee may review exceptions granted in accordance with this Section, directing the Team to provide additional information, if necessary, to comply with OAC 340:100-3-33.1 and other applicable rules.

[OAR Docket #05-1133; filed 6-8-05]

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

[OAR Docket #05-1095]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Client Services
Part 5. Specialized Foster Care
317:40-5-50. through 317:40-5-52. [AMENDED]
317:40-5-53. [REVOKED]
317:40-5-54. through 317:40-5-64. [AMENDED]
317:40-5-65. [REVOKED]
317:40-5-66. through 317:40-5-67. [AMENDED]
Part 7. Standards and Guidelines for Specialized Foster Care
317:40-5-75. through 317:40-5-76. [REVOKED]
(Reference APA WF # 04-18)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
DATES:
Comment period:
February 1, 2005 through March 3, 2005
Public hearing:
March 3, 2005
Adoption:
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March 21, 2005
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March 21, 2005
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March 21, 2005
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May 5, 2005
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Failure of the Legislature to disapprove the rule(s) resulted in approval on May 17, 2005
Final adoption:
May 17, 2005
Effective:
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Developmental Disabilities Services rules are revised to: (1) standardize the home profile process for all services needing a home profile; (2) increase respite services provided to Specialized Foster Care providers; (3) clarify use of room and board reimbursement in foster care; and (4) clarify roles of the DDSD case manager and SFC staff.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 5. CLIENT SERVICES

PART 5. SPECIALIZED FOSTER CARE

317:40-5-50. Purpose of Specialized Foster Care

(a) Specialized Foster Care (SFC) ~~is a~~ provides up to 24 ~~hour~~ hours per day of in-home ~~therapeutic~~ residential ~~option~~ habilitation services funded through the ~~Home and~~ Community ~~Based~~ Waiver ~~(HCBW)services~~ or the Homeward Bound Waiver. SFC serves individuals ages ~~six~~ three and ~~above~~ older ~~who have applied for and been approved for HCBW~~.

~~(1) For children,~~ SFC provides an individualized living arrangement in a family setting ~~offering~~ including up to 24 ~~hour~~ hours per day of supervision, supportive assistance, and training in daily living skills.

~~(2) For adults, SFC provides an individualized living arrangement which offers 24 hour supervision, supportive assistance, and training in a provider's home with friends, peers, or family members eligible in accordance with OAC 317:40-5-51.~~

(b) ~~Persons who provide SFC services have a current contract with the Department of Human Services (Department) Developmental Disabilities Services Division (DDSD) and the Oklahoma Health Care Authority (OHCA).~~ SFC is provided in a setting that best meets the specialized needs of the service recipient.

~~(c) Services are provided for up to three consumers in the home of the SFC provider.~~

~~(d) Specialized Foster Care, particularly for children, is made in the closest proximity to the consumer's family which best meets the specialized needs of the consumer.~~

317:40-5-51. ~~Consumer description~~ Scope of Specialized Foster Care

(a) **Children in ~~DHS~~ OKDHS custody.** ~~Specialized Foster Care (SFC) is provided while a child with developmental disabilities is in Department of Human Services (Department) custody if the special needs of the child cannot be met in a Division of Children and Family Services (DCFS) child welfare foster home.~~ A child in the custody of the Oklahoma Department of Human Services (OKDHS) who is determined eligible for HCBS Waiver services in accordance with OAC 317:40-1-1 is eligible to receive Specialized Foster Care (SFC) services if the special needs of the child cannot be met in a Division of Children and Family Services (DCFS) foster home.

(1) SFC provides a temporary, stable, nurturing, and safe home environment for the child while the ~~Department~~ OKDHS plans for reunification with the child's family.

(2) In the event reunification is not achievable, SFC may be provided on a long-term basis while other more permanent ~~options~~ living arrangements are sought. ~~The DCFS specialist makes application to have the child determined eligible for Home and Community Based Waiver (HCBW) services prior to the provision of SFC services.~~

~~(3) The DCFS specialist follows procedures established by an intra-agency agreement between Developmental Disabilities Services Division (DDSD) and DCFS when making an application for HCBW.~~

~~(4) When DCFS utilizes a DDSD SFC home on an emergency basis prior to the determination of the child's eligibility for the HCBW program, DCFS retains sole programmatic and financial responsibility for the custody child who has a developmental disability.~~

~~(A) The SFC provider, with the prior approval from DDSD and DCFS State Office, co-contracts with DCFS.~~

~~(B) The DCFS specialist is responsible to obtain prior approval for difficulty of care payment, and the SFC provider accepts this rate of pay.~~

~~(C) To prevent an overpayment, the SFC HCBW rate becomes effective the first day of the month following the date of the notice of eligibility from the Oklahoma Health Care Authority (OHCA).~~

(b) **Non-custody children.** SFC is a temporary service provided to children ~~on a voluntary basis as requested by the consumer's family and recommended by the consumer's Team~~ who are not in the custody of OKDHS when needed to prevent institutionalization.

(1) The intent of SFC ~~services~~ is to allow the ~~consumer's~~ service recipient's family relief ~~which~~ that cannot be satisfied by the provision of respite services or other in-home supports.

(2) SFC provides a nurturing, substitute home environment for the ~~consumer~~ service recipient while plans are made to reunify the family.

(3) Parents of a child receiving SFC services must comply with requirements of OAC 317:40-5-56.

(c) **Adults.** SFC is an appropriate living arrangement for many adults. The decision to use SFC for an adult is based on the ~~consumer's~~ service recipient's need for residential support as described in ~~the consumer's~~ his or her Plan.

(1) In general, SFC is appropriate for ~~consumers~~ service recipients who have not experienced family life ~~or who need a 24-hour supervised, nurturing environment~~. A child served in SFC may continue to receive services in the home indefinitely after turning 18 years of age.

(2) The ~~consumer~~ service recipient who receives SFC services lives in the provider's home.

~~(d) **Criteria for support.** The consumer's team determines the level of support based on the criteria given in this Subsection.~~

~~(1) **Close level of support.** Close level of support may include the criteria listed in this paragraph.~~

~~(A) The consumer is able to independently perform basic daily living skills such as:~~

~~(i) bathing and dressing alone;~~

~~(ii) following simple instructions;~~

~~(iii) basic survival skills; and~~

~~(iv) awareness of danger to self and others.~~

~~(B) The consumer may need assistance in accessing and participating in the generic service systems such as:~~

~~(i) education;~~

~~(ii) employment;~~

~~(iii) health care;~~

~~(iv) recreation; and~~

~~(v) leisure.~~

~~(C) The consumer needs assistance in establishing long term relationships with family and friends. The provider responds to the consumer through a family role with the focus on basic human needs to mutually enjoy and share experiences.~~

~~(D) The consumer may present a variety of behavioral challenges.~~

~~(E) The consumer may present a variety of physical challenges.~~

~~(2) **Maximum level of support.** Maximum level of support may include the criteria listed in this paragraph.~~

~~(A) The consumer needs assistance in accessing and participating in the generic service systems such as:~~

~~(i) education;~~

~~(ii) employment;~~

~~(iii) health care;~~

~~(iv) recreation; and~~

~~(v) leisure activities.~~

~~(B) The consumer requires regular and frequent supervision and support to participate in activities and personal relationships.~~

~~(C) The consumer may have health care levels 3 through 6 as described in the consumer's Physical Status Review (OAC 340:100-5-26) which require increased support and provider expertise. The consumer may require constant or intense physical support because of any secondary health or physical condition.~~

~~(D) The consumer may have episodal, frequent, or ongoing behavioral challenges and may require support to establish and maintain life in a community setting.~~

317:40-5-52. Visitation and reunification in Specialized Foster Care

~~Consumers~~ Service recipients in Specialized Foster Care (SFC) have a written plan ~~which~~ that ~~includes~~ addresses visitation, reunification, or permanency planning, and which may ~~include~~ also address guardianship as the ~~consumer~~ service recipient ~~reaches~~ approaches age 18.

(1) **Custody children.** When the Court has established a specific visitation plan, the Division of Children and Family Services (DCFS) specialist informs the SFC provider, the ~~consumer~~ service recipient, the Developmental Disabilities Services Division (DDSD) case manager, and the natural family of the visitation plan.

(A) The SFC provider cooperates with the visitation plan between the child and family as prescribed by the Court or the ~~consumer's~~ service recipient's Team.

(B) The reunification effort is a joint responsibility of:

(i) the DCFS worker;

(ii) the DDSD case manager;

(iii) the natural family; and

(iv) the SFC family.

(C) For children in the custody of the Oklahoma Department of Human Services (~~Department~~ OKDHS) ~~custody~~ who are attaining the age of 18, DCFS and DDSD work together to determine the need for guardianship. When it has been established that a legal guardian is in the child's best interest, both divisions work together to locate a guardian.

(2) **Non-custody children.** Visitation with the family is a part of the reunification efforts for non-custody children. Visitation must not be intrusive to the SFC home.

~~(A) Visitation is not to be intrusive to the SFC home.~~

~~(B) All non-custody children have a written reunification plan developed by the Team prior to placement.~~

~~(i) The reunification plan identifies:~~

~~(I) a minimum number of family visits;~~

~~(II) the prospects and plans for reunification;~~

~~(III) the anticipated time frame for reunification and is signed by the child's family.~~

~~(ii) The DDSD case manager reviews the reunification plan monthly with the family, the SFC provider and the SFC staff to see if adjustments or other action are needed in the area of visitation or reunification.~~

~~(C) When visitation has decreased without good cause or visitation has not occurred for at least 2 months, the DDSD case manager checks to be sure the child has not been abandoned.~~

~~(i) The DDSD case manager makes every effort to locate the family, guardian, or extended family to determine the family's continued interest in, and responsibility for, the child.~~

~~(ii) If the family cannot be located, or refuses to follow the visitation plan without good cause, the DDSD case manager notifies the DDSD case management supervisor and the consumer's Team.~~

~~(iii) All findings of abandonment must be reported to DCFS in writing by the DDSD case manager.~~

(3) **Adults.** Visitation with the adult ~~consumer's~~ service recipient's family is encouraged ~~but is~~ and arranged according to the preference of the ~~consumer~~ service recipient. Visitation must not be intrusive to the SFC home.

~~(A) Visitation may be a part of the consumer's Plan.~~

~~(B) Public transportation is utilized, when appropriate, to support visitation.~~

~~(C) Reunification is not always a normal part of an adult lifestyle. However, if a consumer and family wish to reunify, efforts are made by all Team members to complete this task.~~

~~(D) For adults who need a guardian, the Team makes recommendations prior to adulthood or as soon as the need for a guardian is identified.~~

317:40-5-53. Management of unacceptable behavior [REVOKED]

~~When a consumer presents unacceptable behaviors, only non-physical alternative methods are used to correct or reduce the behavior. The provider complies with Behavior Support Policy, OAC 340:100-3-7, and the Department of Human Services (Department) Child Placing Agency Policy. OAC 340:110-5-62.~~

317:40-5-54. ~~Provider selection~~ Selection of Specialized Foster Care provider

~~(a)~~ Providers of Specialized Foster Care (SFC) must meet the requirements of this Section.

(1) ~~Specialized Foster Care (SFC) is provided by persons who are not employed by the Department of Human Services (Department) or a Department contract agency.~~ Each provider is approved through the home profile process described in OAC 317:40-5-40.

~~(2) A parent or step-parent cannot contract to provide this service to his or her child or adult child, as specified in OAC:340-100-3-37.~~

~~(3) A legal guardian cannot contract to provide Specialized Foster Care to his or her ward except as allowed in OAC:340-100-3-37.~~

~~(4) A spouse cannot contract to provide SFC to his or her spouse.~~

(~~5~~ 2) The individual provider of Specialized Foster Care is required to have a current Home and Community Based Waiver (HCBW) services contract with the Oklahoma Health Care Authority.

(~~6~~3) The provider is required to have a current Fixed Rate Contract for room and board reimbursement with Developmental Disabilities Services Division (DDSD) when:

(A) ~~provision of~~ the SFC ~~services~~ service recipient is ~~for children.~~ a child; or

(B) ~~SFC services are provided for adults, when identified~~ required by the ~~consumer's~~ adult SFC recipient's Team.

(4) OKDHS Form DCW-SH-2, Claim for Foster and Adoptive Home Purchase of Care, if required in accordance with paragraph (3) of this subsection, is completed and submitted monthly to OKDHS Finance by staff as designated by the DDSD area manager.

~~(b) Matching the provider's lifestyle, personality, overall compatibility, and the ability to meet the special needs of a consumer is crucial in the selection process to achieve success in SFC. The provider must understand how the commitment to SFC impacts his or her family when the consumer becomes a member of that family. When a consumer is already living in the SFC home, consideration is made as to the compatibility and the impact of the additional consumer, in accordance with OAC 317:40-5-75.~~

~~(1) **Matching for children.** The provider, when possible, has the opportunity to have visits with the child prior to the child moving into the home.~~

~~(A) Any physical and behavioral challenges are discussed with the potential provider.~~

~~(B) The consumer's Team reaches consensus that a match is made with the provider who understands all of the issues and can commit to meeting the special needs of the child.~~

~~(2) **Matching for adults.** When possible, the provider and the adult consumer have an opportunity to develop a relationship. The consumer's Team reaches consensus in the provider selection process regarding:~~

~~(A) the provider's understanding of how the commitment to the SFC program will affect him or her personally and the provider's family;~~

~~(B) the provider's ability to establish and maintain a positive relationship with the consumer, particularly when dealing with stressful situations; and~~

~~(C) the provider's ability to work cooperatively with others in the service process.~~

317:40-5-55. Specialized Foster Care provider responsibilities

(a) **General responsibilities.** The responsibilities of all Specialized Foster Care (SFC) providers are listed in this Subsection.

(1) Providers of Specialized Foster Care (SFC) are required to meet all applicable standards outlined in ~~OAC 317:40-5-75 and OAC 317:40-5-90~~ OAC 317:40-5-40.

(2) ~~Provider~~ Providers of SFC are required to receive competency based training as outlined in ~~OAC 317:40-5-75~~ OAC 340:100-3-38. The provider keeps all required training up to date and submits documentation to the SFC specialist at the time training is completed.

~~(3) Failure to follow any rules or standards, failure to promote the independence of the consumer, or failure to follow team recommendation results in a Plan of Action, as described in OAC 317:40-5-63, and if warranted, termination of the contract as in 317:40-5-64.~~

(~~4~~3) The provider participates as a member of the ~~consumer's~~ service recipient's Team and assists in the development ~~and implementation~~ of the ~~consumer's~~ service recipient's Individual Plan, as described in OAC 340:100-5-50 through 100-5-58.

~~(5) The provider carries out all training and recreational needs required by the consumer, unless the training is to be provided by a professional therapist or trained vocational provider, as explained in the consumer's Plan.~~

~~(6) The provider understands how to write implementation strategies.~~

~~(7) The provider, with assistance from the DDSD case manager and SFC staff, develops, implements, evaluates, and revises the training or implementation strategies corresponding to the relevant goals and objectives for which the provider is responsible, as identified in the Consumer's plan.~~

~~(8) The provider implements and documents the consumer's Plan and gives monthly data collection and health care summaries to the DDSD case manager by the 10th of the month for services during the proceeding month.~~

(~~9~~4) The provider documents and notifies the ~~consumer's~~ case manager of any changes in behaviors or medical conditions of the ~~consumer~~ service recipient within one working day. Incident reports are completed by the SFC provider and submitted to the DDSD case manager in accordance with OAC 340:100-3-34.

(5) The SFC provider is available to the service recipient at any time.

(~~10~~6) The ~~services provided by the SFC provider are considered the~~ primary ~~job~~ employment of the SFC provider is to provide SFC services to the service recipient. The SFC provider does not have other employment unless ~~it~~ the other employment has been pre-approved by the supervisor of the DDSD foster care unit.

(A) Generally, providers are not approved for other employment because the provider must be available before and after school or vocational programs and often during the day due to holidays or illnesses.

(B) If, after receiving approval for other employment, it is found that the SFC provider's employment interferes with the care, training, or supervision needed by the ~~consumer~~ service recipient, the provider must determine if he or she wants to terminate the other employment or have the ~~consumer removed~~ service recipient moved from the home.

(C) The ~~Department of Human Services (Department)~~ DDSD does not ~~pay for~~ authorize Homemaker, Habilitation Training Specialist, or respite services in order for the SFC provider to perform other employment.

~~(11) The provider delivers services at the appropriate place and times as directed in the consumer's Plan.~~

(~~12~~ 7) The provider does not deliver services ~~which~~ that duplicate the services mandated to be provided by the public school district pursuant to the Individuals With Disabilities Education Act (IDEA-B).

~~(13) The provider completes additional specific training required to meet any individualized needs of the consumer, as determined by the consumer's Team.~~

(~~14~~ 8) The provider allows the ~~consumer~~ service recipient to have experiences, both in and out of the home, to enhance the ~~consumer's~~ service recipient's development, learning, growth, independence, community inclusion, and well-being, while assisting the ~~consumer~~ service recipient to achieve his or her maximum level of independence.

(~~15~~ 9) The provider ensures confidentiality is maintained regarding the ~~consumer~~ service recipient in accordance with the ~~Department of Human Services (Department)~~ DDSD confidentiality policy, OAC 340:100-3-2.

(~~16~~ 10) The provider is sensitive to and assists the ~~consumer~~ service recipient in participating in the ~~consumer's~~ service recipient's choice of religious faith. No ~~consumer~~ service recipient is expected to attend any religious service against his or her wishes.

~~(17) The provider keeps all required training up to date and submits documentation to the SFC specialist at the time training is completed.~~

~~(18) The provider follows all rules and standards established by DDSD, and all contract requirements of DHS and the OHCA.~~

(~~19~~ 11) The provider has a valid driver's license, ~~and~~ maintains a ~~car that is~~ motor vehicle in working order, and complies with requirements of OAC 317:40-5-103, Transportation.

~~(A) The vehicle is licensed and operated in a safe manner in accordance with the local, state, and federal law, regulations or ordinance.~~

~~(B) The provider must provide proof of all renewals on driver's license(s), inspections, and insurance.~~

(~~20~~ 12) The provider arranges, and ensures that the service recipient obtains, a medical and a dental examination at least annually ~~for the consumer~~, and is responsible for obtaining regular and emergency medical services as needed.

(~~21~~ 13) The provider transports or arranges transportation, using adapted transportation when appropriate, for the ~~consumer~~ service recipient to and from school, employment, church, recreational activities, and medical or therapy appointments.

~~(A) The provider assures the consumer is clean, appropriately dressed and on time for activities and appointments.~~

(~~B~~ A) SFC providers who transport ~~consumers~~ service recipients for ~~consumer's~~ Individual Plan activities more than an average of 30 miles a day may sign a transportation contract with approval from the DDSD area programs manager for residential services. Authorization to provide transportation services is only made for transportation for specified activities in excess of the 30 miles per day average.

(B) The provider must assure availability and use of an approved and appropriate child auto restraint system as required by law in transporting children and, in cases of adults receiving services, any additional restraints identified as necessary in the Plan.

(14) The provider assures the person receiving services is clean, appropriately dressed, and on time for activities and appointments.

(~~22~~ 15) ~~The provider does not provide services to other individuals from another source in his or her home~~ The provider ensures no other adult or child is served in the home on a regular or part-time basis without prior approval from the DDSD ~~State Office~~ area manager or designee.

(~~23~~ 16) The provider does not provide services to more than three individuals regardless of the type of service provided, including SFC, DCFS foster care, respite, baby-sitting, or other such services. ~~All consumers are approved by the DDSD SFC supervisor for placement prior to being moved into the home.~~ Any exception to this paragraph must be approved in writing by the director of DDSD or designee prior to authorization or service delivery.

(~~24~~ 17) The provider permits visitation and monitoring of the home by authorized ~~Department~~ DDSD staff. In order to assure maintenance of standards, some visits are unannounced. The visits occur at least monthly and are not intended to be intrusive but to ensure the safety and well-being of the service recipient.

(~~25~~ 18) The provider encourages and cooperates in planning visits in the SFC home by relatives, guardians, or friends of the ~~consumer~~ service recipient. ~~(A) The provider allows visits~~ Visits by the ~~consumer~~ service recipient to the home of friends ~~and~~ or relatives ~~when appropriate~~ must be approved by the service recipient's legally authorized representative.

~~(B) The provider follows Court orders regarding visitation involving children in Department custody.~~

(~~26~~ 19) The provider abides by the policies of DDSD found at OAC 340:100-3-12, Prohibition of client abuse, and ~~OAC 340:100-3-7~~ OAC 340:100-5-58, Prohibited procedures ~~prohibiting abuse, exploitation, neglect, undue restraint, and unnecessary behavior intervention of the consumer~~. The provider is prohibited from signing an authorization for school personnel to use physical discipline or corporal punishment.

(~~27~~ 20) The provider notifies the DDSD case manager when the need arises for substitute supervision in the event of an emergency, in accordance with the Backup Plan, as specified in OAC 317:40-5-59.

(~~28~~ 21) The provider ~~notifies the consumer~~ provides written 30-day notice to the service recipient and ~~consumer's~~ DDSD case manager ~~with a 30-day notice~~ when it is necessary for a ~~consumer~~ service recipient to be ~~removed~~ moved from the home.

(~~29~~ 22) The SFC provider does not serve as representative payee for the ~~consumer~~ service recipient.

(~~30~~ 23) The provider ensures the ~~consumer~~ service recipient's funds are properly safeguarded. ~~When handling the consumer's funds, the provider complies with the Department Consumer Funds policy OAC:340-100-3-4.1.~~

~~(31) The provider immediately notifies the DDSD case manager and documents on the incident report when:~~

~~(A) emergency medical care is required or rendered for the consumer.~~

~~(B) hospital care is required for the consumer.~~

~~(C) changes occur in the consumer's health status or medication.~~

~~(D) any consumer is missing.~~

~~(E) a consumer dies.~~

(~~32~~ 24) The provider assists the service recipient in accessing and ~~utilizing~~ using entitlement programs for which the ~~consumer~~ service recipient may be eligible.

(~~33~~ 25) The provider ~~utilizes~~ must use the room and board reimbursement payment to meet the ~~consumer's~~ service recipient's needs, as specified in the room and board contract.

(A) The provider ~~has~~ retains a copy of the current room and board contract in the home at all times.

(B) Items purchased with the room and board reimbursement include, but are not limited to:

(i) housing;

(ii) food;

(iii) clothing;

(iv) care; and

(v) incidental expenses such as:

(I) birthday and Christmas gifts;

(II) haircuts;

(III) personal grooming equipment;

(IV) allowances;

(V) toys;

(VI) school supplies and lunches;

(VII) school pictures;

(VIII) costs of recreational activities;

(IX) special clothing items required for dress occasions and school classes such as gym shorts and shirts;

(X) extracurricular athletic and other equipment, including uniforms, needed for the service recipient to pursue his or her particular interests or job;

(XI) prom and graduation expenses including caps, gowns, rings, pictures, and announcements;

(XII) routine transportation expenses involved in meeting the service recipient's medical, educational, or recreational needs;

(XIII) non-prescription medication; and

(XIV) other maintenance supplies required by the service recipient.

(C) All items purchased for the service recipient with the room and board payment are the property of the service recipient and are given by the provider to the service recipient when a change of residence occurs.

(D) The room and board payment is made on a monthly basis and is prorated based on the actual days the service recipient is in the home on the initial and final months of residence.

(~~34~~ 26) The provider maintains a Personal Possession Inventory (DDS-22) for each ~~consumer~~ service recipient living in the home.

(27) The provider maintains the service recipient's home record in accordance with OAC 340:100-3-40.

(~~35~~ 28) The provider immediately reports to the DDSD SFC staff all changes in the household including, but not limited to:

(A) telephone number;

(B) address;

(C) marriage or divorce;

(D) persons moving into or out of the home;

(E) provider's health status;

(F) provider's employment; and

(G) provider's income.

(~~36~~ 29) The provider maintains home owner's or renter's insurance, ~~with~~ including applicable liability ~~coverage~~ coverages, and provides a copy to the SFC Specialist.

~~(37) The provider cooperates with the DDSD SFC staff in determining initial and continued compliance with standards and policy of DDSD and OHCA.~~

(~~38~~ 30) ~~When the~~ The provider ~~is~~ serves as the Health Care Coordinator~~, the provider~~ and follows the Health Care Coordinator policy outlined in OAC 340:100-5-26.

(31) Each SFC provider follows all applicable rules of the Oklahoma Department of Human Services and the Oklahoma Health Care Authority, promotes the independence of the service recipient, and follows recommendations of the service recipient's Team.

(b) **Responsibilities specific to SFC providers serving children.** The provider is charged with the same general legal responsibility any parent has to exercise reasonable and prudent behavior in ~~their~~ his or her actions and in the supervision and support of the child.

(1) The provider works with the DDSD case manager and Division of Children and Family Services (DCFS) staff when the provider needs respite for a child in custody.

(2) The provider participates in the development of the Individual Education Plan (IEP) and may serve as surrogate parent when appropriate.

(3) The provider obtains permission and legal consent from the child's custodial parent~~,~~ or guardian~~,~~ and DDSD case manager prior to traveling out of state for an overnight visit. If the child is in the custody of the ~~Department~~ OKDHS, the permission of the DCFS specialist is also secured.

(4) The provider obtains permission and legal consent from the child's custodial parent~~,~~ or guardian~~,~~ and DDSD case manager prior to involvement of the child in any publicity. If the child is in ~~Department~~ OKDHS custody, the permission of the DCFS specialist is also secured.

(c) **Responsibilities specific to SFC providers serving adults.** Additional SFC provider responsibilities for serving adults are given in this Subsection.

(1) The provider obtains permission from the ~~consumer's~~ service recipient's legal guardian, when applicable, and notifies ~~the family and~~ the DDSD case manager, prior to:

(A) traveling out of state for an overnight visit.

(B) involvement of the ~~consumer~~ service recipient in any publicity.

(2) When the ~~consumer~~ service recipient is his or her own payee or has a representative payee, the provider ensures the monthly contribution for services as identified in a written agreement between the ~~consumer~~ service recipient and the provider, is used toward the cost of food, rent, and household expenses.

(A) The ~~consumer's~~ service recipient's minimum monthly contribution is $250.00 per month.

(B) Changes in the ~~consumer's~~ service recipient's monthly contribution are developed on an individualized basis by the ~~consumer's~~ service recipient's Team.

317:40-5-56. Responsibilities of the parents of individuals in voluntary specialized foster care

(a) Natural or adoptive parents retain the responsibility for ~~the on-going~~ on-going involvement and support of their child while the child is in specialized foster care (SFC).

(1) The parents are required to sign a written agreement allowing the Oklahoma Department of Human Services ~~(Department)~~ (OKDHS) to ~~be~~ serve as the representative payee for the child's Social Security, ~~and~~ other government benefits, and court-authorized child support.

(2) Social Security, other government benefits, and child support are ~~utilized~~ used to pay for room and board (maintenance). Home and Community Based ~~Waiver~~ Services ~~(HCBW)~~ (HCBS) services do not pay for room and board (maintenance).

(b) Responsibilities of the parents of a child ~~in~~ receiving voluntary SFC are:

(1) to provide respite to the foster ~~family~~ SFC provider;

(2) to provide transportation to and from parental visitation;

(3) to provide a financial contribution toward the support of their child;

(4) to provide in kind supports such as ~~diapers~~ disposable undergarments if needed, clothing, recreation, ~~special diets,~~ birthday and holiday presents, school supplies, and allowances or personal spending money;

(5) to follow the visitation plan as outlined by the ~~consumer's~~ service recipient's Team; (see OAC 317:40-5-52);

(6) to maintain ongoing communication with the ~~consumer~~ service recipient and ~~foster parent~~ SFC provider by letters and telephone calls;

(7) to be available in the event of an emergency;

(8) to work toward reunification when appropriate;

(9) to provide written consent for medical treatments as appropriate;

(10) to attend medical appointments, when possible, and ~~to~~ keep informed of the ~~consumer's~~ service recipient's health status;

(11) to participate in the ~~consumer's~~ service recipient's education plan in accordance with the Department of Education regulations; and

(12) to be present for all Team meetings~~; and~~

~~(13) when moving out of state, to take their minor child with them, since the child is no longer eligible because he or she is no longer a resident of the State of Oklahoma~~.

(c) When moving out of Oklahoma, parents of a child receiving voluntary SFC are responsible to take their minor child with them, since the child is no longer eligible for services because he or she is no longer a resident of the State of Oklahoma.

(d) For children under age 18, the case manager reports to DCFS if the family moves out of Oklahoma without taking their child with them or cannot be located.

317:40-5-57. ~~Department of Human Services Case Manager~~ Developmental Disabilities Services Division case manager roles and responsibilities regarding Specialized Foster Care

In addition to other identified roles and responsibilities, the ~~Department of Human Services (Department)~~ Developmental Disabilities Services Division (DDSD) case manager is responsible for:

~~(1) assisting the family by offering in-home supports to prevent voluntary foster care;~~

~~(2) ensuring a written visitation plan is developed;~~

~~(3) maintaining contact with the natural family and working with the family on reunification;~~

(~~4~~ 1) reporting any significant changes to the ~~foster care~~ SFC specialist;

(~~5~~ 2) assessing guardianship needs;

~~(6) notifying the case management supervisor, the consumer's Team, and DCFS in writing when the consumer's family is not visiting in accordance with OAC:317-40-5-52;~~

~~(7) providing information to the foster care specialist on evaluation of care;~~

(~~8~~ 3) facilitating pre-placement visits when approved by ~~foster care staff~~ the SFC specialist;

~~(9) designating training the foster care provider is responsible for implementing as listed in the consumer's Plan;~~

~~(10) preventing the prescription of Habilitation Training Specialist or Homemaker units for services that duplicate the responsibilities of the Specialized Foster Care (SFC) provider;~~

~~(11) visiting the home at least one time per month with some visits unannounced;~~

(~~12~~ 4) monitoring for current backup plan, as described in OAC 317:40-5-59;

(~~13~~ 5) monitoring the ~~consumer's~~ service recipient's personal inventory, Form DDS-22;

~~(14) assisting in setting up in-home records for the foster care provider;~~

~~(15) obtaining or granting permission for travel out of state for an overnight visit or involvement of the consumer in any publicity;~~

(~~16~~ 6) monitoring the ~~consumer's~~ service recipient's funds and resources monthly;

~~(17) facilitating a written agreement for room and board contributions on behalf of the consumer, when the Department is not the representative payee for the consumer;~~

(~~18~~ 7) reporting any potential violations of policy and standards to the ~~foster care~~ SFC specialist in accordance with OAC 317:40-5-63 and assisting with the development of the provider's plan of action, if appropriate;

~~(19) cooperating in the relocation of the consumer if the provider home is closed;~~

~~(20) completing or obtaining the forms and documents listed in this Subsection;~~

~~(A) Room and Board Reimbursement for Foster Care (DCW-FH-2);~~

~~(B) Authorization for SFC Services (DDS-SFC-1), which:~~

~~(i) is signed by the parent or legal guardian for consumers not in custody who are requesting SFC services; and~~

~~(ii) allows for authorization of routine or emergency medical care and insurance information; and~~

~~(C) placement memo.~~

~~(21) assisting the consumer with spending down the consumer's Pass Through Account;~~

(~~22~~ 8) assisting in the inventory of any necessary adaptive equipment, Form DDS-22;

(~~23~~ 9) attending Court hearings for custody children;

(~~24~~ 10) forwarding copies of monthly ~~QMRP~~ contact reports on custody children to the DCFS specialist; ~~and~~

(~~25~~ 11) notifying the DCFS ~~Specialist~~ specialist or legally authorized representative of needed medical consents for pre-planned or emergency services; and

(12) completing appropriate section of Form DDS-24, Annual Review, and providing the information to the SFC specialist.

317:40-5-58. ~~Department of Human~~ Developmental Disabilities Services Division Specialized Foster Care (SFC) staff roles and responsibilities

~~Department of Human Services (Department)~~ Developmental Disabilities Services Division (DDSD) SFC staff have the responsibility for:

(1) orientation and prescreening of SFC applicants;

(2) making contact with the potential SFC provider within five working days of receipt of a completed application to schedule interviews and start the Home Profile Process, described in ~~OAC 317:40-5-75~~ OAC 317:40-5-40;

(3) completing the Home Profile within ~~50~~ 90 working days after assignment of the application. The SFC specialist documents the reason for any delay beyond 90 days;

(4) maintaining regular contact with the provider by making a monitoring visit every six months with a minimum of one telephone contact in all other months.

(A) The SFC specialist completes the Monitoring Report (DDS-23) for each monitoring review.

(B) Items to be discussed during the telephone contacts are detailed in the Monthly Contact Monitoring Guide.

(5) completing a Specialized Foster Care/Agency Companion Annual Review (DDS-24) for the annual re-evaluation of each provider home by the renewal date;

(6) attending Team meetings for ~~consumers~~ service recipients in ~~foster care~~ SFC as necessary;

(7) responding to requests for ~~foster care~~ SFC and respite care;

(8) providing technical assistance and training to ~~foster parents~~ SFC providers regarding claims and resolution of problems, such as:

(A) payments;

(B) family dynamics; ~~and~~

(C) ~~Department~~ DDSD policy;

(D) setting up the in-home record as described in OAC 340:100-3-40;

(E) setting up the provider record; and

(F) provider training;

~~(9) speaking to individuals, groups, and organizations for the purpose of recruitment and community education;~~

~~(10) maintaining assigned case records which include narrative entries and forms as required;~~

(~~11~~ 9) making unannounced home visits to ensure homes and providers are in compliance with DDSD standards and policy;

~~(12) communicating regularly with the case manager regarding all aspects of the consumer's program;~~

~~(13) completing and distributing forms according to the supervisor instructions;~~

~~(14) maintaining the Placement Record, DDS-48, in the area office case file;~~

~~(15) assisting the provider and case manager in setting up the consumer's in-home record;~~

~~(16) assisting the provider in setting up the foster care provider's in-home record;~~

~~(17) communicating to the Oklahoma Health Care Authority Provider Enrollment Section and Developmental Disabilities Services Division (DDSD) State Office any changes in provider information;~~

~~(18) completing monthly reports to supervisor on status of work assignments and statistical information;~~

~~(19) ensuring accurate information is reported monthly to the supervisor on provider logs; and~~

(~~20~~ 10) reporting to DDSD State Office Training Staff as the provider's training occurs and is updated:

(A) the provider's name~~,~~ ;

(B) the provider's Social Security Number~~,~~ ; and

(C) dates and places of specific provider training~~.~~ ;

(11) facilitating a written agreement for room and board contributions on behalf of the service recipient, if the Oklahoma Department of Human Services is not the representative payee for the service recipient;

(12) completing or obtaining the:

(A) Room and Board Reimbursement for Foster Care (DCW-FH-2);

(B) Authorization for SFC Services (DDS-SFC-1), that:

(i) is signed by the parent or legal guardian for service recipients not in custody who are requesting SFC services; and

(ii) allows for authorization of routine or emergency medical care and provides insurance information.

317:40-5-59. Back-up Plan for persons receiving Specialized Foster Care

Prior to a ~~consumer~~ service recipient moving into Specialized Foster Care (SFC), the SFC provider, the Developmental Disabilities Services Division (DDSD) case manager, and other appropriate Team members cooperatively develop a Back-up Plan.

(1) The Back-up Plan identifies the person(s) who provides emergency ~~and planned~~ back-up supports.

(2) The ~~consumer's~~ service recipient's natural family is considered as the first resource for the Back-up Plan.

~~(3) No spouse or other adult living in the provider household may serve as paid back-up staff.~~

(~~4~~3) The Back-up Plan contains the name(s) and current telephone number(s) of the person(s) providing back-up service.

(~~5~~4) The Back-up Plan explains specifically where the service is to be provided.

(A) If back-up service is to be provided outside the SFC home, a Home Profile must be completed ~~on~~ for the back-up staff.

(B) If back-up service is to be provided in the SFC home, the person providing this service must have completed all necessary requirements to become a paid provider, including:

(i) criminal background check;

(ii) traffic record check;

(iii) valid driver license;

(iv) Division of Children and Family Services (DCFS) abuse registry check;

(v) ~~current Oklahoma vehicle safety inspection sticker, as required~~ Community Services Worker registry check;

(vi) a check of the Juvenile On-Line Tracking System (JOLTS) for children residing in the home;

(~~vi~~ vii) Oklahoma statutorily mandated liability insurance of 10/20/10 minimum coverage~~,~~ ; and

(~~vii~~ viii) completion of required DDSD training.

(C) The Back-up Plan details where the ~~consumer~~ service recipient and provider will stay if the provider's home is not habitable. If there is a fee to stay in the alternate location, the fee is paid by the provider and not reimbursed by ~~the Department of Human Services (Department)~~ DDSD .

(~~6~~5) The Back-up Plan is jointly reviewed at least monthly by the DDSD case manager and the SFC specialist to ensure the Back-up Plan continues to be appropriate and current.

(~~7~~6) The SFC provider is responsible to report any needed changes in the Back-up Plan to the case manager and SFC specialist.

317:40-5-60. Relief support for providers of Specialized Foster Care

When natural or other unpaid supports are not available, the Specialized Foster Care (SFC) provider may request relief support ~~through the use of Habilitation Training Specialist or Homemaker services~~.

(1) Relief units do not replace the responsibilities of the SFC provider on a regular basis.

(2) All relief units must be justified in the ~~consumer's~~ service recipient's Plan process.

(3) ~~The recommendation of more than 520 units annually must be approved by the District Supervisor for the Specialized Foster Care program.~~ No more than 720 hours annually may be authorized unless approved by the Developmental Disabilities Services Division director or designee.

(4) No spouse or other adult living in the provider household may serve as paid relief staff.

(5) Consideration is given to authorizing additional relief hours when providing additional relief represents the most cost-effective placement for the service recipient and:

(A) there are multiple service recipients living in the home;

(B) the service recipient has an on-going pattern of not sleeping at night; or

(C) the service recipient has an on-going pattern of not working or attending employment services, in spite of continuing efforts by the Team.

317:40-5-61. Investigations of alleged abuse or neglect of a ~~consumer~~ service recipient in a specialized foster care home

Any referral regarding alleged abuse, neglect or exploitation of a ~~consumer~~ service recipient is reported immediately to the appropriate investigative office.

(1) Allegations concerning children are reported to the ~~local~~ Oklahoma Department of Human Services ~~(DHS)~~ (OKDHS) Division of Children and Family Services (DCFS) office in accordance with OAC 340:75-1-9.

(2) Allegations concerning adults are reported to the ~~local DHS~~ OKDHS Adult Protective Services office as required by Section 10-104 of Title 43A of the Oklahoma Statutes. ~~The procedure for handling such referrals is the same as that in any case alleging abuse, neglect, or exploitation.~~

(3) Allegations concerning a Homeward Bound class member are referred for investigation to the ~~DHS~~ OKDHS Office of Client Advocacy. ~~A referral is also made to the Guardian ad litem's office if the Guardian ad litem serves the consumer.~~

317:40-5-62. Evaluation of policy violation or program concern in a specialized foster care home

(a) ~~Department of Human Services (Department)~~ Developmental Disabilities Services Division (DDSD) Specialized Foster Care (SFC) staff begin an evaluation process upon ~~a~~ receipt of ~~the referral~~ a complaint or observation of program concern(s) or policy violation(s) by the provider.

(b) Concerns may include:

(1) provider's use of judgment;

(2) provision of program supervision;

(3) non-compliance with ~~Department~~ DDSD or Oklahoma Health Care Authority policy or contract; or

(4) other related issues.

(c) When abuse, neglect, or exploitation is suspected, appropriate authorities are contacted, as specified in OAC 317:40-5-61.

~~(d) If a program concern or violation of policy or contract is indicated, rather than abuse or neglect or exploitation, the concern or violation is documented on a Plan of Action form (DDS-28) completed by the appropriate Department staff, in accordance with OAC 317:40-5-63.~~

~~(1) The Plan of Action (DDS-28) is signed by the provider, the case manager, and SFC staff; and~~

~~(2) is used to document concerns, action steps, recommendations, time frames, review dates, and resolutions.~~

(~~e~~d) The evaluation includes interviews with:

(1) the ~~consumer~~ service recipient;

(2) the DDSD case manager;

(3) the provider;

(4) any other person(s) living in the home; and

(5) any other person(s) who may have relevant information.

(~~f~~e) When the evaluation findings indicate programming concern(s) or violation(s) of policy or contract, ~~the consumer, when appropriate,~~ the ~~Department~~ DDSD SFC staff, ~~case manager,~~ and the provider meet to develop a Plan of Action for correcting the concern(s) or violation(s). The SFC staff notifies the DDSD case manager of the agreed Plan of Action. The case manager monitors to ensure the Plan is accomplished.

317:40-5-63. Plan of action in Specialized Foster Care

(a) When a program concern or a violation of policy or contract is found ~~during the evaluation of reported concerns~~ in a Specialized Foster Care (SFC) home, a Plan of Action, (DDS-28) is initiated.

(b) The Plan of Action:

(1) is a joint effort between the provider~~, the DDSD case manager,~~ and SFC staff;

(2) ensures that necessary services to the ~~consumer~~ service recipient are not interrupted;

(3) states recommendations regarding the continued use of the provider home;

(4) is time limited; and

(5) is agreed upon by ~~the Department of Human Services (Department)~~ DDSD and the provider.

(c) Unless the Plan of Action is initiated for short-term outcome, reviews of the Plan of Action are conducted, at a minimum, each 90 days. ~~Department~~ DDSD staff and the provider participate in the review.

(d) If new allegations occur or circumstances change while the Plan of Action is in place, an evaluation is made of the existing plan to redefine the action steps, time frames, and recommendations, if necessary.

(e) At the completion of the Plan of Action, a resolution is documented to confirm the agreed upon action steps that have been completed.

(f) If, at the completion of the Plan of Action, all action steps are not completed, but a satisfactory resolution is obtained, an addendum explaining the situation is attached to the Plan of Action.

(g) If the provider is unwilling or unable to satisfactorily complete the Plan of Action:

(1) the provider's home is recommended for closure;

(2) alternative placement is located for the ~~consumer~~ service recipient; and

(3) the provider is given a written 30 day closure notice.

(h) A provider with an active plan of action cannot serve additional service recipients or provide respite until the plan is successfully completed.

317:40-5-64. Closure of Specialized Foster Care home

(a) ~~Upon the determination of the Department of Human Services (Department) that the Specialized Foster Care (SFC) provider or any other household member does not meet the standards outlined in this Subchapter for providing SFC services, the home is closed.~~ In the event that a provider fails to provide services as required by rules or contract, Developmental Disabilities Services Division (DDSD) may, upon written notice to the provider, cancel certification of the home, effective upon receipt of notice. Such cancellation is not an exclusive remedy but is in addition to any other rights and remedies provided by law.

(b) Possible reasons for closure of a Specialized Foster Care (SFC) home include, but are not limited to:

(1) provider request;

(2) non-cooperation in determining compliance with standards, policy, or contract;

(3) confirmed abuse, neglect, or exploitation of any other person;

(4) breach of confidentiality;

(5) involvement in criminal activity or criminal activity in the home;

(6) failure to provide for the care and well-being of the ~~consumer~~ service recipient;

(7) continued failure to implement the ~~consumer's~~ service recipient's Plan;

(8) failure to complete and maintain required provider training;

(9) failure to report changes in the household resulting in the failure of the home to meet standards;

(10) continued failure to follow ~~Department~~ DDSD policy;

(11) decline of the provider's health to the point that he or she can no longer meet the needs of the ~~consumer~~ service recipient;

(12) employment by the provider without prior approval by the Developmental Disabilities Services Division (DDSD) SFC supervisor;

(13) domestic disputes ~~which~~ that result in emotional instability of the ~~consumer~~ service recipient; or

(14) failure to complete a Plan of Action, as described in OAC 317:40-5-63, as agreed.

(c) **Closure Process.** When ~~action has occurred which makes it~~ necessary to close an SFC home, the steps described in this Subsection are taken.

(1) ~~SFC staff talks with the SFC supervisor~~ SFC staff documents, in the case narrative, a summary of the reasons for closure and the effective date of the closure.

~~(2) The SFC Supervisor informs the DDSD Area Manager or designee of the impending closure.~~

(~~3~~ 2) The DDSD Area Manager or designee notifies the case manager and case manager supervisor to make other living arrangements for the ~~consumer~~ service recipient.

~~(4) SFC staff documents, in the case narrative, a summary of the reasons for closure and the effective date of the closure.~~

(~~5~~ 3) ~~A 30-day written notice clearly stating the reason for closure is sent to the provider by the SFC supervisor.~~ The DDSD programs manager for residential services sends a 30-day written notice of the closure to the provider.

(A) A copy of the 30-day notice is sent to:

(i) the case manager;

(ii) case management supervisor;

(iii) DDSD Area Manager;

(iv) DDSD State Office; and

(v) Division of Children and Family Services (DCFS), if applicable.

(B) A copy of the narrative is sent with the written notice to DDSD State Office;

(~~6~~ 4) DDSD State Office notifies the Oklahoma Health Care Authority and ~~DHS~~ the OKDHS Contracts Unit to close the provider's contract.

~~(7) The provider serving children has the right to appeal the termination of their contract and closure, as explained in OAC 340:75-7-149.~~

317:40-5-65. Change of placement for children and foster parent notification [REVOKED]

~~When removing any child from a DDSD Specialized Foster Care (SFC) home, Developmental Disabilities Services Division (DDSD) staff follow rules outlined in OAC 340:75-7-76.1.~~

317:40-5-66. Dispute and grievance procedures for Specialized Foster Care providers

(a) **Legal Base.** Section 7213 of Title 10 of the Oklahoma Statutes directs the Oklahoma Department of Human Services (Department) to establish grievance procedures for Specialized Foster Care (SFC) providers ~~which~~ that resolve disputes quickly, informally, at the lowest possible level, but ~~which~~ that provide for access to impartial arbitration by personnel within the central office. Resolution of grievances ~~shall~~ must be prompt and within established time frames. Each SFC provider shall have the right, without fear of reprisal or discrimination, to present grievances with respect to the provision of SFC services.

(b) **Inquiries.** Not all SFC provider inquiries or requests for explanation are to be considered as disputes ~~which~~ that need a written supervisory review or the initiation of the grievance procedure. Most inquiries or requests are handled within the regular relationship between the SFC specialist and SFC provider within 5 working days.

(c) **Unresolved complaints or disputes.** When a complaint or dispute between the ~~worker~~ DDSD staff member and the SFC provider cannot be resolved, the SFC provider is entitled to a supervisory review regarding the issue within 10 working days. If the supervisory review does not resolve the dispute with the SFC provider, then a grievance can be initiated by the provider in accordance with OAC 340:2-3-50.

~~(d) **Grievance structure.** This Subsection describes the structure of a grievance.~~

~~(1) The designated support staff of the Specialized Foster Care Unit serves as the DDSD SFC provider Grievance Coordinator (GC).~~

~~(2) Any person who is currently an approved SFC provider for the Department of Human Services (Department) of Human Services may file a grievance regarding differences in professional judgment, policy, procedures, or personnel issues regarding the provision of SFC services.~~

~~(3)All SFC provider grievances must be filed within five (5) working days of the supervisory review, explained in Subsection (c) of this Section.~~

~~(4) Situations that are not grievable include:~~

~~(A) a decision of the court;~~

~~(B) findings of an abuse or neglect investigation;~~

~~(C) disposition of a fair hearing, in accordance with OAC 340:2-5;~~

~~(D) disputes with other SFC providers;~~

~~(E) the written Plan of Action developed in accordance with OAC 317:40-5-63; and~~

~~(F) child related issues as administered by the Division of Children and Family Services (DCFS).~~

~~(e) **Filing a grievance.** If the SFC provider does not accept the outcome of the supervisory review, the SFC provider may file a grievance.~~

~~(1) The grievance request must be completed within 5 working days of notification of the supervisory review.~~

~~(2)The SFC provider is given a copy of the Specialized Foster Care Provider Grievance and Proposed Resolution Form, (DDS-25), to write out the grievance and proposed resolution.~~

~~(3) The SFC provider gives the original of the DDS-25 to the grievance coordinator (GC) and keeps a copy of the form.~~

~~(4) The GC logs the receipt of the grievance into the DDSD area grievance log, and refers the grievance (DDS-25) along with the completed Supervisory Review of Grievance (DDSD-26) and all documentation received~~

~~from the reviewing supervisor to the DDSD Area Manager.~~

~~(f) **Resolving the grievance.** The DDSD area manager meets with the SFC provider within ten working days in an effort to resolve the grievance.~~

~~(1) The SFC provider and area manager complete, by checking the appropriate blocks, Foster Parent Statement of Grievance and Resolution, Form DDS 27, and return the completed form to the GC.~~

~~(2) If the provider chooses to appeal, the GC completes and sends in all of the relevant information to the appropriate Programs Supervisor in DDSD State Office and documents the information sent in the DDSD area grievance log.~~

~~(g) **Appeal procedure - State Office DDSD (paper review only).** Upon receipt of an appeal, the DDSD Specialized Foster Care Section marks the date of receipt and immediately refers the appeal to an appropriate staff member.~~

~~(1) The staff member assigned the appeal, after reviewing the grievance and accompanying documentation, decides if additional information is necessary for disposition of the appeal.~~

~~(A) The staff member contacts parties in possession of needed information and sets deadlines for return of the information.~~

~~(B) If it is found that an appeal was prematurely filed, a reply letter to the SFC provider is prepared suggesting the proper procedure to follow.~~

~~(2) The staff member reviews the applicable Department rules and Oklahoma statutes.~~

~~(3) When the Department has reached a decision on the appeal, the SFC provider receives a written response within 15 days after receipt of the appeal in the State Office, unless an extension has been requested.~~

~~(4) Two copies of the response are routed to the GC, who forwards one copy to the Area Unit Supervisor or designee.~~

~~(h) **Review of decision.** The unit supervisor or designee reviews the resolution with the SFC provider. The SFC provider indicates whether he or she accepts the resolution and is advised that all levels of the grievance process have been exhausted. The supervisor or designee gives the SFC provider a copy of the decision from the State Office.~~

317:40-5-67. Specialized Foster Care provider rights

(a) Section 7206.1 of Title 10 of the Oklahoma Statutes directs the Oklahoma Department of Human Services to establish a statement of ~~foster parents'~~ SFC providers' rights.

(b) The rights of ~~foster parents~~ SFC providers include, but are not limited to, the right to:

(1) be treated with dignity, respect, and consideration as a professional member of the team;

(2) be given appropriate, ongoing training to develop and enhance ~~foster parenting~~ the provider's skills;

(3) be informed about ways to contact the state agency in order to receive information and assistance to access supportive services for any child in the ~~foster parent's~~ SFC provider's care;

(4) receive timely financial reimbursement for providing ~~foster care~~ SFC services;

(5) be notified of any costs or expenses for which the ~~foster parent~~ SFC provider may be eligible for reimbursement;

(6) be provided a clear, written explanation of the individual treatment and service plan concerning the child in the ~~foster parent's~~ SFC provider's home;

(7) receive, at any time during which a child is ~~place~~ placed with the ~~foster parent~~ SFC provider, additional or necessary information that is relevant to the care of the child;

(8) be notified of scheduled permanency planning review meetings concerning the child in order to actively participate in the case planning and decision-making process regarding the child;

(9) provide input concerning the plan of services for the ~~consumer~~ service recipient and to have that input be given full consideration in the same manner as information presented by any other professional on the team;

(10) communicate with other professionals who work with the ~~consumer~~ service recipient within the context of the team including, but not limited to, therapists, physicians, and ~~teacher~~ teachers;

(11) be given, in a timely and consistent manner, any information regarding the child and the child's family ~~which~~ that is pertinent to the care and needs of the ~~consumer~~ service recipient and to the making of a permanency plan for the ~~consumer~~ service recipient. Disclosure of information shall be limited to that information ~~which~~ that is authorized by the provisions of Article V of the Oklahoma Children's Code for foster parents and Article VII of the Oklahoma Juvenile Code;

(12) be given reasonable notice of any change in or addition to the services provided to the ~~consumer~~ service recipient pursuant to the ~~consumer's~~ service recipient's Plan;

(13) be given written notice of:

(A) plans to terminate the placement of the child with the ~~foster parent~~ SFC provider unless it is deemed an emergency, and

(B) the reason for the changes or termination in placement;

(14) be notified by the court in a timely and complete manner of all court hearings, including:

(A) notice of the date and time of any court hearing;

(B) the name of the judge or hearing officer hearing the case;

(C) the location of the hearing; and

(D) the court docket number of the case;

(15) be informed of decisions made by the court, or the state agency concerning the child;

(16) be considered as a preferred placement option when a child who was formerly placed with the ~~foster parent~~ SFC provider is to reenter ~~foster care~~ SFC services at the same level and type of care, if that placement is consistent with the best interest of the child and other children in the ~~foster parent's~~ SFC provider's home;

(17) be provided a fair, timely, and impartial investigation of complaints concerning the ~~foster parent's~~ SFC provider's certification;

(18) be provided the opportunity to request and receive a hearing regarding decisions that affect certification retention;

(19) have timely access to the state agency's appeals process and the right to be free from acts of harassment and retaliation by any other party when exercising the right to appeal;

(20) be given the number of the statewide toll-free Foster Parent Hotline; and

(21) file a grievance in accordance with the Developmental Disabilities Services Division (DDSD) Specialized Foster Care Grievance policy, ~~OAC 317:40-5-66~~ OAC 317:40-5-66; and

(22) be informed of the process for filing a grievance.

PART 7. STANDARDS AND GUIDELINES FOR SPECIALIZED FOSTER CARE

317:40-5-75. Standards for Specialized Foster Care and respite homes [REVOKED]

~~(a) **Framework.** The standards in this Section serve as a framework for evaluating each Specialized Foster Care (SFC) or respite home applicant to assist the Department of Human Services (Department) in choosing the best home for consumers placed in out-of-home care.~~

~~(1) It is recognized that each foster family has varying strengths and capabilities.~~

~~(2) Careful study of the essential requirements listed in this Section offers protection to consumers and assures maximum opportunities for consumer growth and development.~~

~~(b) **Application requirements.** Each applicant, spouse, and other adult household member must complete orientation and comply with the pre-screening and application process.~~

~~(1) Failure to cooperate or comply with any of the orientation, pre-screening, or application process steps will result in the denial of a potential or current applicant.~~

~~(2) The orientation, pre-screening, and application information is utilized in the home profile by DDSD staff.~~

~~(c) **Orientation and Pre-screening.** Prospective applicants are given an orientation regarding the purpose, expectations, and basic requirements of the specialized foster care program. The pre-screening, application, and home profile process is explained. Each applicant must complete the pre-screening forms listed in this Subsection prior to making an application.~~

~~(1) The Specialized Foster Home/Agency Companion Information Sheet, Form DDS-12, asks various questions regarding the person's interest in becoming an SFC provider, a brief description of the person's household, and the person's skill(s) in providing services to consumers with developmental disabilities.~~

~~(2) Request for Background Check, Form DDS-14, completed on each adult household member, gives the Department permission to receive required checks from the Oklahoma State Bureau of Investigation criminal record, as mandated by Section 404.1 of Title 10 of the Oklahoma Statutes, and information from Oklahoma Department of Transportation traffic records. The background check is repeated every three years or more often if needed.~~

~~(3) Internal Request for Background Information, DDS-14a, is signed by the parent or guardian for any child over the age of 13 years who resides in a foster family home, other than the foster child, or who subsequently moves into the private residence, pursuant to Section 404.1 of Title 10 of the Oklahoma Statutes, which permits the Department to provide for a juvenile justice review.~~

~~(4) Employment Record (DDS-15) requests the person to provide names of every previous employer for the past 10 years.~~

~~(5) Reference Information Waiver Request (DDS-16) gives the Department permission to request specific information from a variety of sources. More than one form is required to be signed and each form is time-limited, information specific, and ensures confidentiality of the information received.~~

~~(6) Employer Reference Letter (DDS-29) requests information from previous employers regarding past or current work performance.~~

~~(7) The potential applicant must agree to a home visit and cooperate with the Department of Human Services (Department) staff who must complete the Pre-screening Form (DDS-13).~~

~~(A) The Pre-screening Form provides basic information regarding the home environment, limitations, and motivations of the person interested in providing SFC services.~~

~~(B) The information from the DDS-13 is used to determine if a home profile is to be started.~~

~~(d) **Application process.** Upon completion of the pre-screening requirements, the application packet is given to the potential provider.~~

~~(1) The SFC Application, DDS-8, and required forms listed in paragraph 3 of this Subsection are completed in full by the applicant and returned to the Department address as shown in the packet.~~

~~(2) In the event an application received is incomplete, the Department staff send a letter to the applicant which lists information still needed to complete the application. The application is not processed unless the packet is complete.~~

~~(3) The application packet contains the documents listed in this paragraph.~~

~~(A) Special Foster Home/Agency Companion Program Application (DDS-8) provides additional personal information and identifies four personal references, to be contacted by the Department staff, three of which are face to face contacts.~~

~~(B) Specialized Foster Home/Companion Financial Assessment Form (DDS-9) documents the applicant's current and past financial history, including verification of all income and expenses.~~

~~(C) Family Health History (DDS-11) provides current and past medical information to determine health status of the applicant and other household members.~~

~~(D) Self-Study Questionnaire (DDS-18), completed by each adult living in the home, includes questions regarding:~~

~~(i) background;~~

~~(ii) life skills;~~

~~(iii) training;~~

~~(iv) religious preferences;~~

~~(v) relationships;~~

~~(vi) experiences; and~~

~~(vii) attitudes.~~

~~(E) Child's Questionnaire (DDS-19), to be completed by or for each child living in the home, includes questions about the child's home, school, and leisure environment.~~

~~(F) Medical Examination Report (DDS-10) is completed for each adult household member by his or her physician. A written statement from a physician is required to verify all children in the home are free from communicable diseases.~~

~~(G) Insurance Information (DDS-17) is completed by the applicant, verifying the home and automobile insurance coverage required for the applicant, in accordance with this Section.~~

~~(H) Evacuation and Escape Floor Plan (DDS-20) includes a drawing of the applicant's home that reflects the planned evacuation to a safe place for that home. An example escape plan is provided for the applicant's use in the development of the plan.~~

~~(e) **Basic requirements of foster care providers.** All providers of specialized foster care services or respite services must meet requirements of this Subsection.~~

~~(1) **Personal qualities.** Desirable qualities of those who wish to serve as SFC providers include:~~

~~(A) evidence of an interest in and responsiveness to other people, particularly persons with developmental disabilities;~~

~~(B) capacity to give love, affection, and understanding to a person without undue expectation of gratification from such care;~~

~~(C) ability of the family to share with each other in the care of consumers;~~

~~(D) provision of proper consideration to their own children's feelings and the feelings of close relatives towards a person with special needs;~~

~~(E) maintenance of stable and satisfactory relationships, including marital and parent-child relationships, realizing that family problems may affect consumers differently from one's own children;~~

~~(F) evidence of emotional stability and ability to function adequately in relation to family responsibilities and employment;~~

~~(G) ability to administer discipline or behavior supports in accordance with Department policy, OAC 340:100-3-7, and appropriate to the age of the consumer;~~

~~(H) reputable character, values, and ethical standards conducive to the well-being of consumers;~~

~~(I) ability to accept a consumer's relationship with the consumer's family, including possibly neglectful or abusive family members; and~~

~~(J) capacity to help prepare a consumer for his or her return home, to an alternative placement, or independent living.~~

~~(2) **Relationship with Department.** The family reflects an ability to work constructively with the Developmental Disabilities Services Division (DDSD):~~

~~(A) in developing plans and meeting the needs unique to the specific consumer in need of specialized care, and his or her family;~~

~~(B) by accepting consultation and participating in training required by DHS;~~

~~(C) by maintaining confidentiality in accordance with OAC 340:100-3-2; and~~

~~(D) by working within DHS policies.~~

~~(3) **Family composition.**~~

~~(A) Single persons and persons married for more than one year may apply to be SFC providers.~~

~~(i) Placement of a consumer in a single parent home is based on the specific needs of the consumer.~~

~~(ii) Single applicants have extended family or friends to provide support and backup care.~~

~~(B) SFC providers may not care for persons from another source on a regular basis, either full or part-time, in accordance with OAC 317:40-5-55.~~

~~(C) Adults in the home other than the applicant(s) are considered part of the family. Adults in the home must provide DHS information as requested and must authorize DHS to complete a background investigation. The presence of these adults is considered in terms of how they might be affected by, or have an effect on, a consumer placed in the home. The applicant's biological children over 18 years of age are considered in this category.~~

~~(4) **Age.** The age of the SFC provider is considered in relation to the potential provider's physical capability, flexibility, vitality, maturity of judgment, and ability to exercise appropriate authority, supervision, and physical care for a specific consumer. No person under the age of 21 is approved as an SFC provider.~~

~~(5) **Health.** All members of the potential foster family must be in sufficiently good physical and mental health to provide necessary care for a consumer.~~

~~(A) The Specialized Foster Home/Agency Companion Medical Examination Report, (DDS-10) and the health history portion of the self-study are completed on all adults in the family.~~

~~(B) A written statement from a physician is required to verify that all children in the home are free from communicable diseases.~~

~~(C) The SFC provider obtains a physician's statement specifying that the SFC provider is capable of providing care to the consumer(s):~~

~~(i) any time an SFC provider is hospitalized;~~

~~(ii) any time an SFC provider requires ongoing outpatient medical care, including psychological counseling; and~~

~~(iii) at the Department's request.~~

~~(6) **Income.** The foster family must be financially stable and demonstrate the ability to adequately meet the family's needs without the supplement of the foster care payment. The financial statement portion of the self study forms must be completed in accordance with OAC 317:40-5-55.~~

~~(7) **Religion.** SFC providers assure that any consumer in the home is allowed to attend the church of the consumer's choice as often as desired. No consumer is expected to attend any religious service against his or her wishes.~~

~~(8) **Background check.** All adults in the household agree to submit to a background check prior to certification and periodically at the Department's discretion. as provided in this paragraph.~~

~~(A) Request for Background Check, DDS-14, is completed by each adult in the household.~~

~~(B) Permission is given on Form DDS-14a for DHS to perform a background check on each child in the home who is over the age of 13 years. Failure to provide this permission will result in denial of the application or closure of the home.~~

~~(C) DHS secures a background check through the Oklahoma State Bureau of Investigation (OSBI) and Department of Public Safety (DPS).~~

~~(D) Providers of SFC services cannot be listed on the Community Services Worker Registry pursuant to Section 1025.1 of Title 56 of the Oklahoma Statutes.~~

~~(E) Providers of SFC services have no convictions on felony offenses. Approval of any person with a history of felony or misdemeanor charges is determined on a case by case basis by the Division Administrator or designee.~~

~~(F) Any criminal action or offense during the contract period may be grounds for termination of the contract.~~

~~(G) Any allegation or confirmation of abuse, neglect, or exploitation, which includes any household member, will be evaluated on a case by case basis.~~

~~(9) **Training requirements.** SFC providers must complete Department required training which includes:~~

~~(A) Foundation Level Training;~~

~~(B) DDS Residential Training;~~

~~(C) Cardiopulmonary Resuscitation (CPR);~~

~~(D) First Aid;~~

~~(E) Medication Administration Training (MAT); and~~

~~(F) when serving children, training specific to fostering children, which is approved by DDSD.~~

~~(10) **References.** A minimum of four personal references are contacted by DHS staff conducting the profile.~~

~~(A) In addition to four personal references, the Department contacts all employers for the past 10 years.~~

~~(B) At least three of the applicant's personal references are contacted face to face.~~

~~(C) In the event out of state references are given, as in the case of a family recently relocated in Oklahoma, written correspondence and replies are acceptable as valid references to supplement the references provided locally.~~

~~(D) If the applicant has served as a foster parent for another agency or institution, a written release of information is obtained to gather information from the former agency, and this information is reviewed in relation to the family's current request.~~

~~(E) Persons familiar with the family from a variety of perspectives who can provide a well rounded picture of the family's functioning and character are sought to provide references, including:~~

~~(i) friends with whom the family shares an ongoing social relationship, and whose children socialize and visit in the home of the applicants with their children;~~

~~(ii) neighbors acquainted with the family and their activities;~~

~~(iii) employers or co-workers;~~

~~(iv) relatives;~~

~~(v) ministers; and~~

~~(vi) others knowledgeable of the family on a personal basis as to habits, interests, values, and child rearing practices.~~

~~(F) Any community organization or program devoted to individuals with developmental disabilities to which a family member has belonged is contacted.~~

~~(G) If the applicant(s) has a school-age child, permission must be obtained to talk with the child's teacher or school principal, to afford a better understanding of the applicant's child and to give indications of the applicant's parenting ability.~~

~~(f) **Physical facilities, sleeping arrangements, and surroundings.** The physical environment of the potential foster home or respite care home must meet standards in this Subsection.~~

~~(1) **Safety.** The physical facilities of the home must present no hazards to the safety of a consumer.~~

~~(A) The home must be equipped with working fire extinguisher(s), smoke alarm(s), carbon monoxide detector, and flashlight.~~

~~(B) All weapons and firearms are kept locked.~~

~~(C) Quarterly fire drills and two weather drills are conducted annually and documented on Fire and Weather Drill Report, Form DDS-21.~~

~~(2) **Animals or household pets.** Pets or animals in the foster home, indoors or outdoors, are permitted provided that:~~

~~(A) there is proof of annual rabies vaccination for each animal;~~

~~(B) each animal is in good health, showing no evidence of carrying disease;~~

~~(C) each animal is friendly and presents no threat to the health, safety, or well-being of consumer(s).~~

~~(3) **Physical environment.** Physical standards assure a degree of comfort sufficient to ensure the well-being of the family and its self-respect in the community. Department assistance is offered to foster families of consumers who require specialized equipment, supplies, or environmental modification, such as wheelchair ramps or grab bars.~~

~~(4) **Location.** The foster home must be accessible to, or the SFC provider provides transportation to, school, employment, church, recreational and health facilities and other community facilities and resources, such as physicians and clinics, as needed.~~

~~(5) **Recreational space.** Adequate indoor and safe outdoor space for activities must be provided according to the age and needs of the consumer.~~

~~(6) **Equipment.** SFC providers are responsible for providing equipment including bedding and bedroom furniture to the consumer, proper auto restraints, and toys appropriate for children placed in the home. Auto restraints are observed by the SFC specialist. SFC providers maintain a working telephone and keep the consumer's case manager and SFC staff advised of the correct phone number at all times.~~

~~(7) **Transportation.** SFC providers must maintain a vehicle in working order which has a current Oklahoma safety inspection sticker properly displayed, as required.~~

~~(A) SFC providers must carry the statutory mandated vehicle liability insurance of a 10/20/10 minimum.~~

~~(B) The SFC specialist must observe both the inspection sticker and verification of the insurance.~~

~~(C) SFC providers must insure that proper safety restraints are used at all times when consumers are riding in the vehicle.~~

~~(8) **Sleeping arrangements and privacy.** A bed must be provided for each consumer.~~

~~(A) It is preferable that no more than two consumers share a bedroom. Consideration is given to related consumers sharing a room, according to age and emotional needs of each consumer.~~

~~(B) Separate bedrooms must be provided to consumers over age six who are of opposite sex.~~

~~(C) Foster children must not share sleeping quarters with adults in the household. Any exceptions must have prior approval from the SFC Supervisor.~~

~~(D) Individual space must be provided for the consumer's personal possessions.~~

~~(E) The consumer's sleeping arrangements allow a reasonable degree of privacy.~~

~~(9) **Home owner or renter insurance and liability.** The SFC provider ensures the household is covered by home owner or renter insurance, including personal liability. The Department does not pay for damages caused by the consumer.~~

~~(g) **Number of consumers.** Requirements related to the number of consumers who may reside in an SFC home are listed in this Subsection.~~

~~(1) The number and ages of consumers placed in a home are determined by:~~

~~(A) the capacities and skills of the SFC provider;~~

~~(B) the number and ages of the SFC provider's own children;~~

~~(C) the accommodations of the home;~~

~~(D) and the anticipated effect of an SFC placement upon the family as a unit.~~

~~(2) Preferably, the age range of the consumers in a foster home is similar to that in a natural family.~~

~~(3) Needs of a consumer already placed in the home may restrict the capacity of a home regardless of the number of consumers for whom it is approved, as explained in OAC 317:40-5-55.~~

~~(4) Not more than three consumers are placed with a foster family.~~

~~(A) The number of consumers in an SFC home may be limited to one or two consumers depending upon the consumer's needs.~~

~~(B) Exceptions to the limit of three consumers may be made with family groups, only with the approval of the DDSD Programs Supervisor for Specialized Foster Care or designee.~~

~~(5) Careful consideration is given to the effect of having some consumers in the foster home who visit natural family and others who do not.~~

~~(6) An SFC home may not serve as a placement resource for any other agency or institution.~~

~~(7) An SFC home may not contract with any other DHS Division without prior approval from DDSD Programs Supervisor or designee.~~

317:40-5-76. Guidelines for home profile [REVOKED]

~~(a) **Purpose.** The purposes of the profile and evaluation of Specialized Foster Care (SFC) applicants are:~~

~~(1) to determine if the family and home meet the basic requirements of the Department of Human Services (Department) and Developmental Disabilities Services Division (DDSD);~~

~~(2) to fulfill the legal and moral responsibility of the Department to protect the physical, mental, and emotional well-being of the consumer;~~

~~(3) to assess the fostering abilities of the applicant(s);~~

~~(4) to determine if the family's attitudes about foster care are consistent with the goals of the program, such as:~~

~~(A) family reunification;~~

~~(B) an alternate permanent plan for the individual; and~~

~~(C) achievement of independence by the consumer;~~

~~(5) to learn enough about the applicant(s) to determine the consumer the applicant can best serve;~~

~~(6) to help the applicant(s) understand his or her responsibilities to the consumer, the consumer's family, and the Department in deciding if the applicant(s) wishes to participate, and~~

~~(7) to help prepare potential SFC providers to meet the needs of consumers.~~

~~(b) **Use of the guidelines.** The guidelines presented in this Section assist the SFC specialist in evaluating the applicant(s) and the home. Information in the profile is gathered in the orientation, pre-screening and application packets, and interviews. The profile includes, but is not limited to, the areas listed in this Subsection.~~

~~(1) **Family interest and motivation.** A family's motivation for wanting to provide foster care may be based on reasons which are recognized and verbalized.~~

~~(A) Circumstances which prompted the family to apply at the particular time of their application can help clarify their reasons for desiring to provide SFC services.~~

~~(i) The source of information about the foster family program may be the key to the decision, as related on the Specialized Home/Agency Companion Services Application, DDS-8.~~

~~(ii) During the process of the profile, underlying needs of the family which were not previously stated or recognized may be revealed and should be assessed realistically and honestly with the family.~~

~~(B) When an applicant(s) specifically requests to provide services to a person with developmental disabilities, the motivations of the applicant(s) are explored in depth.~~

~~(i) Family or work background may have exposed the applicant to people with developmental disabilities.~~

~~(ii) If the applicant(s) has not had experience with people with developmental disabilities, the applicant(s) is made aware of the physical and emotional requirements of the person for whom the family would be caring.~~

~~(2) **Life skills.**~~

~~(A) **SFC providers, and any other significant adult in household.** Knowledge of past experience and influences are vital in understanding the adults' current functioning not only as individuals, but also as members of a family. Significant areas of study are:~~

~~(i) life skills and general attitudes of the applicant(s), including what each person is like as an individual;~~

~~(ii) childhood relationships with parents, siblings, relatives, or other meaningful persons, asking what each applicant's childhood and growing up were like;~~

~~(iii) experiences, such as death, illness(es), divorce(s), or poverty, which had an impact on each person's attitudes, feelings, and expectations;~~

~~(iv) whether the applicant(s) has ever known anyone who was sexually or physically abused. If so, the applicant's experience is explored in depth and information included in the written profile;~~

~~(v) concepts of appropriate behavior support and discipline and the manner in which behavior supports should be administered, especially as applied to individuals with developmental disabilities;~~

~~(vi) the meaning of education and training to the applicants;~~

~~(vii) general physical and emotional health of members of the household;~~

~~(I) Medical Exam Report, Form DDS-10, or a written statement from a physician must be obtained for each member of the household.~~

~~(II) Adult family members must complete the Family Health History (DDS-11).~~

~~(III) If a physical disability exists, how does the disability affect the ability to function as a provider of SFC services in giving adequate care and supervision?~~

~~(IV) Is there any specific medical or emotional condition existing in members of the household? Is any member of the household under professional care for any condition which requires the use of prescribed drugs or narcotics? If any member of the household uses prescribed drugs or narcotics, what is the extent of use?~~

~~(viii) emotional ability of family members to provide foster care;~~

~~(I) If any members of the household previously received psychiatric or psychological counseling, the circumstances and results must be explored in depth.~~

~~(II) A Release of Information is obtained allowing the worker to contact the person who provided the counseling;~~

~~(ix) physical description;~~

~~(x) employment record with respect to stability of work and satisfaction derived from employment;~~

~~(xi) social relationships with members of the community, including hobbies, skills, talents, and special interests;~~

~~(xii) religious influences, affiliations, and activities;~~

~~(I) Does the family have any specific religious beliefs which might affect a consumer in areas such as dress code, holiday observances, medical care, daily living, or social activities?~~

~~(II) Would the family see that a consumer attended the church of the consumer's choice as often as desired?~~

~~(xiii) reaction to stressful situations;~~

~~(xiv) current relationships within the family, including marital and parent-child relationships;~~

~~(xv) relationship with children living outside the home;~~

~~(xvi) special training, ability, or experience in working with or caring for individuals with special needs, such as physical disabilities, mental retardation, behavior problems, or emotional disturbances;~~

~~(xvii) explanation of any arrests or convictions, including status of parole or probation, from information obtained from:~~

~~(I) the Oklahoma State Bureau of Investigation (OSBI);~~

~~(II) the Central Child Abuse Registry checks; and~~

~~(III) information on the Specialized Foster Care/Agency Companion Services Application, DDS-8;~~

~~(xviii) explanation of any allegations of abuse, neglect, exploitation of child, adult, or animal;~~

~~(xix) If there were no findings on the background checks, the absence of findings is stated in the summary of the profile. A copy of the OSBI check is included in the local and State Office records.~~

~~(B) **Children in the home.** SFC staff describes the children in the home as to:~~

~~(i) age and physical appearance;~~

~~(ii) personality, interests, and skills;~~

~~(iii) strengths or problems in parent-child relationships, school adjustment, behavior, and health;~~

~~(iv) ability to get along with other individuals, especially individuals with developmental disabilities,~~

~~(v) physical or developmental disabilities;~~

~~(vi) attitude toward having a relationship with an individual who has developmental disabilities; and~~

~~(vii) depending on age, attitude towards foster children.~~

~~(3) **Behavior support and discipline.** The applicants are advised of the Department rules on discipline, OAC 340:110-5-62, Discipline and behavior management, and OAC 340:100-3-7, Behavior management.~~

~~(A) The SFC specialist discusses with the applicants how they discipline their natural children.~~

~~(i) If there is a divergence between Department policy and the methods used to discipline natural children, the SFC specialist explores how the applicants will deal with any problems which might result from this difference.~~

~~(ii) In addition, the SFC specialist discusses with the applicants how they were disciplined as children and any effects it has had on their attitudes toward discipline.~~

~~(iii) From information obtained through training and discussion with the family, the SFC specialist indicates the family's understanding and acceptance of the policy in the written report. This information is considered in the final recommendation.~~

~~(iv) The SFC staff member determines if there is agreement among all adults in the household on methods of discipline.~~

~~(v) Any applicant who does not agree to abide by Department policy is not approved to provide foster home care.~~

~~(B) Consumers may require behavior supports. An Individual Plan (IP) is developed by the Team which includes the SFC provider.~~

~~(C) Verbal abuse or derogatory remarks about the consumer, the family, race, religion, disability, or cultural background are not used or permitted.~~

~~(D) Deprivation of meals and corporal punishment are not allowed. No consumer is shaken, pinched, or roughly jerked by a family member or any other person in the home.~~

~~(E) SFC providers are able to follow specific step-by-step instructions for modifying behavior.~~

~~(4) **Marital status and background.** The SFC staff documents the aspects of the family's marital status, as described in this paragraph.~~

~~(A) **Current marital status.** The SFC staff describes the applicant's marriage as to:~~

~~(i) length of present marriage;~~

~~(ii) stability of marriage;~~

~~(iii) method of resolution of marital problems; and~~

~~(iv) whether the decision to become a foster family is a joint decision.~~

~~(B) **Previous marriage, if applicable.** The SFC staff describes previous marriage(s) as to:~~

~~(i) number and length of previous marriages;~~

~~(ii) reason marriage(s) did not work out, if applicable;~~

~~(iii) children involved, visitation and child support arrangements, if applicable.~~

~~(C) **Single or never married.** If the applicant is not married, the SFC staff discusses:~~

~~(i) the best and most difficult aspects of being single;~~

~~(ii) on whom the applicant relies for support; and~~

~~(iii) significant adult relationships in the applicants life.~~

~~(5) **Income and money management.** Verification of income and expenses is required.~~

~~(A) The Specialized Foster Home/ Agency Companion Financial Assessment Form, DDS-9, must be completed.~~

~~(B) Any financial problem areas will be discussed and included in the written report.~~

~~(C) The family shows financial stability by being able to pay their bills and to live within their financial means.~~

~~(6) **Home and living standards.** The SFC staff includes a concise but complete description of the neighborhood and home, specifying:~~

~~(A) cleanliness and appearance of home and yard;~~

~~(B) sleeping arrangements for the consumer;~~

~~(i) The consumer's bedroom must contain:~~

~~(I) at least 80 square feet;~~

~~(II) 2 means of exit; and~~

~~(III) an addition of at least 60 square feet for each additional person sleeping in the room.~~

~~(ii) Any exception to this subparagraph must be approved by the DDSD Programs Supervisor for Specialized Foster Care.~~

~~(C) sanitary facilities, including toilet and bathing facilities, water supply, garbage and sewer disposal, especially if the home is not on a municipal system; and~~

~~(D) safety factors, such as:~~

~~(i) guards and rails on stairways, wheelchair ramps, grab bars, wide doorways, if present or needed;~~

~~(ii) heating and air conditioning equipment, guarded and installed in accordance with manufacturer requirements; and~~

~~(iii) yard area protected from hazards, such as ponds, traffic, creeks, and swimming pools.~~

~~(7) **Teamwork and supervision, Back-up Plan review, and use of relief.** The profile is to include a summation of the SFC staff's explanation and the SFC provider applicants understanding of:~~

~~(A) the fundamental responsibility of the Department to meet the physical, emotional, and medical needs of the consumer in care;~~

~~(B) the responsibility of the SFC provider for the consumer's daily care so that all areas of need are met;~~

~~(C) the primary responsibility of the Child Welfare Specialists and the DDSD case manager as the liaison in all planning among the child, the natural family, the foster family, the Team, the agency, and the court, where applicable;~~

~~(D) situations necessitating placement;~~

~~(E) varying lengths of time for which consumers require placement;~~

~~(F) characteristics of consumers requiring placement;~~

~~(G) differences between foster family care and adoption;~~

~~(H) the importance of teamwork in:~~

~~(i) working toward reunification of the consumer with his or her biological family, if appropriate; or~~

~~(ii) if reunification is not possible, developing an alternative permanent plan for the consumer; and~~

~~(I) the Department's policies and procedures regarding:~~

~~(i) payment of room and board;~~

~~(ii) provision of clothing;~~

~~(iii) medical care;~~

~~(iv) behavior support;~~

~~(v) confidentiality;~~

~~(vi) education; and~~

~~(vii) religious training.~~

~~(8) **Assessment and recommendation.** It is the duty of the SFC specialist to evaluate with the applicant(s) their ability to provide foster care services.~~

~~(A) The SFC specialist has the right and duty to approve only those homes which can fulfill the expectations of the role of SFC provider.~~

~~(B) In addition, it is the SFC specialist's responsibility not to approve any applicant that, in the SFC specialist's professional judgment, is not qualified to provide foster care services.~~

~~(C) The applicant is notified in writing of the final determination. In the written summary all areas are addressed.~~

~~(D) **Completed profile meets agency standards.** If, as a result of the profile process, a determination is made that the applicant meets agency standards, the final assessment includes:~~

~~(i) the applicant's understanding and acceptance of the purpose of foster care and willingness to cooperate in adhering to Department and Oklahoma Health Care Authority rules;~~

~~(ii) areas in which the applicant shows special strength and areas in which he or she needs help and training;~~

~~(iii) a delineation of the number, age range, sex, and special areas of need of consumers for whom the applicant is qualified to provide care; and~~

~~(iv) the effective date for opening the foster home.~~

~~(E) **Completed study does not meet agency standards.** Steps taken if a completed study does not meet standards are listed in this subparagraph.~~

~~(i) If, as a result of the profile process, a determination is made that the applicant does not meet agency standards, the final assessment includes:~~

~~(I) a detailed analysis of the basis for the decision; and~~

~~(II) the effective date for determining the applicant as not meeting agency standards.~~

~~(ii) In the event assistance is needed to reach a decision, consultation is obtained from the Unit Supervisor, District Supervisor, or Area Manager. In addition, consultation is available from the DDSD State Office Foster Care Section, if needed.~~

~~(F) **Application withdrawn or canceled before profile completed.** If an application is canceled or withdrawn prior to completion of the profile, SFC staff takes the steps listed in this paragraph.~~

~~(i) If an application is withdrawn or canceled before the profile is completed, the final assessment includes:~~

~~(I) the reason the application was canceled or withdrawn;~~

~~(II) the SFC specialist's impression of the applicant based on information obtained; and~~

~~(III) the effective date of cancellation or withdrawal.~~

~~(ii) A written notice is sent to the applicant to confirm cancellation or withdrawal of the application, a copy of which is included in the local and State Office records.~~

~~(9) **Annual evaluation.** The annual evaluation is a comprehensive review of the SFC provider's continued ability to meet standards.~~

~~(A) The annual evaluation consists of information specifically related to the use of the foster home.~~

~~(i) An assessment is made of the manner in which the foster family dealt with each consumer they have had in care during the re-evaluation period.~~

~~(ii) A summary, identified with the consumer's first name and age, outlines:~~

~~(I) the consumer's progress in the home;~~

~~(II) any difficulties encountered during placement; and~~

~~(III) reasons why a consumer left the home, if applicable. A detailed explanation is given if the SFC provider requested the consumer's removal.~~

~~(iii) Evaluation of the successful or ineffective means used by the SFC provider in caring for and directing the consumer enables the Department to determine what type of consumer the SFC provider can best serve.~~

~~(iv) Areas in which the SFC provider needs additional help from the DDSD staff to strengthen their abilities are recorded.~~

~~(B) Medical Examination Report, DDS-10, must be completed for SFC providers a minimum of every three years following the initial approval of the home, unless medical circumstances warrant more frequent completion.~~

~~(C) Input from the DDSD case manager, DCFS Child Welfare Specialist, Department Adult Protective Services staff is included in the evaluation.~~

~~(D) All changes since the original study or latest evaluation are included in the evaluation.~~

~~(E) An updated recommendation as to the number, age range, sex, and special needs of consumers for whom the home is approved to provide care is included in the evaluation report.~~

~~(F) SFC providers are informed of the continued recommendation of the use of the home.~~

~~(G) Copies of the evaluation report, and DDS-10, if appropriate, are included in the local and State Office records.~~

[OAR Docket #05-1095; filed 6-2-05]

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

[OAR Docket #05-1116]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Client Services
Part 9. Service Provisions
317:40-5-113. [NEW]
(Reference APA WF # 04-16B)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
DATES:
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March 30, 2005
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Failure of the Legislature to disapprove the rule(s) resulted in approval on May 24, 2005
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July 11, 2005
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Client Services
Part 9. Service Provisions
317:40-5-113 [NEW]
(Reference APA WF # 04-16B)
Gubernatorial approval:
January 28, 2005
Register publication:
22 Ok Reg 1029
Docket number:
05-626
INCORPORATIONS BY REFERENCE:
N/A
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. 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 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

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 #05-1116; filed 6-6-05]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 36. AFFORDABLE HOUSING TAX CREDIT PROGRAM

[OAR Docket #05-1098]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
330:36-1-2.1. [AMENDED]
330:36-1-4. [AMENDED]
330:36-1-9. [AMENDED]
Subchapter 2. Allocation Procedures
330:36-2-1. [AMENDED]
330:36-2-2. [AMENDED]
330:36-2-3. [AMENDED]
330:36-2-12. [NEW]
330:36-2-13. [AMENDED]
330:36-2-15. [REVOKED]
330:36-2-16. [AMENDED]
Subchapter 4. Development Applications and Selection
330:36-4-2. [AMENDED]
330:36-4-2.1. [AMENDED]
330:36-4-3. [AMENDED]
Subchapter 6. Program Administration
330:36-6-3. [AMENDED]
330:36-6-7. [AMENDED]

AUTHORITY:
These Chapter 36 Rules are authorized by the Board of Trustees of OHFA, the Amended Trust Indenture, and the Bylaws of OHFA;

DATES:
Comment Period:
January 3, 2005 through February 15, 2005
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Availability:
All OHFA Rules can be accessed via the internet at ohfa.org. In addition, these Rules are available for inspection at the offices of OHFA, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116, weekdays from 8:30 am to 4:30 pm.

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:

Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), provides that a federal tax credit (the "Credit") may be claimed for a period of ten years by qualified owners (as defined by the Code) of residential rental property rented to qualified low-income tenants at restricted rental rates, if said owner has been approved for an allocation of Credits by the state housing credit agency. OHFA is Oklahoma's housing credit agency. The Code further provides that each state's Credit annual authority is to be allocated by that state's housing credit agency pursuant to a qualified allocation plan. These Chapter 36 Affordable Housing Tax Credit Program Rules (the "Rules") embody Oklahoma's qualified allocation plan. The purpose of said Rules is to comply with the Code, the Oklahoma Administrative Procedures Act ("APA"), and to provide guidelines for administering the allocations of Oklahoma's annual Credit authority and OHFA's Affordable Housing Tax Credit Program (the "Credit Program"). The Trustees are also required to administer the Credit Program in a manner consistent with Oklahoma's Housing Antidiscrimination Act, 15 O.S., Sections 1451-1453 and all federal laws prohibiting discrimination, including 42 U.S.C., Section 1983 and the Fair Housing Act, as amended 42 U.S.C., Sections 3601 et seq.

CONTACT PERSON:

Phillip Elzo, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116,(405)419-8275.

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 JANUARY 2, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

330:36-1-2.1. AUTHORITY

The Tax Reform Act of 1986 ("Act") and Section 42 of the Code Authorizes the OAHTC Program. Oklahoma Housing Finance Agency ("OHFA") has been designated by the Governor as the State's allocating agency for purposes of administering the State's OAHTC Program.

330:36-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional capitalized terms used in these Chapter 36 Rules are defined in the Code. When a conflict exists between the following definitions and the Code the Code shall control.

"Affiliate" means any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with any other Person and specifically shall include parents and/or subsidiaries of the Person who is an Affiliate of the first Person.

"Agreement" means the Regulatory Agreement (Extended Use Agreement) which is required to be executed by Taxpayer and recorded in first lien position, which imposes terms, conditions, obligations, restrictions, covenants, representations and warranties which run with the Land and which are binding and a burden upon the Land and the Development and all portions thereof, and upon any Transferee, purchaser, grantee, developer or lessee (other than a Resident) of any portion of the Development and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and Transferees or assigns of any purchaser, grantee, developer or lessee of any portion of the Development and any other person or entity having any right, title or interest therein and which is intended to meet the definition of a "long-term commitment to low-income housing" as required by Code Section 42(h)(6) and the requirements of the Credit Program.

"Allocation" means the maximum amount of Credit available to the Development as a result of the approval of an award by the Trustees of a portion of the State's Credit Authority. The Credit shall be apportioned to each Qualified Building at the time such Qualified Building is Placed-In-Service.

"Applicable Fraction" means the fraction used to determine the qualified basis of a qualified low income building which is the smaller of the unit fraction or the floor space fraction.

"Applicant" means any ~~Person, and each Affiliate of such Person, that submits an Application to OHFA requesting a TCA pursuant to these Rules and the Application, and includes the Development owner(s) and the original or successor Applicant and each of their successors in interest in the Development, regardless as to whether any such successors in interest in the Development have obtained the approval of transfer of such interest in the Development as required by the Rules or the Application.~~ an individual, nonprofit organization or profit-motivated individual, corporation, general or limited partnership, limited liability company or other legal entity which has submitted an Application to OHFA for a Credit Reservation and Allocation, and its successors in interest. "Applicant" includes the Taxpayer and Taxpayer's predecessor in interest, if any, and includes any successor in interest, Transferee, of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, Transferee, Taxpayer or lessee (other than a Resident) of all or any portion of the Development, and any other person or entity having any right, title, or interest in the Development.

"Application" means an application in the form prescribed by OHFA, from time to time, in the AP, including all exhibits and other materials filed by an Applicant with OHFA in support of or in connection with the formal request by the Applicant requesting a TCA.

"Application Packet" (referred to in these Rules as the "AP") means the Application in the form prescribed by OHFA from time to time, together with instructions and such other materials provided by OHFA to any Person requesting the same for the purpose of seeking to obtain from OHFA a TCA. OHFA will solicit public input on the Application Packet, and provide explanation of any significant changes. The AP may include definitive statements of what shall constitute Threshold Criteria, Selection Criteria, priorities, preferences, and compliance and monitoring requirements as may be authorized by or provided for in the Code and these Rules, and may include the necessary forms, instructions and requirements for Applications, environmental assessments, market studies, commitments, extensions, Carryover Allocations, Agreements, Elections, Set-asides, OHFA staff evaluation criteria

for Threshold Criteria and Selection Criteria, final ranking, credit amounts, tax exempt bond financed projects, compliance monitoring, and other matters deemed by OHFA Trustees, in their complete discretion, to be relevant to the process of evaluation of Applications and the Applicants in connection with the award or denial of TCAs.

"Area Median Gross Income" means the median gross Income adjusted for household size, for the county or counties where each Building in a Development is located as determined and published annually by HUD.

"Assignee" means Transferee, as herein defined.

"Assignment" means Transfer, as herein defined.

"BIN" means the Building Identification Number assigned by OHFA to a Building in the Development.

"Building" means a Residential Rental Property containing residential Housing Units located on the land and included in the Development. For purposes of the Credit Program, each Building is identified by its BIN and its street address assigned by the United States Postal Service. In case of any inconsistency, the BIN shall control. In the event more than one Building is located on the land, each Building must be identified in the manner required by Code Section 42(g) to be treated as part of the Development. Any Allocation of Credit shall be effective only for the Building(s) identified in a Carryover Allocation Agreement, if applicable, or in Exhibit "A" to the Regulatory Agreement.

"Capital Needs Assessment" (CNA) means a qualified professional's opinion of a property's current physical condition determined after a physical inspection of the interior and exterior of the units and structures. The physical inspection should include an interview with the on-site manager and maintenance personnel. This assessment should identify deferred maintenance, physical needs, remaining useful life of key components, building material deficiencies and material building code violations that affect the property use, structural and mechanical integrity, and the future physical and financial needs. The assessment must include the cost of labor and materials identified in detail and the extent of future expenditures contemplated to ensure the costs will be addressed through operating and replacement reserves. Components which should be examined and analyzed in this assessment include but is not limited to:

(A) site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, gas and electric utility lines;

(B) structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system and drainage;

(C) interiors, including unit and common area finishes (carpeting, vinyl or tile flooring, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corriders; and

(D) mechanical systems, including plumbing and domestic hot water, HVAC, electrical, lighting fixtures, fire protection and elevators.

"Carryover Allocation" means, an Allocation which is made with respect to a Building or Development pursuant to Code Section 42(h)(1)(E) and/or Code Section 42(h)(1)(F), as the case may be, and in conformance with IRS Notice 89-1 and Treasury Regulation Section 1.42-6.

"Carryover Allocation Agreement" means the contract between Taxpayer and OHFA, authorized and approved by the Trustees, wherein subject to the satisfaction by Taxpayer of the terms, conditions, obligations and restrictions contained therein or in any Resolution of the Trustees, a Carryover Allocation is made pursuant to Code Section 42(h)(1)(E) and/or Code Section 42(h)(1)(F), IRS Notice 89-1 and Treasury Regulation Section 1.42-6.

"Certifications" means the representations made under penalties of perjury by the Applicant, Taxpayer, each Developer, each partner or general partner, party to a joint venture, and/or Resident, as applicable, including but not limited to those representations and certifications set forth in the Applications and the Regulatory Agreement and Exhibits. Certifications also mean any and all representations made under penalties of perjury with respect to the Development at any time from the date of submission of the Application and throughout the Development Compliance Period.

"Code" means the Internal Revenue Code of 1986, as amended, and in effect at the date of the Regulatory Agreement, together with applicable rules and regulations, revenue rulings, guidelines, releases, pronouncements, notices or procedures promulgated thereunder or referred to therein or in the applicable rules and regulations.

"Commitment" means a representation or agreement of the Taxpayer/Applicant contained in the Application, or otherwise, which in all cases shall be irrevocable and binding upon Taxpayer and its Transferees and successors in interest throughout the Development Compliance Period, unless otherwise noted in the Regulatory Agreement, these Rules, the Application, or any other agreements entered into by Taxpayer with OHFA in connection with the Credit Program.

"Common Area Unit" means a Unit in a Development that is occupied by resident managers or maintenance personnel, or used for a Development's business offices or security personnel, as far as this use is reasonably required for the Development. A Common Area Unit is not a Housing Unit and is not included in the Total Housing Units for the Development [unless so identified in the Application]. A Common Area Unit is not included in the calculations for the Applicable Fraction, and is not Rent-Restricted unless so identified in the Application. If a Common Area Unit is no longer used for the above purposes during the Development Compliance Period, the Unit will be treated as a Housing Unit subject to the limitations on Low-Income Units as far as this treatment is necessary to determine the Applicable Fraction for that Development.

"Compliance Period" means with respect to any Qualified Building, the continuous fifteen (15) year period over which the Qualified Building must satisfy all requirements of the Code and the Credit Program. The Compliance Period begins with the first year of the Credit Period.

"Consultant" means any person (which is not ~~an owner~~ a taxpayer or Affiliate of an owner of the Development) that provides professional or expert services relating to an Application, a Development, or any activities pertaining to the filing of an Application, the award of a TCA, the Carryover Allocation, or cost certification documents filings with OHFA.

"Control" (including the terms "controls", "controlling", "controlled by", and/or "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction or the management and policies ~~or~~ of any other Person, whether through an ownership interest in the other Person, by contract, agreement, understanding, designation, office or position held in or with the other Person or in or with any other Person, or by coercion, or otherwise.

"Credit" means the low-income housing tax credit available for federal income tax purposes under Code Section 42 for a Qualified Building.

"Credit Authority" means the maximum amount of Credits which may be allocated by OHFA for each calendar year. Credit Authority is based upon a formula established by the IRS and the Code.

"Credit Period" means the ten (10) year period over which the Credit may be claimed for a Building. The Credit Period begins when the Building is placed in service, for Credit purposes, or if the Taxpayer makes an election under Section 42(f)(1)(B) of the Code, the next year; but only if the Building is a qualified low-income building within the meaning of Code Section 42(c)(2), by the end of the first year of that period. For an existing Building with Rehabilitation Expenditures, the Credit Period shall not begin before the year that the rehabilitation Credit is allowed under Code Section 42(f)(5).

"Credit Program" means OHFA's program for approving Allocations and includes, without limitation, adopting the Qualified Allocation Plan and OHFA's Credit Program Rules and all things contemplated therein or appurtenant thereto, including without limitations, monitoring Developments throughout the Extended Use Period and notifying the IRS of the Building's or a Development's failure to comply with Code requirements.

"Credit Reservation" means the reservation of a maximum amount of the Credit Authority to the Development which will be available for Allocation to such Development and apportioned to each Qualified Building therein upon meeting the requirements of the Credit Program and Code Section 42.

"Developer" means the person or entity with the responsibility of ensuring the effective construction or rehabilitation of the Development, including any and all responsibilities as outlined in the Development Agreement, which may also be the Applicant and/or Taxpayer of the Development. Developer also includes any other person or organization affiliated with, Controlled by, In Control Of or A Related Party to, the Developer, as determined by OHFA.

"Development" ~~means a site or sites, together with any building or buildings that are proposed, or are, to be assisted with tax credits as a single undertaking.~~ means the Land and one (1) or more Buildings, structures, or other improvements now or hereafter constructed or located upon the Land. If more than one (1) Building is to be part of the Development, each Building must be financed under a common plan and identified in the manner required under Code Section 42(g).

"Development Compliance Period" means the period beginning with the first day the first Building of the Development is Placed-In-Service and continuing thereafter until the latest to end of the following periods for each Building in the Development: (i) the Compliance Period; (ii) the Extended Use Period; or (iii) the "Three Year Period."

"Development Team" means the Applicant, architect, attorney, consultant, developer, general contractor, market analyst and/or appraiser, property management company, tax professional, Taxpayer ~~Owner~~, ~~Developer, property management company,~~ and the principals of each.

"Drug" for purposes of these OAHTC Program Rules, means "a controlled substance" as that term is defined in Section 102 of the Controlled Substances Act, 21 U.S.C., Section 802.

"Due Date" if a due date for submission of documents or fees falls on a weekend or a designated Federal holiday, then the due date becomes the next business day.

"Elderly" means any person sixty-two years of age or older. The sixty-two year old age limit does not apply to spouses or immediate family members for purposes of qualifying as an Elderly Development. It is intended that Elderly Developments will be occupied by at least one person sixty-two (62) years of age or older per unit to satisfy this criteria. State or Federal definitions established for other housing supersedes this definition.

"Eligible Basis" means generally the depreciable basis in the property.

"Empty Unit" means a Tax Credit unit that has never been rented.

"Extended Use Period" means the continuous period, a minimum of fifteen (15) years, following the close of the Compliance Period during which a Qualifying Building must satisfy all requirements of the Code and the Credit Program. The Extended Use Period for the Development is set forth on Exhibit "A" to the Regulatory Agreement and may not be revoked or terminated prior to said date.

"Gross Rent" means the rent received for a Low-Income Housing Unit, including utility allowances but excluding (i) any payments under Section 8 or any comparable rental assistance program; (ii) any fees or supportive services (within the meaning of Code Section 42(g)(2)(B); (iii) paid to Taxpayer (on the basis of the low-income status of the Qualified Resident of the Low-Income Unit) by a governmental assistance program or an organization exempt from federal income tax under Code Section 501(c)(3), if such program or organization provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services; and (iv) rental payments to Taxpayer to the extent an equivalent amount is paid to the RHS under Section 515 of the Housing Act of 1949. Gross Rent includes the minimum amounts paid toward purchase of a Housing Unit as described in Code Section 42(g)(6). The amount of

Gross Rent is determined annually based upon the Area Median Gross Income for the locality in which the Development is located. The annual amount may decrease but such amount will not be reduced below the amount of Gross Rent established in the first Year of the Credit Period.

"Hard Construction Costs" means the following types of activities, but not limited to, earthwork/sitework, on-site utilities, roads and walks, concrete, masonry, metals, carpentry (rough and finish), moisture protection, doors/windows/glass, insulation, roofing, sheet metal, drywall, tile work, acoustical, flooring, electrical, plumbing, elevators, blinds and shades, appliances, lawns & planting, fence, cabinets, carpets, and heat & ventilation. For calculations of contractor fees, contingency will be included.

"Homeless" means (1) lacking a fixed, regular and adequate nighttime residence; and has a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations or a public or private place not ordinarily used as sleeping accommodations for human beings, OR (2) displaced as a result of fleeing violence in the home; and has a temporary residence that is a supervised public or private shelter OR (3) certified by an agency involved in regularly determining homeless status. Homeless individuals are considered homeless for a period of twenty-four (24) months from the date of move-in, according to Section 103 of the Stewart B. McKinney Homeless Assistance Act and 42(i)(3)(B)(iii)(I) of the Code.

"Housing Unit" means a Low-Income Unit and/or Market Rate Unit located in a Building which is available for rent or is rented by Residents. Common Area Units are not included.

"HUD" means the U.S. Department of Housing and Urban Development.

"Imputed Household Size" means the household size based on the number of people deemed living in the Housing Unit, as determined under Code Section 42(g)(2)(C)).

"Imputed Income Limitation" applicable to a Low-Income Housing Unit means, depending upon the Minimum Low-Income Housing Set-Aside irrevocably elected by Taxpayer for the Development forty percent (40%) or twenty percent (20%) of the Area Median Gross Income, adjusted for the Imputed Household Size as set forth in the Code Section 42(g)(2)(C).

"Income" means the income of one or more Qualified Residents, as determined in a manner consistent with the methods under HUD's Section 8 Program.

"IRS" means the Internal Revenue Service of the Treasury.

"IRS Form 8609" means the IRS Form entitled "Low Income Housing Credit Certification" issued by OHFA no later than the end of the calendar year that such Building is Placed-In-Service or to be issued. The IRS Form 8609 establishes the maximum Credit for a Building.

"IRS Form 8823" means the IRS form entitled "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition" issued or to be issued by OHFA with respect to issues of noncompliance with the laws of the IRS and/or the sale or disposition of the Development.

"Land" means the site(s) for each Building in the Development and having the legal description set forth described in the Carryover Allocation Agreement and Exhibit "A" to the Regulatory Agreement.

"Large Development" means a Development with more than sixty (60) units.

"Lease Rider" means the disclosure statement required by OHFA which is to be attached by Taxpayer to each Resident lease for all Housing Units. The Lease Rider describes in general the rights of the Residents of the Development.

"Low-Income Unit" means a Housing Unit that is both Rent-Restricted and occupied by Qualified Residents, provided that: (i) Housing Unit shall constitute a Low-Income Unit only if it is suitable for occupancy taking into account local health, safety and building codes and it is used other than on a transient basis except in the case of transitional housing, all as determined under Code Section 42(i)(3); and (ii) Housing Unit in any Building which has four (4) or fewer Total Housing Units shall not constitute a Low-Income Unit if any Housing Unit in the Building is occupied by an Owner or a related person [within the meaning of Code Section 42(i)(3)(C)] unless such Building is described in Code Section 42(i)(3)(E).

"Market Rate Unit" means a Housing Unit that does not meet the definition of a Low-Income Unit.

"Minimum Low-Income Housing Set-Aside" means the minimum percent required under Code Section 42(g) of Housing Units in the Development to be both Rent-Restricted and occupied by Qualified Residents, i.e., Residents whose Income is at or below a certain percentage of Area Median Gross Income. For purposes of Code Section 42(g), Taxpayer must have selected either: (i) twenty percent (20%) or more of the Total Housing Units to be Rent-Restricted and occupied by Residents whose Income is at or below fifty percent (50%) percent of the Area Median Gross Income; or (ii) forty percent (40%) or more of the Total Housing Units to be Rent-Restricted and occupied by Residents whose Income is at or below sixty percent (60%) of the Area Median Gross Income as the Minimum Low-Income Housing Set-Aside. The Applicant may, however, have made a Commitment to provide greater percentages of Housing Units that are both Rent-Restricted and occupied by Residents meeting the above Income limitations and/or making Housing Units available to Residents with Income below the above limitations, i.e., an Additional Low-Income Housing Set-Aside. Taxpayer and all Transferees, and successors in interest shall be bound by all Commitments, including the Minimum Low-Income Housing Set-Aside, or Additional Low-Income Housing Set-Aside made in the Regulatory Agreement, or included in the Carryover Agreement or any of the Resolutions of the Trustees respecting the Application, the Development, or Taxpayer.

"Nonprofit" means a private nonprofit organization that is organized under State or local laws; has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization; has a tax exemption from the Internal Revenue Service under section 501(c) (3) or (4) of

the Internal Revenue Code of 1986; does not include a public body; has among its purposes the provision of decent housing that is affordable to low income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws; and, has at least a one year history of providing affordable housing at the local level, and is duly qualified to do business within the State.

"Nonprofit Sponsored Development" means and refers to a proposed Development that has or will have a Nonprofit that has a Controlling interest by reason of an ownership interest in a Person that is or will be the owner of the subject Development, and has materially participated, or will materially participate (within the meaning of the Code) in the Development and operation of the Development throughout the Compliance Period.

~~**"OAHTC"** means the affordable housing tax credit provided by Section 42 of the Code.~~

"OHFA" means Oklahoma Housing Finance Agency. ~~OHFA has been designated by the Governor to administer the State's OAHTC Program.~~

"Owner" means the legal Owner of record of the Development, as set forth on page one of the Regulatory Agreement, and any and all successor(s) in interest of Owner, including any and all Transferees, Assignees, purchasers, grantees, owners or lessees (other than a Resident) of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any Transferee, purchaser, assignee, grantee, owner or lessee (other than a Resident) of all or any portion of the Development, and any other person or entity having or acquiring any right, title, or interest in the Development. Owner is also the Taxpayer, Applicant or the Applicant's successor in interest.

"Partnership" means any syndicate, group, pool or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is treated for federal income tax purposes as a partnership and is not considered within the meaning of the Code, a trust or estate or a corporation. A Partnership may be a general Partnership or a limited Partnership and must have partners and an objective to carry on business and divide the gains therefrom.

"Partnership Agreement" means the agreement entered into by the partners and/or limited partners and general partner(s), as applicable, which sets forth their respective, rights, interests and obligations to each other and with respect to the assets of the Partnership.

"Person" means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality, Community Housing Development Organization (CHDO), interlocal cooperative, or other organization of any nature whatsoever, and shall include any two or more Persons acting in concert toward a common goal.

~~**"Phased development"** means two or more properties that share certain characteristics, including but not limited to close or contiguous physical proximity to each other, similar architecture or size, common developer or development team, or common ownership or financing.~~

"Placed-In-Service" means: (i) the date on which a new Building or existing Building used as residential rental property is ready and available for its specifically assigned function as evidenced by a certificate of occupancy or the equivalent; or (ii) for rehabilitation expenditures that are treated as a separate new Building, any twenty-four (24) month period over which such Rehabilitation Expenditures are aggregated.

"Program Rules" means the various written criteria, requirement, rules, and policies adopted from time to time by the Trustees as the State's Qualified Allocation Plan to administer the Credit Program and to provide for Allocations. The Program Rules must be followed by any participant in the Program. The Program Rules may include requirements that are more stringent than those under Code Section 42.

"Qualified Allocation Plan (QAP)" means these Chapter 36 Rules plus the Application Packet (AP) as defined and other materials provided by OHFA.

"Qualified Building" means a Building which meets the terms, conditions, obligations, and restrictions of the Program Rules, Carryover Allocation Agreement, Regulatory Agreement, Resolutions of the Trustees respecting Taxpayer or the Development, and Code Section 42(c)(2) for an Allocation and the issuance by OHFA of IRS Form 8609.

"Qualified Contract" means a bona fide contract to acquire the portion of a Building which is not Rent-Restricted for fair market value and the portion of the Building which is Rent-Restricted for an amount not less than the Applicable Fraction for the Building of the sum of: (i) the portion of outstanding indebtedness secured by, or with respect to the Building which is allocable to such Building; (ii) adjusted investor equity in the Building; and (iii) other capital contributions invested in the Building but not reflected in the amounts described in (i) or (ii) above; reduced by cash distributed from the Development or available for distribution from the Development; provided that in all cases, the purchase price for the Building required for a contract to be a Qualified Contract shall be determined in a manner consistent with the requirements of Code Section 42(h)(6)(F).

"Qualified Development" means a Development or Residential Rental Property where an Applicable Percentage or more of the Housing Units are both Rent-Restricted and occupied by Residents whose Income is at or below the level selected as the Minimum Low Income Housing Set Aside.

"Qualifying Households" means households whose annual incomes do not exceed the chosen set-aside (which is either 50% or 60%) of the median family income for the area.

"Regulatory Agreement" means the written and recorded agreement between a recipient of a TCA and the allocating agency, OHFA, placing restrictive covenants upon the Development and the underlying land for a term of not less than thirty years (30) years, or such other term as may be required from time to time by provisions of the AP, these OAHTC Rules and Section 42 of the Code and the federal rules and regulations promulgated thereunder and containing other restrictions, covenants, warranties and agreements required by state, federal or local law and these OAHTC Rules.

"Rehabilitation Expenditures" means amounts that are capitalized and incurred for the addition to or improvement of an Existing Building of a character subject to the allowance for depreciation under Section 167 of the Code. However, it does not include the costs of acquiring a Building or an interest in it, for example, any Developer Fee properly allocated in acquiring a Building or any other soft costs or any amount not permitted to be taken into account under Section 42(d)(3) or Section 42(d)(4) of the Code.

"Rent-Restricted" means that the Gross Rent with respect to a Low-Income Unit does not exceed thirty percent (30%) of the income limitations for Qualified Residents adjusted by the Imputed Household Size, subject to the exception set forth in Code Section 42(g)(2)(E) (relating to certain Housing Units for which federal rental assistance decreases as Resident Income increases).

"Resident" means an individual or group of individuals (other than an Owner) residing in a Housing Unit.

"Resolution" means the resolution, motion or other official action of OHFA duly taken by not less than a majority vote of the Trustees at an open public meeting of such Trustees and includes all Resolutions adopted by the Trustees with respect to a Development signifying that OHFA has received an Application for such Development and such Application has been approved for a Credit Reservation, Carryover Allocation or Final Allocation, or any changes relating to the Development.

"Review Report" means the Threshold Criteria Review and Selection Criteria Review containing the results of OHFA's review of the Application and scoring of the Application.

"Rural Area" means any city, town, village, area or place generally considered rural by the Secretary of Agriculture (RHS) for rural housing programs.

"Rural Development" means a Development that is, or will be located within a Rural Area. RHS 538 projects are not eligible for the Rural 515 set-aside, but may qualify under other set-asides.

"Section 8" means Section 8(c)(2)(A) of the United States Housing Act of 1937, as amended.

"Selection Criteria" means the evaluation criteria, over and above the Threshold Criteria, set out in an applicable AP, which shall be established and may be changed by OHFA from time to time in an applicable AP (using the priorities for the State as they are established from time to time under and pursuant to these Rules and the applicable AP), to determine the Development's qualifications, and which are the ~~bases~~ basis for ranking Applications and establishing a relative level of acceptability for consideration under the Rules and the applicable AP for the possibility of the award of a TCA by OHFA. Although the Selection Criteria may be given substantial weight by OHFA Trustees in deciding whether or not a particular Application and Applicant shall be awarded a TCA, the OHFA Trustees reserve the right to take into consideration such other factors as they, in their complete discretion, deem appropriate.

"Site Control" means the exercise of dominion or control over the property through the execution of a purchase, sale, or long-term lease agreement (with a lease term that exceeds the extended use period), receipt of a deed or conveyance of the Land where the development will be located, or an option to purchase the property (where the option is not revocable on the part of the seller). OHFA alone will decide if an Applicant or ~~Owner~~ Taxpayer has obtained Site Control.

"Special Housing Development(s)" means any Development specifically designed and developed for persons with Special Needs.

"Special Needs" means such targeted populations as may be designated from time to time in an Application Packet by official action of ~~OHFA~~ OHFA's Board, which designations may include, but are not necessarily limited to, the homeless, the elderly, persons with mental and physical disabilities and/or disabled or handicapped persons.

"State" means the State of Oklahoma.

"TCA" means a federal low-income tax credit allocation by OHFA to a Development owner pursuant to ~~the Code,~~ Section 42 of the Code, these Rules, QAP, the Act, the applicable AP, the Application, and formal action by the OHFA Board of Trustees.

"Three-Year Period" for a Building means the three (3) year period following: (a) the date of acquisition of such Building by foreclosure or forfeiture under a deed of trust, mortgage or real estate contract or by deed in lieu of foreclosure; or (b) the last to end of the Compliance Period, with respect to such Building.

"Threshold Criteria" means the criteria set out herein and in an applicable AP, which shall be established and may be changed by OHFA from time to time in an applicable AP, to determine the qualifications of the Applicant and the ~~owner~~ Taxpayer and the Proposed Development, presented in each Application that are the minimum level of acceptability for consideration under the Rules and the applicable AP for the possibility of the award of a TCA by OHFA. Failure to ~~timely~~ satisfy all Threshold Criteria set out in the applicable AP shall result in the disqualification of the Application for further consideration, and shall require no further action by OHFA Staff except to ~~to not apply the Selection Criteria to the Application, and to~~ notify the Applicant of the disqualification.

"Total Housing Units" means all Housing Units in a Building including both Market Rate Units and Low-Income Units.

"Total Development Costs" means the total costs incurred in acquiring and developing the Development as set forth in the proposed budget for the Development included in the Application and in an independent certified public accountant's certification of sources and uses of funds submitted to OHFA.

"Transfer" means any sale, transfer, merger, consolidation, liquidation, contribution, assignment, exchange or other change in all or part of Ownership of the Land and/or Development or any Building which is a part thereof, whether voluntary or involuntary, and also includes: a transfer, sale, contribution or assignment by the Applicant, Taxpayer or Developer of all or any part of its rights, title or interest in the Application, Carryover Allocation Agreement, Credit, Land, Building and/or Development to another party; or a withdrawal, change or addition of any partner to a general Partnership, general partner of a limited Partnership, any party to a joint venture or the manager of a limited liability company.

"Transferee" means any and all successor(s) in interest of Taxpayer, including any and all Transferees, Assignees, purchasers, grantees, owners or lessees (other than a Resident) of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any Transferee, purchaser, assignee, grantee, owner or lessee (other than a Resident) of all or any portion of the Development, and any other person or entity having or acquiring any right, title, or interest in the Development. Owner is also the Taxpayer, Applicant or the Applicant's successor in interest.

"Transitional Housing" for purposes of these OAHTC Program Rules means transitional housing for the homeless which meets the requirements of Code Section 42(i)(3)(B)(iii).

"Treasury" means the United States Department of the Treasury.

"Trustees" means the Board of Trustees of OHFA.

"Unit Fraction" means the fraction of a Building devoted to low-income housing, the numerator of which is the number of Low-Income Housing Units in the Building, and the denominator of which is the number of Total Housing Units, whether or not occupied, in the Building.

"Vacant Unit" means a Tax Credit unit that was last occupied by a qualified household.

330:36-1-9. Regulatory Agreement/Compliance Manual/Compliance with Applicable Laws

(a) **Regulatory Agreement.** TCA recipients ~~(owners)~~ (taxpayers) must enter into a written Regulatory Agreement with OHFA. Requirements, procedures, and processes provided in the applicable Regulatory Agreement and amendments to it shall apply to Developments and the owner(s) thereof selected to receive a TCA.

(b) **Compliance Manual.** OHFA shall provide each owner upon request with a Compliance Manual at a cost sufficient to defray the cost of production. The Compliance Manual will also be available on OHFA's website at www.ohfa.org.

(c) **Compliance with Applicable Laws.** The Taxpayer, Applicant, the Development, the Owner(s) of the Development, the Development Team and the Affiliates of each must comply with all applicable federal, state and local laws, rules, regulations and ordinances, including but not limited to, Code Section 42, and regulations promulgated thereunder, the Oklahoma Landlord Tenant Act, the Titles VI and VII of the Civil Rights Act of 1964, as amended and Title VIII of the Civil Rights Act of 1968, as amended. Neither the Applicant, the owner(s) of a Development, the Development Team nor the Affiliates of each shall discriminate on the basis of race, creed, religion, national origin, ethnic background, age, sex, familial status or disability or handicap in the lease, use or occupancy of the Development or in connection with the employment or application for employment of persons for the operation and/or management of any Development. The owner(s) of a Development will be required to covenant and agree in the Regulatory Agreement to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended, for the time period as promised in the application.

SUBCHAPTER 2. ALLOCATION PROCEDURES

330:36-2-1. TCAs distribution

(a) OAHTCs allocated annually to the State by the IRS shall be awarded to Applicants selected through a formal application process governed by the Qualified Allocation Plan (QAP). The deadline for all informal input sessions and the formal public hearing will be published by ~~OHFA's~~ OHFA Staff.

(b) TCAs will be awarded according to the Act, Code, these Chapter 36 Rules, the applicable AP, and at the discretion of the OHFA Trustees, by their formal action, giving consideration to Staff's recommendation following a thorough review and financial feasibility analysis.

(c) The AP shall be made available to parties considering the filing of an Application and interested parties upon request. Requests for the AP should be directed to ~~OHFA's~~ the OHFA Housing Development Team or the AP can be accessed at OHFA's website, www.ohfa.org.

330:36-2-2. Additional Credits

(a) Applications for additional Credits on new construction developments are not allowed. Although discouraged, applications for additional credits on rehabilitation developments may be allowed, but only under extenuating circumstances not easily identifiable or ascertainable at the time of initial credit award. The OHFA Board of Trustees may award additional credits at their sole discretion. Maximum award amount cannot exceed ten percent (10%) of the original tax credit allocation amount, which in the aggregate cannot exceed $500,000. Applicants who have received approval of a Carryover Allocation in a prior year for a specific Development may request additional Credits for that Development. The Applicant may supplement the Applicant's prior Application; however, the Application as supplemented must:

(1) Be made by the applicable reservation cycle deadline;

(2) Be accompanied by the Application fee;

(3) Meet all Threshold requirements of the Credit Program Rules in effect as of the deadline of the reservation cycle in which the request for additional Credits is made; and

(4) Each page clearly tabbed in conformity with the current form of Application.

(b) The supplemented Application will be scored and ranked in accordance with the Credit Program Rules in effect as of the deadline of the reservation cycle in which the request is made.

(c) An additional feasibility analysis will be undertaken. The Applicant must prepare an in-depth analysis of why additional Credits are required. OHFA may request information from the Applicant's lender(s), accountants, legal advisors or financial Consultants to confirm representations contained in the Application.

(d) Neither the Applicant nor OHFA shall be required to give additional notice pursuant to 330:36-2-11 and 330:36-4-2(b)~~(2)~~ (1) of these Chapter 36 Rules if the notice requirements of the Credit Program Rules in effect as of

the date of the Applicant's original filing of an Application were met.

330:36-2-3. Set-aside categories for TCAs

(a) The annual allocation of OAHTC Program tax credits made available to the State shall be divided into various set-aside categories, including but not necessarily limited to, specific set-aside categories of non-profits (as identified by a written determination letter from the IRS), rural areas, elderly, and such other categories as OHFA Trustees, in their complete discretion, may adopt from time to time for inclusion in an applicable AP. Non-profits competing in the nonprofit set aside must be, at a minimum, a fifty-one percent (51%) Controlling general partner. (b) The amount of the State's annual allocation of credits devoted to each set-aside category will be determined by the Code, these Chapter 36 Rules and from time to time by formal action of OHFA. Specific set-aside categories and amounts for each category may be determined from time to time by formal action of OHFA and shall be set out in the applicable AP. OHFA may, in its discretion, at any time and from time to time, modify the amount of the State's annual allocation of credits devoted to any or all of each set-aside in the AP if, in the complete discretion of the OHFA Trustees, they determine that the housing needs of the State so warrant, except for the maximum ninety percent (90%) allocation limitation to those other than non-profits as required by the Code.

330:36-2-12. Communications with OHFA during Application Review

(a) Following submission of an Application, neither the Applicant nor any representative or affiliate of the Applicant shall contact any OHFA employee, with the exception of the Housing Development Team Leader, concerning the Application or any other Applications filed in the same cycle. This prohibition includes telephone and electronic transmissions. All communications concerning the Application must be directed to the Housing Development Team Leader, be in writing and executed by the contact person identified in the Application. Only written communications will be accepted.

(b) Upon issuance of the Review Report by OHFA, communications with OHFA shall be made in the manner and time set forth in 330:36-2-13. Failure to comply with this subsection 330:36-2-12 may result in termination of the review process and denial of the Application.

(c) OHFA reserves the right to grant or deny requests for meetings with the staff of OHFA at any time during the Application process. Any requests must be in writing.

330:36-2-13. Review Report

(a) Upon completion of its review of all applications, OHFA will forward OHFA's Review Report to the contact person identified by the Applicant in the Application. OHFA will mail the Review Report by certified mail with return receipt requested mail or other form of traceable delivery system to provide proof of mailing and receipt. The Applicant must provide OHFA with any clarifying information requested therein ~~within ten (10) business days of the date of the Report~~ by the deadline given in the accompanying cover letter. In the event the Applicant disputes any matter contained in the Review Report, including without limitation any finding, determination, recommendation or scoring, the Applicant must respond to the Review Report in writing. Information requested by OHFA and/or the Applicant's response must be ~~forwarded to OHFA, postmarked no later than ten (10) business days following the date of the Review Report.~~ received by the deadline. Applicants are encouraged to use certified mail, Federal Express or another carrier providing a return receipt. Electronic transmissions will not be accepted.

(b) The Applicant's response to the Review Report must identify with specificity the disputed matter, finding, determination, recommendation, scoring, etc, and the Applicant's reason for disputing same, including any evidence which controverts the Review Report's determination. Any applicable statutes, rules, regulations or ordinances should be cited. Documentary evidence should be attached.

(c) OHFA will consider the Applicant's response to the Review Report prior to making its recommendations to the Trustees. The Applicant will be informed of OHFA's recommendations prior to the meeting of the Trustees where the Application is being considered.

(d) Failure to respond to staff's Review Report in a timely manner may result in the adoption of the Review Report by the Trustees, including any recommendation contained therein to deny the Application.

(e) The Trustees will not entertain Applications for Rehearing or Reconsideration based upon any matter contained in the Review Report which could have been asserted under this subsection 330:36-2-13.

330:36-2-15. Communications with OHFA during Application Review [REVOKED]

~~(a) Following submission of an Application, neither the Applicant nor any representative or affiliate of the Applicant shall contact any OHFA employee, with the exception of the Housing Development Team Leader, concerning the Application or any other Applications filed in the same cycle. This prohibition includes telephone and electronic transmissions. All communications concerning the Application must be directed to the Housing Development Team Leader, be in writing and executed by the contact person identified in the Application. Only written communications will be accepted.~~

~~(b) Upon issuance of the Review Report by OHFA, communications with OHFA shall be made in the manner and time set forth in 330:36-2-13. Failure to comply with this subsection 330:36-2-15 may result in termination of the review process and denial of the Application.~~

~~(c) OHFA reserves the right to grant or deny requests for meetings with the staff of OHFA at any time during the Application process. Any requests must be in writing.~~

330:36-2-16. Carryover Allocations

(a) **Code reference.** Code Section 42(h)(1)(E) provides that an Allocation may be made to a Qualified Building, as defined by Section 42(h)(1)(E)(ii), which has not yet been placed in

service, provided the Qualified Building is placed in service not later than the close of the second calendar year following the calendar year of the Allocation.

(b) **Carryover Allocation requests.** An eligible Applicant must request in writing the approval of a carryover of an Allocation of the applicable calendar year, at a date specified in the AP. The ~~Owner~~ Taxpayer must satisfy all requirements of the Code and this section and file proof of same with OHFA, except the verifications required by 330:36-2-16(d) of the calendar year in which a Carryover Allocation is sought. The certifications and opinions required by 330:36-2-16(d) must be received by OHFA the later of the date which is ~~one hundred eighty (180) calendar days~~ six (6) months after the date that the allocation was made or the close of the calendar year in which the allocation is made. All documents requested by OHFA must be provided by the ~~Owner~~ Taxpayer.

(c) **Carryover Allocation basis.** To qualify for a Carryover Allocation, the ~~Owner~~ Taxpayer must demonstrate that the ~~Owner's~~ Taxpayer's basis in the Development, at the later of ~~one hundred eighty (180) calendar days~~ six (6) months after the date of allocation or the close of the calendar year in which the Allocation is made, is more than ten percent (10%) of the ~~Owner's~~ Taxpayer's reasonably expected basis in the Development. Developments that fail to meet the ten percent (10%) Test will not have a valid carryover allocation.

(d) **Verification of basis.** The Code requires OHFA to verify that the Owner has, by the later of ~~one hundred eighty (180) calendar days~~ six (6) months after the date of allocation or the close of the calendar year in which a Carryover Allocation is made, incurred more than ten percent (10%) of the ~~reasonable~~ reasonably expected basis in the Development (~~Land~~ land and depreciable basis). The ~~Owner~~ Taxpayer must file with OHFA a written certification, under penalty of perjury and in the form prescribed by OHFA, certifying that more than ten percent ~~(10)%~~ (10%) has been expended, in the year in which the Carryover Allocation was made or ~~one hundred eighty (180) calendar days~~ six (6) months later. The certification must be accompanied by a written opinion of the ~~Owner's~~ Taxpayer's certified public accountant, in a form acceptable to OHFA. It must state that said certified public accountant has examined all eligible costs incurred with respect to the Development and that, based upon this examination, it is the certified public accountant's belief that the taxpayer has incurred more than ten percent (10%) of its ~~reasonable~~ reasonably expected basis in the Development by the close of the calendar year of the Allocation or ~~one hundred eighty (180) calendar days~~ six (6) months later as determined in conformity with the Code and Treasury Regulations. OHFA's determination as to the satisfaction of the ~~ten percent~~ ten percent (10%) requirement is not binding upon the IRS and does not constitute a representation by OHFA to the ~~Owner~~ Taxpayer or any other party to that effect.

(e) **Carryover Allocation Agreement.** The ~~Owner~~ Taxpayer must submit to OHFA an executed Carryover Allocation Agreement, in a form approved by the Trustees of OHFA, in the year in which the Carryover Allocation is requested.

(f) **Notification of placed in service date.** Applicant must notify OHFA within thirty (30) calendar days of the date the Development is placed in service or be subject to loss of any Allocation. Notice will consist of submission of copies of the Certificates of Occupancy for each building and completion of any and all forms as may be required in the AP.

(g) **Development based Allocation.** An Allocation pursuant to Code Section 42(h)(1)(F) must meet the requirements of Code Section 42(h)(1)(F), all applicable Treasury Regulations, and these Chapter 36 Rules.

SUBCHAPTER 4. DEVELOPMENT APPLICATIONS AND SELECTION

330:36-4-2. Selection of Applications for award of TCAs

(a) **General.** For the purpose of selecting Applications for awards of TCAs, OHFA may annually develop Threshold and Selection Criteria that conform to the Code, the OAHTC Program purposes and these Chapter 36 Rules for inclusion in the next year's AP. The number, severity, or value of any one or more of the Threshold Criteria items may be increased by adoption of an AP for a given year that contains such increased Threshold Criteria items. However, each AP must contain, as a minimum standard for approval of any Applications for the award of any TCAs, for any applicable AP, the Threshold Criteria set out herein below in this section.

(b) **Minimum Threshold Criteria.** Failure to meet all Threshold Requirements set forth in the AP upon initial submission of the Application will result in the Application being rejected without further review. The Threshold Criteria shall include, but are not necessarily limited to the following:

~~(1) **Prohibition of Phased Developments.** Phased Developments are permitted in MSAs only if they are described and contemplated in the original Application and if all phases contain fifty (50%) or more market rate units, or the development is part of a HUD approved revitalization plan and the financing includes HUD HOPE VI Program funding.~~

(~~2~~1) **Notice Requirements.** The provisions of this subsection apply to all Applicants for a TCA, including the owners of Developments to be located on tribal property(ies). All notice requirements must be satisfied not less than thirty (30) calendar days prior to submission of an Application. ~~Every~~ Each application cycle requires notice.

(A) **Written Notices.** The Applicant must notify, in writing and by certified mail, the local Chief Executive Officer of the local Governing Body, Chairman of the appropriate county commissioners, state legislators (or their successor) within whose district the application is to be located regarding their intent to submit an application. This written notice shall serve to provide a reasonable opportunity to comment on the application. All notice requirements must be satisfied not less than thirty (30) calendar days prior to submission of an Application. ~~Every~~ Each application cycle requires notice.

(B) **Additional notice requirements.** If the site for the application is not located within the specific corporate limits of an incorporated town or city, but is proposed to be located within two (2) miles of an incorporated town(s) or city(ies) limits, Applicant must provide the same notice to each such town(s) and city(ies) as if the site was located within the corporate limits of each such town(s) and city(ies). All notice requirements must be satisfied not less than thirty (30) calendar days prior to submission of an Application. ~~Every~~ Each application cycle requires notice.

(C) **Publication notice.** Notice of an Applicant's intent to file an Application shall also be published in a newspaper of general circulation in the area wherein the Development will be located. All notice requirements must be satisfied not less than thirty (30) calendar days prior to submission of an Application. ~~Every~~ Each application cycle requires notice. At a minimum all such notices must contain the reasonably anticipated information below:

(i) the name and the legal description or street address of the proposed Development;

(ii) the names, business addresses and telephone numbers of the Applicant and the Applicant's designated contact person in regard to the proposed Development;

(iii) whether the Development is new construction, acquisition and rehabilitation and/or substantial rehabilitation;

(iv) the maximum number of units, bedroom mix, and percentage of income restricted units;

(v) the month in which the Applicant reasonably expects the Application to be considered by the OHFA Trustees for an award of a TCA;

(vi) the name, business address, telephone number and extension number of the contact person at OHFA to whom all inquiries about the hearing on the Application and the proposed Development should be directed.

(~~3~~2) **Market analysis.** All Applicants must submit third party, independent housing market analyses conforming to the Threshold Criteria set forth in the applicable AP, demonstrating and documenting the status of the market demand for the type and number of housing units proposed to be developed. The market analysis must be prepared no more than twelve (12) months prior to the date Application is filed with OHFA.

(~~4~~3) **Nonprofit owners.** Applicants proposing Developments under the nonprofit set-aside must demonstrate and document that the Nonprofit owner and/or Nonprofit ownership participant meet the definition of a nonprofit as defined in Section 42h(5)(C) of the Code and these Chapter 36 rules at 330:36-1-4. Applicants for nonprofit set-aside TCAs must demonstrate that the Nonprofit participant:

(A) ~~has a~~ will own a minimum of fifty-one percent (51%) ownership interest (~~either~~ directly or through a Partnership) in the Development;

(B) is at least a co-general partner, co-managing member, or a controlling stockholder, or can otherwise demonstrate ownership of, or the contractual obligation to acquire a controlling interest in the proposed Development by not later than the date the Development is substantially completed and commences business;

(C) will materially participate, on a regular basis, in the planning and construction of the Development, and in the operation and management of the Development throughout the entire compliance period pursuant to 26 CFR § 1.469;

(D) has a Board of Directors and Officers that are independent from any for-profit Development partner;

(E) is duly authorized to do business within the State; and

(F) has at least one year of affordable housing experience in the State.

(~~5~~4) **Resolution of local support.** Applicants must provide documentation of official local support for the Development by the jurisdiction within which the proposed Development is to be located, i.e. the Local Governing Body. The required documentation must be in the form of a resolution duly adopted by the Local Governing Body, and must be in a form that shall be subject to approval by OHFA's General Counsel. If there are any conditions in the resolution, OHFA may exercise its discretion to contact the governing body to ascertain the potential impact of the conditions. In the case of Developments to be located on tribal property, the resolution of support may be issued by the official elected tribal governing body.

(~~6~~5) **Capacity and prior performance.** Each Applicant must demonstrate and document the degree of expertise of Applicant and owner in the use of TCAs and the Development, rehabilitation and/or conversion, management and operation of properties related to the type of the proposed Development. Applicants, Owners, and their Affiliates, including all Development team members, shall be examined in regard to their existing Developments, and the record of compliance performance within Oklahoma and other states in which the Development team members have developed or are developing affordable housing. The removal as a General Partner may be considered lack of capacity and performance. Applicants with existing Developments ~~are~~ may be ineligible for a TCA where OHFA has or receives notice of uncorrected or repeated instance of nonperformance by Applicant, owner, or any of their Affiliates, including any of their Development team, including without limitation:

(A) failure to meet and maintain minimum property standards;

(B) failure to meet and maintain any material aspect of a Development as represented in a Development Application;

(C) have been involved in uncured financing defaults, foreclosures, or placement on HUD's list of debarred contractors;

(D) events of material uncorrected non-compliance with any Federal or State assisted housing programs within the prior seven (7) years; or

(E) the appointment of a Receiver; conviction on a felony criminal charge; or bankruptcy within the prior seven (7) years.

(~~7~~6) **Acquisition credits/ten-year holding requirement.** Applicants requesting acquisition credits must provide an opinion of counsel, in a form satisfactory to OHFA, that the ten-year holding requirement of Code Section 42(d)(2)(B)(ii) has been met or a waiver obtained from the IRS. If an existing waiver or waiver to be granted is claimed, copy of the waiver letter or a copy of the letter indicating a waiver will be granted and is forthcoming must be included in the applicant's Development proposal.

(~~8~~7) **Phase I environmental study.** Applicants must submit a Phase I Environmental Assessment of the Development prepared no more than twelve (12) months prior to the date an Application is filed with OHFA. In lieu of assessment for existing RHS-financed properties to be acquired and rehabilitated, the Applicant and RHS must certify that there are no adverse environmental concerns. Any remediation requirements should be detailed and costs identified in the budget.

(~~9~~8) **Financial feasibility and viability.** Applicants must provide a plan that demonstrates and makes commitments to the Development's financial feasibility and viability as a qualified low-income housing Development throughout the extended use period. Projects financed through the RHS programs must submit a Multiple Family Housing Obligation-Fund Analysis, Form FmHA 1944-51, or other evidence of firm commitment. Applicant must demonstrate to OHFA's satisfaction that the Applicant has financing commitments for one hundred percent (100%) of the project's total estimated construction and permanent financing. Commitment letters must include loan amount, interest rate, loan term, debt service coverage ratio (permanent lender), loan amortization period (permanent lender), borrower, loan fees, collateral and conditions precedent to funding. ~~Financing rates and the terms of the commitment must have been approved by the lending institutions and the commitment conditioned only on the award of TCAs.~~

(~~10~~9) **Readiness to proceed.** Applicants must demonstrate readiness to proceed in a timely manner should they be awarded a TCA. Factors that may be considered regarding Development readiness shall include but not be limited to:

(A) site control;

(B) land preparation. Applicant must provide preliminary plans or specifications for those activities commonly necessary to make a site ready for building, i.e. clearing, grading, infrastructure (streets, utilities, and the like), etc.

(C) proper zoning for the proposed Development.

(~~11~~10) **Public Housing Wait Lists.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated that the local or State public housing authority documents the presence of a client waiting list for affordable housing units in the locale of the proposed development.

(~~12~~11) **Capital needs assessment.** No allocations for rehabilitation will be made unless preceded by a capital needs assessment performed by a qualified independent third-party (architect, engineer, contractor, Rural Housing Services) which considers the proposed rehabilitation activities to ensure that the proposed improvements have a useful life that meets the full term of affordability based on extended use agreements. In addition, all rehab developments must include a complete, detailed tenant income audit that identifies all existing tenants and their income. The audit shall separately identify those tenants whose income exceeds applicable income limits.

(c) **Selection criteria.** The Selection Criteria shall be set forth in the appropriate AP, and shall include, but not necessarily be limited to the following:

(1) **Income targeting.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated therein a commitment to target lower-income populations. Points will be awarded based on the percentage of total AHTC units targeted to persons at or below fifty percent (50%) AMFI to the total number of AHTC units in the project. A sliding scale for points will be established in the annual AP.

(2) **Term of affordability.** Each Application will be analyzed on its ability and evaluated as to any commitments made therein in regard to serving qualified tenants for a period of time longer than the minimum required by the Code. Points will be awarded for an extension of the term of affordability beyond the minimum required by the Code and established in the annual AP.

(3) **Development location and housing characteristics.** Each Application will be analyzed and evaluated as to the geographic location and prevailing market conditions for the proposed Development. Examples of location and condition variables may include, but are not necessarily limited to, locating Developments within Difficult Development Areas, areas with rent burdens and/or Qualified Census Tracts the development of which contributes to a concerted community revitalization plan, ~~including but not limited to HUD or RDC designated Empowerment Zones, Enterprise Communities and/or Champion Communities~~ or presidentially declared disaster areas as identified in the current or preceeding year. For projects satisfying targeted locations, points will be established in the annual AP.

(4) **Development Leverage.** Each Application will be analyzed and evaluated as to the extent to which it results in tangible, cost beneficial investments or contributions to the proposed Development. Leverage shall be considered as the proportion or percentage of leverage resources to total eligible basis. Points for this criterion will be established in the annual AP.

(5) **Community Support.** The extent to which local governments and other community partners commit support for a proposed development will be analyzed.

Examples of community support include, but are not necessarily limited to: fee waivers, tax abatements, public improvements directly related to ~~a~~ the proposed Development, donations of property and/or materials, and other contributions of direct value to the proposed Development. Support must be directly related to the proposed project. Eligible evidence of support and points will be established in the annual AP.

(6) **Development ~~Characteristics~~ Amenities.** Each Application will be analyzed and evaluated as to commitments made therein for the provision of resident appropriate ~~supportive~~ amenities ~~and services~~, including but not limited to: percentage of brick, the use of higher quality building materials, ceiling fans in each bedroom and living room, shower head(s) with maximum of 2-1/2 gallons per minute water flow rate, $\frac{1}{2}$" insulation on hot water pipes; fluorescent light fixtures in the kitchen, bathroom(s) and utility room; air conditioners and/or heat pumps that use a more efficient and environmentally friendlier refrigerant called 410A or R-410, etc. ~~supportive services, day care, formalized resident involvement in the Development's on-going operations and management, and special on-site facilities. Services and amenities must be on site if a Large Development; Small Developments may provide off-site or contractual services.~~ Points available under this criterion for the resident appropriate ~~supportive~~ amenities ~~and/or services~~ will be established in the annual AP. Only ~~services and~~ amenities which exceed the minimum required by applicable laws or building codes, ~~such as the ADA,~~ will be eligible for points.

(7) **Development Services.** Each Application will be analyzed and evaluated as to commitments made therein for the provision of resident appropriate services. Points available under this criterion for the resident appropriate services will be established in the annual AP.

(8) **Applicant/Owner Experience.** Each Application will be analyzed and evaluated as to the experience of the ~~owner~~ Applicant in owning and successfully operating Developments in the LIHTC Program. Points available under this criterion will be established in the annual AP. This evaluation will be based on the experience of the Owner/Applicant as well as the Development Team.

(~~8~~9) **Management Experience.** Each Application will be analyzed and evaluated as to ~~the experience of the owner in~~ managing or providing management for Developments in the LIHTC Program. Points available under this criterion will be established in the annual AP. This evaluation will be based on the experience of the management team members. Changes in management may not occur after the Reservation without the prior written approval of OHFA.

(~~9~~10) **Tenant/Special Needs Populations.** Each Application will be analyzed and evaluated as to the extent to which commitments are made therein to serve Special Needs populations. Points available under this criterion will be established in the annual AP and will be based upon a percentage of units dedicated to special needs.

(~~10~~11) **Tenant populations of individuals with children.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated that the development will provide amenities and a unit mix conducive to families/individuals with children. Points available under this criterion will be established in the annual AP. To be eligible, the market study must indicate a need for family units.

(~~11~~12) **Tenant ownership.** Points available to applicants proposing for single family home ownership after the Compliance Period will be established in the annual AP. Applicants must submit a detailed plan which includes projections on maintenance, tenant reserve funds, etc. which will be evaluated for feasibility.

(~~12~~13) **~~Cost~~ Eligible basis per unit.** Each Application will be analyzed and evaluated as to the ability demonstrated therein to cost-efficiently produce the highest number of quality housing units for the TCAs requested in the Application or applied for with OHFA by the Applicant or any Affiliate of the Applicant for the same Development. Projects with the lowest Tax Credit eligible basis per unit will be given priority in the case of a tie in the final total rating scores.

(14) **Project Design.** Points may be established in the AP for project design elements.

(15) **Women/MBE.** Points may be established in the AP for Applicants utilizing Minority Business Enterprises/Women Business Enterprises (M/WBEs) as a participant of the Development Team.

(16) **Preservation of affordable housing units from pre-1990.** Points may be established in the AP for the preservation of affordable housing.

(17) **Negative Points.** OHFA Staff will deduct points for records of poor performance, or multiple errors in the application that require repeated contact and/or correspondence. Repeated contact and/or correspondence, in this case, would mean more than twice.

(d) **OHFA discretion.** Not withstanding the point ranking under the Selection Criteria set forth above under 330:36-4-2(c), the OHFA Board of Trustees reserves the right and shall have the power to allocate Credits to a project irrespective of its point ranking, if such intended allocation is:

(1) in compliance with Code Section 42;

(2) in furtherance of the housing goals set forth herein, in the AP or any formally adopted resolution of the Trustees; and

(3) determined by the Trustees to be in the interests of the citizens of the State.

330:36-4-2.1. General program requirements and limitations

(a) **General. [Reserved]**

(b) **Developer Fee limitations.** The amount of allowable Developer Fees shall be limited to:

(1) **Small developments.** Developer Fees may not exceed eighteen percent (18%) of the Eligible Basis, excluding the Developer Fees.

(2) **Large Developments.** Developer Fees may not exceed fifteen percent (15%) of the Eligible Basis, excluding the Developer Fees.

(3) OHFA may, in its sole discretion, increase the Developer Fees allowable in order to create special financing incentives to meet a pressing local affordable housing need. All determinations of allowable Developer Fees shall be made in a manner consistent with the Code, IRS regulations and/or any directives of the Internal Revenue Services at the time of Allocation.

(c) **Contractor Fee limitation.** Allowable Contractor Fees shall be limited to:

(1) **Small Developments.** Total allowable Contractor fees may not exceed sixteen percent (16%) of the hard construction costs, excluding the Contractor Fees. Allowable Contractor Fees are further limited as follows:

(A) General requirements may not exceed six percent (6%) of the hard construction costs, excluding the Contractor Fees;

(B) General Overhead may not exceed two percent (2%) of the hard construction costs, excluding the Contractor Fees; and

(C) Builders Profit may not exceed eight percent (8%) of the hard construction costs, excluding the Contractor Fees.

(2) **Large Developments.** Total allowable Contractor fees may not exceed fourteen percent (14%) of the hard construction costs, excluding the Contractor Fees. Allowable Contractor Fees are further limited as follows:

(A) General requirements may not exceed six percent (6%) of the hard construction costs, excluding the Contractor Fees.

(B) General Overhead may not exceed two percent (2%) of the hard construction costs, excluding the Contractor Fees; and

(C) Builders Profit may not exceed six percent (6%) of the hard construction costs, excluding the Contractor Fees.

(d) **Underwriting standards.**

(1) **Operating and replacement reserves.**

(A) Minimum operating reserves must equal six months of projected operating expenses plus:

(i) debt service payments and

(ii) annual replacement reserve payments.

(B) Minimum replacement reserves should equal $200 per unit annually for new construction and $300 for rehabilitation developments.

(C) Developer guarantees or letters of credit may be accepted in lieu of operating reserves, at the discretion of OHFA. The developer must demonstrate financial capacity and liquidity. OHFA will also consider the developer's track record and the number of other guarantees outstanding.

(D) Notwithstanding the foregoing, these underwriting standards shall not apply if the project is being constructed in accordance with another federal program, such as Rural Housing 515 or 538, and such program provides for budgeting for operating and replacement reserves.

(2) **Debt service coverage.**

(A) Debt service coverage means the ratio of a property's net operating income to debt service obligations.

(B) The minimum acceptable debt service coverage ratio will be established in the AP. ~~of 1.15 (1.05 in RHS properties) is required.~~

(3) **Projections.** All projections and pro-formas must contain realistic operating expense and vacancy rate projections consistent with prevailing market conditions.

(4) **Cost limits.** Costs per unit must be realistic and consistent with prevailing market rates. OHFA encourages cost efficient production, but will not give a preference solely for lowest construction costs.

(5) **Minimum of $7,500 hard construction costs per unit for rehabilitations.** No allocations for rehabilitation will be made unless a minimum of $7,500 in hard construction costs per unit will be expended.

(e) **Progress reports.** Progress reports must be filed by the Applicant/Owner beginning with the calendar quarter following the approval of a reservation of Credits until the IRS Form 8609 is issued for a building. Due dates are January 10, April 10, July 10 and October 10. The report must contain, at a minimum, the status of site preparation and/or construction, including the percentage of completion of each building, and costs incurred to date. The report must address any other requirements set forth in a Resolution of the Trustees and/or the Carryover Agreement. Within thirty (30) calendar days after the Certificate of Occupancy is issued for the last building in the project, the ~~Owner~~ Taxpayer must notify OHFA and submit a copy of the Permanent Certificate of Occupancy for each building in the ~~Project~~ Development. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of unused tax credits.

(f) **Construction time period.** Construction, not including site prep work, must begin within one hundred eighty (180) calendar days of credit reservation, unless extended for cause by OHFA. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of unused tax credits.

(g) **Additional requirements.** OHFA may, as it deems necessary in its sole discretion, impose additional requirements or Program limitations on any Applicant, Taxpayer, Owner or ~~Project~~ Development. Said requirements or limitations may be set forth in a Resolution of the Trustees or in any contract between the Applicant or Owner and OHFA.

(h) **Bond financed developments.** Taxable or tax-exempt bond developments financed at least fifty percent (50%) with the proceeds of tax-exempt bonds subject to the private activity bond volume cap are required to comply with all requirements of these Rules ~~except~~ with the exception of the Written Notice Requirement and the competitive selection process. Evidence of the bond financing must be submitted at least ~~seven (7)~~ ten (10) business days before the board meeting wherein the four percent (4%) tax credits are to be awarded. Bond Requirements must be met in addition to AHTC requirements, i.e.,

rental units, rents, student exemptions, transfers on site, occupancy changes, verification of assets. If a violation is not corrected within the cure period, the bonds will become taxable.

(i) **Timeliness and completeness of filings.** Deadlines for filing Applications will be established in the AP. Should OHFA request additional information, the deadline for filing same with OHFA will be set forth in the letter requesting same. Applicants/Owners must strictly comply with all deadlines and all filings must be complete when filed.

330:36-4-3. Fees

(a) **General.** Application and TCA Fees will be used to support overall OAHTC Program delivery and operation activities. Application fees shall be calculated as follows:

(1) **Application fees.**

(A) for single site or contiguous site Developments consisting of one to four Units, the application fee shall be $350.00;

(B) for single site or contiguous site Developments consisting of five to fifty Units, the application fee shall be $700.00;

(C) for single site or contiguous site Developments consisting of fifty one to one hundred units, the application fee shall be $1,400.00;

(D) for single site or contiguous site Developments consisting of over one hundred units, the application fee shall be $2,800.00;

(E) for scattered sites, the application fee shall be $350.00 per site, up to a maximum of $2,800.00.

(F) ~~For~~ for non-profit sponsored Developments the application fee shall be $350.00.

(2) **Amendment fee.** Any amendments to an Application, exhibits thereto or other information on file with OHFA must be accompanied by a $75.00 processing fee along with $15.00 per each supplemental page and/or each page amended. No amendments to an Application will be accepted prior to approval of a reservation unless the amendment is requested, in writing, by OHFA.

(3) **Reservation fees.** A non-refundable Reservation fee of two percent (2%) of the reservation amount is due within fourteen (14) calendar days of notification from OHFA of the approval of a Reservation.

(4) **Allocation fee.** An Allocation fee shall be paid in an amount equal to eight percent (8%) of the total Allocation, but in any event not less than $1,000.00. The Allocation fee must accompany the Allocation or Carryover Allocation request. The Allocation request will not be submitted to the Trustees for approval, nor will a Carryover Allocation Agreement be executed, nor will Form 8609 be issued unless this fee has been received by OHFA.

(5) **Processing fee.** A processing fee of three quarters of one percent (.75%) of the TCA must accompany the request for a final Allocation. A service fee of $100.00 must accompany the Request for Final Allocation of Credit.

(6) **Regulatory Agreement filing fee.** Upon approval of a final Allocation, an executed Regulatory Agreement must be submitted to OHFA and be accompanied by a check payable to the County Clerk of the county or counties in which the Development is located. The check or checks shall be in an amount sufficient to cover the filing fees of that county(ies). ~~OHFA will provide a schedule of said fees.~~

(7) **Compliance monitoring fees.** In addition to the documentation required by OHFA, an annual compliance monitoring fee shall be paid to OHFA. The compliance fee is payable on or before January 28th for each year during the compliance period and extended use period subject to annual adjustment. If the Development includes scattered sites, a compliance monitoring fee for each site shall be paid to OHFA. If the Compliance fee is not paid within thirty (30) calendar days of the due date, then a Late Fee will be assessed. The Late Fee is equal to ten percent (10%) of the Compliance fee. Failure to remit timely payment of compliance monitoring fees may result in the filing by OHFA of a lien against the Development. The compliance monitoring fee shall be computed as follows:

(A) For Developments financed by RHS under the Section 515 or by taxable or tax-exempt bonds (and otherwise qualify under the Code) where an agreement has been entered into between OHFA and RHS or the bond issuer wherein the RHS or bond issuer agrees to provide OHFA with the required information respecting the income and rent of the tenants in the Development, the fee shall be $210.00 per Development per year, plus $3.50 per OAHTC unit per year within any building within the Development;

(B) For developments where no agreement has been entered into between OHFA and RHS or the bond issuer wherein RHS or the bond issuer agrees to provide OHFA with the required information respecting the income and rent of tenants-the fee shall be $350.00 per Development per year, plus $15.00 per OAHTC unit per year within any building within the Development.

(C) For single site or contiguous site Developments of four units or less-the fee shall be $275.00 per Development per year.

(D) For all other Developments the fee shall be $350.00 per Development, plus $15.00 per OAHTC unit per year within any building within the Development.

(8) **Additional monitoring fees.** In the event of noncompliance with the Code or Regulatory Agreement or these Chapter 36 Rules requiring OHFA to conduct an examination of the owner, any building within the Development or any documentation to verify correction of said noncompliance, OHFA shall be reimbursed its costs by the Development or owner for such an examination, including an hourly rate for the OHFA examiner, not to exceed $30.00 per hour, plus any and all actual travel, lodging and per diem expenses of such examiner. Such reimbursement of expenses and costs shall be paid to OHFA within ten (10) calendar days of receipt of OHFA's statement of same.

(9) **Ownership/General Partner transfer fee.** In the event that the owner submits a request for approval of a transfer of ownership/general partner of the Development or any of the Buildings therein, a fee of three percent (3%) of the amount of annual tax credit allocation, but no less than $2,500.00, shall be imposed to cover OHFA's costs of handling the request. This fee shall accompany the request and shall be non-refundable.

(10) **Notice costs.** All costs of copies and postage costs incurred by OHFA in connection with the notification provisions contained in these Chapter 36 Rules at 330:36-2-11, Review Report at 330:36-2-13, and any occasion when OHFA incurs extra postage costs to accommodate the Applicant, (such as Resolutions and Regulatory Agreements) must be reimbursed by the Owner within ten (10) calendar days of OHFA's statement of same. Failure to do so may result in the rejection ~~or deferral~~ of consideration of the Application.

(11) **Copies of Rules.** Copies of these Chapter 36 Rules will be provided at a cost of $10.00 per copy, but can be accessed via OHFA's website, www.ohfa.org.

(12) **Copies of Credit listing.** Copies will be provided at a cost of $10.00 per copy, but can be accessed via OHFA's website, www.ohfa.org.

(13) **Compliance Workshops.** A ~~$30~~ $30.00 fee for attendance at Compliance Workshops.

SUBCHAPTER 6. PROGRAM ADMINISTRATION

330:36-6-3. Corrective and remedial actions

(a) Upon a determination by OHFA staff that a violation has occurred during the Application stages or prior to the filing of the Regulatory Agreement ~~period~~, OHFA may take any one or more of the following actions when the cited violations are not corrected in a timely manner:

(1) Condition regulatory agreements;

(2) Withhold allocations of tax credits;

(3) Reduce the total amount of the tax credit award;

(4) Require the return of unused tax credits;

(5) Deny future program Applications and participation for a specified period of time as determined by OHFA;

(6) Indefinitely suspend from program participation;

(7) File an action for specific performance; and/or

(8) Notify the IRS.

(b) Additionally, OHFA shall have the right, upon discovery of facts or statements indicating possible program violations by an Applicant or owner in regard to a Development, or a proposed Development or a pending Application, or a pending TCA, to request and obtain information regarding:

(1) The administrative, planning, budgeting, management and evaluation functions, actions being taken to correct or remove the cause of the program violation(s);

(2) Any activities by an Applicant and/or owner, or by an Affiliate of either of them that are, or might be in violation or breach of the commitments made in the Application or that are, or might be, in violation of applicable laws, these Rules, the applicable AP, and/or the applicable Carryover Agreement and/or the applicable Regulatory Agreement;

(3) The ability of the Applicant and/or owner to fulfill the commitments made to OHFA in the Application and/or the applicable Carryover Agreement and/or the applicable Regulatory Agreement, in a timely manner; and

(4) Progress schedules for completing and/or performing the commitments made to OHFA in the Application and/or the applicable Carryover Agreement and/or the Regulatory Agreement in a timely manner.

(c) Prior to OHFA taking any corrective and/or remedial actions, OHFA, may, in its sole discretion, issue a notice of a show cause hearing. The Applicant and/or owner shall have ten (10) business days to appear and show cause as to why corrective and/or remedial actions should not be taken. This language shall not be construed as a limitation on the compliance monitoring and reporting requirements of the Code and these Chapter 36 Rules.

330:36-6-7. OHFA monitoring procedures.

(a) **General.** Section 42(m)(1)(B)(iii) of the Code mandates that state housing credit agencies monitor all placed in service tax credit projects for compliance with the provisions of Section 42. The Code also mandates that the Internal Revenue Service be notified, by the state housing agencies, of any instances of noncompliance, this includes failure to comply with the Code and federal regulations and these Chapter 36 Rules, as well as failure to pay all compliance fees in a timely manner. OHFA will also monitor for compliance with the Regulatory Agreement (Land Use Restriction Agreement) ~~(Regulatory Agreement)~~ provisions which contain additional owner commitments made to secure points in the project selection process, e.g. additional low-income units or an extended low-income use period. OHFA has assembled and will make available to the ~~project~~ development owners**,** a Compliance Manual explaining the OAHTC monitoring process in detail. An owner representative and a management agent ~~representatives~~ representative will be required to successfully complete a compliance training session conducted by OHFA or approved by OHFA and submit proof thereof with the first Quarterly report. OHFA will monitor the documents and certifications set forth in 330:36-6-7(b) and (c) for compliance with the Code.

(b) **Record keeping and record retention provisions.**

(1) The owner of a low-income housing project is required to keep records for each qualified low-income building in the project showing:

(A) The total number of residential units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);

(B) The percentage of residential rental units in the building that are low-income units;

(C) The rents charged on each residential rental unit in the building (including any utility allowances;

(D) The number of occupants in each low-income unit;

(E) The low-income unit vacancies in the building and information that shows when, and to whom the next available units were rented;

(F) The annual income certification of each low-income tenant per unit;

(G) Documentation to support each low-income tenant's income certification;

(H) The eligible basis and qualified basis of the building at the end of the first year of the credit period;

(I) The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project); and

(J) Copies of all correspondence with the IRS.

(2) The owner is required to retain the records described in this section for each building in the project for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

(c) **Certification and review provisions**

(1) Between the placed in service date of a building and the submission of an application for a final allocation of credits, and prior to the issuance of an 8609, OHFA may physically inspect the property. An on-site review will again be conducted within the following year as described in 330:36-6-7(c)(6) of these Rules.

(2) In accordance with Section 42(l)(1), following the close of the first taxable year in the credit period, the owner must certify to the Secretary of the Treasury:

(i) the taxable year in which such building was placed in service,

(ii) the adjusted basis and eligible basis as of the close of the first year of the credit period,

(iii) the maximum applicable percentage and qualified basis, and

(iv) the election made for the low-income targeting threshold. This certification is accomplished by completing Part II of the 8609(s). A copy of the completed 8609(s) must also be submitted to OHFA. The due date for submission is May 10 of the year due to The Service for the first credit year.

(3) Owners must prepare and submit a quarterly report beginning with the first full calendar quarter after the last building is Placed in Service, and for the subsequent three quarters. This report must be accompanied by copies of the Tenant Income Certifications for each tenant and new move-ins for the appropriate quarter. If a project is determined not to be in compliance with Program requirements or there is indication of possible noncompliance, OHFA, at its discretion, may require reports each quarter until compliance is demonstrated.

(4) The owner of a low-income housing project is required to certify annually, in a form prescribed by OHFA, that for the preceding 12-month period:

(A) The project met the requirements of the 20-50 or 40-60 test under Section 42(g)(I) of the Code, whichever minimum set-aside is applicable to the project, and, if the applicable to the project, the 15-40 test under Section 42(g)(4) for "deep rent skewed" projects;

(B) There was no change in the applicable fraction (as defined in Section 42(c)(1)(B))of any building in the project, or that there was a change and a description of the change;

(C) The owner has received an annual income certification from each low-income tenant and documentation to support that certification;

(D) Each low-income unit in the project was rent-restricted under Section 42(g)(2);

(E) All units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless);

(F) Each building in the project was suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low-income unit in the project;

(G) There was no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or that there was a change, and the nature of that change;

(H) All tenant facilities included in eligible basis under Section 42(d) of any building in the project, such as swimming pool, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

(I) If a low-income unit in the project became vacant during the year, reasonable attempts were, or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were, or will be rented to tenants not having a qualifying income;

(J) If the income of the tenant of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was, or will be, rented to tenants having a qualifying income;

(K) An extended low-income housing commitment, as described in Section 42 (h)(6), was in effect;

(L) The project meets the additional requirements contained in the Land Use Restriction Agreements;

(M) There was no change in the Owner entity (for example, transfer of general partnership interest);

(N) If the owner received its credit allocation from a portion of the State's ceiling set-aside for projects involving "qualified non-profit organizations" under Section 42(h)(5) of the Code, the non-profit organization has materially participated in the operation if the development (within the meaning of CFR § 1.469);

(O) No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 361a(a)(1), or an adverse judgment from federal court; and

(P) An extended low-income housing commitment as described in Section 42(h)(6) was in effect, that an owner cannot refuse to lease a unit in a project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s.

(5) OHFA will review the owner certifications submitted pursuant to 330:36-6-7(c)(4), for compliance with the requirements of Section 42 of the Code.

(6) OHFA must and will conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service, and for at least twenty (20) percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.

(7) At least once every three (3) years through the extended use period, OHFA must conduct on-site inspections of all buildings in the project and, for at least twenty percent (20%) of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.

(8) The certifications and reviews of paragraphs 330:36-6-7(c)(2) and (c)(4) of these Chapter 36 Rules are required to be made at least annually until the end of the extended use period, and the certifications are to be made under penalty of perjury.

(9) The owner is required to provide to OHFA, for the first credit year, a copy of the completed Part II 8609, 8609 Schedule A and Form 8586 that is submitted to the Internal Revenue Service.

(10) The owner is required to provide to OHFA, as it occurs, copies of all correspondence with the Internal Revenue Service.

(d) **Auditing provisions.** OHFA has the right to perform an audit of any low-income housing project during the term of the Land Use Restriction Agreement. An audit includes physical inspection of any building in the project, as well as a review of the records described in 330:36-6- 7(c)(1) of these Chapter 36 Rules. The auditing provision of this paragraph is in addition to any inspection of low-income certifications and documentation under 330:36-6-7(c)(7)of this Chapter 36 Rules.

(e) **Notification of non-compliance provisions.**

(1) OHFA will provide prompt written notice to the owner of a low-income housing project if OHFA does not receive the certification described in 330:36-6-7(c)(4) of these Chapter 36, or does not receive, or is not permitted to inspect, the tenant income certification supporting documentation and rent records, or discovers on audit, inspection review, or in some other manner, that the project is not in compliance with the Code or these Chapter 36 rules. The owner shall have a period of time, not to exceed thirty (30) calendar days, from the date of such notice (the "Correction Period") to supply any missing certifications and bring the project into compliance. OHFA may extend, in its own discretion, the Correction Period for up to an additional thirty (30) calendar days for good cause.

(2) OHFA must file IRS Form 8823 Report of Noncompliance with the Internal Revenue Service no later than forty-five (45) calendar days after the end of the Correction Period whether or not the noncompliance or failure to certify is corrected. OHFA will explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualified basis of the project under Section 42(c)(1)(A) is an event of noncompliance that must be reported under this paragraph.

[OAR Docket #05-1098; filed 6-3-05]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 60. OKLAHOMA HOUSING TRUST FUND RULES

[OAR Docket #05-1100]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
330:60-1-4. [AMENDED]
Subchapter 3. Funds
330:60-3-1. [AMENDED]
330:60-3-2. [AMENDED]
330:60-3-5. [AMENDED]
330:60-3-6. [AMENDED]
AUTHORITY:
These Chapter 60 Rules are authorized by the Board of Trustees of OHFA, the Amended Trust Indenture, and the Bylaws of OHFA;
DATES:
Comment Period:
January 3, 2005 through February 15, 2005
Public Hearing:
February 10, 2005
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March 30, 2005
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May 16, 2005

Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 25, 2005.
Final Adoption:
May 25, 2005
Effective:
July 18, 2005
Availability:
All OHFA Rules can be accessed via the internet at ohfa.org. In addition, these Rules are available for inspection at the offices of OHFA, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116, weekdays from 8:30 am to 4:30 pm.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
These Chapter 60 Rules are intended to expand the supply of decent, safe, sanitary and affordable housing to the citizens of the State of Oklahoma.
Senate Bill 786 provided for and created the Oklahoma Housing Trust Fund (OHTF). House Bill 3065 initially capitalized the OHTF with $1 million in State appropriated funds. Through Senate Bill 786, OHFA was designated as the administrator of the OHTF for purposes of placing project funding with eligible recipients such as, for-profit and nonprofit developers, builders, units of local government, and political subdivisions.
The purpose of these Chapter 60 Rules is to comply with Senate Bill 786, House Bill 3065, the Oklahoma Administrative Procedures Act (OAPA), and to provide guidelines for administering funds available through the OHTF.
CONTACT PERSON:
Phillip Elzo, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116, (405) 419-8275.

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 18, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

330:60-1-4. Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional capitalized terms used in these Chapter 60 Rules are defined in Senate Bill number 786/74 O.S. Supp 1997, Sections 2901.1 and 2901.2, as amended. When a conflict exists between the following definitions and the State Statutes, the State Statutes shall control.

"Contractor" means any eligible entity or person receiving OHTF financial assistance through OHFA.

"Eligible Applicants" means political subdivisions (including, but not limited to, incorporated towns, cities, and counties, their trusts and authorities, and state trusts), nonprofit organizations, for-profit developers, and Native American Tribes.

"For-profit Developer or Builder" means a legal entity or an individual in the business of residential housing construction or land preparation for such construction.

"Low-income" means a family or household whose total annual income from all sources does not exceed 80% of the area median income as set forth by the most recent U.S. Department of Housing and Urban Development ("HUD") published income limits.

"Moderate-income" means a family or household whose total annual income from all sources does not exceed 100% of the area median income as set forth by the most recent HUD published income limits.

"Non-profit Developer or Builder"means an incorporated IRS recognized not-for-profit entity engaged in residential housing construction or land preparation for such construction.

"State Statute" means 74 O.S. Supp 1997, Sections 2901.1 and 2901.2, as amended.

"Target Populations" means moderate and low-income families or households that are end-users of assisted housing units. For rental projects, assisted units must serve target populations at or below eighty percent (80%) of the HUD published area median family income for the county in which the project is located. For home ownership projects, assisted units must serve target populations at or below one hundred percent (100%) of the area median family income for the county in which the project is located.

"Term of Affordability" means the length of time assisted housing must remain in service to meet the needs of target populations.

"Unit of Local Government" means an incorporated town, city, or county.

"U.S. Department of Housing and Urban Development Published Income Limits" means the family income limits derived from the U.S. Census and published annually by HUD.

SUBCHAPTER 3. FUNDS

330:60-3-1. Funds distribution

(a) Allocation by OHFA shall be awarded to eligible applicants through a formal application process. Submission requirements for project applications will be developed annually by OHFA and described in the published OHTF Application Packet.
(b) OHTF Financial assistance will be awarded according to the State Statute, Program Rules, and Application Packet.
~~(c) Application materials and guidelines shall be made available to eligible applicants and interested parties upon request. Requests for application materials and guidelines should be directed to OHFA.~~

330:60-3-2. Funding activities

(a) ~~Funds made available shall be divided into four broad activities~~ Eligible funding activities shall include:
(1) New construction of rental and home ownership units
(2) Conversion of non-residential buildings or structures into rental or home ownership units
(3) Acquisition and/or rehabilitation
(4) Infrastructure development, when it is part of a total affordable housing development project

330:60-3-5. Forms of assistance

Financial assistance ~~shall~~ may be in the form of ~~collaterized loans, intended to provide construction financing.~~ either grants or collateralized below market rate loans. The maximum loan amount provided to any one multi-family rental application and/or project proposal shall not exceed twenty five percent (25%) of the total development costs, or five hundred thousand dollars ($500,000), whichever is less. In a home ownership project, OHTF may provide up to one hundred percent (100%) of the total development costs of the project. The maximum loan amount for homeownership shall not exceed five hundred thousand dollars ($500,000). OHFA staff reserves the right to adjust loan maximums and terms based on the availability of funds and the most efficient and practical utilization of available resources.

330:60-3-6. Maximum loan terms and interest rates

The maximum term for all loans made shall be subject to the specific requirements of any given project proposal. For rental projects, the term of any loan shall be fifteen (15) years, for housing infrastructure, seven (7) years, and for home ownership, three (3) years Interest rates shall be set at below-market rates for a comparable period. Any requests for exceptions to the terms and conditions shall be reviewed on a case by case basis. Requests for extensions and/or loan modifications shall be subject to a fee established at 3% of the total outstanding balance at the time of request.

[OAR Docket #05-1100; filed 6-3-05]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 70. PERFORMANCE BASED CONTRACT ADMINISTRATION PROGRAM RULES

[OAR Docket #05-1099]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Fees
330:70-9-1. [AMENDED]
AUTHORITY:
These Chapter 70 Rules are authorized by the Board of Trustees of OHFA, the Amended Trust Indenture, and the Bylaws of OHFA;
DATES:
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Availability:
All OHFA Rules can be accessed via the internet at ohfa.org. In addition, these Rules are available for inspection at the offices of OHFA, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116, weekdays from 8:30 am to 4:30 pm.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Oklahoma Housing Finance Agency (OHFA) conducts transactions and activities relating to the Performance Based Contract Administration Program. The Rules are intended to provide covered Project Based Property Owners with information regarding OHFA's compliance monitoring and payment services of assisted units in accordance with the United States Department of Housing and Urban Development in the State of Oklahoma. The Rules establish certain minimum criteria for the compliance monitoring and payment services of assisted units for the Performance Based Contract Administration Program. The Trustees of OHFA reserve the right, by their Resolution (s), from time-to-time, to adopt priorities to be accomplished for OHFA's implementation of the Performance Based Contract Administration Program.
CONTACT PERSON:
Phillip Elzo, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116, (405) 419-8275.

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 18, 2005:

SUBCHAPTER 9. FEES

330:70-9-1. Criminal Background Search Fee

A ~~$25.00 (twenty-five dollar)~~ $50.00 (fifty dollar) fee must accompany each request for a Criminal Background Search for each individual for whom a request is made.

[OAR Docket #05-1099; filed 6-3-05]

TITLE 420. OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD
CHAPTER 1. ADMINISTRATIVE RULES OF PROCEDURE

[OAR Docket #05-1103]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
420:1-1-2. Organization [AMENDED]
AUTHORITY:
Oklahoma Liquefied Petroleum Gas Board; Pursuant to 52 O.S. 1991, Section 420.3. Oklahoma Liquefied Petroleum Gas Board - Rules, regulations and specifications. Subsection (G)(H).

DATES:
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Effective:
July 11, 2005
Availability:
Oklahoma liquefied Petroleum Gas Administration, Jim Thorpe Building, 2102 N. Lincoln Blvd., Suite B-45, Oklahoma City, Oklahoma, 73105-4990. Office hours are from 7:30 a.m., to 4:30 p.m., Monday through Friday.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule amendment simply brings the rule in line with the statutes and changes the title of Inspector(s) to Safety Code Enforcement Officer(s).
CONTACT PERSON:
Bill Glass, Administrator, 405/521-2458.

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 11, 2005:

420:1-1-2. Organization

The Liquefied Petroleum Gas Administration shall consist of State Liquefied Petroleum Gas Administrator, Chief Deputy Administrator, ~~Inspectors~~ Safety Code Enforcement Officers, other staff members and the Oklahoma Liquefied Petroleum Gas Board, whose operations and duties shall be those set forth in Oklahoma Statute Title 52 O.S. 420.1 et. seq.

[OAR Docket #05-1103; filed 6-6-05]

TITLE 420. OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD
CHAPTER 10. LIQUEFIED PETROLEUM GAS ADMINISTRATION

[OAR Docket #05-1104]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
420:10-1-5. Permits [AMENDED]
420:10-1-14. Standards for the Storage and handling of liquefied petroleum gas [AMENDED]

AUTHORITY:
Oklahoma Liquefied Petroleum Gas Board; Pursuant to 52 O.S. 1991, Section 420.3. Oklahoma Liquefied Petroleum Gas Board - Rules, regulations and specifications. Subsection (G)(H).
DATES:
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July 11, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a.
INCORPORATIONS BY REFERENCE:
Incorporated standards:
The standards for the storage and handling of liquefied petroleum gases adopted by the National Fire Protection Association and published in its pamphlets No. 58, and the standards for the installation of gas appliances and gas piping adopted by said National Fire Protection Association published in its pamphlet No. 54 have been adopted by the legislature in 52 O.S. 1991, Section 420.3 (e) and shall be accepted standards for the State of Oklahoma.
Incorporating rules:
420:10-1-5
420:10-1-14
Availability:
Oklahoma liquefied Petroleum Gas Administration, Jim Thorpe Building, 2102 N. Lincoln Blvd., Suite B-45, Oklahoma City, Oklahoma, 73105-4990. Office hours are from 7:30 a.m., to 4:30 p.m., Monday through Friday.
ANALYSIS:
The rule amendment to 420:10-1-5 provides cleanup language that is consistent with existing language currently in the rules, by clarifying that a fee is required upon all first sales, purchases, rentals or uses in this state of LP Gas containers or cylinders. The rule amendments in 420:10-1-14 would add wording that clarifies when plans must be submitted to the Administrator as they relate to existing LP Gas plumbing systems in public buildings. The amendment would also bring the rules in compliance with the statutes and change the title of Inspector to Safety Code Enforcement Officer. The amendment would delete antiquated language as it pertains to specific Section numbers in the National Fire Protection Association (NFPA) Pamphlet 58. The NFPA Phamphlet 58 is continually being updated and amended, subsequently changing many of its section numbers, which then may not be relevant to a specific Oklahoma rule. The rule amendment will also add language that will allow the Administrator to approve a person, other than a Safety Code Enforcement Officer or approved meter tester, to reseal a broken meter seal.
CONTACT PERSON:
Bill Glass, Administrator, 405/521-2458.

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 11, 2005:

420:10-1-5. Permits

(a) **Permits required.** No person, firm, corporation, association or other entity shall engage in the manufacturing,

assembling, fabrication, installing or selling of any system, container, or apparatus to be used in this State in or for the transportation, storing, dispensing, or utilization of LPG, nor shall any transporter, distributor, or retailer of LPG store, dispense and/or transport over the highways of this State any LPG for use in this State in any system, container, apparatus or appliance without having first obtained a permit to do so as provided in this section.

(b) **Permit classifications.** The permits required for engaging in business shall be divided into the following classifications:

(1) **Class I - Dealer permit.** The Class I Dealer Permit permits the holder to engage in any phase of the LP Gas business. A Class X Manager's permit must be secured for the person actually in charge of an LP Gas operation at each separate branch or base of operation of a Class I permit holder. The initial permit fee for a Class I is Five Hundred Dollars ($500.00). The annual fee for the Class I permit is Two Hundred Dollars ($200.00).

(A) Class I holder can go on inactive status, but will have to meet all the requirements of the permit, including paying the renewal fee, and having proper insurance requirements filed with the administrator, before going back on active status. If requirements are not met the permit will then be revoked. All Class I holders, active and inactive, are required to pay the annual renewal fee.

(B) Applicant must furnish to the Board, evidence of the following insurance:

(i) A minimum of $500,000.00 general liability insurance, as per 420:10-1-18;

(ii) Worker's Compensation shall be required as per state requirements;

(iii) Motor vehicle insurance must meet State and Federal requirements.

(C) Brokers/wholesalers selling LP Gas to anyone other than Class I permit holders or refinery/gas processing type facilities shall obtain a Class I permit and meet the requirements thereof, except for minimum storage and metering, when said sales are by transport bulkhead to bulkhead.

(2) **Class II - Truck Transporter permit.** The Class II Transporter Permit permits the holder to transport LP Gas as a common carrier or private carrier to another of the following: a person, firm, or corporation engaged in the production or manufacture of LP Gas and/or selling or reselling LP Gas to transporters, industrial consumers, processors, distributors, retailers, and/or to holders of Class I, III, or VI permits. A Class II permit shall not authorize the resale of LP Gas to an end-user. A Class II permit shall not be a substitute where a Class I is needed. A transport must meet all CFR 49 requirements. The initial permit fee for a Class II is Three Hundred Dollars ($300.00). The annual fee for a Class II permit is Two Hundred Dollars ($200.00).

(3) **Class III - DOT Cylinder Transporter Permit.** The Class III DOT Cylinder Transporter Permit permits the holder to operate DOT cylinder filling station and cylinder delivery service. The annual fee for a Class III permit is One Hundred Fifty Dollars ($150.00).

(4) **Class IV - Installer permit.**

(A) The Class IV Installer Permit permits the holder to install and service LP Gas systems, appliances, and other LP Gas equipment. The applicant is required to have immediate supervision for two (2) weeks with a Class IV, IV-D, Class X, or an Oklahoma licensed plumber, and then shall be required to pass a written examination. Exception from two (2) week training period would be anyone already licensed by Oklahoma as a licensed plumber. If the supervising Class X determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV application has been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days or the applicant shall cease to perform these duties. Current Class IV's, as of September 1, 1994, are not required to take a written exam. The annual fee for a Class IV permit is Fifty Dollars ($50.00).

(B) Class IV permit does not permit the holder to install or service LP-Gas carburetion systems.

(C) Any installer not under the personal and direct supervision of a Class X holder at the immediate time and location of installation shall be required to have a Class IV or IV-D permit.

(5) **Class IV-D - Driver/Installer Permit.**

(A) The Class IV-D Driver/Installer Permit permits the holder to deliver LP Gas by bobtail and install and service LP Gas systems, appliance, and other LP Gas equipment. Class IV-D permit can only be issued under a Class I permit. New applicants must be under immediate supervision from a current Class IV-D, or Class X while in a minimum of a two (2) week training period before testing. Permit holder shall be required to pass a written examination. The tests shall be given according to current policies of the administration. If the supervising Class X determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV-D application has been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV-D permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days or the applicant shall cease to perform these duties. Current Class IV permit holders, as of September 1, 1994, properly trained in delivery of LP Gas will not be required to take the test and will be issued a IV-D permit. The annual fee for a Class IV-D is Fifty Dollars ($50.00).

(B) Class IV-D permit does not permit the holder to install or service LP Gas carburetion systems.

(C) Any installer not under the personal and direct supervision of a Class X holder at the immediate time

and location of installation shall be required to have a Class IV or IV-D permit.

(6) **Class VI - DOT Cylinder &/or LP Gas Motor Fuel Station Operator Permit.** The Class VI DOT Cylinder and/or LP Gas Motor Fuel Station Operator Permit permits the holder to operate DOT cylinder charging station and/or a motor fuel dispenser for resale. Applicant shall be required to pass an approved written examination. Examination shall be administered by an LP Gas Inspector, or by a Class X Manager. In either case, the test fee for the Class VI permit is Ten Dollars ($10.00). Permit holder is responsible for the safety of the dispensing operation and training and safety of the employees dispensing LP Gas. Class VI locations may not become operational until a permit has been issued. A permit will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VI permit is One Hundred Dollars ($100.00).

(7) **Class VI-A - LP Gas Dispensing Permit.** All employees involved in dispensing LP Gas must acquire a Class VI-A permit, except a Class IV, Class IV-D, Class VI, and Class X. Class VI-A applicants must be properly trained by a Class VI or Class X on proper filling of ASME tanks and DOT cylinders, and inspection thereof per NFPA 58. Applicants shall be required to pass an approved written examination. Test shall be administered by an LP Gas inspector, or by Class X manager. In either case, the test fee for the Class VI-A permit is Ten Dollars ($10.00). Holder must carry permit and attend the annual safety school once every year. This does not prohibit any person, firm or corporation from filling his own equipment from his own supply line, or dispensing motor fuel from an approved limited access self-service dispenser. The annual fee for a Class VI-A permit is Twenty-Five Dollars ($25.00).

(8) **Class VII - Cylinder Exchange Program Permit.** The Class VII Cylinder Exchange Program Permit permits the holder to participate in the cylinder exchange program. Applicant shall be required to pass an approved written examination. One person can be tested for multiple locations. Examination shall be administered by an LP Gas Inspector, or by a Class X Manager. In either case, the test fee for the Class VII permit is Ten Dollars ($10.00). A permit is required for each bottle exchange location. Class VII locations may not become operational until a permit has been issued. Permits will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VII permit is Fifty Dollars ($50.00).

(9) **Class VIII - Appliance Dealer Permit.** The Class VIII Appliance Dealer Permit permits the holder to sell LP Gas appliances. The annual fee for a Class VIII permit is Seventy Dollars ($70.00).

(10) **Class IX - LP Gas Container Sales Permit.** The Class IX Gas Container Sales Permit permits the holder to manufacture and/or sell LP Gas containers. This permit is required by both wholesalers and retailer. The annual fee for a Class IX permit is Seventy Dollars ($70.00).

(11) **Class IX-A - Mobile Homes and Recreation Sales Permit.**

(A) The Class IX-A Mobile Homes and Recreation Sales Permit permits the holder to manufacture, fabricate and sell all LP Gas facilities or systems used in mobile homes, campers, recreational vehicles and portable buildings whether such LP Gas system is manufacture, fabricated or sold separately or as an integral part of such trailer, camper, recreational vehicle or portable building. The annual fee for a Class IX-A is Seventy Dollars ($70.00).

(B) This shall not be construed to require a permit for a sale by the owner of a mobile home or recreational vehicle who is not engaged in such business on a commercial basis and does not make over two such sales in one year.

(12) **Class X - Manager's Permit.** A Class X Manager's permit is required for a person actively in charge of LP Gas operation for holder of Class I permit and at each separate branch or base of operation of a Class I permit. All Class X holders must be a full-time employee of said Class I holder. The annual fee for a Class X permit is One Hundred Fifty Dollars ($150.00).

(13) **Additional permits required for employees of Class I dealers.** Class IV, IV-D, VI-A, and X permits are the only additional permits that may be required for the employees of a Class I dealer, or as may be required by future Board action.

(14) **Truck inspections.** For the purpose of defraying the cost and expenses of administering and enforcing this act, persons, firms and corporations shall also pay at the time of inspection an annual inspection fee of One Hundred Fifty Dollars ($150.00) for each LP Gas bulk delivery truck or trailer belonging to a person who holds a permit authorizing the use of such truck or trailer and One Hundred Fifty Dollars ($150.00) for each such truck or trailer belonging to a person who does not hold a permit. The inspection fee shall increase to Three Hundred Dollars ($300.00) per vehicle if said inspection is not completed within sixty (60) days of the expiration date, or at the discretion of the Administrator.

(15) **Containers or cylinders.** There is hereby levied the following fee, to be paid to the Administrator, upon ~~the~~ all first sales, purchases, rentals or uses in this state of liquefied petroleum gas containers or cylinders; on all Department of Transportation (DOT) cylinders, vehicle fuel containers, a fee of Three Dollars ($3.00) each, and on all other containers, a fee of Ten Dollars ($10.00) each.

420:10-1-14. Standards for the storage and handling of liquefied petroleum gas

(a) **NFPA standards.** The standards for the storage and handling of liquefied petroleum gases adopted by the National Fire Protection Association and published in its pamphlets No. 58, and the standards for the installation of gas appliances and gas piping adopted by said National Fire Protection Association published in its pamphlet No. 54 have been adopted by the Legislature in 52 O.S. 1991, Section 402.3 (e) and shall

be accepted standards for the State of Oklahoma. All Class I permit holders must have a current copy of NFPA 58 and 54 on file at each separate branch.

(b) **Supplemental standards.** The following standards are supplemental to NFPA pamphlet No. 58 and shall be part of the rules and regulations of the Oklahoma Liquefied Petroleum Gas Board:

(1) **Definitions.**

(A) The word "approved" as used in this section means acceptable to the State Liquefied Petroleum Gas Administrator. A device or system having materials or forms different from those detailed in this section may be examined and tested according to the intent of the regulations and if found equivalent, may be approved.

(B) In this section those provisions which are considered essential for adequate protection of life and property from fire are indicated by the words "shall" and "must. The words "should" or "preferably" indicate advisory provisions concerning which the State Liquefied Petroleum Gas Administrator of Oklahoma should be consulted.

(C) In each place mentioned in NFPA No. 54 and NFPA No. 58 where it refers to "the authority having jurisdiction" this would mean the Liquefied Petroleum Gas Administrator.

(D) An "important building" shall be any building, open to the public, or inhabited by people, in which any LP Gas system or any type is installed.

(2) **Submittal of plans.**

(A) Prior to the installation of new, or the modification of liquefied petroleum gas plumbing systems, excluding tank change outs, in school buildings, churches, courthouses, office building and other building to which the public is invited, such as cafes, dance halls, tourist courts and parks, plans and specifications for such installation in duplicate, shall be submitted to, and approved, by the State Liquefied Petroleum Gas Administrator, and before such systems are filled with liquefied petroleum gas, they shall be physically inspected and approved by a licensed installer and a report made by him to the State Liquefied Petroleum Gas Administrator on LPG Form 4, or its revision, furnished by the LP Gas Administrator's office.

(B) Plans must be submitted on any dispenser used to fill DOT cylinders and/or ASME containers, and used for public resale of LP Gas. These plans must be submitted to the Administration office along with the proper fee, and an on site inspection must be performed by ~~an LP Gas inspector~~ a Safety Code Enforcement Officer prior to final approval and before the dispenser can be placed into service. A Ten Dollar ($10.00) plan review fee must accompany all dispenser plans submitted. If a dispenser is taken out of service, written notice must be given to the Administration office within seven (7) working days. If a dispenser is moved to a new location, new plans must be submitted to the Administrator and on site inspection performed by an LP Gas inspector prior to final approval and dispenser being placed into service. A complete list of dispensers by location shall be submitted to the LP Gas Administration as indicated on Class I permit renewal forms.

(C) Plans must be submitted to, and approved, by the Administrator on any fixed installation with individual water capacity of 2,000 gallons or more, or aggregate water capacity exceeding 4,000 gallons.

(3) **Report of accident.** In case of accident or fire at any location where a liquefied petroleum gas system or equipment is involved, or any accident involving liquefied petroleum gas systems or equipment, the dealer owning, operating or servicing the equipment or installation shall notify the State Liquefied Petroleum Gas Administrator. This notification shall be forwarded as soon as feasibly possible after the dealer has knowledge of the accident in order that an inspection may be made by the State Liquefied Petroleum Gas Administrator before the site has been disturbed.

(4) **Piping - including pipe, tubing and fittings.**

(A) No person, firm, or corporation shall connect a liquefied petroleum gas tank to any piping without having first determined that such piping complies with the laws of the State of Oklahoma and the rules and regulations of the State Liquefied Petroleum Gas Administrator relative to liquefied petroleum gas piping.

(B) All installations, installed after July 1, 2002, of storage containers, with more than 4,000 gallon water capacity, shall have internal valves installed as per NFPA 58 ~~3.3.3.6 and 2.3.3.2~~.

(C) On installations of stationary or portable storage, with an aggregate of more than 4,000 gallon water capacity, a bulkhead approved by the LP Gas Administrator shall be required on each liquid line of one and one-half (1-1/2) inch or larger and each vapor line of one and one-quarter (1-1/4) inch or larger.

(5) **Vaporizers and housings.**

(A) The minimum capacity of the storage container feeding the vaporizer shall not be less than ten (10) times the hourly capacity of the vaporizer in gallons.

(B) The minimum capacity of a storage container being heated by a direct fired tank heater shall not be less than ten (10) times the hourly vaporizing capacity of the tank heater in gallons.

(6) **Container charging.** Containers, including DOT cylinders, with water capacity less than 300 pounds shall be charged by weight, except containers covered by Ch. 4-4.3, 1998 Edition of NFPA 58 or later revisions as made by NFPA 58.

(7) **Liquid metering systems.** Each bulk retail delivery of liquid LP Gas shall be measured by a suitable LP Gas liquid meter system, except those deliveries of liquid LP Gas in cylinders which are filled by weight and deliveries of LP Gas vapor through vapor meters otherwise, are exempt from the requirements of this paragraph.

(A) LP Gas Liquid meters shall indicate deliveries in terms of gallons and to the nearest tenth of a gallon.

(B) The LP Gas liquid meter shall meet, in addition to the other requirements of this paragraph, the following requirements:

(i) The system shall include a device (such as a differential back-pressure regulator) so designed and installed that the product being measured will remain in a liquid state during passage through the meter.

(ii) No means shall be provided by which any measured liquid can be diverted from the measuring chamber, differential valve equipment or the discharge line therefrom.

(iii) Effective January 1, 1994, in accordance with the National Institute of Standards and Technology (NIST) Handbook 44, all LP Gas Liquid meters used for bulk delivery shall be designed with the necessary equipment for mechanically printing gallons on a delivery ticket and the customer served thereby shall be given a ticket mechanically imprinted by the printing device. The customer's name and Class I Dealer's name must be included on the metered ticket. Meters used for stationary dispensing of motor fuel will not be required to be equipped with such printing device.

(iv) All bulk metered sales of propane, via bobtail or transport, shall be made by temperature compensated measure. Except, any truck now operating without a temperature compensation meter shall be retrofitted by no later than July 1, 2003.

(C) All meters where product is sold to the public must be proved annually by an approved meter tester/inspector and have written certification on file at permit holders place of business. All meters and temperature compensators must be accurate within the manufacturers tolerance not to exceed + or -1% at any time. The LP Gas liquid meter system shall be designed and constructed to provide for applying lead-and-wire seals in such a manner that no modifications or adjustments which would affect the accuracy of deliveries, can be made without mutilating the seal or seals. If a seal is broken, notification must be made to the Administrator and resealed by ~~the LP Gas Inspector~~ a Safety Code Enforcement Officer, ~~or~~ an approved meter tester, or a person approved by the Administrator. In addition, the Administrator at his discretion may require proving of metering system to determine the accuracy.

(D) No dealer or firm controlled or affiliated with a dealer may calibrate or certify its own meters. All meters must be tested with a volumetric meter prover.

(8) **Qualified personnel.** Each holder of an LP Gas permit shall be responsible for having qualified personnel operating and installing LP Gas equipment.

(9) **Filling unsafe or unapproved dispensing or storage tanks prohibited.** No person, firm, or corporation shall introduce liquefied petroleum gas into a dispensing or storage tank in the State with knowledge that such dispensing or storage tank or piping is known to be in an unsafe operating condition.

(10) **Basement installations.** No appliance shall be installed in any basement or semi-basement unless it is fully automatically controlled and properly vented and must have the approval of the State Liquefied Petroleum Gas Administrator.

(11) **Standards for containers.**

(A) In accordance with 52 O.S. Sec. 420.5, all first sales, rentals, purchases or uses of DOT cylinders and ASME tanks in this State, must have Oklahoma Identification tags attached to such cylinders or tanks. However, all DOT cylinders and ASME tanks in Oklahoma, with a manufacturers date prior to September 1, 1993, are not required to have Oklahoma Identification tags. These Oklahoma Identification tags are not transferable from one cylinder or tank to another.

(B) Any new container sold or installed in Oklahoma for use in this State shall carry a five year warranty covering workmanship and material. This warranty shall provide that any container not in compliance with this regulation must be repaired or replaced by the fabricator at no expense to the dealer or customer. This provision is to take care of "pin-hole" leaks in the weld that were not detected at the time of fabrication and does not apply to fittings.

(C) Containers shall be filled or used only upon authorization of the fee simple owner. The name of the fee simple owner, if other than the consumer, shall be conspicuously shown on the container.

(D) Any stationary storage container converted from anhydrous ammonia to propane shall be converted as follows:

(i) The container shall be purged of anhydrous ammonia by water flooding, steam or other methods described by the National Propane Gas Association's (NPGA) Recommendation for Prevention of Ammonia Contamination; and

(ii) It shall then be properly purged with propane vapor and tested with the red litmus paper as described in NFPA 58 or by any other test approved by the Board; and

(iii) The test shall be completed by the permit holder that performs the conversion; and

(iv) The results shall be documented and shall contain the container manufacturer, water capacity, serial number, the results of the test, the capacity of the relief valve, the date of the test, and the signature of the permit holder conducting the test. A copy of the results shall be provided to the owner of the container; and

(v) Any dealer filling a converted anhydrous ammonia container for the first time shall either be provided a copy of the test or complete the test as described above; and

(vi) The container shall meet all requirements of NFPA 58.

(12) **Underground containers.**

(A) Underground containers before being reinstalled must be inspected by the State Liquefied Petroleum Gas Administrator, and a fee of $25.00 paid to the State Liquefied Petroleum Gas Administrator's office, and reinstalled by a licensed LP Gas installer.

(B) Underground containers shall be dug up at the expense of the owner at any time at the discretion of the State Liquefied Petroleum Gas Administrator.

(C) Any person installing an underground container must notify the Administrator prior to installation.

(13) **Minimum storage.** All new Class I permit holders must provide bulk propane storage capacity of not less than an aggregate of 18,000 water gallons. Current active Class I permit holders, as of September 1, 1994, are not required to meet this minimum storage requirement. After a change of ownership the new Class I permit holder must secure the minimum storage requirement within one year.

(14) **Painting.** All bulk storage containers of a capacity 120 gallons water capacity or greater shall be painted a heat reflection color.

(15) **Lettering bulk storage and dispensers.**

(A) All bulk storage 2,000 gallons and above shall be lettered with the name of the contents, such as LP Gas, butane, propane, and a "No Smoking" sign in letters not less than six (6) inches high.

(B) In addition to subparagraph (A) of this paragraph, all bulk storage used for loading and unloading facilities, and all container filling storages (dispensers) shall include the name of the person, firm, or corporation operating the bulk storage or dispenser and their phone number in letters not less than two (2) inches high. This information shall be placed so as to be readily visible to the public.

(C) For all size bulk storage containers the name of the fee simple owners, if other than the consumer, shall be conspicuously shown on the container.

(16) **Extinguishers required.** Extinguishers of the dry chemical type, with a B:C or A:B:C rating, are required. Extinguishers shall have a net content of not less than the current NFPA 58 requirements and shall be inspected at least once each year by an authorized inspector such as Fire Departments or Fire Appliance Company representatives. Current weatherproof inspection tags shall be attached to the extinguisher.

(17) **Marking cargo vehicles.** Every tank vehicle used for transportation of liquefied petroleum gas shall be marked and placarded according to current DOT requirements. Each tank vehicle must also have the name of the person, firm or corporation on each side of the cargo tank in letters a minimum of two (2) inches in height. This information shall be placed so as to be readily visible to the public. This name shall be the same as permit holder has designated on the Class I or Class II permit.

(18) **Parking and garaging LP gas tank vehicles.** Any tank vehicle used for transportation of Liquefied petroleum gas shall not be parked beneath or adjacent to any electric transmission line in such position that there is a possibility of a conductor contacting the tank in event of breakage.

(19) **Filling unapproved truck or trailer tanks prohibited.**

(A) An inspection form (LPG Form No. 9), when properly completed, and a LPG registration decal (the serial number of which is shown on the inspection form), shall be evidence that the design, construction, assembly and mounting of the liquefied petroleum gas truck or trailer tank described on the inspection form by its serial number has been approved by the Liquefied Petroleum Gas Administrator for use in the transportation of liquefied petroleum gas. Such LPG registration decal and inspection form also shall authorize the person, firm or corporation whose name appears on the inspection form or its bona fide employees to operate the truck or trailer tank described on the inspection form, and further shall authorize the filling of such truck or trailer tank with liquefied petroleum gas.

(B) The LPG registration decal shall be displayed at all times in an easily visible location on the left front head of the cargo tank, which is on the driver's side. A copy of the inspection form shall be retained, until the expiration date, in the office of the person, firm or corporation whose name appears thereon. It will not be necessary to keep or display a copy of the inspection form on the truck or trailer tank.

(C) No person, firm or corporation shall operate a truck or trailer tank in the transportation of liquefied petroleum gas in this State unless such person, firm or corporation has been issued a LPG registration decal and an inspection form certifying that such tank has been registered with and approved by the State Liquefied Petroleum Gas Administrator, or unless its operation has been specifically approved by a communication from the State Liquefied Petroleum Gas Administrator.

(D) The LPG registration decal and the inspection form required in this paragraph are not transferable by the person, firm or corporation to whom they are issued or from one truck to another, and they are not to be used after the expiration date of the fiscal year for which they were issued, or in the event the Class I permit becomes inactive.

(20) **Vaporizers.** Exhaust gases shall not be used as a direct means of heat supply for the vaporization of fuel.

(21) **Stationary engines in building.**

(A) All engine rooms shall be well ventilated at the floor level.

(B) When engines are installed below grade level, suitable floor level mechanical exhaust ventilation shall be provided and operated continuously or adequate means shall be provided to purge the room

before the engine is started. In any case the mechanical ventilation shall be in operation when the engine is running. Before and during any repairs to the engine the room shall be ventilated.

(C) Automatic fire doors shall be provided at openings in the engine room that open into other sections of the building.

(D) Exhaust gases shall be discharged outside the building in a manner that will not create a fire or any other hazard.

(E) Regulators and pressure relief valves installed in buildings and engine rooms shall be vented to the outside and discharge at least five feet away from any building opening. Such venting will not be required for combination engine fuel vaporizing - fuel reducing - fuel metering devices providing an acceptable automatic shut-off valve is installed immediately ahead of such devices.

(22) **Storage outside of buildings.** Valves and safety relief devices shall be protected against accumulations of ice and snow. Protective caps shall be deemed adequate.

(23) **Appliances.** Any mobile home, travel trailer, camper or recreational vehicle shall be delivered to the buying public by the permit holder with the system properly installed and free of leaks.

(24) **Maximum vapor pressure and container working pressure.**

(A) The maximum vapor pressure of the product at 100 degree Fahrenheit which may be transferred to a container shall not exceed the design working pressure of the container. Exception: 200 psig ASME working pressure vessels in LP Gas service in Oklahoma prior to January 1, 1994, may be continued in service for commercial propane, provided that they are fitted with relief valves and meet the start-to-leak setting in relation to the design pressure of the container, shall be in accordance with NFPA 58. For the purpose of this exception, "commercial propane" is defined as having a vapor pressure not in excess of 210 psig at 100 degree Fahrenheit. This exception does not apply to LP Gas motor fuel and mobile fuel containers.

(B) Any stationary 200 psig ASME containers brought into Oklahoma from out of state and intended for stationary LP Gas installation in Oklahoma at any facility requiring submission of plans and specification must be tested by at least two (2) of the following nondestructive test methods recognized by ASME to determine if the container or assembly is safe for LP Gas use in Oklahoma. The following test results must be submitted to the Oklahoma LP Gas Administration for approval.

(i) Hydrostatic Test;

(ii) Ultrasonic thickness test;

(iii) Wet particle fluorescent or magnaflux.

(25) **Testing, leakage and visual inspection, and meter calibration.**

(A) Hydrostatic testers operating in Oklahoma that are hydrostatic testing cargo containers for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and shall:

(i) Hold a Federal C.T. number;

(ii) Include in their testing the use of a calibrated pressure chart recorder;

(iii) Hold a Class IV installer permit.

(B) Leakage and visual inspectors operating in Oklahoma and performing this inspection on cargo containers and their systems for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and meet the following requirements:

(i) Inspectors shall hold a Federal C.T. number;

(ii) If the inspection includes repairs that require the LP Gas system to be re-plumbed, a Class IV permit is required.

(C) Meter calibrators operating in Oklahoma that are calibrating meters for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and meet the following requirements:

(i) Meters shall be tested in accordance to Oklahoma Rules and Regulations, Section 420:10-1-14(7);

(ii) Meter calibrators shall furnish the meter owner a copy of the calibration showing the correct gear numbers and temperature compensator settings;

(iii) Meter calibration results shall be on a form approved by the LP Gas Administrator and a copy of the completed form shall be furnished to the meter owner;

(iv) Meter calibrators shall hold a Class IV permit.

(v) Meter calibration testers shall test meters according to National Institute of Standards and Technology (NIST) standards.

(26) **Cylinder exchange program.**

(A) Cylinder exchange cabinets shall be constructed of steel and be lockable so that cylinders cannot be removed and valves cannot be tampered with when unattended. The cabinets shall be otherwise configured in compliance with NFPA 58.

(B) The cabinet shall have the following signs affixed to it:

(i) "Propane" or "Flammable Gas" and "No Smoking" in letters not less than two (2) inches high;

(ii) Class VII Permit number;

(iii) Name of Class I permit holder who supplies the cylinders;

(iv) 24-hour Emergency telephone number.

(C) The cabinet shall be located for distance and number of cylinders as per NFPA 58 with a minimum five (5) feet distance away from any source of ignition.

(D) Protection against vehicle impact shall be provided in accordance with good engineering practice where vehicle traffic normally is expected at the location as per NFPA 58.

(E) An approved serviceable portable fire extinguisher of not less than eighteen (18) lbs. dry chemical, B:C or A:B:C rating, and shall be readily available within a fifty (50) foot radius of the exchange cabinet. Extinguishers shall have a net content of not less than the current NFPA 58 requirements and shall be inspected at least once a year by an authorized inspector such as Fire Departments or Fire Appliance Company representatives. Current weatherproof inspection tags shall be attached to the extinguisher.

(F) A warning sign shall be posted at or near any entrance doorway stating the "LP GAS EXCHANGE CYLINDERS EMPTY OR FULL SHALL NOT BE TAKEN INDOORS FOR ANY REASON."

(G) All employees who exchange cylinders shall be properly trained and know how to check for leaks and what emergency procedures to take if a leak is discovered. Only properly trained employees can remove or install exchange cylinders from the cylinder exchange cabinets. This training shall be provided by the Class I permit holder who is supplying the exchange cylinders. This documentation will be kept at the Class VII location.

(H) A Class I permit shall be required in order to supply exchange cylinders for the cylinder exchange permit holder.

(I) Cylinders for sale or exchange, in exchange locations, shall each contain a minimum 35% water weight capacity of propane.

(J) A busy sidewalk and thoroughfare, as referenced in ~~the 2001 Edition of~~ NFPA 58~~-5.4.1.3(3) and Table 5.4.1.3~~, shall be further defined as not being located on private property. A busy sidewalk is alongside a public road and a thoroughfare is a public road.

(27) **Recreational vehicles.** Installations or repairs on LP Gas systems on recreational vehicles shall be performed as per NFPA 1192, Standard on Recreational Vehicles.

[OAR Docket #05-1104; filed 6-6-05]

TITLE 505. BOARD OF EXAMINERS IN OPTOMETRY
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-1042]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Rulemaking and Declaratory Rulings
505:1-5-6. [AMENDED]
AUTHORITY:
The Oklahoma Board of Examiners in Optometry; 59 O.S. §§ 581, 584, 585 et seq.
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Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 6, 2005.
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May 6, 2005
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendment to Rule 505:1-5-6 is intended to make the Board's rules on emergency rulemaking conform to the provisions of the Administrative Procedures Act by deleting limitations on the duration of the effectiveness of emergency rules which are not contained in the Act.
CONTACT PERSON:
Robert A. Nance, 5801 N. Broadway Extension, Suite 101, Oklahoma City, OK 73118, (405) 843-9909.

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 11, 2005:

SUBCHAPTER 5. RULEMAKING AND DECLARATORY RULINGS

505:1-5-6. Emergency rules

(a) Emergency rules may be adopted by the Board without the prescribed notice and hearing if the Board, stating in writing its reasons, finds that imminent peril to the public health, safety, or welfare requires this shortened procedure. However, the sufficiency of the reasons is subject to judicial review.

(b) Emergency rules become effective immediately upon filing with the State Officials, as required by law, ~~or at any stated date thereafter, less than twenty (20) days. It may continue for not longer than one hundred twenty (120) days,~~ and upon their approval as provided for the by Administrative Procedures Act. Emergency rules shall remain effective as provided for by the Administrative Procedures Act, but the Board may adopt an identical rule under the general rulemaking procedures prescribed in Rules 505:1-5-1 through 505:1-5-5.

(c) The Board shall distribute a copy of the emergency rules to those persons who have requested to be notified of the rulemaking activities, and shall take other appropriate measures, where reasonable and practical, to notify other persons who may be affected by the rule.

[OAR Docket #05-1042; filed 5-27-05]

TITLE 505. BOARD OF EXAMINERS IN OPTOMETRY
CHAPTER 10. LICENSURE AND REGULATION OF OPTOMETRISTS

[OAR Docket #05-1043]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Regulation of Licensees
505:10-5-11. [AMENDED]
505:10-5-17. [NEW]
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The Oklahoma Board of Examiners in Optometry; 59 O.S. §§ 581, 584, 585 et seq.
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505:10-5-17. [NEW]
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October 29, 2004
Register publication:
22 Ok Reg 169
Docket number:
04-1372
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendment to Rule 505: 10-5-11 deletes from the list of approved providers of continuing professional education a provider which the Board has determined should no longer be presumptively authorized to provide approved training.

The new Rule 505: 10-5-17 supersedes an emergency rule of the same number dealing with the proper scope of practice of nonlaser surgical procedures. The rule is intended to return the scope of optometric practice to that which existed before the issuance of Attorney General Opinion No. 2004 OK AG 9 which held, in part, that 59 O.S. § 581 "does not authorize licensed optometrists to perform any surgeries other than laser surgeries (excluding retina surgery, laser in-situ keratomileusis (LASIK) surgery and cosmetic lid surgery)." In response to that opinion, and in an attempt to return the scope of optometric practice to that which had existed before the Attorney General issued his opinion, during its 2004 session the Oklahoma Legislature amended 59 O.S. § 581 to provide that, "[t]he practice of optometry is further defined to be nonlaser surgery procedures as authorized by the Oklahoma Board of Examiners in Optometry, pursuant to rules promulgated under the Administrative Procedures Act." This proposed Rule is intended to define such nonlaser surgery procedures as were part of the scope of practice before the issuance of the Attorney General's opinion.
CONTACT PERSON:
Robert A. Nance, 5801 N. Broadway Extension, Suite 101, Oklahoma City, OK 73118, (405) 843-9909.

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 11, 2005:

SUBCHAPTER 5. REGULATION OF LICENSEES

505:10-5-11. Authorized post-graduate educational work

(a) Every Optometrist must cause to be filed with the Board not later than June 30th of each year, a certificate showing that during the preceding year he attended not less than three (3) days of an educational or post-graduate program that had been previously approved by the Board, and totaling eighteen (18) hours, or an affidavit showing that he was unavoidably prevented, because of sickness or for some other reason satisfactory to the Board, from attending any such educational or post-graduate program. Of the eighteen (18) hours required annually, up to three (3) hours of correspondence, up to three (3) hours of practice management, a total of at least five (5) hours of therapeutics, and a minimum of one (1) hour shall be judicious prescribing of dangerous drugs and controlled dangerous substances provided by the Oklahoma Association of Optometric Physicians or the Oklahoma Board of Examiners in Optometry or a course provided by a vendor acceptable by the Board.

(b) The Board approves for attendance three-day post-graduate educational work to meet the requirements of Oklahoma statutes on renewal of license:

(1) Any three-day or more course in an optometry college accredited by the American Optometric Council on Education, or

(2) Any three or more day educational course sponsored by the American Optometric Association, or an affiliate of the American Optometric Association,

(3) College of Optometrists in Vision Development

(4) Annual convention of the American Optometric Association

(5) Annual convention of the Oklahoma Association of Optometric Physicians

(6) Session of a regional congress of an Optometric Extension Program

(7) State seminar of the graduate Clinic Foundation of the O.E.P.

(8) Post-graduate course of any Class A college or university teaching optometry
(9) Annual convention of any of the various State Optometric Associations of the United States
(10) Post-graduate course sponsored by the American Academy of Optometrists
(11) Southwest Council of Optometry
(12) Southwest Contact Lens Society
(13) Heart of America Contact Lens and Primary Care Congress
~~(14) The Council on Optometric Practitioner Education (COPE) Approved Courses~~

(c) Any Optometrist desiring approval of any other program must make a written request for approval to the Secretary-Treasurer at least fifteen (15) days before he attends such program. The certificate of attendance required by (a) of this Section must be on a form approved by the Board, and must be signed by the presiding officer of the organization conducting or sponsoring the program. The affidavit of non-attendance required by (a) of this Section must be verified by at least two (2) adult persons who are related to or associated with the Optometrist submitting the affidavit, and will, in all cases, be subject to final acceptance by the Board.

(d) Simultaneously with the requirement of this rule that every Optometrist file with the Board not later than June 30th of each year a certificate showing that during the preceding year he or she attended the required continuing education, every Optometrist shall not later than June 30, 2003and each year thereafter file with the Board evidence that he or she has a current cardiopulmonary resuscitation certificate issued by the American Red Cross, or equivalent training.

505:10-5-17. Proper scope of practice of nonlaser surgical procedures

(a) The practice of optometry is defined to be the science and art of examining the human eye and measurement of the powers of vision by the employment of any means, including the use or furnishing of any self-testing device, the use of any computerized or automatic refracting device, the use of pharmaceutical agents, the diagnosis of conditions of the human eye, and the correcting and relief of ocular abnormalities by means including but not limited to prescribing and adaptation of lenses, contact lenses, spectacles, eyeglasses, prisms and the employment of vision therapy or orthoptics for the aid thereof, low vision rehabilitation, laser surgery procedures, excluding retina, laser in-situ keratomileusis (LASIK), and cosmetic lid surgery. (59 O.S. § 581) In addition, the practice of optometry shall include the correction and relief of ocular abnormalities by Non-Laser Surgical procedures not excluded in paragraph (b) of this rule.

(b) Except for the Post Operative Care of these procedures, the following Non-Laser Surgeries are excluded from the scope of practice of optometry:
(1) Non-Laser Surgery related to removal of the eye on a living human being;
(2) Non-Laser Surgery requiring full thickness incision or excision of the cornea or sclera other than Paracentesis in an emergency situation requiring immediate reduction of the pressure inside the eye;
(3) Penetrating Keratoplasty (Corneal Transplant), or Lamellar Keratoplasty;
(4) Non-Laser Surgery requiring incision of the Iris and Ciliary body, also includes Iris diathermy or cryotherapy;
(5) Non-Laser Surgery requiring incision of the Vitreous;
(6) Non-Laser Surgery requiring incision of the Retina;
(7) Non-Laser Surgical Extraction of the Crystalline Lens;
(8) Non-Laser Surgery Intraocular Implants;
(9) Incisional or excisional Non-Laser Surgery of the Extraocular Muscles;
(10) Non-Laser Surgery of the eyelid for incisional Cosmetic or Mechanical repair of Blepharochalasis, ptosis, and tarsorrhaphy or eyelid malignencies.
(11) Non-Laser Surgery of the boney Orbit, including Orbital Implants;
(12) Incisional or excisional Non-Laser Surgery of the Lacrimal System other than Lacrimal probing or related procedures;
(13) Non-Laser Surgery requiring full thickness Conjuntivoplasty with graft or flap; and
(14) Any Non-Laser Surgical procedure that does not provide for the correction and relief of ocular abnormalities.

(c) The language of the Oklahoma Statutes shall be controlling if there is any conflict between this rule and the statutes.

[OAR Docket #05-1043; filed 5-27-05]

TITLE 565. OKLAHOMA BOARD OF PRIVATE VOCATIONAL SCHOOLS CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-1050]

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RULES:
Subchapter 1. General Provisions
565:1-1-6. [AMENDED]
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Oklahoma Board of Private Vocational Schools, 70 O.S., § 21-107.
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Legislative approval:
Failure of the Legislature to disapprove resulted in approval on May 25, 2005
Final adoption:
May 25, 2005
Effective:
July 11, 2005
ANALYSIS:
The rules will amend the address and phone number of the Board administrative offices.
CONTACT PERSON:
Dennis Rea, Board Director
3700 N. Classen Blvd., Suite 250
Oklahoma City, OK 73118
(405) 528-3370
Facsimile: (405) 528-3366

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 11, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

565:1-1-6. Location for information and for filing

(a) **Location.** The address and telephone number for communication with the Oklahoma Board of Private Vocational Schools is: Oklahoma Board of Private Vocational Schools; ~~2200~~ 3700 N. Classen Boulevard, Suite ~~1010~~ 250; Oklahoma City, OK ~~73106-5801~~ 73118-2864; Telephone (405) ~~521-2225~~ 528-3370

(b) **Hours of operation.** The normal business hours are 8:00 a.m. to 4:30 p.m., Monday through Friday.

(c) **Filing procedure.** Anyone may file a document by mail or hand-delivered during normal business hours. The filing date is the date the document is received, not the date it is mailed or postmarked. OBPVS does not accept ~~facsimilies~~ facsimiles or "FAX's" instead of original documents.

[OAR Docket #05-1050; filed 5-31-05]

TITLE 565. OKLAHOMA BOARD OF PRIVATE VOCATIONAL SCHOOLS CHAPTER 10. LICENSURE AND REGULATION OF PRIVATE VOCATIONAL SCHOOLS AND REPRESENTATIVES

[OAR Docket #05-1051]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Requirements for Licensure as Private Vocational School
565:10-3-1. [AMENDED]
Subchapter 5. Fees
565:10-5-1. [AMENDED]
Subchapter 11. School Operation
565:10-11-1. [AMENDED]
Subchapter 19. Penalty
565:10-19-1. [AMENDED]
Subchapter 27. Financial Statements and Financial Stability
565:10-27-1. [AMENDED]
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Oklahoma Board of Private Vocational Schools, 70 O.S., § 21-107.
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565:10-5-1. [AMENDED]
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565:10-27-1. [AMENDED]
Gubernatorial approval:
August 11, 2004
Register publication:
22 Ok. Reg. 68
Docket number:
04-1284
ANALYSIS:
The purposed rules would amend requirements for measurement of course length for correspondence or distance learning courses and amend the catalog requirements for addendum and supplements, amend fees charged by the Board and maximum fines allowed by the Board and District Court to reflect statutory changes in HB 2400 effective July 1, 2004. The rules changes would allow out of state schools to submit additional instructor qualifications to comply with the Board's rules and amend requirements for financial statements to require an entry showing total tuition collected by the school. The new rules will clarify financial statement requirements to ensure the information needed to comply with HB 2400 is included.
CONTACT PERSON:
Dennis Rea, Board Director
3700 N. Classen Blvd., Suite 250
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(405) 528-3370
Facsimile: (405) 528-3366

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 11, 2005:

SUBCHAPTER 3. REQUIREMENTS FOR LICENSURE AS PRIVATE VOCATIONAL SCHOOL

565:10-3-1. Requirements for licensure as private vocational school

Application shall be made on forms provided by the Board and shall include but not be limited to the following documents:

(1) A copy of the current school catalog, in printed or mimeographed form, shall be furnished to each student and certified as true and correct in content and policy by an administrative official of the school. The catalog will at least contain the following information.

(A) Name and address of the school, effective date of the catalog.

(B) Names and titles of the controlling owners and officials of the school, and with specific identification of the responsible administrative official or officials, duly authorized to act for the school in all matters relating to State approval and licensing.

(C) A calendar for the school showing vacation periods, holidays, and beginning and ending dates for each school year, semester, quarter, term, and/or session observed by the school.

(D) School policies and regulations covering leave, absences, class cuts, makeup work, tardiness, causes for school to terminate enrollment of student for the above reasons.

(E) Enrollment prerequisites for each course offered, and policy of school relative to granting of credit for previous education, training, and/or work experience.

(F) Detailed listing of tuition, fees, books, supplies, tools and instructional aids to be used and purchased by students for each course and the cost for each item.

(G) Policy and regulations at the school relative to the refund of the unused portion of tuition, fees, and supplies.

(H) A topical outline of each course for which approval is requested showing subjects, units, skills, or jobs to be learned in the course, and the total number of contact, quarter, or semester hours to be spent by the student in each phase of the training program. Correspondence or distance learning courses shall show this information by using the number of lessons and estimated time of completion. A school that is accredited by a national or regional accrediting body recognized by the U. S. Department of Education, may use quarter or semester hours to measure correspondence or distance learning courses.

(I) Institution policy and regulations relative to standards of progress required of the student by the institution. (This policy will define the grading system of the institution, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory grades or progress, and a description of the probationary period, if any, allowed by the institution and conditions for reentrance for those students dismissed for unsatisfactory progress.)

(J) Institution policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct.(

K) Any changes made to the catalog will be approved in advance by the Board and a copy of the new catalog shall be submitted to the Board upon publication.

(L) If an addendum is used, there shall be a statement that the catalog is not complete without the addendum ~~and a page containing a list of all addenda including the subject and effective date of each~~.

(M) Each addendum will show the effective date and the effective date of the catalog to which it is an addendum.

(2) A financial statement which meets the requirements as stated in 565:10-27.

(3) A surety bond, which shall be submitted for each main school location on the form provided by the Board and shall meet the requirements as specified in Subchapter 9 of this Chapter. Branch school locations shall be covered under the main school bond.

(4) An Instructor Qualification Form, which shall be submitted for each instructor. Each instructor shall meet standards as outlined in 565:10-11-1.

(5) A copy of the enrollment contract as described in Subchapter 11 of this Chapter.

(6) A copy of a current fire inspection, no more than three months old, showing that the school meets all requirements pertaining to local fire and safety codes.

(7) A copy of the certificate, diploma, or accredited degree given by the school.

(8) Plans, blueprints, or line drawings which describe in detail the facilities in which the school will operate.

(9) The appropriate fee as outlined in Subchapter 5 of this Chapter.

(10) Out of state schools must be licensed or approved in the state where they are located for the courses they are offering in Oklahoma and must provide the Board a copy of their approval or license listing the courses as verification.

SUBCHAPTER 5. FEES

565:10-5-1. School fees

(a) Main school fee. Private schools shall pay the following base fee per license issued by the Board: A fee of ~~One Thousand Dollars ($1,000.00)~~ One Thousand Two Hundred Dollars ($1,200.00) shall be paid to the Board for the issuance of a new license under 70 O.S. § 21-103~~,~~. ~~and a fee of Five Hundred Twenty Five Dollars ($525.00) shall be paid to the Board for each renewal of a license.~~ For each renewal of a license, a fee based on the total tuition collected by the school as shown in the current financial statement of the school shall be paid to the Board. as follows: $50,000.00 or less the fee will be $700.00; 50,001.00 to $250,000.00 the fee will be $800.00; $250,001.00 to $500,000.00 the fee will be $950.00; $500,001.00 to $1,000,000.00 the fee will be $1,100.00; $1,000,001.00 to $3,000,000.00 the fee will be $1,300.00;

$3,000,001' and above the fee will be $1,500.00. [70:21-106 (C)(1)]

(b) Branch school fee. In addition to the fees required for the main school location, each private school shall pay an additional fee of Three Hundred Dollars ($300.00) for each in state branch and a fee of Three Hundred Dollars ($300.00) for each out of state branch as defined by 70 O.S. § 21-101. Each branch which is not located in the same state as its main school or which does not offer substantially the same curriculum as is offered at the main school shall be considered to be a separate private school. Upon application for a license or renewal of license, each private school shall designate a main school location. [70:21-106 (C)(2)]

SUBCHAPTER 11. SCHOOL OPERATION

565:10-11-1. Personnel

(a) **Submission of training or work experience.** The school's administrators, directors, owners, and instructors shall be qualified by reason of preparation and experience. Evidence of such training, preparation, and experience shall be submitted on forms provided by the Board on each administrator, director, and instructor. The accuracy of such information shall be attested to by the person responsible for the operation of the school.

(b) **Reputation and character.** The school's administrators, directors, owners, agents and instructors shall be of good reputation and moral character. The Board may consider a conviction or a plea of guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside, to constitute a violation of this rule. A copy of the record of conviction, certified by the clerk of the court entering the conviction, shall be conclusive evidence of conviction.

(c) **Director qualification.** The director or manager of the school must be familiar with educational administration and methods as well as sound business practices, including:

(1) The development of a curriculum capable of preparing students for specific job entry levels.

(2) The selection of an instructional staff competent in subject matter and teaching techniques to implement the curriculum.

(d) **Instructor qualifications.** Instructors must be found to be qualified by education and experience background, and must meet the following qualifications as minimum requirements.

(1) Be a person of good character.

(2) Be a graduate of a recognized college or university and hold a baccalaureate degree with a minimum of 12 credit hours in a field directly related to the subject(s) he/she is teaching or,

(3) Have two years minimum full time work experience within the_last seven years in the field in which he/she is teaching or,

(4) Have a license issued by a state or the federal government in the field in which he/she is teaching, or have a nationally recognized professional certification in the field he/she is teaching, as approved by the Board.

(5) The Board may waive these requirements if the school presents evidence that the instructor has met other requirements sufficient to provide adequate instruction in the subjects being taught, as approved by the Board.

(6) Schools that offer instruction outside of Oklahoma must provide documentation that those instructors meet the requirements of the states where the instruction is offered in lieu of OBPVS instructor qualifications

(e) **Instructor changes and terminations.** The Board will be notified of any terminations or changes of instructors within thirty (30) days.

(f) **Authorized administrative official.** One person must be designated as the authorized administrative official of the school. Such duly designated official shall have sole authority to represent the school and act in all matters involving the school's responsibilities under the law.

(g) **Responsible for school operation.** The school director or administrator should be recognized as the authorized administrative official who is directly responsible for the school program, including methods of instruction, selection and employment of teachers, representatives, and/or other school employees organization of classes, maintenance of facilities, advertising, maintenance of administrative and overall classroom records, business professional ethics, development of policies, and the one who is directly responsible for meeting school obligations under terms of its license.

(h) **Qualifications of authorized administrative official.** The authorized administrative official of the school must be a person of good moral character. He/she should be a graduate of an approved college or university with a major in the general field related to the direct objectives of the school's efforts, or have suitable experience as a school administrator or as a teacher in one or more of the major subjects offered by the school, or in lieu thereof, he/she must possess other qualifications which are considered by the Board as being substantially equivalent.

(i) **Employment status of authorized administrative official.** The authorized administrative official or the administrative official's designated representative must devote his/her full time to the operations of the school while it is in session.

(j) **Mandatory school workshop.** The Board shall develop and administer workshops which emphasize rules relating to relicensing and daily operation of a school. [70:21-106 (C)(4)].

(1) At least one person from each school who is responsible for the operation of the school shall be required to participate in an annual workshop conducted by the Board. [70:21-106 (C)(4)]

(2) The Board shall notify each school of the date, time, and location the workshop is scheduled at least thirty (30) days prior to the workshop.

(3) Workshop registration forms and fees must be submitted to the Board not less than 15 days prior to the workshop.

(4) Schools that do not submit the workshop registration form with fee in accordance with the Board's rules

or do not participate in the workshop, may be fined in accordance with 565:10-19-1(b) and O.S. 70 §21-103(B).

SUBCHAPTER 19. PENALTY

565:10-19-1. Penalties for violation and noncompliance

(a) **General penalties.** Any person violating any of the provisions of the Private Schools Licensing Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars ($100.00), nor more than ~~Five Hundred Dollars ($500.00)~~ Two Thousand Five Hundred Dollars ($2,500.00), or by imprisonment of not more than thirty (30) days. [70:21-111]

(b) **Board imposed penalties.** Except as is otherwise provided by law, the Board is authorized, subject to the provisions of the Administrative Procedures Act, to prescribe such penalties as it may deem proper for the enforcement of 70 O.S. § 21-101 through 21-112, not to exceed ~~Five Hundred dollars ($500.00)~~ One Thousand Dollars ($1,000.00). [70:21-103(B)]

SUBCHAPTER 27. FINANCIAL STATEMENTS AND FINANCIAL STABILITY

565:10-27-1. Financial statements

(a) Format. Each school shall submit a financial statement which has been prepared by a licensed Certified Public Accountant or licensed Public Accountant in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The statement will be a "Compilation", "Reviewed", or "Audited" statement or report. A compilation will be required for schools that collected less than Two Hundred and Fifty Thousand Dollars ($250,000) in gross tuition for the year reported, schools licensed as Seminars, Workshops, and Short Courses as stated in 565:10-23, and new schools not participating in "Title IV Programs" through the U.S. Department of Education. The compilation report must be certified by the school owner or proper executive officer as true and correct in content. All other schools must submit a reviewed statement. If a school is required by another licensing, accrediting, or approving body to submit an audited statement, than that statement shall be submitted to this Board in lieu of other financial reporting required by this section. A school required to submit a compilation may submit a reviewed or audited statement instead.

(1) Financial statements, for other than a new school, must include:

(A) A cover letter from the preparer.

(B) A Balance sheet.

(C) An income statement that includes a separate line item showing the total tuition collected by the school.

(2) In addition, Audited and Reviewed statements must include:

(A) A statement of changes in shareholders'/owners' equity.

(B) A statement of cash flows.

(C) Notes to financial statements.

(b) Balance sheet. All Compilation statements must carry as separate line items on the balance sheet or on a notarized statement signed by the school owner or corporate officer and attached as part of the financial statement the following:

(1) Unearned tuition.

(2) Unpaid, past due taxes.

(3) Unpaid, past due tuition refunds.

(4) Unpaid fines and assessments.

(5) Unpaid judgments against the institution.

(c) Period of coverage. The school shall submit a report covering their most recent fiscal year. The report shall cover a twelve (12) month period unless the school has not been in business for a full year. Schools which submit a statement for a fiscal year ending more than six (6) months prior to filing shall submit a quarterly report for their most recent quarter. A new school shall submit a statement which reflects their financial position at the time of application.

[OAR Docket #05-1051; filed 5-31-05]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 10. FACILITIES MANAGEMENT

[OAR Docket #05-1045]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Use of Public Areas of Capitol and Plazas
580:10-5-6. [AMENDED]
Subchapter 7. Use of State Capitol Park
580:10-7-3. [AMENDED]
580:10-7-4. [NEW]
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N/A

ANALYSIS:

Revisions to Section 580:10-5-6 and 580:10-7-3 clarify the use of alcoholic beverages in the State Capitol, Capitol Plazas and State Capitol Park by including the prohibition of low-point beer. New rules establish prescribe procedures and conditions for the display of banners on light poles located along the Lincoln Renaissance area.

CONTACT PERSON:

Gerry Smedley, Human Resources Director, (405) 522-8519, Department of Central Services, 2401 N. Lincoln Boulevard, Suite 206, Oklahoma City, OK 73105.

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 11, 2005:

SUBCHAPTER 5. USE OF PUBLIC AREAS OF CAPITOL AND PLAZAS

580:10-5-6. Provisions for events, exhibits and art exhibits

(a) The following provisions apply to all events, exhibits or art exhibits:

(1) Sponsors shall confine events, exhibits and art exhibits to the public areas specified in the reservation and shall not relocate to, install, or erect additional paraphernalia in other areas of the Capitol or plazas unless the Department grants prior approval.

(2) No intoxicating beverage or ~~substance~~ low-point beer will be dispensed or consumed on state property.

(3) Use of cooking or heating elements of any kind is prohibited.

(4) Placement of materials of any kind on structures, fixtures or vehicles in a state parking lot in conjunction with an event, exhibit or art exhibit is prohibited.

(5) Unless authorized in the reservation application, affixing banners, signs, or materials in any manner on or in the Capitol or plazas, or to an appurtenance of the Capitol or plaza is prohibited. The Department may remove and dispose of, or cause to be removed and disposed of, the signs or banners without notice.

(A) Plaza. Use of handheld signs and signs on hand sticks are allowed.

(B) Capitol. Unless authorized in a reservation, signs or banners of any kind are prohibited in the Capitol.

(6) No individual or group may restrict access to, from or within the Capitol or a plaza.

(7) No individual or group shall cause unreasonable risk to works of art, public property or persons within the Capitol or plaza.

(8) The Department prohibits commercial activity, collection of fees, solicitation of money, or fund raising events which solicit or collect money, in the Capitol or on a plaza. State agencies and non-profit organizations that sell goods to benefit or promote the function of the agency or non-profit organization may request an exemption from the Director.

(9) Events, exhibits or art exhibits for the purpose of promoting a profit making organization or individual are prohibited. Display of business cards or other means the Department considers promotional are prohibited.

(10) Use of audio devices may be restricted or altered to a decibel level which does not disturb or disrupt other persons in the Capitol or on a plaza.

(11) The Department may order or seek to cause cessation of an event, exhibit or art exhibit which may pose a hazard, as determined by the Department, to an individual, group, building, contents of the building, or building fixtures and appurtenances.

(12) A sponsor shall place electrical cords and cables used for events, exhibits or art exhibits so that the cords and cables limit potential hazard to persons in the area. Electrical cords and cables must be placed out of walkways unless secured to the floor.

(13) Compressed gas cylinders are prohibited for use in conjunction with an event, exhibit or art exhibit, unless specifically identified and approved in the reservation.

(14) Waste accumulation of any kind in any area or manner so as to create a potential hazard to health, safety or property is prohibited.

(15) Open flames (including candles), confetti, balloons, rice, birdseed or other similar substances in conjunction with events, exhibits or art exhibits are prohibited.

(16) All reptiles, animals and fowl, with the exception of assistance dogs and law enforcement canines, are prohibited in the Capitol or on a plaza.

(b) **Requirements at end of event, exhibit or art exhibit.** A sponsor shall remove all materials used in conjunction with or created by an event, exhibit or art exhibit immediately following the conclusion of the event, exhibit or art exhibit.

(c) **Unauthorized events or activities.** Security personnel will be notified upon detection of unauthorized events or activities.

SUBCHAPTER 7. USE OF STATE CAPITOL PARK

580:10-7-3. Park use information

(a) **Conditions.** The provisions of this section shall apply to the use of the State Capitol Park, which includes all demonstrations or events approved by the Director pursuant to this Subchapter.

(1) Individuals may carry handheld signs, placards and banners. Affixing or securing signs, placards or banners to a building, fixture, tree or any other fixed structure is prohibited.

(2) Use of audio devices and musical instruments may be restricted or altered to a decibel level which does not disturb other persons.

(3) Digging, which includes driving stakes into the ground, is prohibited.

(4) Injuring, removing, molesting, burning or vandalizing botanical, paleontological, archaeological or historical features and structures is prohibited.
(5) Contained fires may be authorized based upon intended use and climatological conditions.
(6) Discharging or setting off fireworks is prohibited. The Department may authorize the use of fireworks during holidays and events based upon intended use and climatological conditions.
(7) Assembling, congregating or acting individually in such a way as to obstruct sidewalks, walkways, or entrances and exits to buildings is prohibited.
(8) Possession of firearms, explosives, clubs, missiles, chemicals, incendiary devices, or other like devices is prohibited.
(9) The placement, setting up or erection of tents, sleeping bags, bed rolls, or bedding of any kind for the purpose of camping or remaining overnight is prohibited.
(10) Throwing stones, bottles or other objects with the intent to injure another person or damage property is prohibited.
(11) Use of a motorized vehicle on sidewalks or grounds shall be restricted to emergency, maintenance, construction, development, or authorized building access purposes as determined by the Department.
(12) Burial of human or animal remains is prohibited.
(13) No intoxicating beverage or ~~substance~~ low-point beer will be dispensed or consumed on state property.
(14) Waste accumulation of any kind in any area or manner so as to create a potential hazard to health, safety or property is prohibited.

(b) **Requirements at end of demonstration or event.** A sponsor shall remove all facilities, equipment, temporary structures and materials used in conjunction with or created by a demonstration or event immediately following the conclusion of the demonstration or event.

(c) **Unauthorized demonstrations and events.** Security personnel will be notified upon detection of unauthorized demonstrations or activities.

580:10-7-4. Banners on light poles along Lincoln Renaissance

(a) **Purpose.** The purpose of the banner arms on the light poles along the Lincoln Renaissance area (Lincoln Boulevard from NE 28th to NE 38th Streets) is for the State of Oklahoma to communicate with its citizenry and promote state agencies, state programs, and state-sponsored events. The banner arms are reserved for the sole and exclusive use of the State Oklahoma, acting through the Department. The provisions of this Section prescribe procedures and conditions for the display of banners on such light poles.

(b) **Request to display banners.** No banners may be displayed without written authorization from the Director. Requests to display banners shall be:
(1) submitted to the Director in writing;
(2) be signed by the appointing authority of a state agency; and,
(3) specify what state agency, program or event the banners will promote.

(c) **Approval of request to display banner.** After the request is reviewed, the Director will notify the state agency in writing of the approval or denial of the request.

(d) **Prohibited displays of banners.** Banners promoting private organizations, individuals, or privately sponsored events may not be displayed from the light poles along the Lincoln Renaissance area at any time. Any banners displayed without the express written authorization of the Director will be taken down immediately at the owner's expense.

[OAR Docket #05-1045; filed 5-31-05]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 15. CENTRAL PURCHASING

[OAR Docket #05-1046]

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580:15-2-7. [AMENDED]
580:15-2-11. [AMENDED]
Subchapter 4. Supplier Provisions
580:15-4-5. [AMENDED]
580:15-4-7. [AMENDED]
580:15-4-8. [AMENDED]
580:15-4-11. [AMENDED]
580:15-4-13. [AMENDED]
580:15-4-16. [AMENDED]
Subchapter 6. State Agency Provisions
580:15-6-2. [AMENDED]
580:15-6-3. [AMENDED]
580:15-6-5. [AMENDED]
580:15-6-8. [AMENDED]
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N/A

ANALYSIS:

The rule amendments clarify, revise and update information and references pertaining to general provisions of the Purchasing Division of the Department of Central Services. Rule amendments also revise and update information and references that suppliers, agencies and the Central Purchasing Division follow related to the contract negotiation process and submission of a request for waiver from rules of this chapter. Other rule amendments revise and update information and references pertaining to submission of a notarized noncollusion affidavit so that a facsimile or photocopy is acceptable, which is consistent with Oklahoma law.

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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 11, 2005:

SUBCHAPTER 2. GENERAL PROVISIONS

580:15-2-1. Purpose

This Chapter provides information to suppliers that desire to sell ~~or sell~~ acquisitions to state agencies, and to state agencies to ensure compliance with provisions of the Oklahoma Central Purchasing Act. These rules of the Purchasing Division of the Department of Central Services conform to requirements of the Oklahoma Central Purchasing Act, 74 O.S., Sections 85.1 et seq. Promulgation of these rules is by the Director of the Department of Central Services and pursuant to 74 O.S., Section 85.5.

580:15-2-2. Definitions

~~As used in this chapter,~~ The following words or terms, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise ~~requires~~:

"Acceptable Electronic Signature Technology" ~~Technology which~~ means technology that is capable of creating a signature that is unique to the person using it; is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"Acquisition authority" means the dollar amount within which a state agency is approved to make acquisitions without submitting a requisition to the State Purchasing Director.

"Affiliates" means associated business entities or individuals that directly or indirectly control or can control other business entities, or individuals that associate with a business entity but derive financial benefit from another business entity.

"Aircraft" means any device now known, or hereafter invented, used, or designed for navigation of or flight in the air or airspace.

"All or none bid" means a bid in which the bidder states only an award for all items or services included in the solicitation will be accepted.

"All or none solicitation" means a solicitation in which the state indicates it will award a contract to a single supplier for all items or service included in the solicitation.

"Alternate bid" means that with the submission of a bid that meets the requirements of the solicitation, a bidder, at the same time, includes another bid, which contains an intentional substantive variation to a basic provision, specification, term or condition of the solicitation.

"Authorized signature" means a manual, electronic or digital identifier uniquely linked to a person the supplier authorizes to sign documents the supplier submits to the State Purchasing Director.

"Bid bond", "performance bond" or **"surety bond"** means a form of surety or guaranty that the State Purchasing Director may require bidders to submit with a bid.

"Business days" means Monday through Friday and is exclusive of weekends and state holidays.

"Certified procurement officer or **CPO"** means a state agency procurement official certified by the State Purchasing Director under the provisions of the Oklahoma Central Purchasing Act.

"Clarification" means a ~~bidder'~~ bidder's explanation of all or part of a bid that does not change, alter or supplement the bid.

"Closing date" means the date and time a solicitation specifies after which a bid is considered late and the Purchasing Division or state agency will not accept a bid.

"Commodity classification" means numeric designations the State Purchasing Director assigns to classify goods and services into similar categories.

"Commodity list" means a list of all items and services in a commodity classification.

"Competitive bidding" means a process of acquisition wherein bidders submit bids to the Purchasing Division or a state agency pursuant to terms, conditions and other requirements of a solicitation. The competitive bidding process may be electronic when the terms of the solicitation expressly permit electronic submission and the requirement of the statutes and/or rules are met.

"Days" means calendar days unless otherwise specified.

"Debar" or **"debarment"** means action taken by the State Purchasing Director to exclude any business entity from inclusion on the suppliers list, bidding, offering to bid, ~~or~~ receiving an award of contract with the State of Oklahoma for acquisitions by state agencies or a contract the Department of Central Services awards or administers.

"Department" means the Department of Central Services.

"Director" means the Director of the Department of Central Services.

"Electronic Record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Unless otherwise provided by this Chapter or law, an electronic signature may be used to sign a ~~writing~~ document and shall have the same force and effect as a written signature.

"Emergency acquisition" means an acquisition made by the State Purchasing Director or a state agency without seeking competitive bids to relieve an unforeseen condition believed to endanger human life, ~~or~~ safety ~~or pose~~ poses imminent danger to significant property~~,~~ or ~~a~~ is condition certified by the Governor as a serious environmental situation.

"Firm bid" means an offer by a bidder which contains no conditions which may prevent acceptance and which, by its terms, remains open and binding until the State Purchasing Director accepts or rejects the bid.

"Fiscal year" means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.

"Fixed rate" means a rate the Department establishes for contracts for services a supplier provides to persons directly benefiting from the services.

"Forms" means documents the Director prescribes and requires suppliers and state agencies to use to provide information to the Department or Purchasing Division.

"Information Technology" means data processing, telecommunications, and office systems technologies and services.

"Internet" means the ~~international computer~~ global information network of both federal and nonfederal ~~interoperable packet-switched data networks, including the graphical~~ systems that are linked together by a globally unique address and includes the subnetwork called the World Wide Web.

"Invitation to bid" means a type of solicitation a state agency or the State Purchasing Director sends to suppliers for submission of bids for acquisitions.

"Life Cycle Costing" means a procurement technique that takes into account demonstrable and documented operating, maintenance, the cost of money, other costs of ownership, ~~and~~ usage, ~~and~~ resale or residual value in addition to acquisition price in making an award on lowest and best or best value.

"Material deficiency" means failure to provide information necessary to evaluate a solicitation.

"Minor deficiency" or **"minor informality"** means an immaterial defect in a bid or variation in a bid from the exact requirements of a solicitation that may be corrected or waived without prejudice to other bidders. A minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.

"Noncollusion affidavit" means a document a supplier submits pursuant to the Oklahoma Central Purchasing Act with bids or for acquisitions by contract.

"Nonbinding contract" means a contract that the State Purchasing Director or a state agency establishes based on historical usage of a service or product rather than a specified quantity of said service or product and which does not obligate the State to purchase any certain amount. (Example: A contract to treat special head injuries based on the number of cases for the special treatment provided by the State for previous years.)

"Nonencumbered contract" means a contract that the State Purchasing Director or a state agency establishes that provides for an unspecified quantity of items or services, or an unspecified delivery date for goods and services, when a state agency encumbers funds for each order pursuant to the contract.

"Nonresponsive" means a bid that does not conform to essential requirements in a solicitation.

"Oklahoma Central Purchasing Act" means 74 O.S., Sections 85.1 et seq.

"Oklahoma Correctional Industries" means a program of the State Department of Corrections for utilization of inmate labor for the manufacture or production of items or products for use by state agencies.

"Online Bidding" means an electronic procurement process in which state agencies receive bids from vendors for goods, services, construction, or information services over the Internet or other electronic medium in a real-time, competitive bidding event.

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, construction, or information services. The term also means all functions that pertain to the obtaining of any goods, services, construction, or information services, including, but not limited to, the description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

"Purchasing Division" or **"Division"** means the Purchasing Division of the Department of Central Services.

"Ratification" means the act of approving an unauthorized commitment made by a state agency.

"Reciprocity" means a preference, which the State Purchasing Director shall apply against the price an out of state bidder submits for an acquisition whose home state applies a similar preference against Oklahoma bidders.

"Registered supplier" means a supplier that registers with the Purchasing Division pursuant to 580:15-4-2.

"Remedy" means to cure, alter, correct or change.

"Request for proposal" means a type of solicitation a state agency or the State Purchasing Director provides to suppliers requesting submission of proposals for acquisitions.

"Request for quotation" means a simplified written or oral solicitation a state agency or the State Purchasing Director sends to suppliers requesting submission of a quote.

"Requisition number" means an identifier the state agency or Purchasing Division assigns to a requisition.

"Requisitioning unit" means the unit in a state agency responsible for making acquisitions.

"Responsive offer" means an offer a supplier submits, which conforms in all material respects to requirements a solicitation states.

"Responsible supplier" means a supplier who demonstrates capabilities in all respects to fully perform the requirements of a contract ~~which~~ that may include, but not ~~be~~ limited to, finances, credit history, experience, integrity, perseverance, reliability, capacity, facilities and equipment, which will ensure good faith performance.

"Reverse Auctioning" means a procurement method wherein bidders are invited to bid on specified goods or services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and

bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

"Scheduled acquisition" means a recurring acquisition that consolidates multiple state agency requirements for a given commodity or group of commodities.

"Services" means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance.

"Settlement agreement" means a document that reflects an agreement between the state and an individual or business entity that ratifies an unauthorized commitment.

"Solicitation" means a request or invitation by the State Purchasing Director or state agency for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal or request for quotation.

"State official" means a person that works for a department, state agency, trusteeship, authority, school district, fair board, advisory group, task force or study group supported in whole or in part by public funds or administering or operating public property.

"State Purchasing Director" means the director of the Purchasing Division of the Department of Central Services appointed by the Director of the Department or the Purchasing Director's designee.

"State Use Committee" means a committee that certifies severely disabled individuals and sheltered workshops as ~~eligible participants~~ qualified organizations that contract with the state to provide products and services made by severely disabled individuals, and establishes the State Use Committee procurement schedule for state agency use pursuant to 74 O.S., Sections 3001 et seq.

"Supplier complaint" or **"performance evaluation"** means information a state agency or the Purchasing Division provides to the State Purchasing Director, in a manner the Director prescribes, that documents supplier performance.

"Supplier registration" means a process a supplier uses to register with the Purchasing Division to receive solicitations for commodities on a commodity list for a specified period of time. The process for bidder registration for the receipt of online solicitations may be a separate list. Online bidders may be required to prequalify and online solicitations may be restricted to prequalified online bidders.

"Suppliers list" means a list of individuals or business entities that desire notification of solicitations for specified commodity lists.

"Suspension" means action by the State Purchasing Director to exclude an individual or business entity from the suppliers list.

"Written, Writing, and in Writing" shall include handwriting, printing, typewriting and all other methods and means of forming letters and characters upon paper, stone, wood, other materials, or any electronic medium, that can be read, retrieved, and reproduced. When used in these rules, a writing may include an electronic writing.

580:15-2-7. State Purchasing Director authority

(a) **General.** The State Purchasing Director is an employee of the Department of Central Services. The Director and the Oklahoma Central Purchasing Act prescribe the duties, responsibilities and authority of the State Purchasing Director.

~~(b) **Conditional.**~~

~~(1) **Waivers.** The State Purchasing Director may waive requirements of the Oklahoma Central Purchasing Act pursuant to 580:15-2-11.~~

~~(2) **New contracting procedures.** Whenever the State Purchasing Director develops and tests new contracting procedures and said procedures are used for acquisitions, the State Purchasing Director shall:~~

~~(A) Inform any state agency requesting the acquisition of said procedures; and~~

~~(B) Include a statement of said procedures in the solicitation for the acquisition.~~

(b) **New Contracting Procedures.** Whenever the the State Purchasing Director develops and tests new contracting procedures and said procedures are used for acquisitions, the State Purchasing Director shall promptly notify state agencies.

(c) **Limited contact.** ~~For those solicitations requiring submission of requisitions to the State Purchasing Director, the~~ The State Purchasing Director may limit contact regarding ~~the~~ a solicitation between suppliers and agency personnel during the solicitation process. The limitation of contact ~~shall~~ may be described in the solicitation. All communication between suppliers and agency personnel regarding a solicitation shall be documented and submitted and submitted to DCS for inclusion in the bid file. ~~The State Purchasing Director may require agency personnel to file a statement disclosing all communications with suppliers during the evaluation process.~~

(d) **Limited disclosure.** ~~For solicitations requiring submission of requisitions to the State Purchasing Director, agency~~ Agency staff shall not announce or reveal their decision regarding supplier evaluation or recommendation for award to Central Purchasing in any public manner or forum, including board meetings, until ~~after~~ Central Purchasing has issued the award of contract.

(e) **Negotiation.** The State Purchasing Director or designee may negotiate consolidation contracts, enterprise agreements, and high technology system contracts in lieu of or in conjunction with bidding procedures by noting in the solicitation that negotiations will be conducted and by following these rules for negotiation. Negotiations may be conducted with ~~suppliers~~ a supplier or suppliers whose technical and price proposals are acceptable ~~and whose price proposals are within the competitive range~~.

(1) **Negotiation team.** The State Purchasing Director shall designate a negotiator or negotiation team ~~consisting of a minimum of two individuals~~. ~~The team members shall be familiar with the technical and cost aspects of the contract and have training in the dynamics and techniques of negotiation.~~ The State Purchasing Director or designee shall serve as the ~~chief~~ lead negotiator for ~~the~~ a team.

(2) **Negotiation process.**

(A) The ~~chief~~ lead negotiator shall notify vendors of the date and time for negotiations.

(B) The ~~chief~~ lead negotiator shall request the supplier provide a list ~~and resumes~~ of the individuals who will attend the negotiation and who have full authority to bind the supplier in the negotiation process.

(C) ~~All negotiations shall should be conducted at the Department of Central Services.~~ The lead negotiator shall determine the location and manner of negotiation.

(D) Negotiations shall be recorded ~~and transcribed~~.

(E) The negotiation team shall develop an agenda with the ~~chief~~ lead negotiator and submit the agenda to all ~~suppliers participating in~~ participants of the negotiation process. The agenda shall set forth the key areas in the solicitation, which require negotiation. ~~The agenda shall also identify all nonnegotiable areas of the solicitation.~~

(F) ~~Negotiations may be concluded by allowing suppliers to submit a best and final offer by a date and time certain.~~ The lead negotiator may require suppliers to submit a best and final offer.

(G) The ~~chief~~ lead negotiator shall prepare a summary that ~~memorandum of agreement to be approved and signed by all participants in the negotiation. The memorandum of agreement~~ shall document the following:

(i) an overview setting forth the solicitation number, names and titles of participants, description of the contract, date and location of the negotiation, and purpose of the negotiation; and

~~(ii) a summary of the areas negotiated and the original position of the parties; and~~

(~~iii~~ ii) a summary of the results of the negotiation, specifically stating what is the basis of the final agreement.

(H) A summary ~~memorandum of agreement~~ created under these rules shall become a part of the contract ~~documents~~ file retained in Central Purchasing.

(f) **Contract management fee, levy or rebate.** Pursuant to 74 O.S., Section 85.33(B), the State Purchasing Director may enter into or award contracts that provide a contract management fee, levy or rebate to the Department. The State Purchasing Director may negotiate a contract management fee whenever it is in the best interest of the state and the Department. All monies received from fees, levies or rebates shall be deposited in the Contract Management Revolving Fund established by 74 O.S., Section 85.33(A).

580:15-2-11. Waivers

(a) **Waiver request.** A ~~State agencies~~ state agency may request a waiver from competitive bidding requirements or rules of this chapter from the ~~State Purchasing Director~~ Director of the Department of Central Services, if:

(1) ~~**State agency inability to perform necessary function.**~~ ~~If a~~ the state agency reasonably believes that the state agency would be unable to perform a necessary function due to the inability to make an acquisition pursuant to rules of this ~~chapter~~ Chapter~~, the state agency may request a waiver from the State Purchasing Director.~~ ;or,

(2) ~~**Court orders.**~~ ~~If a~~ a court order directs ~~a~~ the state agency to make an acquisition from a specified vendor or provider~~, the state agency shall request a waiver from the State Purchasing Director~~.

~~(3) **State Purchasing Director determination.**~~

~~(A) **Waiver approval.** If the State Purchasing Director approves or conditionally approves a waiver, the State Purchasing Director shall notify the state agency.~~

~~(B) **Waiver denial.** If the State Purchasing Director denies a waiver, the State Purchasing Director shall notify the state agency of waiver denial.~~

(b) **Approval of waiver request.** After the request is reviewed, the Director shall notify the agency of the approval, conditional approval or denial of the waiver request.

SUBCHAPTER 4. SUPPLIER PROVISIONS

580:15-4-5. Bid solicitation ~~by the State Purchasing Director~~

(a) **General.** The Purchasing Division shall comply with provisions of the Oklahoma Central Purchasing Act and rules the Department promulgates pursuant to the Oklahoma Central Purchasing Act to ensure fair competition for suppliers. When a purchasing agent determines that electronic or online bidding is more advantageous than other procurement methods provided by the laws of this state, the purchasing agent may use online bidding to obtain bids as authorized by the Oklahoma Central Purchasing Act for the purchase of goods, services, construction, or information services.

(b) **Competitive solicitations.** The State Purchasing Director shall issue solicitations for acquisitions by invitation to bid, request for proposal or request for quotation.

(c) **Supplier notification.**

(1) **Registered suppliers.** The State Purchasing Director shall notify suppliers of solicitations for commodity classes for which the supplier registers.

(2) **Suppliers a state agency recommends.** The State Purchasing Director may notify suppliers a state agency recommends for a solicitation.

(3) **Emergency notification.** For an emergency acquisition pursuant to 74 O.S. §85.7(4), the State Purchasing Director or a state agency shall select a supplier or a group of suppliers to notify utilizing telephone, facsimile or electronic commerce.

(4) **Notification pursuant to a waiver.** When the State Purchasing Director issues a waiver pursuant to 580:15-2-11, the State Purchasing Director or a state agency may select a supplier or group of suppliers to notify using telephone, facsimile or electronic commerce. ~~Supplier selection shall be determined on the basis of price, timeliness of delivery.~~

(5) **Amendments to a solicitation.** If the State Purchasing Director amends a solicitation, the State Purchasing Director shall notify suppliers sent the original

solicitation of the amendment. Suppliers submitting bids or quotations shall acknowledge receipt of an amendment in the supplier's bid or quotation. If the supplier has already submitted a bid, the supplier shall submit an acknowledgment of the amendment prior to the closing date.

(d) **Bid award criteria.** The State Purchasing Director shall indicate in the solicitation whether the bid award criteria is lowest and best, or best value.

(e) **Specifications.** Solicitations shall include specifications or a statement of work. The State Purchasing Director may reference manufacturer names, product names, or other product references as specifications to describe the type or quality of the acquisition.

(f) **Terms and Conditions.** The State Purchasing Director shall include all the terms and conditions for the acquisition in the solicitation.

(1) **Copyrights, patents or intellectual property.** If an acquisition includes copyrights, patents or intellectual property rights pursuant to federal law, the solicitation shall request conditions of use for the acquisition.

(2) **Other terms and conditions.** The State Purchasing Director may not accept supplier terms and conditions in a supplier's bid. No alterations or variations of the terms of the contractor shall be valid or binding upon the state, unless made in writing and accepted by the State Purchasing Director.

(3) **Other rights and remedies.** Actions of the State Purchasing Director shall not limit the rights or remedies of a state agency.

(4) **Rejection of all bids.** If the State Purchasing Director finds it to be in the best interest of the State of Oklahoma, any and all bids or proposals may be rejected and a solicitation may be reissued or canceled.

(g) **Affidavit.** The Purchasing Director shall include a noncollusion affidavit form in a solicitation. ~~An original, notarized copy of the~~ The noncollusion affidavit~~, executed by the supplier,~~ shall be submitted to the Division with any bid or proposal. The noncollusion affidavit shall have an original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.

(h) **High technology systems.** The State Purchasing Director shall state in a solicitation if the acquisition is a high technology system.

(i) **Pre-bid conference.** The State Purchasing Director shall state in a solicitation if the State Purchasing Director shall hold a supplier pre-bid conference and shall state whether supplier attendance is mandatory or optional.

(j) **Shipping.** Bidders shall deliver the acquisition F.O.B. destination to the receiving state agency unless otherwise specified in the solicitation.

(k) **Closing date.** The State Purchasing Director shall provide notice to suppliers in the solicitation of the closing date, time and location of a bid opening. In the event it is determined that a significant error or event occurred that affected the electronic receipt of an online bid, the Director of Central Services may authorize the Division to accept an electronic bid after the specified official closing date and time. Failure of the bidder's computer or electronic equipment or service is not an acceptable event.

(l) **Sample submission.** For acquisitions of items or products, the solicitation may specify submission of samples of the required items or products to the State Purchasing Director.

(1) **Sample receipt.** If a bidder submits a sample, the bidder shall submit the sample to the Purchasing Division prior to the closing date.

(2) **Sample identification.** The bidder shall identify the sample the bidder submits with the bidder's name, bidder's address, state bid identification number and closing date. The supplier shall place the information on the sample container and on the sample shipping container.

(3) **Sample costs.** The bidder shall pay costs for the sample and submission to the State Purchasing Director.

(4) **Sample requirements.** A sample a bidder submits to the Purchasing Division shall represent the quality of the whole.

(5) **Sample tests.** The State Purchasing Director shall use standard testing procedures to determine the quality of a sample a bidder submits.

(6) **Sample tests costs.** If the sample a bidder submits to the Purchasing Division fails to meet the specification or standards the solicitation requires, the bidder shall pay testing costs the Purchasing Division incurs.

(7) **Unsuccessful bidder samples.**

(A) **Bidder requests sample return.** Bidders may request that the State Purchasing Director return samples examination does not destroy.

(B) **State Purchasing Director retains sample.** The State Purchasing Director may retain samples that bidders submit that examination does not destroy.

(C) **State Purchasing Director returns sample.** The State Purchasing Director may return samples that bidders submit that examination does not destroy. Bidders shall pay costs the Division incurs for sample return.

(8) **Successful bidder samples.** The State Purchasing Director may retain samples the successful bidder submits to ensure that acquisitions the successful bidder delivers meet specifications in the solicitation.

(m) **Subcontractor notice.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the supplier shall provide the information in the supplier's bid.

580:15-4-7. Bid submission

(a) **Submission location.** Bidders shall submit bids to the location the solicitation specifies.

(b) **Bid submission contents.** Bidders shall submit all forms, documents and contents required by a solicitation as instructed in the solicitation. The legal name and complete address of the bidder, bid number and closing date shall be prominently displayed as stated in the solicitation.

(c) **Submission of ~~notarized sworn statement~~ noncollusion affidavit.** When electronic submission of the bid is

allowed, an original ~~notarized sworn statement of non-collusion~~ noncollusion affidavit must be submitted to the Central Purchasing Division as prescribed in the solicitation. An original signature shall be properly executed by an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photo copy of an original signature will not be accepted.

(d) **Purchasing Division bid receipt.** Upon receipt, the Purchasing Division shall clearly mark the outside of all envelopes or containers with the receipt date and time. Electronic submission of bids, when allowed, must be submitted in such a manner that the time and date of submission is electronically linked to the bid and cannot be changed.

(e) **Signatures on solicitation documents.** All signatures required on any bid document shall be original unless otherwise authorized by state law and approved by the State Purchasing Director. An original signature shall be properly executed by an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.

580:15-4-8. Bid withdrawal

(a) **Bid withdrawal before closing date.** A bidder who desires to withdraw a bid prior to the closing date shall submit written notice to the Division, which includes personal identification, the supplier's name, bid number and closing date.

(b) **Bid withdrawal after closing date.** Withdrawal of a bid after the closing date shall not be authorized by the State Purchasing Director unless the bidder can prove that significant error by the bidder exists in the bid.

580:15-4-11. Bid evaluation

(a) **Evaluation document.** The State Purchasing Director shall establish an evaluation document that contains evaluation criteria the Purchasing Division shall use to evaluate bids. The evaluation document shall be open for public inspection following contract award.

(b) **Bid clarification.** The State Purchasing Director may solicit clarification from a bidder regarding the bidder's bid. The clarification shall not alter or supplement the bid.

(c) **Reasons for bid rejection.** The State Purchasing Director shall indicate in the solicitation file if a bid is nonresponsive. The State Purchasing Director may reject a bid that is nonresponsive or a bid from a nonresponsible bidder for reasons that include, but are not limited to the following:

(1) **Terms and conditions.** A bid that does not meet the terms and conditions of the solicitation shall be considered nonresponsive.

(2) **Forms use.** A bid that does not contain forms or other information the solicitation specifies may be considered nonresponsive.

(3) **Incomplete forms.** If forms required by the solicitation do not contain complete information, the bid may be considered nonresponsive.

(4) **Form entries improper.** If information provided in the solicitation documents is not in ink, legible, typewritten or printed, or submitted in the electronic format specified in the solicitation, the bid may be considered nonresponsive.

(5) **Improper alterations.** If alterations do not bear the initials of the person making the alteration, the bid may be considered nonresponsive.

(6) **Use of unauthorized signature.** If a signature on a form is not an authorized signature pursuant to state laws and the rules of this chapter, the bid shall be considered nonresponsive.

(7) **Absence of notary seal.** If forms do not contain a notary seal where forms indicate or otherwise comply with the manner of notarization prescribed for the bidding suppliers' state of residence, the bid shall be considered nonresponsive.

(8) **Bid does not contain bid bond.** If a bidder fails to include a bid bond specified as a requirement by a solicitation, the bid shall be considered nonresponsive.

(9) **Bid does not contain samples.** If a solicitation specifies that the bid shall contain samples and the bid does not contain samples, the bid shall be considered nonresponsive.

(10) **Bid nonresponsive.** If a bid does not offer items suitable for the intended use of the items, the bid shall be considered nonresponsive.

(11) **Pricing.** If bid pricing does not meet requirements of a solicitation, the bid shall be considered nonresponsive.

(12) **Bid fails to acknowledge solicitation amendment.** If a bid fails to acknowledge an amendment the Purchasing Director issues to a solicitation, the bid may be considered nonresponsive.

(13) **Bidder not responsible.** If the solicitation specifies that suppliers submit information relating to responsibility and a bidder does not submit said information, or the State Purchasing Director determines the bidder is not responsible, the bid may be rejected.

(14) **One bid from multiple suppliers.** One bid from multiple suppliers that does not designate a prime contractor shall be considered nonresponsive.

(15) **Additional supplier terms and conditions.** If a supplier adds terms and conditions to an acquisition that are contrary to the laws of Oklahoma the bid shall be considered nonresponsive.

(16) **Past performance.** If the Purchasing Director has received complaints on a supplier, the supplier may be found not responsible.

(17) **Signatures on solicitation documents.** If a facsimile or photocopy signature appears in any solicitation document that requires an original signature [Reference 580:15-4-7.(e)], the bid ~~may~~ shall be considered nonresponsive. An original signature shall be properly executed by an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.

(18) **Proof of insurance.** Whenever applicable to a solicitation, if a supplier is unable to provide proof of workers' compensation insurance or an alternative or exemption as authorized by state law, the supplier may be found not responsible.

(e) **Samples.** When a solicitation specifies a bidder submit samples, the State Purchasing Director shall examine the sample to determine the expected performance and service capabilities. The State Purchasing Director shall indicate the method of testing and rate the sample's performance in the evaluation document.

(f) **Supplier past performance.** The State Purchasing Director shall consider bidder performance on previous contract awards and indicate past performance in the evaluation document.

(g) **Lowest and best bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is lowest and best, the State Purchasing Director shall consider criteria the Oklahoma Central Purchasing Act specifies to determine the lowest and best bid.

(h) **Best value bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is best value, the State Purchasing Director shall consider criteria specified to determine the best value bd.

(i) **Life cycle costing.** If the State Purchasing Director specifies in the solicitation the evaluation criteria is life cycle costing, the State Purchasing Director shall consider the specified criteria to determine the factors and methodology to be used in the life cycle costing adjustments.

(j) **Other factors in determination of award.** The State Purchasing Director may waive minor deficiencies or informalities in a bid if the State Purchasing Director reasonably determines the deficiencies or informalities do not prejudice the rights of other bidders, or are not a cause for bid rejection.

(k) **Proof of insurance.** A vendor who contracts to do business with the state shall provide proof of workers' compensation insurance or proof of an alternative or exemption authorized by state law.

580:15-4-13. Supplier's protests

A supplier may protest a contract award by a state agency or the Purchasing Division to the State Purchasing Director. All remedies available to suppliers through the sealed bid process pursuant to the Oklahoma Central Purchasing Act or the Public Building Construction and Planning Act are also available to online bidders in an online bidding process.

(1) **Supplier notification.** A supplier shall submit written notice to the State Purchasing Director of a protest of an award of contract by a state agency or the Purchasing Division within ten (10) business days of contract award. The protest notice shall state supplier facts and reasons for protest.

(2) **State Purchasing.** Director review and determination. The State Purchasing Director shall review the supplier's protest and contract award documents. Written notice of the decision by the State Purchasing Director to sustain or deny the protest will be sent to the supplier within ten (10) business days of receipt of the protest.

(3) **Supplier appeal of State Purchasing Director denial.** The supplier may appeal a denial of protest by the State Purchasing Director to the Director of Central Services. The supplier shall file a written appeal within ten (10) business days of the date of the State Purchasing Director's notice of denial pursuant to 75 O.S., Section 309 et seq.

(4) **Director actions and determination.** The Director may hear the protest, assign the protest to an attorney employed by the Department, or assign the supplier's appeal to an administrative law judge the Department retains. If the protest is assigned to an attorney employed by the Department or to an administrative law judge, the delegated party shall review the protest for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the delegated party shall conduct an administrative hearing and provide findings of fact and conclusions of law to the Director. The Director shall send written notice of the decision to sustain or deny the supplier's appeal to the supplier.

(5) **Supplier appeal of Director denial.** If the Director denies a supplier's appeal, the supplier may appeal pursuant to provisions of 75 O.S., Section 309 et seq.

580:15-4-16. State agency and supplier disputes

The Purchasing Director shall seek resolution of disputes between state agencies and suppliers.

(1) **Supplier does not retrieve and replace defective acquisition.** If a supplier fails timely to retrieve and replace an acquisition that does not meet or exceed contract specifications, the state agency shall submit a supplier complaint form to the Purchasing Director.

(2) **Supplier does not make refund for defective acquisition.** If a supplier does not refund payment for an acquisition that does not meet or exceed contract specifications, the state agency shall submit a supplier complaint form to the Purchasing Director.

(3) **Other supplier problems.** State agencies or the Purchasing Division shall submit a supplier complaint form for a problem that a supplier does not resolve in a timely manner.

(4) **Purchasing Director dispute resolution.** When a state agency notifies the Purchasing Director of a dispute with a supplier, the Purchasing Director shall seek to resolve the dispute.

(A) Purchasing Director resolves dispute. If the Purchasing Director resolves the dispute between the state agency and the supplier, the Purchasing Director shall notify the supplier and the state agency of resolution terms or conditions.

(i) **Supplier fails to meet terms or conditions.** If the supplier fails to meet terms or conditions of the dispute resolution, the Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.

(ii) **State agency fails to meet conditions.** If the state agency fails to meet conditions of the dispute resolution, the Purchasing Director may order an audit of the state agency's acquisitions pursuant to 580:15-6-16.

(B) **Purchasing Director fails to resolve the dispute.** If the Purchasing Director fails to resolve the dispute between the state agency and the supplier, the Purchasing Director shall take an action in this subparagraph.

(i) **Supplier fails to meet terms and conditions.** If the Purchasing Director determines that the supplier fails to meet terms and conditions of the contract, the Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.

(ii) **State agency fails to meet contract terms and conditions.** If the Purchasing Director determines that actions of the state agency ~~fails~~ fail to meet terms of the contract, the Purchasing Director may order an audit of the state agency's acquisitions pursuant to 580:15-6-16.

SUBCHAPTER 6. STATE AGENCY PROVISIONS

580:15-6-2. Certified procurement officers

(a) **Training.** The State Purchasing Director shall provide training for state agency purchasing officials and other purchasing staff pursuant to 74 O.S., Section 85.5(D).

(b) **Certification.** The State Purchasing Director shall certify state agency purchasing officials and other purchasing staff who demonstrate proficiency in principles of state procurement practices, basic contracting, provisions of the Oklahoma Central Purchasing Act, provisions of State Use Committee and other matters which relate to procurement practices.

(c) **Authority.** A CPO shall be authorized to make acquisitions for state agencies.

(d) **Duties.** A CPO shall provide assistance and oversight to a state agency so state agency acquisition processes meet the requirements of the Oklahoma Central Purchasing Act, rules of the Purchasing Division, other statutory provisions and the state agency's internal purchasing procedures.

(e) **Decertification.** The State Purchasing Director may revoke certification of a CPO if the State Purchasing Director reasonably believes the CPO did not make state agency acquisitions pursuant to the Oklahoma Central Purchasing Act, rules of the Purchasing Division, other statutory provisions, or the state agency's internal purchasing procedures.

(f) **Continuing education.** A CPO shall attend eighteen (18) hours of qualifying continuing education per calendar year following certification. Continuing education courses must be related to procurement practices. Prior to December 31 of each calendar year, a CPO shall submit to the State Purchasing Director documentation verifying course attendance. Failure to obtain the required continuing education hours ~~may~~ shall result in suspension of certification by the State Purchasing Director.

(1) **Burden of proof.** The burden of proof rests solely upon the CPO to demonstrate to the satisfaction of the State Purchasing Director, in accordance with the rules of this chapter, that all continuing education courses reported meet all of the requirements as to content and subject matter related to the procurement practices.

(2) **Reporting and documentation by CPOs.** Continuing education credit may be claimed by a CPO only for the compliance period in which the course was completed and credit granted.

(g) **Change in status.** A CPO shall notify the State Purchasing Director when they are no longer performing as a CPO, when they transfer to another state agency, or when they terminate their employment with the state.

580:15-6-3. State agency purchasing procedures

(a) Development. State agencies shall develop internal purchasing procedures for acquisitions by the state agency.

(b) **Submission to State Purchasing Director.** The state agency shall submit a copy of the procedures to the State Purchasing Director.

(c) **State Purchasing Director review.** The State Purchasing Director shall review the state agency's procedures to ensure compliance with provisions of the Oklahoma Central Purchasing Act, provisions of the State Use Committee, and the rules of the Purchasing Division.

(d) **State Purchasing Director notice of approval or denial to state agency.** Within fifteen (15) business days of submission, the Director, or the Director's designee, shall notify the state agency ~~of the procedures' compliance~~ if the procedures comply or indicate revisions necessary to bring the procedures into compliance.

(e) **State agency resubmission following disapproval.** The state agency shall resubmit procedures until the Director notifies the state agency ~~of~~ the ~~procedures' compliance~~ procedures comply.

(f) **Purchasing procedure amendments.** If a state agency desires to amend the state agency's internal purchasing procedures, the state agency shall submit the new procedures in their entirety to the State Purchasing Director for review pursuant to the provisions of these rules.

580:15-6-5. Methods State Agencies Use to Make Acquisitions

State agencies shall make acquisitions using a method of acquisition in this section.

(1) **Statewide Contracts.** The State Purchasing Director shall designate statewide contracts as mandatory or nonmandatory.

(A) **Mandatory statewide contract.** The State Purchasing Director may designate a statewide contract for mandatory use. State agencies shall make acquisitions from mandatory statewide contracts regardless of the acquisition purchase price. A state agency may submit a written request to the State Purchasing Director to waive requirements for a state agency's use of a mandatory statewide contract for

acquisitions. The State Purchasing Director shall grant exceptions prior to a state agency making the acquisition from another supplier.

(B) **Nonmandatory statewide contracts.** State agencies may use nonmandatory statewide contracts when an agency determines it is in the best interest of the state.

(2) **State Use Committee.** State agencies shall make acquisitions from suppliers on the State Use Committee procurement schedule regardless of the acquisition purchase price if the supplier's delivery date meets state agency requirements. State Use Committee statewide contracts are mandatory statewide contracts. State agencies shall reference the State Use Committee procurement schedule to ensure all acquisitions are pursuant to 74 O.S., Section 3007. An agency may make an open market acquisition of a specified commodity or class of commodities on the State Use Committee procurement schedule upon receipt of a written waiver from the State Use Committee ~~procurement~~ contracting officer.

(3) **Oklahoma Correctional Industries.** State agencies shall make acquisitions from the Oklahoma Correctional Industries pursuant to 57 O.S., Section 549.1 if such article or service is the lowest and best bid. State agencies shall submit requisitions for acquisitions from Oklahoma Correctional Industries to the Purchasing Division or to Oklahoma Correctional Industries. If an acquisition is available from the State Use Committee procurement schedule and from Oklahoma Correctional Industries, the state agency shall make the acquisition from the State Use Committee procurement schedule. If Oklahoma Correctional Industries is unable to meet state agency requirements for an acquisition, Oklahoma Correctional Industries shall certify to the State Purchasing Director that it is not able to provide products. If the State Purchasing Director determines that an acquisition Oklahoma Correctional Industries produces does not meet minimum state agency requirements, the State Purchasing Director shall notify Oklahoma Correctional Industries. If Oklahoma Correctional Industries disagrees with the State Purchasing Director, the Director shall resolve the dispute. An agency may make an open market acquisition of a specified commodity or class of commodities produced by the Oklahoma Correctional Industries upon receipt of a written waiver from the Oklahoma Correctional Industries or whenever the Oklahoma Correctional Industries cannot provide the lowest and best bid for such acquisition.

(4) **Scheduled acquisitions.** If the State Purchasing Director makes scheduled acquisitions from suppliers for a state agency, the state agency shall not make open market purchases for the same commodity or group of commodities.

(5) **Nonencumbered Contracts.**

(A) **For a state agency.** If a state agency is unable to establish a quantity of items or services, or delivery dates for an acquisition, the State Purchasing Director or the state agency may establish a nonencumbered contract for the acquisition by the state agency.

(B) **For state agencies.** If the State Purchasing Director is unable to establish a quantity of items or services, or delivery dates for an acquisition, the State Purchasing Director may establish a nonencumbered contract for acquisitions by state agencies.

(6) **Open market acquisitions.** State agencies may make open market acquisitions not exceeding Twenty Five Thousand Dollars ($25,000.00) pursuant to provisions of the Oklahoma Central Purchasing Act and rules of the Purchasing Division.

580:15-6-8. State agency open market acquisitions not exceeding ten thousand dollars ($10,000.00)

State agencies that do not have a CPO and approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6-3 shall make open market acquisitions not exceeding Two Thousand Five Hundred Dollars ($2,500.00) pursuant to this section. State agencies that do have a CPO and approved internal purchasing procedures shall make open market acquisitions not exceeding Ten Thousand Dollars ($10,000.00) pursuant to this section.

(1) **Supplier selection.** The State Purchasing Director shall make the Division registered supplier list available to state agencies. A state agency may select suppliers from the registered supplier list. State agencies shall not select a supplier that is suspended or debarred by the State Purchasing Director or the Oklahoma Tax Commission or a supplier that is suspended or debarred by the federal government if federal funds are being used in the acquisition.

(2) **State agency terms and conditions.** The state agency shall document the state agency's specifications. The state agency shall notify suppliers of the state agency's specifications for the acquisition. The state agency shall give suppliers written specifications upon the suppliers' request.

(3) **Price quotation.** The state agency shall solicit price quotations and delivery dates by mail, telephone, facsimile or by means of electronic commerce from a minimum of two suppliers. The state agency shall secure the suppliers' price quotation in writing or document the suppliers' price quotation and delivery dates.

(4) **Services requisition requirements.** If the state agency requisitions professional or nonprofessional services, the state agency shall submit a requisition or contract signed by the state agency's chief administrative officer or the chief administrative officer of the requisitioning unit certifying to each requirement of 74 O.S., Section 85.4(E)(1).

(5) **Contracts.** If the state agency and the supplier execute a contract for the acquisition, the supplier shall provide a ~~notarized, sworn statement of~~ noncollusion affidavit pursuant to 74 O.S., Section 85.23. The noncollusion affidavit shall have the original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.

(A) Prior to awarding a contract exceeding Two Thousand Five Hundred Dollars ($2,500.00), the awarding agency must verify that the vendor has obtained a sales tax permit in accordance with the laws of Oklahoma.

(B) **Verification.** Sales tax permit verification may be confirmed through the link provided on the Department of Central Services' website. If a vendor cannot be identified by searching this database, agencies should call the Oklahoma Tax Commission for assistance.

(C) **Documentation.** Verification of the sales tax permit must be documented in the acquisition file.

(D) **Exceptions.** This verification requirement does not apply to acquisitions for services only or to acquisitions made with the state purchase card.

(6) **Delivery document from supplier.** When the state agency takes possession of the acquisition, the state agency shall obtain a delivery document from the supplier stating, at a minimum, the date of the acquisition, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.

(7) **Supplier payment.** The state agency shall pay the supplier following receipt, inspection and acceptance of the acquisition by the state agency.

580:15-6-9. State agency acquisitions exceeding ten thousand dollars ($10,000.00) and not exceeding twenty-five thousand dollars ($25,000.00)

State agencies with a CPO and approved internal purchasing procedures pursuant to the requirements of Sections 580:15-6-2 and 580:15-6-3 shall make acquisitions exceeding Ten Thousand Dollars ($10,000.00) but not exceeding Twenty-Five Thousand Dollars ($25,000.00) pursuant to this section.

(1) **Supplier selection.** The State Purchasing Director shall make the Division registered supplier list available to state agencies. The state agency shall select a minimum of three (3) suppliers ~~for~~ from the commodity classification for bid solicitation. The state agency may select suppliers from the registered supplier list. State agencies shall rotate use of suppliers. State agencies shall not select a supplier that is suspended or debarred by the State Purchasing Director or the Oklahoma Tax Commission or a supplier that is suspended or debarred by the federal government if federal funds are being used in the acquisition.

(2) **Solicitations.** The state agency shall prepare specifications for a solicitation. The state agency shall solicit bids from a minimum of three (3) suppliers using mail, telephone, facsimile or by means of electronic commerce. The state agency shall notify the suppliers of the state agency's specifications for the acquisition.

(3) **Noncollusion affidavit.** The state agency shall provide suppliers a noncollusion affidavit form pursuant to 74 O.S., Section 85.22. Suppliers shall submit the forms as stated in the solicitation. The noncollusion affidavit shall have an original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.

(4) **Supplier bid submission.** Suppliers shall submit bids to the state agency in person, by mail, by facsimile or by means of electronic commerce. If a supplier submits a bid, the supplier shall submit an original notarized~~, sworn statement of~~ noncollusion affidavit pursuant to 74 O.S., Section 85.22. If a supplier submits a bid by facsimile or by means of electronic commerce, the supplier shall submit the ~~notarized, sworn statement of~~ noncollusion affidavit with the original signature prior to the closing date the state agency specifies. The noncollusion affidavit shall have an original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.

(5) **Bid evaluation.** The state agency shall make a written bid evaluation. The state agency shall select the lowest and best bid or bid providing the best value to the state agency.

(6) **Services requisition requirements.** If the state agency requisitions professional or nonprofessional services, the state agency shall submit a requisition or contract signed by the state agency's chief administrative officer or the chief administrative officer of the requisitioning unit certifying to each requirement of 74 O.S., Section 85.4(E)(1).

(7) **Award to a supplier.** When the state agency selects a bid, the state agency shall notify the supplier of the award.

(A) Prior to awarding a contract exceeding Two Thousand Five Hundred Dollars ($2,500.00), the awarding agency must verify that the vendor has obtained a sales tax permit in accordance with the laws of Oklahoma.

(B) **Verification.** Sales tax permit verification may be confirmed through the link provided on the Department of Central Services' website. If a vendor cannot be identified by searching this database, agencies should call the Oklahoma Tax Commission for assistance.

(C) **Documentation.** Verification of the sales tax permit must be documented in the acquisition file.

(D) **Exceptions.** This verification requirement does not apply to acquisitions for services only or to acquisitions made with the state purchase card.

(8) **Contract noncollusion affidavit.** If the state agency and the supplier execute a contract for the acquisition, the supplier shall submit a ~~notarized, sworn statement of~~ noncollusion affidavit pursuant to 74 O.S., Section 85.23. The noncollusion affidavit shall have an original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.

(9) **Delivery document from supplier.** The state agency shall receive a delivery document from the supplier stating, at a minimum, the date of the acquisition, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.

(10) **Supplier payment.** The state agency shall pay the supplier following receipt, inspection and acceptance by the state agency of the acquisition.

580:15-6-11. Additional purchasing information

(a) **Split purchases.** A state agency shall not make split purchases for the purpose of evading the state agency's dollar amount threshold for competitive bids. Conviction for making an acquisition by split purchase is a felony pursuant to 74 O.S., Section 85.7.

(b) **Acquisitions by component.** If a state agency makes an acquisition that the state agency receives in components, the acquisition purchase price is the total acquisition purchase price for all components.

(c) **Change orders.** Contracts including component or phased deliveries may be increased by an amount ~~which~~ that does not exceed ten percent (10%) of the total acquisition purchase price. In determining the ten percent (10%) dollar amount, the cumulative value of all change orders shall be compared to the original total acquisition price. All other contracts may be increased only if the change order does not exceed the scope of the original solicitation.

(1) **Acquisitions by a state agency.** If a change order would increase the total contract dollar amount above the dollar amount requiring the state agency to submit a requisition to the State Purchasing Director, the state agency shall seek approval of the State Purchasing Director prior to issuing the change order.

(2) **Acquisitions by the Purchasing Division.** If a requested change order exceeds ten percent (10%) in a contract ~~which~~ that includes component or phased deliveries or exceeds the scope of the original solicitation, the State Purchasing Director ~~shall~~ may deny the requested change order and notify the state agency. The State Purchasing Director may deny a requested change order which exceeds the scope of the original solicitation.

(d) **Fixed rates.** The Department may approve service acquisitions as qualifying for a fixed rate pursuant to the provisions of 74 O.S., Section 85.7(11).

(e) **State agency acquisitions from another state agency.** A state agency may contract with another state agency pursuant to 74 O.S., Section 581. A state agency shall not make an acquisition with or through another state agency for the purpose of evading competitive bidding provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or State Use Committee.

(f) **State agency acquisitions from another governmental agency.** A state agency may contract with a political subdivision, agency of the United States or a political division pursuant to 74 O.S., Sections 1001 through 1008. A state agency shall not make an acquisition with or through a political division, political subdivision, or agency of the United States for the purpose of evading competitive bidding requirements, provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or State Use Committee.

(g) **Recycled materials.** State agencies shall procure acquisitions with recycled or recyclable materials whenever feasible. ~~The~~ Upon request, the State Purchasing Director shall supply information regarding acquisitions that contain recycled materials to a state agency~~, upon request~~.

(h) **Trade-ins.** State agencies may use state agency items as trade-in items when the state agency makes an acquisition with written approval of the State Purchasing Director. The state agency shall determine fair market value for the trade-in item and receive that amount or more as credit on the purchase price of the acquisition. The state agency may seek advice from the State Purchasing Director to determine fair market value of the trade-in.

(i) **State agency acquisitions through OneNet.** State agencies may make acquisitions through OneNet pursuant to provisions of the Oklahoma Central Purchasing Act.

(j) **Signature authorization.** State agencies shall provide the State Purchasing Director with a current original Authorized Signature Form. The form shall be dated and identify the name, title, and signature of those individuals designated by the appointing authority to sign and approve requisitions, sole source affidavits, change order requests, and surplus property transactions. The State Agency shall submit revisions of the form to the State Purchasing Director within 30 days of any change in the authorized signatures.

[OAR Docket #05-1046; filed 5-31-05]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 20. CONSTRUCTION AND PROPERTIES

[OAR Docket #05-1047]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. ~~Bidding Procedures~~Construction Contracting [AMENDED]
580:20-1-2. [AMENDED]
580:20-1-22. [NEW]
580:20-1-23. [NEW]
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Subchapter 1. ~~Bidding Procedures~~Construction Contracting [AMENDED]
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580:20-1-22. [NEW]
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N/A
ANALYSIS:
These rules amend the title of Subchapter 1 to more accurately reflect the subchapter's contents. The rules add procedures and information to timely address consultant and contractor claims and disputes.
CONTACT PERSON:
Gerry Smedley, Rules Liaison, 522-8519

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 11, 2005:

SUBCHAPTER 1. ~~BIDDING PROCEDURES~~ CONSTRUCTION CONTRACTING

580:20-1-2. Definitions

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

"Administrator" means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services.

"Alternate bid" (or "Alternate") means an amount stated in the bid to be added to or deducted from the amount of the base bid if the corresponding change in the work, as described in the bidding documents, is accepted.

"Base bid" means the sum stated in the bid for which the bidder offers to perform the work described in the bidding documents as the base. Work may be added or deleted for sums stated in the alternate bids.

"Bid" means the cost proposal submitted by a construction firm in response to a request or solicitation for bids from the Division for a construction project described in plans and/or specifications provided by the State.

"Claim" means a demand or assertion by a contractor seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the contract. The term "Claim" also includes other disputes and matters in question between the owner and contractor arising out of or relating to the contract.

"Department" means the Department of Central Services.

"Design consultant" means either the architectural/engineering firm under contract to the Division or a representative of the Construction and Properties Division used for the design and construction monitoring of the construction project.

"Director" means the Director of the Department of Central Services.

"Division" means the Construction and Properties Division of the Department of Central Services.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.

580:20-1-22. Contractor appeals process

(a) If a contractor's claim has not been resolved after consideration by the consultant in accordance with the General Conditions for Construction Contracts, the claim shall be submitted in writing to the owner. The owner will render to the parties the owner's written decision relative to the claim, including any change in the contract sum or contract time or both within ten (10) calendar days.

(b) The contractor may appeal the owner's decision by submitting written notice of a protest to the Director of Central Services within ten (10) calendar days of receiving the owner's decision.

(c) The Director will review the protest and determine to hear the appeal or assign the appeal to an administrative law judge the Department retains.

(1) If the appeal is assigned to an administrative law judge, the administrative law judge shall review the appeal for legal authority and jurisdiction.

(2) If legal authority and jurisdictional requirements are met, the administrative law judge shall conduct an administrative hearing in accordance with the Administrative Procedures Act, 75 O.S. Section 309 et seq., and provide findings of fact and conclusions of law to the Director.

(d) The Director shall send written notice to the contractor of the final decision sustaining or denying the contractor's appeal.

(e) If the Director denies a contractor's appeal, the contractor may appeal pursuant to provisions of 75 O.S., Section 309 et seq. of the Administrative Procedures Act.

580:20-1-23. Consultant appeals process

(a) The owner and consultant shall endeavor to resolve claims, disputes and other matters in question between them by participating in a meeting to obtain a mutual agreement. If an agreement cannot be attained, the consultant may appeal by submitting written notice of a protest to the Director of Central Services within twenty-one (21) days of the settlement meeting immediately preceding the protest.

(b) The Director will review the protest and determine to hear the appeal or assign the appeal to an administrative law judge the Department retains.

(1) If the appeal is assigned to an administrative law judge, the administrative law judge shall review the protest for legal authority and jurisdiction.

(2) If legal authority and jurisdictional requirements are met, the administrative law judge shall conduct an administrative hearing in accordance with the Administrative Procedures Act, 75 O.S. Section 309 et seq., and provide findings of fact and conclusions of law to the Director.

(c) The Director shall send written notice to the consultant of the final decision sustaining or denying the consultant's appeal.

(d) If the Director denies a consultant's appeal, the consultant may appeal pursuant to provisions of 75 O.S., Section 309 et seq. of the Administrative Procedures Act.

[OAR Docket #05-1047; filed 5-31-05]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 15. EDUCATIONAL OUTREACH

[OAR Docket #05-1124]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Use of Towers, Facilities, and Communications Services
610:15-1-1. Purpose [AMENDED]
610:15-1-2. Towers and facilities use [AMENDED]
610:15-1-3. Communications services use [AMENDED]
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
This action is necessary to implement fully the lease rates with respect to OneNet towers and facilities with the purpose of aligning rates with current industry standards. Further, the action is intended to update the applicable rule language, OAC 610:15-1, to replace the operational designation of the "Educational Telecommunications Network (ETN)" with "OneNet".
CONTACT PERSON:
Regina Switzer, Associate General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104, (405) 225-9335.

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 11, 2005:

SUBCHAPTER 1. USE OF TOWERS, FACILITIES, AND COMMUNICATIONS SERVICES

610:15-1-1. Purpose

The Oklahoma State Regents for Higher Education will make available the use of the towers and facilities of the ~~Educational Telecommunications Network (ETN)~~OneNet, the State of Oklahoma's official telecommunications and information network, to institutions of higher education, federal, state, and local government agencies and to private business. The towers and facilities will be made available primarily for educational purposes in accordance with 70 O.S., §§ 2166 and 2167 and only to the extent that the proposed use does not interfere with the normal maintenance and operation of the ~~Educational Telecommunications Network~~OneNet. Requests to utilize the towers and facilities will be reviewed on a case-by-case basis consistent with state and federal laws and regulations.

610:15-1-2. Towers and facilities use

(a) All proposed installations shall be in accordance with good engineering practices and shall be subject to the approval of the ~~Educational Telecommunications Network~~OneNet engineering staff. Requests for installation of microwave antennas on the ~~ETN~~OneNet towers shall be approved only after a tower wind load study is performed by an approved and qualified registered professional engineer. Costs of the study are to be paid for by the proposed user. Any structural modifications required to the tower resulting from the proposed antenna installation will be at the expense of the proposer. Generally, 2-way radio antenna installations will not require a tower analysis to be performed; however, it shall be at the discretion of the ETN engineering staff as to whether or not an analysis is required.

(b) The Oklahoma State Regents for Higher Education will make the ~~ETN~~OneNet towers and facilities available on a monthly basis at the following rates:

(1) Two-way radio antenna ~~$.50~~$1.00 per foot of tower height~~ and antenna~~ (subject to increase if transmission lines are greater than .500" in diameter)

(2) Microwave antennas ~~$120~~$200.00 per antenna and $1.00 per foot of tower height

(3) Building space ~~$5~~$10.00 per sq. foot

(4) A.C. electrical power (2-way radio) $10 per month

(5) D.C. electrical power ~~$.25 per amp/volt~~$12/Amp.

(6) Land ~~$1~~$2.00 per sq. foot

610:15-1-3. Communications services use

(a) The Oklahoma State Regents for Higher Education will make available the use of voice, data and video communications circuits via the fiber optics and microwave network of ~~the Educational Telecommunications Network~~OneNet to institutions of higher education, federal, state, and local government agencies and private business as long as the proposed use is of excess system capacity and it does not interfere with the regular activities of ~~the Educational Telecommunications Network~~OneNet. The voice, data and video circuits will be made available primarily for educational purposes in accordance with 70 O.S., §§ 2166 and 2167 and only to the extent that the proposed use does not interfere with the normal maintenance and operation of ~~the Educational Telecommunications Network~~OneNet. Requests to utilize the voice, data and video circuits will be reviewed on a case-by-case basis consistent with state and federal laws and regulations. (In consideration for use of the telecommunications network of ~~the Educational Telecommunications Network~~OneNet, the State Regents will develop a schedule of rates based on a case-by-case basis upon the discounted fair commercial value of the service to be provided.

(b) The State Regents reserve the right to change the rates or cancel service with a 90-day advance notice to the user.

[OAR Docket #05-1124; filed 6-8-05]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #05-1125]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 23. Oklahoma Higher Learning Access Program (OHLAP)
610:25-23-2. Eligibility of participants [AMENDED]
610:25-23-4. Program requirements [AMENDED]
610:25-23-5. Securing OHLAP benefits [AMENDED]
AUTHORITY:
70 O.S. §2601 et seq.; 70 O.S. §3206 (i); Oklahoma State Regents for Higher Education
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ANALYSIS:
The rule amendments address using guidelines consistent with regulations for federal Title IV student financial aid programs to determine a student's custodial parent(s) and making the description of the OHLAP curriculum consistent with recent changes to the curriculum required for regular college admission.
CONTACT PERSON:
Regina Switzer, Associate General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104, (405) 225-9335.

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 11, 2005:

SUBCHAPTER 23. OKLAHOMA HIGHER LEARNING ACCESS PROGRAM (OHLAP)

610:25-23-2. Eligibility of participants

Eligibility to participate in the program must be established by both the student and his/her parent(s), custodial parent(s), or guardian(s). Students enrolled in the eighth, ninth or tenth grade and whose parents' income meets the financial need criteria are eligible to apply to become an OHLAP participant. Eligibility requirements to participate in the program include the following:

(1) The student must be a resident of the state of Oklahoma; and

(2) The student's parent(s), custodial parent(s), or guardian(s) must establish financial need.

(A) To meet the OHLAP financial need criteria, the income of the student's parent(s) from taxable and nontaxable sources shall not exceed $50,000 per year. [70 O.S. § 2603]

(B) Parents of students making application to the OHLAP must use their most recent calendar (tax) year income to establish financial need eligibility. Parents of tenth-grade applicants may use the calendar (tax) year income that coincides with the spring semester of the tenth-grade if the parents' income is expected to be significantly less than the previous year.

(C) The OSRHE shall use guidelines consistent with regulations for federal Title IV student financial aid programs to determine a student's custodial parent(s).

(D) A *student who satisfies the financial need criteria during the eighth, ninth- or tenth-grade when he or she begins participating in the Oklahoma Higher Learning Access Program shall not later be denied participation in the Oklahoma Higher Learning Access Program on grounds that the student does not meet the financial need criteria.* [70 O.S. § 2603]

610:25-23-4. Program requirements

(a) Students shall agree to abide by the following provisions:

(1) *Attend school regularly and to do homework regularly*;

(2) *Refrain from substance abuse*;

(3) *Refrain from commission of crimes or delinquent acts*;

(4) *Have school work and school records reviewed by mentors designated pursuant to the program*;

(5) *Provide information requested by the Oklahoma State Regents for Higher Education* [OSRHE] *or the State Board of Education; and*

(6) *Participate in program activities*. [70 O.S. § 2605]

(b) The student's parent(s), custodial parent(s), or guardian(s) shall witness the student's agreement and further agree to:

(1) *Assist the student in achieving compliance with the agreements*;

(2) *Confer, when requested to do so, with the school contact person, other school personnel, and program mentors*;

(3) *Provide information requested by the Oklahoma State Regents for Higher Education or the State Board of Education*; *and*

(4) *Assist the student in completing forms and reports required for program participation, making application to institutions and schools of higher learning, and filing applications for student grants and scholarships*. [70 O.S. § 2605]

(c) OHLAP students graduating high school must complete the following 17-unit core curriculum with a minimum 2.5 GPA on a 4.0 grading scale, by the time they graduate from high school:

(1) Four units, or years, of English (grammar, composition, literature);

(2) Two units, or years, of lab science (biology, chemistry, physics, or any lab science certified by the school district; general science with or without a lab may not be used to meet this requirement);

(3) Three units, or years, of mathematics (Algebra I, Algebra II, geometry, trigonometry, math analysis, calculus, Advanced Placement Statistics);

(4) Three units, or years of history and citizenship skills (1 unit of American history and 2 units from the subjects of history, economics, geography, government and/or non-Western culture) ~~Two units, or years, of history (including one unit of American history)~~;

(5) ~~One unit, or year, of citizenship skills from the subjects of economics, geography, government, non-western culture;~~

~~(6)~~ Two units, or years, of a foreign or non-English language (both units, or years, of the same language), or Two units, or years, of computer technology (courses in programming, hardware, and business computer applications such as word processing, databases, spreadsheets and graphics will qualify; keyboarding and typing classes do not qualify);

(~~7~~6) Two additional units, or years, of subjects listed above;

(~~8~~7) One unit, or year, of fine arts (music, art, or drama) or speech.

(d) The OHLAP curricular requirements for English, science, mathematics, history and citizenship skills are identical with the curricular requirements for college admission set by the OSRHE. Any change by the OSRHE to the curricular requirements for college admission shall also apply to the OHLAP curricular requirements.

(e) Advanced students who complete core courses in earlier grades will not be required to take additional courses for purposes of the requirements of this program.

(f) ~~As a pilot study, beginning fall 1992, selected applied courses may be substituted for the high school courses specified in this section.~~ Strict parameters regulate the substitution of applied courses ~~(see OSRHE Policy II-2-46.7).~~ (OSRHE Policy Statement on Admission to, Retention in and Transfer Among Colleges and Universities of the State System).

(g) Exceptions to the required OHLAP core curriculum will be considered according to the following:

(1) Students attending schools which do not offer all the OHLAP core curriculum courses will be allowed to satisfy the requirements subject to the following provisions:

(A) OHLAP core curriculum requirements which are also required for regular college admission ~~(OSRHE Policy II-2-58 et seq.)~~ (OSRHE Policy Statement on Admission to, Retention in and Transfer Among Colleges and Universities of the State System) will be subject to the OSRHE Policy on Remediation and Removal of High School Curricular Deficiencies. ~~(OSRHE Policy II-2-199 et seq.).~~

(B) Any other OHLAP core curriculum requirements must be satisfied during the first twenty-four (24) hours of college coursework. Any exceptions to the twenty-four (24) hour limitation must be requested in writing and shall be subject to approval by the Chancellor.

(2) Students who have documented proficiency in a non-English language equivalent to at least two (2) units of high school study may be exempted from the requirement of two (2) units of a foreign or non-English language.

(3) Any other requests for exceptions to the OHLAP core curriculum requirement must be submitted in writing to the Chancellor. Upon approval of the exception, the student may be eligible for OHLAP benefits; provided, such approval may require the satisfaction of any OHLAP core curriculum requirements omitted in high school.

(h) Students must attain a minimum 2.5 cumulative GPA on a 4.0 grading scale for all work attempted in grades nine through twelve.

(i) Students graduating from a high school not accredited by the State Board of Education must achieve a composite score of 22 or higher on the ACT test.

610:25-23-5. Securing OHLAP benefits

(a) To qualify for the OHLAP benefits for the first semester or other academic unit of postsecondary enrollment, the participant must:

(1) Be a resident of this state.

(2) Have graduated within the previous three years from a high school or the Oklahoma School of Science and Mathematics. For the purposes of qualifying for OHLAP benefits, home-educated students shall not be considered to have graduated from a high school. Students graduating from a secondary program accredited by the North Central Association Commission on Accreditation and School Improvement shall be considered to have graduated from a high school for the purposes of qualifying for OHLAP benefits.

(3) Have a record of satisfactory compliance with the agreements and program requirements described in 610:25-23-4. Students failing to comply with the agreement and program requirements shall not be eligible for awards. Compliance shall be verified by the local contact person upon a form provided by the OSRHE. Final verification of compliance shall be determined by the OSRHE. A copy of the student's final high school transcript shall be submitted by the local contact person with the student's verification form.

(4) Have satisfied admission standards as established by the Oklahoma State Regents for Higher Education for first-time-entering students for the appropriate type of institution ~~(OSRHE Policy II-2-35)~~ (OSRHE Policy Statement on Admission to, Retention in and Transfer Among Colleges and Universities of the State System) or, if attending a private institution, satisfy the admission standards determined by the private institution; provided, that no student participating in OHLAP shall be admitted into an institution of higher education by special admission standards.

(5) Have secured admission to, and enrolled in, an institution which is a member of The Oklahoma State System of Higher Education, a postsecondary program offered pursuant to a duly approved cooperative agreement between a public technology center and an institution of The Oklahoma State System of Higher Education, or a private institution of higher learning located within this state and accredited pursuant to Section 4103 of Title 70 of the Oklahoma Statutes.

(b) Any person incarcerated in a state, federal, or private correctional facility shall not be eligible to receive OHLAP benefits.

[OAR Docket #05-1125; filed 6-8-05]

TITLE 610. OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #05-1127]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 27. Teacher Shortage Employment Incentive Program
610:25-27-3. Application procedure [AMENDED]
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ANALYSIS:
This rule amendment allows undergraduate students to sign a Teacher Shortage Employment Incentive Program Participation Agreement on or before their date of graduation. Changing the deadline for enrolling in the program will give more opportunities for students to enroll.
CONTACT PERSON:
Regina Switzer, Associate General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104, (405) 225-9335.

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 11, 2005:

SUBCHAPTER 27. TEACHER SHORTAGE EMPLOYMENT INCENTIVE PROGRAM

610:25-27-3. Application procedure

(a) OSRHE is authorized to distribute TSEIP Participation Agreement forms to post-secondary institutions in the State System of Higher Education that are eligible to participate in state and federal financial aid programs and have an approved program of professional teacher preparation.

(b) TSEIP Participation Agreement forms may be obtained from TSEIP coordinator in each post-secondary institution or from the OSRHE. The student is responsible for the completeness of the application.
(c) A Participation Agreement must be signed by a student while enrolled in a mathematics or science major course of study at the undergraduate or graduate level.
(d) The completed Participation Agreement must be submitted to the TSEIP coordinator no later than the date of their graduation~~May 5th in the year of graduation from a four year institution~~.
(e) Post-secondary institutions TSEIP coordinators will submit copies of the TSEIP Participation Agreements to the State Regents' office within 10 days of their submission.
(f) The State Regents will notify each applicant of the receipt of his/her application in the program, the educational loan obligation, and the disbursement benefits under the TSEIP.

[OAR Docket #05-1127; filed 6-7-05]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #05-1126]

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PERMANENT final adoption
RULES:
Subchapter 35. Oklahoma Money Matters AmeriCorps Education Award Program [NEW]
610:25-35-1. Purpose [NEW]
610:25-35-2. Definitions [NEW]
610:25-35-3. Program Information [NEW]
610:25-35-4. Field Site Selection [NEW]
610:25-35-5. Member Candidacy [NEW]
610:25-35-6. Grievance Procedures [NEW}
610:25-35-7. Program Capacity [NEW]
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Subchapter 35. Oklahoma Money Matters AmeriCorps Education Award Program [NEW]
610:25-35-1. Purpose [NEW]
610:25-35-2. Definitions [NEW]
610:25-35-3. Program Information [NEW]
610:25-35-4. Field Site Selection [NEW]
610:25-35-5. Member Candidacy [NEW]
610:25-35-6. Grievance Procedures [NEW]
610:25-35-7. Program Capacity [NEW]
Gubernatorial approval:
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22 Ok Reg 522
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
To address Oklahoma's deficit in financial instruction and combat the considerable cost of fiscal illiteracy, the State Regents for Higher Education are developing a financial literacy initiative, Oklahoma Money Matters (OKMM), under the auspices of the Oklahoma Guaranteed Student Loan Program. OKMM's mission is to promote financial literacy by building Oklahomans' awareness of the need for financial education and understanding of sound fiscal principles and practices. OKMM has received a federal grant funding for an AmeriCorps Educational Award Program from the Corporation for National and Community Service. This rule defines the program information, field site selection, member candidacy, grievance procedures, and program capacity for the AmeriCorps Educational Award Program.
CONTACT PERSON:
Regina Switzer, Associate General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104, (405) 225-9335.

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 11, 2005:

SUBCHAPTER 35. OKLAHOMA MONEY MATTERS AMERICORPS EDUCATION AWARD PROGRAM

610:25-35-1. Purpose

The purpose of this Subchapter is to describe the Oklahoma Money Matters AmeriCorps Education Award Program (OKMM-EAP), which is designed to improve financial literacy in Oklahoma. OKMM-EAP operates under the auspices of the Oklahoma Guaranteed Student Loan Program (OGSLP), a division of the Oklahoma State Regents for Higher Education.

610:25-35-2. Definitions

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

"AmeriCorps" means the AmeriCorps Education Awards Program, which is one of several national service programs of the AmeriCorps National Service Network.

"Applicant" means an individual who has applied to participate in OKMM-EAP, but is not an AmeriCorps member.

"Corporation for National and Community Service" means the federal organization established under the National and Community Service Act of 1990 that administers the AmeriCorps National Service Network.

"Education Award" means an award provided to a member who has successfully completed a required term of service in an approved national service position and who otherwise meets the eligibility criteria established by AmeriCorps. An Education Award may be used to pay qualified educational expenses.

"Enrollment" means acceptance as an AmeriCorps member, as evidenced by inclusion in the AmeriCorps national database.

"Field Sites" means locations across Oklahoma that host AmeriCorps members during their term of service.

"Financial Literacy" means knowledge of money management and financial principles.

"Member" means an individual who is enrolled in the Oklahoma Money Matters AmeriCorps Education Award Program.

"Oklahoma Community Service Commission" means the authorized alternative entity administering Oklahoma's national service programs.

"Service Activities" means direct, meaningful actions through organized community service efforts that count toward fulfillment of service hours in a term of service.

"Service Hours" means the number of hours spent performing eligible community service activities during a term of service.

"Site Application" means the documentation submitted by potential field sites for OKMM-EAP consideration during the field site selection process.

"Site Supervisor" means a qualified employee of the field site who volunteers his or her time to serve OKMM-EAP.

"Term of Service" means the contracted length of time during which a member must perform eligible community service activities to qualify for an education award.

610:25-35-3. Program information

To achieve its primary goal of improving financial literacy, OKMM-EAP is placing AmeriCorps members in field sites around Oklahoma to educate youth and others about personal finance, student financial aid, and consumer credit. OKMM-EAP goals are to build student knowledge of financial literacy principles; develop members' leadership, citizenship, and presentation skills; and encourage members life-long commitment to community service. OKMM-EAP members will receive an Education Award upon successful completion of and subject to the terms of the OKMM-EAP member contract.

610:25-35-4. Field site selection

OKMM-EAP will select field sites around Oklahoma to host AmeriCorps members during their service terms.

(1) **Selection process.**

(A) Interested entities will submit a site application to OKMM-EAP. Site applications can be requested from the OKMM Director at P.O. Box 3000, Oklahoma City, Oklahoma, 73101-3000 or by calling (405) 234-4495.

(B) An evaluation committee composed of the OKMM Director and other OGSLP senior-level staff will review site applications.

(C) The evaluation committee will select field sites to participate in OKMM-EAP based on the criteria and restrictions defined in this section.

(2) **Selection criteria.**

(A) OKMM-EAP field sites will be educational entities and/or other organizations with an established or expressed interest in community service and financial literacy.

(B) OKMM-EAP will consider the following field site characteristics when reviewing site applications:

(i) The site's community service objectives are consistent with the OKMM-EAP mission of improving financial literacy in Oklahoma.

(ii) The site's planned activities are consistent with identified community need for financial education.

(iii) The site offers a range of member activities that support the OKMM-EAP mission.

(iv) The site will facilitate sufficient service activities to ensure that members have adequate opportunity to fulfill the required number of service hours in the prescribed service term.

(v) The site has designated a site supervisor who is willing to meet AmeriCorps administrative requirements and has the time, interest, and ability to supervise members and facilitate member involvement.

(vi) The site provides a safe, accessible work environment for members.

(vii) The site endorses a drug-free workplace.

(C) OKMM-EAP endeavors to facilitate a wide range of member activities, serving a diverse spectrum of demographic populations at sites located across Oklahoma. Consistent with that vision, favorable consideration will be given to site applications that demonstrate compatibility with these objectives.

(3) **Restrictions.** Entities that discriminate on the basis of race, color, national origin, gender, age, religion, disability, or status as a veteran in policies, practices, or procedures are ineligible to serve as field sites for OKMM-EAP.

610:25-35-5. Member candidacy

(a) **Member requirements.**

(1) Members will be a U.S. citizen, U.S. national, or lawful permanent resident alien of the United States.

(2) Members will be at least 17 years of age at enrollment.

(3) Members will hold a high school diploma or equivalency certificate.

(4) Members must sign an OKMM-EAP member contract.

(b) **Criminal history and background investigation.**

(1) Must be obtained for all members from the Oklahoma State Bureau of Investigation (OSBI).

(2) Must include a search of the Oklahoma Department of Corrections' files maintained by the OSBI pursuant to the Sex Offenders Registration Act.

(c) **Curricular knowledge.**

(1) Applicants are provided training in a prescribed financial literacy curriculum.

(2) Applicants are tested after participating in the training course to assess knowledge gained.

(d) **Restrictions.**

(1) An applicant whose criminal history report reveals a conviction, a plead of guilty, or a plead of nolo contendere for a felony charge is not approved to serve in OKMM-EAP.

(2) An applicant who scores below 75 percent on the post-training test is not approved to serve in OKMM-EAP.

610:25-35-6. Grievance procedures

OKMM-EAP members may file a grievance in accordance with OKMM-EAP's grievance procedures.

(1) **General information.**

(A) These procedures apply to service-related issues such as assignments, evaluations, suspensions, or release for cause, as well as issues related to non-selection of members, displacement of employees, or duplication of activities by AmeriCorps.

(B) Allegations of fraud and criminal activity must be reported immediately to the Corporation for National and Community Service.

(C) Allegations of discrimination should be in writing and directed to the Corporation for National and Community Service.

(2) **Grievance hearing.**

(A) An aggrieved party may request a grievance hearing if informal efforts fail to result in a mutually agreeable resolution.

(i) The aggrieved party should make a written request for a hearing to the OKMM-EAP Director, unless it is the Director's decision or action that has resulted in the grievance, in which case a written request for a hearing should be sent to the Oklahoma Community Service Commission. The hearing request must be made within one year of the date of the alleged occurrence.

(ii) At the time a request for a hearing is made, OKMM-EAP will make available to the aggrieved party information that it relied upon in its disciplinary decision.

(iii) One or more pre-hearing conferences will be scheduled at a time mutually convenient for all parties in an effort to facilitate a mutually agreeable resolution of the matter to make a hearing unnecessary or narrow the issues to be decided at the hearing.

(B) The hearing will be conducted by Oklahoma Community Service Commission staff within 30 calendar days after the filing of the grievance.

(C) A written decision will be made within 60 calendar days after filing.

(3) **Binding arbitration.**

(A) An aggrieved party may request binding arbitration if a grievance hearing decision is adverse or if no decision is made within 60 days after the filing of the grievance.

(i) The arbitrator will be independent and selected by agreement of the parties.

(ii) If the parties cannot agree on an arbitrator, the Corporation for National and Community Service will appoint one within 15 calendar days after receiving a request from one of the parties.

(B) An arbitration proceeding will be held within 45 calendar days after the request for arbitration, or within 30 calendar days after the appointment of an arbitrator by the Corporation for National and Community Service.

(C) An arbitration decision will be made within 30 calendar days after the commencement of the arbitration proceeding.

(D) The cost of arbitration will be divided evenly between the parties, unless the aggrieved party prevails, in which case OKMM-EAP will pay the total cost of the proceeding as well as the prevailing party's attorney fee, unless prohibited by law.

610:25-35-7. Program capacity

The reach and scope of OKMM-EAP is defined as follows.

(1) **Field sites.**

(A) OKMM-EAP will utilize approximately 30 field sites.

(B) Additional field sites may be added as needed.

(2) **Enrolled members.** OKMM-EAP will enroll up to 500 AmeriCorps members per year.

(3) **Restrictions.** To manage OKMM-EAP's expansion, the number of sites established and the number of members enrolled will be limited commensurate with OKMM-EAP's administrative capability.

[OAR Docket #05-1126; filed 6-8-05]

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

[OAR Docket #05-1054]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Teacher Preparation Program Accreditation
712:10-5-1. through 712:10-5-4. [AMENDED]
Subchapter 11. Education Leadership Oklahoma

712:10-11-1. [AMENDED]

AUTHORITY:

Oklahoma Commission for Teacher Preparation; 70 O.S. Supp. 1998, §6-180 et seq. Oklahoma Teacher Preparation Act.

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n/a

ANALYSIS:

The rule provides for: revisions in the accreditation processes; definitions of the Program Review Advisory Board; expansion of possible meeting dates of the Program Accreditation Committee; revisions in Education Leadership Oklahoma language referring to scholarships and scholarship applicants.

CONTACT PERSON:

Ted Gillispie, Executive Director, Oklahoma Commission for Teacher Preparation, 4545 N. Lincoln, Suite 275, Oklahoma City, Oklahoma 73105.

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 11, 2005:

SUBCHAPTER 5. TEACHER PREPARATION PROGRAM ACCREDITATION

712:10-5-1. Teacher Preparation Program Accreditation And Review Process

(a) Oklahoma teacher education institutions function under an 'accreditation program' system which requires the evaluation of teacher education units and programs on a periodic basis.

(b) Beginning July 1, 1997 institutions which have no accredited teacher education program and which desire to initiate a certificate program shall follow the format outlined herein based on Standards for Oklahoma Accredited Teacher Education Programs and Institutional Plan (see 712:10-5-3). Institutional plans are defined as plans developed and prepared utilizing input from education stakeholders (teacher preparation faculty, arts and science faculty, teacher candidates, teachers, administrators, business and community leaders, and parents) which follow the general guidelines and standards for pre-service teacher preparation programs outlined in sections 712:10-5-3. On July 1, 1997 the Oklahoma Commission for Teacher Preparation, hereafter referred to as the Commission, shall assume responsibility for accrediting all teacher education programs in Oklahoma's public and private institutions of higher education.

(c) The program accreditation system shall be a multifaceted system based on:

(1) A competency-based teacher preparation program built around the Standards for Oklahoma Accredited Teacher Education Programs and State Department of Education Competencies, herein after referred to as SDE;

(2) Institution plans as outlined in the Standards for Oklahoma Accredited Teacher Education Programs and Institution Plan Format;

(3) On-site accreditation review team visits to the campuses of the institutions of higher education;

(4) Analysis of data related to student success rates on the general education, professional education, and subject matter assessments;

(5) Analysis of student satisfaction data;

(6) Analysis of student/teacher candidate portfolios.

(d) Beginning January 1, 1997 all institutions of higher education with teacher education programs must submit an initial institutional plan outlining how the institution will respond to those standards identified in the Oklahoma Standards for Accredited Teacher Education Programs and Initial Institution Plan (See 712:10-5-3, and OS 70 sections 6-199 through 6-202.)

(1) All initial plans will be reviewed by the Program Accreditation Committee, hereafter referred to as the PAC and recommendations forwarded for ~~initial~~ first accreditation, continuing accreditation, accreditation with stipulations, continuing accreditation with probation, or denial of accreditation will be forwarded to the Commission within sixty days of submission.

(2) All PAC members and a minimum of ten prospective members will receive performance training on how to evaluate the initial plans. Only those members demonstrating proficiency in evaluation will be allowed to evaluate the plans.

(3) The performance-based training will be conducted by the National Council for Accreditation of Teacher Education, hereinafter referred to as NCATE, ~~Board of Examiners from outside the State of Oklahoma and other training deemed appropriate by the Commission~~ and/or their designee.

(4) Any Commission member or Commission appointee who is involved in any evaluation and/or accreditation decision related to any teacher education unit and/or program must complete the performance-based training related to the review and accreditation of teacher education units and/or programs prior to voting and/or participating on any accreditation decisions.

(5) Prior to being accredited each institution must meet the ~~following~~ NCATE preconditions for accreditation and ~~provide the required documentation for each precondition. NCATE accredited institutions shall address changes~~

~~which have been made in the following preconditions areas since the initial NCATE accreditation visit~~ all requirements of the OCTP, and/or receive the approval of the OSRHE when applicable, and provide required documentation for each precondition.

~~(A) There is a written description of the professional education unit that is primarily responsible for the preparation of teachers and other professional education personnel.~~

~~(i) Verification by an appropriate central administration officer of the unit with primary responsibility for professional education and the unit's authority.~~

~~(ii) Chart depicting all programs for the preparation of school personnel in the institution, indicating the unit in which each is administratively located (e.g. School of Education, School of Music, School of Arts and Science, etc.), and the administrative unit's relationship to the professional education unit.~~

~~(iii) Program summary that includes the number of graduates by program and level.~~

~~(iv) Unit statement of mission, purpose or goals.~~

~~(v) Summary of meetings and actions of the professional education unit for the preceding year (maximum of two pages.)~~

~~(B) A dean, director, or chair is officially designated to represent the unit and assigned the authority and responsibility for its overall administration and operation.~~

~~(i) Job description for dean, director, chair.~~

~~(ii) Chart depicting administrative and organizational structure of the unit.~~

~~(C) There are written policies and procedures upon which the operations of the unit rest.~~

~~(i) Codified policies and operating procedures of the unit, such as policy manual or constitution and by-laws.~~

~~(D) The unit regularly monitors and evaluates, both internally and externally, its operation, scope, quality of its offerings, and effectiveness of its graduates.~~

~~(i) Policies for conducting ongoing evaluation reviews.~~

~~(ii) Summary of the findings of evaluation reports completed within the past five years documenting internal programs review (maximum of two pages.)~~

~~(iii) Summary of findings of evaluation reports completed in the past three years documenting external program review, including follow up study of graduates and employers (maximum of two pages).~~

~~(iv) Summary of recent program modifications based on evaluation results (maximum of two pages).~~

~~(E) The unit has criteria for admission to basic teacher education program(s) include an assessment of basic skills.~~

~~(i) List of basic skills that are assessed and the measures used to assess them.~~

~~(ii) Published criteria for admission to professional education programs.~~

~~(iii) Summary report of assessment results for students admitted for at least the past three years (maximum of two pages).~~

~~(F) The unit assesses the academic and professional competencies of education students at exit from all programs at all levels, through multiple evaluation methods.~~

~~(i) Listing of multiple assessment measures used to evaluate academic and professional competence of professional education graduates.~~

~~(ii) Summary of reports of competency assessment outcomes for at least the past three years.~~

~~(G) The unit submits program review for each certification program area. For areas in which there are NCATE approved guidelines, the NCATE approved guidelines shall be used. For areas in which there are no NCATE curriculum guidelines the program review shall be based upon the standards of the professional learned society which most closely aligns with the certification area and the Oklahoma State Department Full, Subject Matter Competencies.~~

~~(H) The institution is fully accredited by the appropriate institutional accrediting agency recognized by the Commission for Recognition of Postsecondary Accreditation and the U.S. Department of Education.~~

~~(I) A copy of the latest accreditation letter from the institutional accrediting agency showing that there is a reasonable assurance of the overall quality of the institution in the general areas of finance, administration, facilities, student personnel, faculty, and instruction.~~

(~~I~~A) The institution is an equal opportunity employer and does not discriminate on the basis of race, sex, color, religion, age, or handicap (consistent with Section 702 of Title VII of the Civil Rights Act of 1964, which deals with exemptions for religious corporations, with respect to employment of individuals with specific religious convictions).

(~~J~~B) A copy of the institution's official action pledging compliance with nondiscriminatory law and practice.

(e) Beginning July 1, 1997 the Commission will become a performance-based partner with the Oklahoma State Regents for Higher Education (State Regents) and NCATE. All teacher education programs shall be expected to meet all NCATE unit and program standards, SDE competencies, as well as all additional standards established by the Oklahoma Commission for Teacher Preparation.

(1) Application form. The application form containing the required information will be completed by the director

of teacher education at the institution seeking Commission accreditation for the teacher education certificate programs.

(2) Institutional plan. The institutional plan shall be utilized by the Commission for program accreditation, State Regents program review, and NCATE accreditation. An institutional plan addressing the standards as outlined in the Oklahoma Commission for Teacher Preparation Standards for Oklahoma Accredited Teacher Education Programs and Institution Plan and criteria established in these rules and as stipulated in OS 70 sections 6-180 through 202 will be sent to the Commission office along with the application form.

(3) Records to be kept on file at the institution. The following items and records shall be kept on file at the institution with the director/dean of teacher education. ~~All records shall be available to the public under the Oklahoma Open Records Act:~~

(A) Copy of the institution plan;

(B) Comments from the annual public forum held by the institution, the responses to comments, and how the comments were utilized in the modifications of the program;

(C) Copy of annual report to the Commission;

(D) Syllabi for courses in the areas of specialization, general education, and professional education will be kept on file with the institution; and

(E) Full faculty resumes will be on file for review. All levels of teaching personnel will be indicated.

(F) Copies of program review reports.

(G) Copy of the portfolio assessment report.

(H) Candidate CEOE scores.

(4) Timelines for evaluation process.

(A) The Oklahoma Commission for Teacher Preparation personnel will establish an accreditation visit schedule in collaboration with the State Regents, NCATE and the institution dean/director of teacher education.

(B) Upon approval by the governing board of the institution, ~~three~~ two copies of the institution report and supporting materials including the college catalog shall be sent to the Commission office 75 days prior to the accreditation visit. Upon receiving the names and addresses of the visiting accreditation review team, the institution shall send copies of all documentation to the members of the visiting accreditation review team.

(C) The visiting committee selection process shall be completed a minimum sixty (60) days prior to the accreditation visit.

(D) The on-site accreditation evaluation will be conducted over a three to ~~four~~ five day period.

(E) After finalizing the team draft report which results from the accreditation visit, and within fourteen days of the accreditation visit, the team chair shall send the draft report to team members and Commission professional personnel for editing.

(F) Within twenty-one days of the visit the team members and the Commission office shall return their comments and recommendations on the report to the team chair. The chair makes corrections to the report, as appropriate, and sends a copy to the unit head at the institution for factual corrections.

(G) Within twenty-eight days of the visit but not less than five days of the receipt of the report the unit head sends factual corrections in writing to the team chair. The chair makes changes at his/her discretion, finalizes the report and sends one copy to the Commission office. The report shall be in the format determined by the Commission.

(H) The Commission staff will copy and bind the report with a cover that includes the name of the institution, its location, and the date of the visit.

(I) Utilizing the procedures outlined in 712:10-5-1(e)(8) the Commission will make a final decision regarding the accreditation of the institution's certificate program(s). That decision will be based on the findings and recommendations of the ~~CRC and the~~ Commission Program Accreditation Committee and any additional information which may be presented by the institution under review.

(J) ~~Three years after the last visit, a comprehensive review of all annual reports and portfolio reviews will be conducted. A third year status report outlining any areas of concern that the unit should address by the time of the next accreditation review team on-site visit shall be forwarded to the institution to assist in preparing for this review. For NCATE accredited institutions, the PAC will base its findings on reports prepared by NCATE and all annual reports, portfolio assessments, and any continuing areas for improvement from the previous accreditation reviews. The PAC will develop the third year status report and submit to the Commission for appropriate action (see 712:10-5-3(b)(1-5). For non-NCATE accredited institutions the Commission Program Accreditation Committee will review all annual reports, portfolio assessments, and any continuing areas for improvement from the previous accreditation reviews. The PAC will develop the third year status report and submit to the Commission for appropriate action.~~ A portfolio review will be conducted three years prior to an accreditation site visit Findings of the portfolio review will be presented to the Program Accreditation Committee and the Commission in the form of a report for information only.

(K) All certification program reviews must be submitted to NCATE or to the Commission no later than ~~eighteen~~ twelve months prior to the ~~initial~~ first accreditation visit and ~~twelve~~ six months prior to a continuing accreditation visit.

(5) Selection of accreditation review team. Selection of the accreditation review team will be coordinated by the Commission staff as soon as possible after the visitation dates are set. All accreditation review team members shall be determined within eight weeks prior to the accreditation

review team visit. Selection of the accreditation review team shall be based on the following:

(A) All team members must have been trained by NCATE Board of Examiners and/or their designee in the assessment of NCATE standards and on the process for evaluating programs for the Commission.

~~(B) Experience and/or expertise in the certificate areas being evaluated.~~

~~(C) Accreditation team for initial accreditation.~~

(B) The membership of a first accreditation review team shall be as follows:

(i) Three to six ~~Representatives~~representatives from the NCATE Board of Examiners (for NCATE accredited institutions).

(ii) State representatives appointed by the Commission including:

(I) One pre-K-12 classroom teacher;

(II) One representative from higher education who is a member of a teacher education unit. For accreditation of private institutions the representative shall be from a private institution; for public institutions this representative shall be from a public institution;

(III) One representative from the Commission;

(IV) One ~~member from the community~~ additional at-large member;

(iii) For any institution requesting accreditation of a career technology program(s) an additional accreditation review team member may be recommended by the State Director of Career and Technology Education.

(iv) Special Circumstances:

(I) For accreditation review teams requiring fewer members the Executive Director of the Commission shall collaborate with the Program Accreditation Committee, the director of teacher education at the institution being accredited, and NCATE and Commission staff to determine the team composition.

~~(II) NCATE approved Board of Examiners members from Oklahoma may be a state representative to an accreditation review team.~~

(v) Observers shall be determined by the Commission and from among representatives of the Oklahoma State Regents for Higher Education, State Department of Education, State Department for Career and Technology Education, professional organizations, and the community-at-large.

(I) Observers shall be actively involved in the data collection process, participate in the accreditation review team meetings, and assist the accreditation review team to understand state nuances. They may assist, but shall not be required to write any sections of the team report. They shall not be a voting member of the team.

(II) Observers are expected to participate in the entire visit and all assigned meetings and activities.

(III) The chair of the accreditation review team has the authority to dismiss any observer from the accreditation visit who does not participate in the entire site review and assigned activities.

(C) Accreditation team for continuing accreditation. The membership of a continuing accreditation review team shall be as follows:

(i) NCATE representatives as determined by NCATE (for NCATE accredited institutions);

(ii) State representatives which will number one less than the NCATE representatives;

(iii) The Executive Director for the Commission for Teacher Preparation or his/her designee shall collaborate with the director of teacher education at the institution being reviewed, NCATE, and with the PAC and Commission staff to determine the state committee representation;

(iv) Observers shall be determined by the Commission and from among representatives of the Oklahoma State Regents for Higher Education, State Department of Education, and the community-at-large. If a Career and Technology program is offered at the institution the State Director of Career and Technology Education shall nominate a team member for any institution requesting accreditation of career and technology program(s);

(v) Observers shall be actively involved in the data collection process, participate in the accreditation review team meetings, and assist the accreditation review team with understanding state nuances. They may assist but shall not be required to write any sections of the team report. They shall not be a voting member of the team.

(vi) Observers are expected to participate in the entire visit and all assigned meetings and activities.

(vii) The chair of the accreditation review team has the authority to dismiss any observer from the accreditation visit who does not participate in the entire site review and assigned activities.

(~~E~~D) Accreditation teams for non-NCATE accredited institutions shall be composed of state representatives.

(~~F~~E) The Executive Director for the Commission for Teacher Preparation or his/her designee shall collaborate with the director of teacher education at the institution requesting state accreditation, NCATE, the State Regents, PAC and Commission staff to determine the team representation.

(6) Logistics of the accreditation visit.

(A) Each institution shall arrange through the Commission for a pre-visit with the chair of the accreditation review team. The pre-visit should be conducted a minimum of sixty days prior to the team

visit. The team chair must have received the ~~continuing accreditation~~ institutional report prior to the pre-visit.

(B) If it is to be a joint NCATE and Commission visit, the state chair, the NCATE chair and the Commission staff member responsible for program accreditation shall be included in the pre-visit. Logistical arrangements shall be finalized during the pre-visit.

(C) For state accreditation only, the state chair and the Commission staff member responsible for program accreditation shall be included in the pre-visit. Logistical arrangements shall be finalized during the pre-visit.

(D) A visitation schedule will be prepared and distributed approximately four weeks prior to the scheduled visit. The schedule will be developed cooperatively by the director of teacher education and the Commission staff in cooperation with the team chair(s).

(E) The following stakeholders shall be interviewed during the accreditation visit:

(i) Key faculty from the teacher education and the arts and sciences units;

(ii) Administrators from the university teacher education and the arts and sciences units;

(iii) Other individuals identified by the institution;

(iv) Students (both in organized group settings and in informal settings such as in hallways, student lounges, student union, etc.);

(v) Field supervisors and cooperating teachers of student teaching and internships;

(vi) Practitioners from area schools including, but not limited to, principals, school personnel directors, and teachers; and

(vii) Recent graduates.

(F) The individuals to be interviewed should be representative of the student body being served, consideration shall be made relative to ethnicity, gender, age and individuals with disabilities. Individuals being interviewed, unless unit and/or institution faculty members and administrators, shall not be employed in the unit. This shall not apply to field supervisors receiving stipends for their services.

~~(G) The majority of those students being interviewed shall be students who are not receiving any form of graduate stipend. Students participating in the formal interview process and who are receiving graduate assistantships shall be identified in the list of students to be interviewed.~~

(~~H~~G) The visitation schedule shall include:

(i) Dates of the accreditation visit;

(ii) Name, location, telephone number of lodging where reservations have been made for committee members;

(iii) Location of visiting team headquarters on the campus of the institution being evaluated;

(iv) Meeting time and place for team organizational meeting;

(v) Meeting time and place for formal team interviews with constituencies listed in 712:10-5-1(e)(6)(E);

(vi) Meeting time and place for team to complete writing assignments;

(vii) Meeting time and place for team to present the exit report; and

(viii) Fax, telephone, and e-mail addresses of members of the unit.

(~~I~~H) The completed accreditation review team report will be presented to the PAC, NCATE (as applicable), and the Commission.

(~~J~~I) Visiting team members will be reimbursed for expenses incurred according to state guidelines. Reimbursement forms must be completed by team members on the last day of the visit. ~~All travel claims must be notarized prior to submission.~~

(7) Preparation of the team report. The accreditation review team work will culminate in preparation of a report outlining the findings of the team. Individual writing assignments will be completed prior to the conclusion of the visit. The report will reflect the team consensus on the review.

(A) The accreditation review team report is to be based on the following:

(i) Validating and supporting documents, through interviews with students, faculty members, administrators, and school personnel;

(ii) Validating the institution plan by visiting facilities and reviewing documents; and

(iii) Specific guidelines and competencies for accredited teacher education programs.

(B) At the exit report, representatives of the accreditation review team will present a summary of its evaluation of the program. The summary will include~~:~~ findings for each standard and state requirement including areas for improvement.

~~(i) Area of improvement for the program;~~

~~(ii) An indication that a specific timeline shall be established for bringing into compliance all standards which were not met if appropriate. The report shall also contain a statement that all standards must be brought into compliance by meeting the conditions set by the team and that full accreditation will not be granted until all conditions are met;~~

(C~~iii~~) The completed reports will be due to the NCATE and Commission office 30 days after the accreditation review team on-site visit; and

(D~~iv~~) The recommendation of the accreditation review team regarding the program will be made to the PAC and the Oklahoma Commission for Teacher Preparation within ~~30~~ 90 days after having received the rejoinder [see 712:10-5-1(e)(8)(B)(iv)]. For NCATE accredited institutions, final accreditation

decisions will be made after the NCATE Unit Accreditation Board has forwarded its accreditation decision to the Commission.

(8) Recommendation process.

(A) Two copies of the final draft of the accreditation review team report will be forwarded to the Commission and one copy to each of the accreditation review team members who will be given the opportunity to suggest corrections in their respective assignment areas. Additionally, the director of teacher education will be given the opportunity to offer input regarding corrections in factual information.

(B) The head of the unit, in consultation with the chief executive officer of the institution, is required to acknowledge receipt of the report and is given the opportunity to prepare a rejoinder to the accreditation review team report. The unit can file the rejoinder and supplemental materials pertinent to the facts and conclusions found in the report of the accreditation review team.

(i) The institutional rejoinder to the accreditation review team report is a vital part of the evidence that the PAC considers as it makes its determination regarding ~~initial~~ first and continuing accreditation. The PAC considers the ~~initial~~ first/continuing accreditation report, accreditation review team report and the institutional rejoinder as it prepares its recommendations for the Program Accreditation Committee and subsequently to the full the Commission. The PAC may affirm the accreditation review team citations in areas for improvement or modify them based on evidence provided in the institutional rejoinder or to bring consistency to its decisions across institutions.

(ii) The purpose of the rejoinder is to clarify information presented in the accreditation review team report and to correct any factual errors in the report. If the judgments of the accreditation review team are being appealed by the unit, the rejoinder must indicate the grounds for such a stance and the available documentation to support it. This information should be summarized, cited, and included in an appendix as appropriate. The rejoinder should be concise, to the point, and complete.

(iii) The following conditions must be adhered to as the institutional rejoinder is prepared by the unit:

(I) All evidence must describe what existed at the time of the accreditation visit. Changes made by the unit after the visit cannot be considered by the PAC in its deliberations. Changes after the visit should be reported to the Commission for Teacher Preparation as part of the unit's annual report;

(II) All evidence must relate directly to ~~the Standards For Oklahoma Accredited Teacher Education Programs~~ NCATE standards, state requirements, and all procedures that applied at the time of the accreditation visit;

(III) The rejoinder must be factual in nature. All inaccurate information in the accreditation report should be corrected and appropriate documentation submitted with the rejoinder; and

(IV) When the unit does not respond, in writing, to the unmet standards and weaknesses in the accreditation report, the PAC assumes that the unit concurs with the accreditation review team citation and decision.

(iv) The institutional rejoinder should contain the following:

(I) Letter from the unit head to the Commission Executive Director acknowledging the receipt of the accreditation report;

(II) Responses to the ~~weakness statements~~ areas for improvement. If there is evidence that ~~a weakness~~ an area for improvement does not exist, the appropriate documentation should be appended;

(III) Perceptions of procedural concerns, if any, regarding the accreditation review team review or process that might have prejudiced the accreditation review team judgments; and

(IV) Appendices that contain information to support any requests for reconsideration of the accreditation review team judgments. If the data were included in the institutional report and not given adequate consideration by the accreditation review team, the appropriate pages should be cited/reproduced; if the reference exceeds three pages in the institutional report, the page numbers should be cited and not duplicated.

(v) The institutional rejoinder must be submitted to the Oklahoma Commission for Teacher Preparation within 30 days of the receipt of the accreditation review team report. When accreditation review team reports are sent to an institution during semester breaks, additional time to prepare the rejoinder will be considered. Additional time beyond the date indicated in the transmittal letter must be approved by the Commission Executive Director.

(C) Final action on the reports and institutional accreditation will proceed according to Section 712:10-5-1(e).

(D) Final action by the Commission may include the following actions:

(i) First and Continuing Accreditation

(I) First accreditation or continuing accreditation is granted to the education unit and program(s) if the Commission finds that standards have been adequately addressed to merit accreditation. This accreditation decision indicates that the unit meets each of the six NCATE standards for unit accreditation.

Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the unit may describe progress made in addressing the areas for improvement cited in NCATE's action letter in preparation for its next visit. In its annual report the institution will be expected to address progress on the areas for improvement cited in the Commission accreditation report. This progress will be reviewed, annually, by the PAC. First accreditation is retroactive to the semester in which the accreditation visit occurred.

(ii) Provisional Accreditation (First).

(I) This accreditation decision indicates that the unit has not met one or more of the standards. When the PAC renders this decision, the unit has accredited status; but must satisfy provisions by meeting previously unmet standard(s) within an established time period.

(II) If provisional accreditation is granted, the PAC will require (1) submission of documentation that addresses the unmet standard(s) within six months of the accreditation decision or (2) a focused visit on the unmet standard(s) within two years of the semester of the accreditation decision. When a decision is made by the PAC to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two year. If documentation is submitted under the terms specified in the above paragraph, the PAC may (1) grant accreditation or (2) require a focused visit within one year of the semester in which the documentation was reviewed by the PAC. After a focused visit, the PAC will (1) grant accreditation or (2) revoke accreditation.

(III) If accreditation is granted, the next on-site visit is scheduled for five years following the semester in which the accreditation visit occurred. ~~This scheduling establishes and maintains the unit's five-year accreditation cycle.~~

(iii) Accreditation with Conditions (Continuing).

(I) This accreditation decision indicates that the unit has not met one or more of the NCATE standards. When the PAC renders this decision, the unit maintains its accredited status, but must satisfy conditions by meeting the previously unmet standard(s) within an established time period.

(II) If accreditation with conditions is granted, the PAC will require (1) submission of documentation that addresses the unmet standard(s) within six months of the accreditation decision or (2) a focused visit on the unmet standard(s) within two years of the accreditation decision. When a decision is made by the PAC to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two years. If documentation is submitted under the terms specified in the above paragraph, the PAC may (1) continue accreditation or (2) require a focused visit within one year of the semester in which the documentation was reviewed by the PAC. After a focused visit, the PAC will (1) continue accreditation or (2) revoke accreditation.

(III) If accreditation is granted, the next on-site visit is scheduled for ~~five~~ seven years following the semester in which the continuing accreditation visit occurred. This scheduling maintains the unit's original ~~five~~ seven-year accreditation cycle.

(iv) Accreditation with probation (Continuing).

(I) Continuing Accreditation with Probation is issued if the unit has serious and significant areas for improvement related to the Standards for Oklahoma Accredited Teacher Education Programs. As a result of the continuing accreditation review, the PAC has determined that areas for improvement with respect to standards will place an institution's accreditation in jeopardy if left uncorrected.

(II) All students who have been admitted to the program must be notified by mail, within 30 days of receipt of the PAC/Commission decision, as to the probationary accreditation status of unit and/or programs.

(III) For an institution that is placed on probation an accreditation visit must be scheduled by the institution and take place within two years of the semester in which the probationary decision was rendered. The professional education unit will remain accredited at least until the result of the rescheduled accreditation visit is known. This visit will mirror the team composition process for ~~initial~~ first accreditation. All Oklahoma standards for accreditation of the teacher education unit and/or programs in effect at the time of the visit must be addressed by the unit, as part of this visit. Following the review, the PAC may decide to (1) continue accreditation, (2) continue accreditation with conditions, or (3) revoke accreditation.

(v) Denial of accreditation (First).

(I) Denial of accreditation is rendered when the PAC finds that the professional education unit and/or programs have severe and/or numerous areas for improvement that limit its capacity to offer quality programs.

(II) All students who have been admitted to the program must be notified by mail, within

30 days of receipt of the PAC/Commission decision, as to the denial of program accreditation of the unit and programs.

(III) Institutions that are denied accreditation may recommend candidates for certification for one year from the end of the semester in which accreditation is denied.

(vi) Revocation of accreditation (Continuing).

(I) Revocation of accreditation terminates current accreditation after a two-year probationary visit if the PAC/Commission finds that critical areas for improvement are not corrected. Accreditation will be terminated at the end of the semester in which the PAC/Commission revokes accreditation.

(II) All students who have been admitted to the program must be notified by mail, within 30 days of receipt of the PAC/Commission decision, as to the revocation of accreditation of the unit and programs.

(III) Institutions that lose their accreditation may recommend candidates for certification for one year from the end of the semester in which accreditation is revoked.

(IV) An on-site interim accreditation visit may be requested by the Appeals Board, hereinafter referred to as AB, acting on behalf of the Commission Administrative Committee. This visit would result from the committee's determination that compelling reasons exist to authorize reexamination of the accreditation of an institution's professional education unit and/or programs. If the AB determines that a complaint received by the committee needs to be investigated, the committee will authorize an interim accreditation review team visit to the campus. The interim accreditation review team will consist of one member from the ~~initial~~ first or continuing accreditation review team and the remainder of the members will be appointed by the PAC following the guidelines outlined in 712-10-5(e)(5).

(V) The interim accreditation review team will prepare a report for the PAC. At the next PAC meeting following such a visit, the PAC will determine the institution's accreditation status.

(VI) The Commission may revoke accreditation if the unit and/or program(s) (a) no longer meets the Standards For Oklahoma Accredited Teacher Education Programs, (b) fails to submit annual reports and other documents required for accreditation; (c) misrepresents its accreditation status to the public; (d) fails to meet timelines of conditional or probationary accreditation or (e) fails over a three-year period to meet and maintain teacher candidate performance standards on the competency-based assessments as established by the Commission

(VII) All accreditation decisions shall be reported annually in the Commission annual report to the Education Oversight Board and all entities as outlined in OS 70 section 6-186.

(VIII) In the event that accreditation is denied or revoked, an institution may reapply for first accreditation following a three-year waiting period. Before an first visit may occur, a minimum of three years must have lapsed since accreditation was denied. Reapplication shall occur based on the Standards for Oklahoma Accredited Teacher Education Programs and Institutional Plan (See 712:10-5-3). All procedures for first accreditation will be followed during the reapplication process.

(9) Appeals Board.

(A) For NCATE accredited units the AB shall consider the recommendations of the NCATE appeals board for unit accreditation,

(B) For appeals related to program(s) and non-NCATE accredited institutions the following procedures shall be followed.

(C) Membership of Commission appeals board shall be:

(i) Commission chair. The Commission Chair shall be the Chair of the Appeals Board;

(ii) Chair of Program Accreditation Committee;

(iii) Program subject matter and/or standards expert(s). If the appeal is related to a specific program, the program expert shall be in the area(s) being appealed;

(iv) One PK-12 school classroom teacher;

(v) One member from the NCATE Board of Examiners (when applicable);

(vi) One teacher educator; and

(vii) One representative from the arts and sciences faculty or from school administration.

(D) The appeals board shall serve an initial term of two years, with the exception of the Commission Chair, Chair of the Program Accreditation Committee, and the program expert(s).The program subject matter expert(s) shall be appointed by the Commission Chair and serve on the AB only when an appeal is related to a program(s) appeal.

(10) Conditions for appeals.

(A) Any institution that is the object of an adverse decision, as determined by one of the Commission teacher education program review committees and/or unit accrediting committees, may appeal that decision to the Commission Appeals Board.

(B) An adverse decision is defined as the denial or revocation of program(s) or unit accreditation.

(C) An institution may also appeal, in writing, a provisional, conditional or probationary accreditation

decision. Provisional, conditional or probationary accreditation does not terminate accreditation. An adverse decision may be appealed only on the following grounds:

~~(i) Standards for Oklahoma Accredited Teacher Education Programs (SOATEP) were disregarded by the review team;~~

(~~ii~~i) Stated procedures were not followed;

(~~iii~~ii) Evidence favorable to the institution was provided to the accreditation review team but was not considered;

(~~iv~~iii) Evidence was presented to the appropriate board in the form of a rejoinder or stipulation response but was not considered;

(~~v~~iv) If a college or university believes that one or more of these ~~four~~ conditions was a factor in its accreditation, the only available means of redress is through the appeals process; or

(~~vi~~v) There was a lack of the full number of team members due to last minute emergencies; however, that factor alone is not sufficient to uphold an appeal.

(I) The institution must convincingly demonstrate that this fact made a difference in the accreditation decision.

(II) The institution shall prove actual prejudice to it and that the prejudice changed the accreditation decision.

(III) The fact that the institution did not recommend canceling the visit would be evidence that it, at least before the visit, believed that the assembled team would be sufficient to conduct a fair and complete visit.

(D) The findings and recommendations of the AB are received by the full Commission at it first meeting following the meeting of the AB.

(E) Subsequent actions shall be based on grounds upheld by the full Commission and may include, but are not limited to:

(i) Assigning another accreditation review team to revisit an institution;

(ii) Reinstating accreditation or accreditation with provision, condition or probation; or

(iii) Upholding the initial recommendation for denial or revocation of accreditation.

(F) The status of the appellant at the time of the visit remains unchanged until the appeals process has been exhausted.

(11) Process for appeal. The following provisions govern the appellate process:

(A) Within 15 days of receiving notice of the adverse decision, an institution electing to appeal an adverse decision of the Commission must present the Commission Executive Director and the board or committee which issued the adverse or probation decision written notification of its intention to appeal.

(B) No later than 30 days from the date that it submits its notification, the institution must submit a brief to the Executive Director which sets forth the specifics of its appeal and includes full documentation.

(C) The Commission Chair shall convene the AB within 30 days after an appeal brief has been filed. The AB will hear and act on the appeal within this time frame.

(D) The appellant shall have the right to present a 30-minute oral argument on its brief. The appellant shall also have the right to be represented by counsel during the appeal, but may not call witnesses or introduce new evidence on its own behalf.

(E) If the adverse decision appealed is provisional, conditional or probationary accreditation, the appellant's right to appeal is limited to the submission of written documentation.

(F) In the case of an accreditation decision review, the AB has the right to seek clarification of the accreditation review team report from the state team chair, and clarification of the PAC's deliberations from the chair of the PAC.

(G) In the case of an accreditation decision review, all evidence presented in the appellant's brief and considered by the AB must be confined to conditions existing at the time of the accreditation review team visit as cited in the final report, or in the case of a petition for stipulation removal, to conditions existing at the time the petition for stipulation removal was submitted.

(12) Cost of review.

(A) If the appeal leads to an affirmation of the Commission's original decision, the appellant will be liable for the expenses of the AB, the second accreditation review team visit, and all expenses related to the review. All expenses will be reimbursed according to state travel reimbursement guidelines.

(B) If the AB finds in favor of the institution, the Commission will be liable for expenses of the AB and second accreditation review team. All expenses will be reimbursed according to state travel reimbursement guidelines.

(C) Access to Documents. In cases of accreditation decision review, team chairs, and the PAC chair serving as witnesses to hearings of the AB will be provided copies of pertinent action letters and reports. Appellant petitions of appeals are provided to all witnesses.

(13) Continuing accreditation procedures. ~~Five~~ Seven-year continuing accreditation shall follow the same basic format as the NCATE Continuing Accreditation procedures. The accreditation review team will review such things as faculty qualifications and loads, financial support of the unit, follow-up procedures, clinical and field experiences, the residency program, faculty development procedures, and annual student assessment data.

(14) Distribution of findings.

(A) The accreditation review team chair shall mail one copy of the final draft of its report to the Commission office.

(B) The Commission will coordinate with NCATE (for NCATE accredited institutions) for distribution of reports to other team members.

(C) After the institution has received the reports, it has 30 days to submit a rejoinder to the Commission according to procedures outlined in 712:10-5-1(e)(8)(B).

(D) When the entire process has been completed the Commission will distribute the findings to all interested stakeholders, including the State Department of Education and the Regents for Higher Education. ~~as outlined in 712:10-5-1(e)(8)(B).~~

712:10-5-2. Structure of Accreditation Committees

(a) A Program Accreditation Committee (PAC) of the Oklahoma Commission for Teacher Preparation carries out the responsibilities for overseeing the accreditation or continuing accreditation of institution teacher education programs. Committee members shall be selected by the Oklahoma Commission for Teacher Preparation and approved by Commission membership to serve on such a committee. Except for the Commission Executive Director and program(s) subject matter experts, the initial term of membership shall be two years.

(1) Members shall have completed a training seminar related to state and NCATE accreditation and any other training deemed appropriate by the Commission.

(2) Membership shall be comprised of:

~~(A) The Commission Executive Director;~~

(~~B~~A) A minimum of ~~T~~ three Commission members who are not members of either an Accreditation Team or the Appeals Board;

(i) The Commission chair shall appoint PAC Chair(s) from the ~~three~~ Commission members appointed to the PAC.

(~~C~~B) Two pre-K-12 classroom teachers;

(~~D~~C) The PAC chair(s) shall serve on the Commission Administrative Committee.

(~~E~~D) Two teacher educators whose institutions will not be reviewed during the two-year term of appointment;

(~~F~~E) One PK-12 public school administrator nominated by the State Superintendent of Public Instruction;

(~~G~~F) One superintendent from an area-vocational school shall be nominated by the State Director of Career and Technology Education;

(~~H~~G) Two arts and science faculty; one from a four year institution and one from a community college shall be nominated by the Chancellor for Higher Education; and

(~~I~~H) The Commission Director of Program Accreditation shall serve in an advisory capacity.

(3) A minimum of two PAC members may be reappointed to additional terms to allow for continuity.

(4) Discretion and ethical judgment shall be used in making recommendations.

(5) Meeting dates shall be established in compliance with the following criteria:

(A) The PAC shall schedule a minimum of four meeting dates per academic year. ~~: September, November, February, and April with subsequent recommendations to the Commission during October, December, March, and May.~~

(B) Other meetings shall be held as needed.

(C) Institutions with proposed programs for evaluation shall be notified of meeting dates four weeks in advance. Representatives from the institution(s) are encouraged to attend the meetings.

(6) Responsibilities and authority of the PAC shall be:

(A) ~~Approving an institution's program reviews prior to submission to the Commission and NCATE;~~ Recognizing the status of all programs at each institution annually.

(B) Reviewing the Accreditation Team Report, reviewing the NCATE Unit Accreditation Board recommendations and recommending program accreditation status to the Commission;

(C) Following all procedures outlined in 712:10-5-1(e);

(D) Recommending to the Commission changes in administrative rules, regulations, policies. and procedures;

(E) Ensuring training for all accreditation review team members and PAC members;

(F) Carrying-out a systematic review and development of the standards by which programs are approved;

(G) Monitoring the performance of accreditation review team members; and

(H) Recommending training needs for accreditation review team members, institution faculty members, and PAC members.

(b) The Program Review Advisory Board (PRAB) shall provide consultation related to program reviews. The PRAB shall make final reviews on all program reports and make recommendations on program status for all non-NCATE institutions and for program areas not associated with an NCATE-recognized learned society. ~~The curriculum review committees (CRC) shall review all program reviews and make recommendations to the PAC regarding the quality of the certification program(s) curriculum. These~~ Program reviews will take place in conjunction with the college's/university's five- or seven-year accreditation cycle, occurring ~~twelve~~ six months prior to a continuing accreditation visit and ~~eighteen~~ twelve months prior to an ~~initial~~ first accreditation visit.

(1) Members of the ~~CRC~~ The Program Review Advisory Board (PRAB) shall be approved by the Program Accreditation Committee.

(2) ~~CRC~~ The Program Review Advisory Board (PRAB) members shall serve an initial term of two years.

(3) Two or more of the ~~CRC~~ The Program Review Advisory Board (PRAB) members may be reappointed to additional terms to allow for continuity.

(4) Members shall have completed a training seminar on the program review process.

(5) Discretion and ethical judgment shall be used in making recommendations.

~~(6) A CRC member may be appointed to more than one committee.~~

(~~7~~6) The ~~CRC~~ The Program Review Advisory Board (PRAB) shall be comprised of ~~three members~~ trained reviewers in specific subject areas from the following groups:

(A) Practicing PK-12 classroom teachers

(B) Practicing PK-12 administrators

(C) Higher education faculty members

~~(D) Parents and community members~~

(c) The Commission ~~Coordinator~~ Director of Program Accreditation or designee shall chair the ~~each curriculum review~~ The Program Review Advisory Board (PRAB) committee.

712:10-5-3. Specific State Standards For Program Accreditation

(a) The following standards apply to both undergraduate and graduate programs. The governance and administration of the total teacher education program standard is based on the premise that there must be a recognizable and functioning governance entity within the institution's administrative structure which has responsibility for designing, approving and continuously evaluating and developing teacher education programs. This governing unit may be a council, committee, department, school, college, or any other recognizable entity, which includes the administration of teacher education as one of its functions.

(1) The governing unit membership and responsibilities include the following:

(A) Membership on the teacher education governing unit shall be defined by written policy to include:

(i) A majority of the members who have a minimum of three years teaching experience in public schools;

(ii) A majority of the members in the governance unit who are currently teacher education faculty members;

(iii) Some faculty members who shall represent the arts and sciences;

(iv) A designated director of teacher education defined as the institution's official representative for teacher education. The authority and responsibilities of this individual shall be clearly defined in written policies; and

(v) A clearly defined process whereby faculty members and administrators become members and the terms of office.

(B) The responsibilities of the teacher education governing unit shall be defined by written policy to include:

(i) Responsibilities of the officers of the unit;

(ii) Responsibilities of the unit's standing committees; and

(iii) Responsibilities in the following areas as they are related to teacher education:

(I) Admission/retention in teacher education;

(II) Field experience and student teaching (admission and placement);

(III) Development of courses and program curricula; and Program review, evaluation and planning.

(C) Program review, evaluation and revision responsibilities include:

(i) The governance unit shall conduct at least one systematic review, evaluation, and when appropriate, revision of all teacher education programs within each ~~five-year~~ accreditation period;

(ii) The governance unit shall conduct an annual public forum pursuant to 712:10-5-1 and OS 70 section 6-185;

(iii) Periodic program reviews and revisions shall be based on, but not limited to, stated goals and objectives; and

(iv) The process for conducting program review, evaluation, and revision shall include, but not be limited to, participation by the following:

(I) Teacher education faculty and arts and science faculty;

(II) Graduates of the programs;

(III) Students currently in the program;

(IV) Teachers and administrators from the public schools;

(V) Parents of PK-12 students; and

(VI) Business and community leaders who are actively involved in assisting PK-12 schools.

(D) Documentation related to the budget-making process and level of financial support shall include the following:

(i) A clearly defined budget-making process for all teacher education programs; and

(ii) An analysis showing that the institution's financial support for programs in teacher education are maintained at a level appropriate for a professional preparation program.

(b) Teacher education faculty standards are to be consistent with accreditation standards.

(c) Student-related standards are to be consistent with accreditation standards.

(d) Program decisions of the professional education unit are to be guided by a conceptual framework, which establishes the shared vision for the preparation of teacher candidates.

(1) The conceptual framework must include the following structural elements: The mission of the institution and the teacher preparation program;

(A) The program's philosophy, purposes, professional commitments and dispositions;

(B) A knowledge base that provides the foundation for the framework;

(C) Performance expectations for candidates that align with professional, state and institutional standards; and

(D) A system by which candidate performance is regularly assessed.

(2) A description of the conceptual framework shall be submitted along with the institution's preconditions report by any institution seeking ~~initial~~ first accreditation.

(3) A description of the conceptual framework shall be included in all institutional reports submitted prior to ~~initial~~ first and continuing accreditation visits.

(e) The following guidelines are to be used to collect and maintain data on each institution's teacher preparation program:

(1) The institutional shall establish a process which seeks information and program input from teacher preparation faculty; faculty from arts and sciences and other program and disciplines which are appropriate; students within the teacher education program; teachers, administrators, parents, guardians or custodians of students; and business and community leaders.

(2) The institutional shall hold an annual public forum, subject to the provisions of the Oklahoma Open Meetings Act, regarding the content of the institutional plan; public comment on either the institution's teacher preparation plan or program will be solicited during the forum.

(3) The institutional plan shall be accessible to any interested party under the Oklahoma Open Records Act.

(4) The submitted institutional plan must be approved by the institution's governing board.

(5) Annual reviews and reports indicating program changes resulting from the evaluations.

(f) The following policies, procedures and guidelines are used to direct the content and candidates experiences of each institution's teacher preparation program.

(1) Programs require teacher candidates to have speaking and listening skills at a novice high level in a language other than English.

(2) General studies requirements for candidates include the arts, communication, history, literature, mathematics, philosophy, sciences, English, government, and the social sciences.

(3) Programs establish cohort or colleague groups within the institution to assist teacher candidates in achieving competencies, better adapting to the school environment and furthering professional growth.

(4) Candidates complete a well-planned sequence of courses and/or experiences in pedagogical studies that ensures student competency in the Oklahoma State Department of Education Full, Subject Matter Competencies for Teacher Licensure and Certification.

(5) The guidelines and standards for program reviews representing specialty organizations and national learned society standards are used in developing programs in each content area.

(6) Secondary and elementary/secondary teacher candidates have undergraduate majors or their equivalents, in a subject area.

(7) Teacher candidates in early childhood, elementary, and special education have subject area concentrations, which allow qualification as a generalist. To qualify as a generalist, candidates must document competency in mathematics, science, language arts, and social studies as identified in the NCATE curriculum guidelines and State Department of Education Full, Subject Matter Competencies for early childhood, elementary and special education.

(8) Teacher candidates must have a minimum of 45 hours of diverse field experiences prior to their student teaching experience.

(9) Teacher candidates are provided with advisement services to assist them in taking course work designed to maximize their opportunity for certification and employment. At a minimum, teacher candidates are made aware of the latest supply and demand information concerning teacher employment, state salary structure, and are encouraged to seek secondary endorsements if appropriate.

(10) Substantive collaboration and classroom interaction with students accompanies theoretical curriculum, thus allowing teacher candidates the opportunity to apply theory to actual classroom situations.

(11) Instruction integrates pedagogical competencies or skills with experiences in the school setting.

(12) Teacher candidates are provided with opportunities to have parental, family and community involvement within their pre-service programs.

(13) The unit establishes and publishes a set of criteria/competencies for exit from each professional education program. These criteria/competencies reflect the Oklahoma Department of Education General Teacher Competencies and/or subject matter competencies outlined in the NCATE ~~curriculum folios and/or~~ national (professional) learned societies guidelines.

(14) The unit establishes and publishes the criteria/competencies for exit and satisfactory completion of the residency program adhering to all rules and regulations established by the Oklahoma State Department of Education.

(15) A candidate's mastery of a program's stated exit criteria or competencies is assessed through the use of multiple sources of data such as culminating experience, portfolios, interviews, videotaped and observed performance in schools, standardized tests and course grades.

(g) The following guidelines are to be used to facilitate the professional development of faculty:

(1) Teacher education faculty continue their professional development during their tenure at an institution of higher education to ensure that the future teachers of Oklahoma are taught by professional educators fully trained in their areas of expertise. Professional development for teacher educators and arts and sciences faculty should be focused on the faculty members ability to model such effective teaching strategies as inquiry, group discussions and collaborative learning.

(h) The following policies are to be used to evaluate individual program areas at each institution:

(1) The institution shall submit program reviews for each required program area based upon the guidelines and accreditation schedule of the Commission.

(2) Following the completion of each program evaluation, the institution will receive written notification of each program's status. Recognition decisions will include the following categories: recognized, recognized with conditions, recognition decision deferred, not recognized.

(3) ~~For programs that are not in compliance with national and/or state competencies, a rejoinder will be submitted based on the timelines specified by the Commission.~~ If the program is recognized, it will retain its status through the semester and year of the institution's next accreditation visit. To retain recognition, another program report must be submitted before that review.

(4) ~~Programs that are not in compliance after the rejoinder process will have two years to bring the program into compliance. A follow-up review must be submitted no later than two years from the time the rejoinder report is received at the institution.~~ If the program is recognized with conditions, a report addressing the conditions to recognition must be submitted within 18 months of the date of the status report. The report must address the conditions specified by the reviewers. Once acceptable data has been submitted, the condition(s) will be be removed. If the program does not submit acceptable information within the designated timeframe, the decision reverts to "not recognized."

(5) ~~Programs that are not in compliance following the evaluation of the two year follow-up review will no longer be eligible to recommend candidates for licensure and certification.~~ If the program recognition is deferred/more information required, a revised report addressing the issues identified by the reviewers must be submitted within two months. Failure to submit a report by the date specified in the recognition decision will cause the decision to revert to "not recognized." If the revised report with satisfactory information, the program decision will be changed to "recognized" or "recognized with conditions." If the information is not satisfactory, the decision is changed to "not recognized" and the program must submit a new report.

(6) ~~An institution with a non-compliant program may apply to the PAC for a waiver if there is evidence that the non-compliant status of a program is due to transitioning national standards~~. If the program is not recognized, a revised report addressing unmet standards may be submitted within 18 months of the date of the recognition report. [This report will be sent to the original team if possible.] The unit may elect to submit a new program report for recognition within 18 months. [This report will be sent to a new team of reviewers]. The BOE team will automatically cite the non-recognized program(s) as in Areas for Improvement.

(7) Units may receive conditional approval for new programs. These programs must undergo initial, mid-program, and final reviews as outlined in the New Certification Program Procedures for Established Units guidelines before receiving full recognition. Recognition will be retained through the semester and year of the unit's next accreditation visit.

(8) Programs that do not comply with the procedures detailed in items (h)3-7 will no longer be eligible to recommend candidates for licensure and certification.

(9) An institution with a non-compliant program may apply to the PAC for a waiver if there is evidence that the non-compliant status of a program is due to transitioning national standards.

712:10-5-4. Standards for Oklahoma Teacher Education Programs

(a) The following standards as defined by the National Council for Accreditation of Teacher Education shall apply to undergraduate and graduate programs.

(1) Standard One: Candidate Knowledge, Skills and Dispositions.

(A) Candidates preparing to work in schools as teachers or other professional school personnel know and demonstrate the content, pedagogical, and professional knowledge, skills, and dispositions necessary to help all students learn. Assessments indicate that candidates meet professional, state, and institutional standards.

(B) Elements for Standard One include content, pedagogical and professional knowledge; dispositions for all candidates; and student learning for all candidates.

(2) Standard Two: Assessment System and Unit Evaluation.

(A) The unit has an assessment system that collects and analyzes data on the qualifications of applicants, the performance of candidates and graduates, and unit operations to evaluate and improve the unit and its programs.

(B) Elements of Standard Two include data collection, analysis, and evaluation; and use of data for program improvement.

(3) Standard Three: Field Experiences and Clinical Practice.

(A) The unit and its school partners design, implement, and evaluate field experiences and clinical practice so that teacher candidates and other school personnel develop and demonstrate the knowledge, skills, and dispositions necessary to help all students learn.

(B) Elements of Standard Three include collaboration between the unit and school partner; design, implementation, and evaluation of field experiences and clinical practice; and candidates' demonstrations of the knowledge, skills and dispositions necessary for student learning.

(4) Standard Four: Diversity.

(A) The unit designs, implements, and evaluates curriculum and experiences for candidates to acquire

and apply the knowledge, skills and dispositions necessary to help all students learn. These experiences include working with diverse higher education and school faculty, diverse candidates, and diverse students in P-12 schools.

(B) Elements of Standard Four include design, implementation, and evaluation of student experiences relevant to diversity.

(5) Standard Five: Faculty Qualifications, Performance, and Development.

(A) Faculty are qualified and model best professional practices in scholarship, service and teaching, including the assessment of their own effectiveness as related to candidate performance; they also collaborate with colleagues in the disciplines and schools. The unit systematically evaluates faculty performance and facilitates professional development.

(B) Elements of Standard Five include hiring of qualified faculty, modeling of best professional practices, ongoing evaluation and professional development and collaboration.

(6) Standard Six: Unit Governance and Resources.

(A) The unit has the leadership, authority, budget, personnel, facilities, and resources including information technology resources, for the preparation of candidates to meet professional, state and institutional standards.

(B) Elements of Standard Six include evidence of leadership within the unit and across the institution, the unit budget, personnel and other resources.

(b) Teacher candidate portfolios.

(1) Institutions shall require all initial and advanced certification program(s) students to develop a portfolio following the guidelines outlined in this section.

(2) A portfolio is a documented profile of an individual's accomplishments, learning, and strengths related to the competencies, standards, and outcomes established by the Commission, State Regents, SDE and institution.

(3) The portfolio, for purposes related to institutional accreditation is a unit of measure which presents evidence that the institution is providing initial, on-going, and focused opportunities and avenues which lead to student achievement of competencies, standards and outcomes determined by the Commission, Regents, SDE and institution. Portfolio reviews shall be included in all accreditation reviews. Institutional reports, including the third year status report and all annual reports shall include a report on institutional portfolio reviews and any revision in the institution's portfolio process.

(4) Institution's pre-service and/or advanced portfolio process.

(A) The teacher education unit and programs shall:

(i) Require the portfolio development process to begin with enrollment into the professional education course work;

(ii) Have a written philosophy related to portfolio development and assessment which is consistent with the institution's and unit's mission and conceptual framework(s);

(iii) Have written policies, criteria, and institutional rubrics related to the portfolio assessment(s) of individual(s) enrolled in initial and advanced certification programs.

(5) Process for Commission portfolio assessment.

(A) The Commission shall conduct a portfolio review during ~~2nd semester, year two or 1st semester,~~ year three of the 5-year accreditation period~~.~~, or year 4 of the 7-year accreditation period.

(B) The institutions shall provide a list of students who are enrolled in initial and advanced certification programs the semester prior to the scheduled portfolio review. Data shall be provided indicating each student's name, classification, and certification area.

(C) A random sample, stratified across student classifications and certification areas, of students' portfolios, from each institution, shall be selected from the above mentioned list and reviewed.

(D) The executive director or designee shall appoint representative members from higher education professional educators, arts and science faculty, public school teachers and administrators, and the community-at-large to the portfolio review team.

(E) All members of the portfolio review team shall be trained in the use of the Oklahoma Portfolio Assessment Rubric.

(F) Portfolio reviews shall be included in all accreditation reviews.

~~(i) For NCATE accredited institutions, the Commission PAC shall review only the portfolios and shall accept the NCATE review of annual reports and the NCATE third year status report for considerations related to continued, annual accreditation.~~

~~(ii) For non-NCATE accredited institutions, the Commission PAC will conduct all reviews the institution's portfolios, annual reports, and third year status report.~~

(G) A portfolio review report shall be submitted to the teacher preparation unit following the assessment. A rejoinder to the report may be submitted by the institution within thirty (30) days of receiving the Portfolio Review Report.

(c) Annual report. There will be an annual report submitted to the Oklahoma Commission for Teacher Preparation. This report will satisfy the requirements for the Commission for Teacher Preparation, State Regents for Higher Education, State Department of Education, and NCATE/AACTE. The following information will be included in the report:

(1) Changes that occurred in implementation of the standards outlined in the Institution Plan as a result of local and statewide evaluations/assessments, portfolio reviews, public hearings or other reasons;

(2) Progress made in addressing the ~~weaknesses~~ areas for improvement, if any, identified by the most recent on-site visit by the on-site accreditation review team;
(3) Quantitative data related to the unit's programs as required in the AACTE/NCATE Annual Report. These data shall reflect information pertaining to supply and demand for teacher candidates;
(4) Program changes being implemented for OCTP and NCATE continued accreditation;
(5) Report on resources devoted to technology;
(6) Report on professional development activities of faculty;
(7) Report on the number of hours each faculty member taught in public schools;
(8) Report on the number of graduate students admitted conditionally and the success rates.
(9) Annually, the OCTP shall provide feedback to any institution if their annual report indicates that progress is not being made in addressing program weaknesses.
(10) Complete copies of the annual reports for public institutions will be distributed to OSRHE and summary data for all institutions will be distributed to constituents based on reporting requirements outlined in 70 O.S., Section 6-186.
(11) OCTP will produce a report describing the accreditation status of each institution. This report will devote a section to each institution separately and include a summary of NCATE and OCTP review findings.

SUBCHAPTER 11. EDUCATION LEADERSHIP OKLAHOMA

712:10-11-1. Education Leadership Oklahoma regulations

(a) Selection of scholarship recipients.
(1) Applicant can be funded for one ~~certification area~~scholarship only for National Board for Professional Teaching Standards (NBPTS).
(2) ~~Candidate~~Applicant must be a current, full-time, Oklahoma public school classroom teacher from a public school to receive the Education Leadership Oklahoma Scholarship. ~~Candidates~~Applicants shall be ranked (from highest to lowest), based on the score of the application. In case of a tie score, the locale (under represented areas of the state may be given consideration) for candidate selection.
(3) OCTP shall develop the application and any associated deadlines.
(4) OCTP shall provide candidates, his/her school district and other organizations of the names and contact information of ELO candidates.
(5) OCTP shall designate the place and time for each application review and candidate selection process.
(6) The application review committee shall review and score applications to award scholarships.
(A) The selection committee consists of thirteen members- preferably National Board Certified Teachers.
(B) The application review committee may serve as oversight of a subcommittee that will read and score Education Leadership Oklahoma applications.
(C) Application review committee members will participate in training to score applications and may train and conduct the application reading with the subcommittee members.
(D) Each application review committee member may choose up to five classroom teachers, preferably National Board Certified Teachers if available, to assist that member in reading and scoring the applications. The subcommittee members shall be selected by the following guidelines. During their term the subcommittee member shall:
(i) Have at least three years of teaching experience in an accredited school;
(ii) Be a full time public school classroom teacher or is a National Board Certified Teacher;
(E) The application review committee members and/or subcommittee members shall serve a term of no more than five years.
(F) If an application review committee member resigns before the end of his/her term, the agency responsible for that nomination will submit a nomination of a person to replace that member.
(7) The selection process may include an application with requested information, short answer question(s), and an essay. The items reviewed may include:
(A) Knowledge of NBPTS process
(B) Inclusion of the five core propositions within the essay question
(C) Degree to which the applicant's essay conveys his/her application of the five core propositions
(D) Demonstration of community involvement
(E) Demonstration of parental involvement
(F) Demonstration of educational achievement
(G) Conveyance of commitment to rigorous process
(H) Provision of quality writing which is clear and sufficiently elaborated
(I) Demonstration of knowledge, ability, and leadership
(8) The candidate shall be chosen based on scores determined within the application process.
(b) Selection and Utilization of Alternates.
(1) Alternate must be a current, full-time, public school classroom teacher to receive the Education Leadership Oklahoma Scholarship.
(2) Alternates shall be ranked (from highest to lowest), based on the score of the application. In case of a tie score, the locale (under represented areas of the state may be given consideration) for candidate selection.
(3) Alternates not selected during the year may reapply for candidacy the following year.

(c) Payment and reimbursement of ~~application~~assessment fees

(1) OCTP shall make ~~certification fee~~assessment fee payments in full for each scholarshipcandidate to the NBPTS~~.~~, upon signing a contract.

(2) OCTP shall make a payment of a stipend after the application deadline to each candidate receiving the Education Leadership Oklahoma Scholarship.

(3) Should a candidate not be able to complete the process ~~after~~by the ~~application~~National Board deadline, the following shall apply:

(A) If the candidate withdraws by the ~~portfolio~~National Board deadline and OCTP can recover partial amount of the application fee, the candidate may pay the amount not recovered and will then be placed in the next applicant pool. ~~However, the candidate will not receive another stipend.~~

(B) If the candidate does not withdraw or submit a portfolio by the National Board deadlines, he/she will be responsible to OCTP for the reimbursement of the ~~application fees~~assessment fee and will not be eligible for another Education Leadership Oklahoma Scholarship.

(4) OCTP shall reimburse candidates who pay the National Board ~~application~~assessment fee as long as they are a full-time, public school classroom teacher in the year in which they certify.

(5) OCTP will fund a maximum of two retakes for reassessment to candidates that bank scores with the NBPTS provided funding is available.

[OAR Docket #05-1054; filed 6-1-05]

TITLE 715. TEACHERS' RETIREMENT SYSTEM
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-1052]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
715:1-1-15. [AMENDED]
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Changes to **715:1-1-15** are necessary because of changes in IRS regulations.
CONTACT PERSON:
Jacqueline Scott Shannon, Communications Director/Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4743

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

715:1-1-15. Distribution Rules

(a) Notwithstanding any other provision of the administrative code, all benefits paid from the retirement system (other than the tax-sheltered annuity program) shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and ~~any regulations under that section~~ Treasury Regulations § 1.401(a)(9)-1 through § q.401(a)(9)-9, even if the member has not submitted the appropriate notice. ~~In furtherance of this rule, the Board of Trustees and its designee will apply the following provisions:~~ These provisions override any distribution options that are inconsistent with Internal Revenue Code Section 401(a)(9).

(b) In furtherance of this section, the Board of Trustees and its designee will apply the following provisions:

(1) ~~For purposes of determining benefits, the life expectancy of a member or a member's spouse shall not be recalculated after benefits commence.~~ The entire interest of each member:

(A) will be distributed to such member not later than the required beginning date; or

(B) will be distributed beginning not later than the required beginning date, in accordance with Treasury regulations over the life of such member or over the lives of such member and a designated beneficiary (or over a period not extending beyond the life expectancy of such member or the life expectancies of such member and a designated beneficiary).

(2) ~~If a member dies before distribution of the member's benefits begins, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died.~~ If distribution of the member's interest has begun in accordance with subparagraph (1)(B) and the member dies before his or her entire interest has been distributed to the member, the remaining amount shall be distributed

at least as rapidly as under the method of distribution being used under subparagraph (1)(B) as of the date of the member's death.

(3) ~~The amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the Internal Revenue Code.~~ If a member dies before distribution of the member's benefits begins under subparagraph (1)(B), and if any portion of the member's interest is payable to or for the benefit of a designated beneficiary for the beneficiary's lifetime or for a period not to exceed the beneficiary's life expectancy, the distribution must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. However, if the designated beneficiary is the surviving spouse of the member:

(A) the date on which the distribution is required to begin shall not be earlier than the date on which the member would have attained age 70 1/2, and

(B) if the surviving spouse dies before the distribution to such spouse begins, subparagraph (1)(B) shall be applied as if the surviving spouse were the member.

(4) For benefit payments to beneficiaries that are not covered by paragraph (3), if the member dies before distribution of the member's interest has begun in accordance with subparagraph (1)(B), the member's entire interest must be distributed within 5 years after the member's death.

(5) For purposes of this section, the term "required beginning date" means April 1 of the calendar year following the later of:

(A) the calendar year in which the employee reaches age 70 1/2 or

(B) the calendar year in which the employee retires.

(6) For purposes of determining benefits, the life expectancy of a member, a member's spouse or a member's beneficiary shall not be recalculated after benefits commence.

(7) The amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Internal Revenue Code Section 401(a)(9)(G).

[OAR Docket #05-1052; filed 6-1-05]

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

[OAR Docket #05-1053]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Post-Retirement Employment
715:10-17-14. [NEW]

AUTHORITY:
70 O.S. Section 17-101, et seq., especially Section 17-106; Board of Trustees
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
715:10-17-14 is a new rule clarifying the starting and stopping of retirement benefit checks when a retiree voluntarily returns to employment and reaches or exceeds the annual earnings limit.
CONTACT PERSON:
Jacqueline Scott Shannon, Communications Director/Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4743

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 17. POST-RETIREMENT EMPLOYMENT

715:10-17-14. Termination and Resumption of Benefit Payments

When a member returns to employment in a position that requires suspension of benefit payments, the following will apply:

(1) If the member commences employment after the 15th of the month the benefit payment for that month will be paid at the end of the month.

(2) If the member commences employment on or before the 15th of the month the benefit payment for that month will not be due and must be refunded if paid to the member..

(3) If the member terminates employment on or before the 15th of a month and the Teachers' Retirement System is notified prior to the 20th of the month the benefit payment for that month will be paid at the end of the month.

(4) If the member terminates employment after the 15th of a month the benefit payment for than month will not be due.

[OAR Docket #05-1053; filed 6-1-05]

TITLE 720. STATE TEXTBOOK COMMITTEE
CHAPTER 10. TEXTBOOK SELECTION

[OAR Docket #05-1117]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 3. Bidding Procedures
720:10-3-5. Materials to be considered for adoption [AMENDED]
AUTHORITY:
State Textbook Committee; Article XIII, section 6 of the Oklahoma Constitution and 70 O.S., § 16-118
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of establishing this rule is to define what a pilot program is in the state of Oklahoma and to set guidelines for the times in which a pilot program may be implemented in the schools.
CONTACT PERSON:
Paige Phillips, (405) 521-3456

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 11, 2005:

SUBCHAPTER 3. BIDDING PROCEDURES

720:10-3-5. Materials to be considered for adoption

(a) One copy of each textbook and one sample of each learning package, kit comprehensive materials shall be filed with the office of the Secretary of the state Textbook Committee on or before the date specified in the schedule for the textbook adoption process. Textbooks must be in final form.

(b) One copy of each textbook and one sample of each learning package, kit comprehensive material and materials not listed as free shall be provided to each member of the State Textbook Committee and to each Congressional District Review Center. Failure to deliver samples by the date established by the State Textbook Committee calendar will result in a bid rejection.

(c) Samples of textbooks provided to the State Textbook Committee members and their advisors may be returned to the publishers, donated to a school district or donated to a college or university. Under no circumstances shall the samples become the personal property of the committee member or the advisor. Under no circumstances shall the samples be sold or donated for resale purposes.

(d) In order for a library or university to be designated by the State Textbook Committee as a Congressional District Review Center the library or university must agree to the following conditions:

(1) conveniently display materials immediately upon the receipt of materials and maintain the display until such date adopted by the State Textbook Committee;

(2) obtain approval of the State Textbook Committee before disposing or distributing the materials to any other person or entity; and remove materials from public access once they are adopted. Materials may remain accessible for on-site use to a limited audience (education professionals and pre-service teachers);

(3) sample materials may be returned to the publisher or may be disposed of with the approval of the State Textbook Committee

(e) Highly-visible, permanent labels stating, "sample not to be sold" must be attached to each item furnished as a sample to the State Textbook Committee, Congressional Review Centers and the office of the Secretary of the State Textbook Committee,

(f) Consumable materials must be clearly marked as consumable.

(g) Each publisher must warrant that all books adopted shall comply with the standards in the Manufacturing standards and Specifications for Textbooks approved by the National Advisory Commission on Textbook Standards.

(h) The State Textbook Committee favors regular editions, but special editions may be considered provided the differences between the two (2) editions are set forth with the bid.

(i) Multimedia and related materials will be considered for adoption.

(j) Teacher materials will be adopted as separate items only at the kindergarten level and ESL.

(k) Instructional Materials shall be adopted in no more than one (1) core subject cycle.

(l) A hardbound copy and a softbound copy of the same text are considered to be the same book and when bid together fill one (1) position.

(m) A book which has been bid and rejected by the State Textbook Committee cannot be bid again for the subject contract cycle unless allowed by law.

(n) Instructional computer software, including, but not limited to applications using computer assisted instruction, interactive videodisc, other computer courseware, and magnetic media, shall include comprehensive teacher materials listing special requirements for the respective subject or course along with

(1) instructions on how to use the instructional computer software;

(2) an inventory of the components of the instructional computer software system;

(3) specifications for the hardware necessary to operate the system;

(4) technical support via at least a 15-hour toll-free telephone line.

(o) Specifications for the hardware necessary to operate the instructional computer software system must be identified. If the hardware and equipment essential for review of the materials bid in any category is not available, it shall be supplied to the State Textbook Committee, Congressional District Review Centers, and the State Department of Education for the duration of the review process.

(p) Publishers may not pilot programs to be bid for adoption without explicit written permission from the district superintendent and site administrator. Pilots must be completed no later than one adoption cycle year prior to the opening and consideration of bids in that subject area. Violation of this rule will result in immediate removal from the state textbook list.

[OAR Docket #05-1117; filed 6-6-05]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 15. FISCAL, PERSONNEL AND GENERAL OPERATIONS

[OAR Docket #05-1118]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 31. Refunds
Part 3. State Parks
725:15-31-10. Refunds of advance deposits for reservations [AMENDED]
725:15-31-11. Refunds for advance payment [AMENDED]
Part 5. Golf Courses
725:15-31-20. Refunds for purchase of merchandise from golf course pro shops [AMENDED]
725:15-31-21. Refunds for green fees and cart rental [AMENDED]
Part 7. State Lodges
725:15-31-30. Refunds of advance deposits for reservations [AMENDED]
725:15-31-31. Refunds for advance payment [AMENDED]
725:15-31-32. Refunds for purchase of merchandise from gift shops [AMENDED]
Part 9. Oklahoma Today Magazine
725:15-31-41. Refunds for purchase of merchandise [AMENDED]

AUTHORITY:
Oklahoma Tourism and Recreation Commission to make rules pursuant to Sections 1830 and 1847.1 of the Oklahoma Statutes.

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N/A

ANALYSIS:
Existing Sections 725:15-31-10 and 725:15-31-11 have been amended to allow state parks to issue refunds in excess of $100.00 by check. Currently, the checks are issued by the Administrative Offices in Oklahoma City.

Existing Sections 725:15-31-20 and 725:15-31-21 have been amended to allow state golf facilities to issue refunds of up to $500.00 by check. The amendments further require that refunds of greater than $500.00 be issued by the Administrative offices in Oklahoma City. Currently, all refunds greater than $100.00 must be issued by the Administrative offices in Oklahoma City.

Existing Section 725:15-31-30 has been amended to allow a state lodge to issue, by check, a refund in excess of $100.00 for advance deposits required by OAC 725:30-12. Currently, such refunds are issued by the Department's administrative offices in Oklahoma City.

Existing Section 725:15-31-31 has been amended to allow state lodges to issue refunds for advance payments by a lodge guest. Advance payment refunds are allowed when a guest chooses to vacate a state lodge facility due to unsuitable conditions. Currently, the lodges may issue cash refunds of up to $100.00. Refunds in excess of $100.00 must be issued by the Department's administrative offices in Oklahoma City.

Existing Section 725:15-31-32, regarding refunds for purchases made at state lodge gift shops, has been amended to allow a facility to issue a refund of up to $500.00 by check. Refunds greater than $500.00 will be issued by the Department's administrative offices in Oklahoma City. Currently, the facility may issue a cash refund of up to $100.00 and refunds in excess of $100.00 must be issued by the administrative offices.

CONTACT PERSON:
Sara Gibson, Oklahoma Tourism and Recreation Department, 15 N. Robinson, Suite 600, Oklahoma City, OK 73102, 405/521-3287.

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 11, 2005:

SUBCHAPTER 31. REFUNDS

PART 3. STATE PARKS

725:15-31-10. Refunds of advance deposits for reservations

(a) In order to insure a refund from state parks for advance deposits required in accordance with OAC 725:30-12, notice of cancellation must be received in advance of the check-in or arrival date as follows:

(1) Park cabins, reserved/assigned campsites, community buildings, amphitheaters, shelters and meeting rooms - 5 days.

(2) Group Campsites - 10 days.

(3) Large group and rallies - 30 days.

(4) Group camps - 60 days.

(b) Notice of cancellation shall be provided by mail or telephone to the park unit or entity where the reservation was originally made.

(c) Refunds in excess of One Hundred Dollars ($100.00) ~~may~~ will be in the form of a check issued by the ~~department's administrative offices in Oklahoma City~~ facility.

725:15-31-11. Refunds for advance payment

(a) Cash refunds may be made when a guest has occupied state park accommodations and chooses to vacate the facility due to unsuitable conditions prior to their planned departure and has paid for accommodations in advance. Inoperable utilities, pest infestation or personal emergencies are examples of conditions warranting a refund.

(b) A cash refund may be made locally at the facility's discretion for refunds not greater than One Hundred Dollars ($100.00).

(c) Refunds greater than One Hundred Dollars ($100.00) will be made in the form of a check issued by the ~~Department's administrative offices in Oklahoma City~~ facility.

(d) No refunds will be made if comparable state park accommodations are made available to the guest in lieu of the unsuitable accommodations.

(e) Such determination of conditions and whether comparable state park accommodations are available shall be made by the facility manager.

PART 5. GOLF COURSES

725:15-31-20. Refunds for purchase of merchandise from golf course pro shops

Refunds for golf course pro shop purchases may be made upon return of merchandise accompanied by the original sales receipt using one of the following methods:

(1) A cash refund may be made locally at the facility's discretion for refunds not greater than One Hundred Dollars ($100.00).

(2) Refunds ~~greater than~~ up to ~~One~~ Five Hundred Dollars ~~($100.00)~~ ($500.00) will be made in the form of a check issued by the ~~department's administrative offices in Oklahoma City~~ facility.

(3) Refunds greater than Five Hundred Dollars ($500.00) will be made in the form of a check issued by the Department's administrative offices in Oklahoma City.

725:15-31-21. Refunds for green fees and cart rental

(a) Refunds for golf course green fees and cart rental may be made when an individual cannot play the number of holes for which fees were paid using one of the following methods:

(1) A cash refund may be made locally at the facility's discretion for refunds not greater than One Hundred Dollars ($100.00).

(2) ~~Refunds greater than One Hundred Dollars ($100.00) will be made in the form of a check issued by the department's administrative offices in Oklahoma City.~~ Refunds up to Five Hundred Dollars ($500.00) will be made in the form of a check issued by the facility.

(3) Refunds greater than Five Hundred Dollars ($500.00) will be made in the form of a check issued by the department's administrative offices in Oklahoma City.

(b) Golf course managers reserve the right to prorate the amount of a refund based upon the number of holes played.

PART 7. STATE LODGES

725:15-31-30. Refunds of advance deposits for reservations

(a) In order to insure a refund from state lodges for advance deposits required in accordance with OAC 725:30-12, notice of cancellation must be received five (5) days in advance of the check-in or arrival date at a state lodge, unless otherwise specified by sales contract.

(b) Notice of cancellation shall be provided by mail or telephone to the lodge.

(c) Refunds in excess of One Hundred Dollars ($100.00) will be in the form of a check issued by the ~~Department's administrative offices in Oklahoma City~~state lodge.

725:15-31-31. Refunds for advance payment

(a) Cash refunds may be made when a guest has occupied state lodge accommodations and chooses to vacate the facility due to unsuitable conditions prior to their planned departure and has paid for accommodations in advance. Inoperable utilities, pest infestation and personal emergencies are examples of conditions warranting a refund.

(b) A cash refund may be made locally at the facility's discretion for refunds not greater than One Hundred Dollars ($100.00).

(c) Refunds greater than One Hundred Dollars ($100.00) will be made in the form of a check issued by the ~~Department's administrative offices in Oklahoma City~~facility.

(d) No refunds will be made if comparable lodge accommodations are made available to the guest in lieu of the unsuitable accommodations.

(e) Such determination of conditions and whether comparable lodge accommodations are available shall be made by the lodge manager.

725:15-31-32. Refunds for purchase of merchandise from gift shops

Refunds for lodge gift shop purchases may be made upon return of merchandise accompanied by the original sales receipt using one of the following methods:

(1) A refund not greater than One Hundred Dollars ($100.00) may be made locally at the facility's discretion in the form of cash.

(2) ~~A refund greater than One Hundred Dollars ($100.00) will be made in the form of a check issued by the Department's administrative offices in Oklahoma City.~~ A refund up to Five Hundred Dollars ($500.00) will be made in the form of a check issued by the facility.

(3) A refund greater than Five Hundred Dollars ($500.00) will be made in the form of a check issued by the Department's administrative offices in Oklahoma City.

PART 9. OKLAHOMA TODAY MAGAZINE

725:15-31-41. Refunds for purchase of merchandise

(a) Refunds for purchases may be made upon return of merchandise to Oklahoma Today Magazine accompanied by the original sales receipt.

(b) ~~Refunds will be in the form of a check issued by the Department's administrative offices in Oklahoma City.~~ Refunds up to Five Hundred Dollars ($500.00) will be made in the form of a check issued by Oklahoma Today Magazine.

(c) Refunds greater than Five Hundred Dollars ($500.00) will be in the form of a check issued by the Department's administrative offices in Oklahoma City.

[OAR Docket #05-1118; filed 6-6-05]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 30. DIVISION OF STATE PARKS

[OAR Docket #05-1120]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 4. Public Use and Recreation
725:30-4-10. Horses, llamas and pack animals [AMENDED]
725:30-4-26. Swimming and associated swimming activities [AMENDED]
Subchapter 8. Camping and Day Use
725:30-8-1. Definitions [AMENDED]
725:30-8-3. Fee collection, restrictions and exemptions [AMENDED]
Subchapter 12. Reservations and Use of Cabins, Group Camps, Shelters, Reserved/Assigned Camping Facilities, Amphitheaters, Community Building and Meeting Rooms
725:30-12-5. Reserved/assigned and group camping [AMENDED]
Subchapter 24. Golf
725:30-24-1. Prohibitions [AMENDED]
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N/A
ANALYSIS:

Existing Section725:30-4-10 has been amended to require proof of a negative Coggins test for every horse, llama or other pack animal brought into a state park. The documentation of the negative Coggins test must be in conformance with the rules of the Oklahoma Department of Agriculture.

Existing Section 725:30-4-26 has been amended to prohibit swimming within 150 feet of a boat ramp, boat dock or public fishing pier. Currently, the rules prohibit swimming within 50 feet of those areas.

Existing Section 725:30-8-1 has been amended to broaden the definition of a "family unit". Currently, a "family unit" is defined as a mother and/or father and dependant children under the age of 18. The amended definition allows a married couple, an adult or two adults with dependant children to qualify as a "family unit".

Existing Section 725:30-8-3 has been amended to add the defined term family unit to the rule regarding camping fee collections. Currently, the subsection of the rule refers only to a "family", which is not a defined term. The amendment eliminates confusion about the rule.

Existing Section 725:30-12-5 has been amended to allow groups to make advance reservations, at the park manager's discretion, not in excess of three years from the date of application. The rule has also been amended to remove the old address of the Department's headquarters.

Existing Section 725:30-24-1 has been amended to require that any golf cart rented from a state golf course, and operated outside the boundaries of the course, is to be operated in conformance with rules and laws governing the use of vehicles on public roads.

CONTACT PERSON:
Sara Gibson, Oklahoma Tourism and Recreation Department, 15 N. Robinson, Suite 600, Oklahoma City, OK 73102, 405/521-3287.

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 11, 2005:

SUBCHAPTER 4. PUBLIC USE AND RECREATION

725:30-4-10. Horses, llamas and pack animals

The following is prohibited in state parks:

(1) The use of horses, llamas and pack animals outside of trails, routes or areas designated for their use.

(2) The use of horses, llamas and pack animals on a park road, except where such travel is necessary to cross to

or from a designated trail or area and no alternative routes have been designated; or the road has been closed to motor vehicles or under emergency conditions.

(3) Allowing a horse, llama or pack animal to act in an uncontrollable or imprudent manner when such animal is controllable by the owner.

(4) Bringing a horse, llama or pack animal to a park unit that is dangerous and/or not able to be controlled by its owner.

(5) Failing to retrieve and properly dispose of excrement within campgrounds or other heavily used public areas within a state park unit.

(6) Individuals who bring horses into an Oklahoma State Park must have documentation that verifies that the animal(s) has/have had a negative Coggins test in conformance with rules of the Oklahoma Department of Agriculture.

725:30-4-26. Swimming and associated swimming activities

The following is prohibited in state parks:

(1) Swimming or bathing in areas designated as closed.

(2) Swimming within ~~50~~ 150 feet of a boat ramp, boat dock or public fishing pier.

(3) Having any child 12 years of age or younger, within a designated swimming area, unattended by an adult who is 18 years of age or older.

(4) Possessing any glass container or glass material in a designated swimming area.

(5) Swimming in violation of the posted restrictions set forth by the park manager.

(6) Utilizing a pool without a lifeguard present except when posted otherwise.

SUBCHAPTER 8. CAMPING AND DAY USE

725:30-8-1. Definitions

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

"Primitive campsite" means a site or area where there are no utilities, sanitation facilities or developments and is generally a significant distance from emergency services.

"Unimproved campsite" means a site where there is no water, electric or sanitation hookups for recreational vehicles but water, tables and grills are available in the area.

"Semi-modern campsite" means a site with a table, grill and electric utility service and water hydrants either at the site or in the area.

"Modern campsite" means a site which may have a table, grill, electric utility service, sanitation dump and water.

"Tent site" means a campsite where tents may be erected for overnight camping which includes erecting tents upon unimproved, semi-modern or modern campsites.

"Reserved/assigned camping" means camping in an area with gate and site attendant present during the recreation season. Reservations are accepted.

"Non reserved/assigned camping" means camping in an area which is not secured with a gate and a site attendant may not be present. Reservations are not accepted and is based on first-come, first-served.

"Family unit" means ~~mother and/or father and dependant children under the age of 18~~either a married couple, an adult (over 18 years of age, or two adults with a child or children who are under 18 years of age.

"Camping/sleeping unit" means any method used for remaining overnight for the purpose of camping in a state park unit which includes but is not limited to tents, vehicles, cots, sleeping bags or any other method not described herein.

725:30-8-3. Fee collection, restrictions and exemptions

(a) The daily fee covers use of facilities from 5:00 p.m. on day of payment until 5:00 p.m. the following day.

(b) Camping fee receipts are non-transferable.

(c) Camping fee receipts shall be maintained at the campsite and available for review upon request by the park manager, park ranger or any other official designated to collect fees.

(d) Unimproved camping fees shall be assessed and charged in the following manner:

(1) Persons in a "family unit" shall only be charged one (1) unimproved camping fee regardless of the number of "sleeping units".

(2) Persons not in a family unit shall be charged one (1) fee for each "sleeping unit".

(3) Organized groups shall be charged according to the rule of four (4) which is one (1) unimproved fee for each multiple of four (4) persons. Children's groups may receive a discount in accordance with 725:30-6-1(b)(3).

(e) Improved camping fees shall be assessed and charged in the following manner:

(1) One (1) recreational vehicle fee shall be charged for each unit occupying an improved site.

(2) If the improved site is not occupied by a recreational vehicle but rather with other "sleeping unit" methods the rules defined under (d) of this section shall apply and improved camping fees shall be assessed.

(3) One (1) tent only may be established as an extension to a recreational vehicle in an improved site. There shall be no charge for dependant children under the age of 18 whose parent or parents are occupying the improved site. Any other person, such as friends or relatives, shall be charged one (1) unimproved fee for the extra tent. Fees for use of utilities for the additional tent will be in accordance with the utility fee structure for improved sites.

(f) Any person who utilizes any type of campsite, regardless of equipment, shall pay the established fee for said site.

SUBCHAPTER 12. RESERVATIONS AND USE OF CABINS, GROUP CAMPS, SHELTERS, RESERVED/ASSIGNED CAMPING FACILITIES, AMPHITHEATERS, COMMUNITY BUILDINGS AND MEETING ROOMS

725:30-12-5. Reserved/assigned and group camping

(a) **Reservations and reservation priorities - reserved/assigned camping.**

(1) Reservations shall be accepted on a year-to-day basis.

(2) Reservations shall be taken on a first-come, first-served basis.

(3) A reservation can be made by contacting the park unit in which the reservation is requested.

(4) The minimum reservation shall be for 2 nights on weekends and 3 nights on holiday weekends during the season.

(5) If accepted, a request reservation deposit shall be mailed or presented to the person requesting a reservation. The deposit shall be equal to the first night's rate (3 nights on holiday weekends) and presented to the park unit within 14 days (excluding Sundays) from the day the request for deposit was mailed from the park unit or the reservation shall be cancelled.

(6) Cancellation of the reservation shall be made 5 days in advance of the occupancy date or the deposit shall be subject to forfeiture.

(7) Reservations shall be held without guarantees until 6:00 p.m. Reservations may be held after 6:00 p.m. with prepayment by check, money order or accepted credit cards in those parks that provide credit card services.

(8) Persons may reserve a campsite in person on a first-come, first served basis when campsites have not been reserved and are available at the established reserved/assigned campground fee.

(9) Sites shall be reserved by availability and not by site number.

(10) One tent may be established in the immediate area of a rented site and a fee may be imposed at the discretion of the park manager.

(11) The provisions in (1) through (9) of this subsection apply only to State Parks offering reserved camping.

(b) **Reservation and reservation priorities - group camping.**

(1) Reservations shall be accepted for groups when there will be 5 or more sites occupied by the group for 2 or more consecutive nights or 3 consecutive nights on holiday weekends on a year-to-day basis. At the park manager's discretion, reservations for groups (5 or more sites) may be requested for dates not in excess of three years from the date of application.

(2) A reservation can be made by contacting the park unit in which the reservation is requested 75 days in advance of the date of arrival.

(3) Reservations shall be made by 1 person representing the entire group. The group representative shall provide the park unit:

(A) The arrival and departure dates;

(B) The number of campsites which will be occupied by the group; and

(C) The number of members applicable to a discount as defined in 725:30-6-1.

(4) The provisions (1) through (3) of this subsection apply only to state Parks offering reserved group camping.

(5) Two methods of advance deposits are available for groups.

(A) ~~A security bond deposit in the amount of $200.00 will allow groups to make unlimited reservations for a year. The deposit shall be submitted to the Camping Programs Coordinator, Division of State Parks, 2401 North Lincoln Boulevard, Suite 500, Oklahoma City, Oklahoma 73105. The Department shall hold the deposit which shall serve as a security bond.~~ A security bond deposit in the amount of $200.00 allows groups to make unlimited campground reservations for up to three years in advance. The deposit shall be submitted to the headquarters of the Oklahoma Tourism and Recreation Department.

(i) Upon notice of a group reservation a reservation confirmation shall be sent to the group representative.

(ii) When the $200.00 security bond deposit level is reduced by the terms set forth in (b)(5) of this section the group representative shall reestablish the $200.00 level within 10 days notice from the Department.

(B) Non-security bond deposits shall be made by the group representative 60 days in advance of arrival date in accordance with the following requirements or the reservation will be cancelled:

(i) The amount of deposit shall be equal to the first night's rate multiplied by the number of reserved sites, except on weekends and holidays.

(ii) The amount of deposit shall be equal to the nightly rate for 2 nights multiplied by the number of sites on weekends during the season.

(iii) The amount of deposit shall be equal to the nightly rate for 3 nights multiplied by the number of sites on holiday weekends during the season.

(iv) Upon receipt of deposit for non-security bond deposit a reservation confirmation shall be sent to the group representative.

(6) Notice of cancellation for the entire group shall be received by mail or telephone from the group representative 10 days in advance of the occupancy date or the deposit amount will be deducted from the security bond deposit or the deposit will be forfeited for non-security bond deposits.

(7) Upon arrival at the reserved/assigned campground the group representative or designee shall provide payment for the balance of the reservation period and verification for senior citizen and totally disabled person discounts for the entire group.

(8) Visitation and reservation circumstances shall dictate consecutive site allocation for groups.

(c) **Reservation and reservation priorities - rallies and large groups.**

(1) Reservations shall be accepted outside of campgrounds for groups in excess of 20 recreational vehicle units where park facilities can accommodate the size of the group on a year-to day basis.

(2) A reservation can be made by contacting the park unit in which the reservation is requested 75 days in advance of the date of arrival.

(3) Reservations shall be made by 1 person representing the entire group. The group representative shall provide the park unit:

(A) The arrival and departure dates;

(B) The number recreational vehicles; and

(C) The number of members applicable to a discount as defined in 725:30-6-1.

(4) A deposit shall be required in accordance with the terms set forth in (b)(4) of this section.

(5) Notice of cancellation for the entire group shall be received by mail or telephone from the group representative 30 days in of the occupancy date or the deposit amount will be deducted from the security bond deposit or the deposit will be forfeited for non-security bond deposits.

(6) A permit requiring liability insurance may be required contingent upon activities conducted by the group in accordance with rules set forth in subchapter 16 of this chapter.

(7) Upon arrival the group representative or designee shall provide payment for the balance of the reservation period for the entire group.

(d) **~~Transfering~~ Transferring of reservations.** The transferring of campsite reservations is prohibited.

SUBCHAPTER 24. GOLF

725:30-24-1. Prohibitions

Except as otherwise provided in this section, the following is prohibited in state parks:

(1) Using a golf course or any portion thereof without having paid prescribed fees in advance except when so authorized by the golf course manager.

(2) Operating a golf cart in a reckless or otherwise careless or wanton manner without due regard for the safety of persons or property.

(3) Rental and use of golf cart by any person under the age of 18.

(4) ~~Operating a golf cart outside the defined boundaries of a golf course.~~ A golf cart rented from a golf course and operated outside the course's boundaries is to be operated in conformance with 725:30-28-4.

(5) Operating a golf cart beyond passenger or occupancy capacity limits set forth by the manufacturer.

(6) Failing to return a rental golf cart by sunset.

(7) Participating in a game of golf without a set of golf clubs for each person.

(8) Possessing a pet except as defined in 725:30-4-9(f).

(9) Glass containers of any kind except when authorized by the golf course manager.

(10) Allowing children under the age of 12 upon any portion of the golf course without a parent or guardian who is 18 years of age or older.

(11) Carrying or possessing personal golf equipment in a golf pro shop.

(12) Wearing inappropriate clothing, or the absence of required clothing apparel inside thegolf pro shop. Such requirements shall be set forth by the golf course manager and posted at the entrance of the golf pro shop.

[OAR Docket #05-1120; filed 6-6-05]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT
CHAPTER 30. DIVISION OF STATE PARKS

[OAR Docket #05-1119]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 6. Fees, Discounts and Waivers
725:30-6-1. [AMENDED]
AUTHORITY:
Oklahoma Tourism and Recreation Commission to make rules pursuant to Sections 1830 and 1847.1 of the Oklahoma Statutes.
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Subchapter 6. Fees, Discounts and Waivers
725:30-6-1. Fee authority, requirements, discounts and waivers [AMENDED]
Gubernatorial approval:
May 11, 2004
Register publication:
21 Ok Reg 1979
Docket number:
04-990
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Existing Section 725:30-6-1 has been amended to allow a fee discount for those 62 years of age and older, regardless of whether the guest's home state provides a discount for Oklahoma residents [74:1847.1(B)(1)].

The existing Section has been amended to conform to the statute regarding fee discounts for guests with disabilities [74:1847.1(B)(2)]. The acceptable methods for proving disability have been amended, but none of the current acceptable methods for proving disability have been removed from the rule.

The existing Section has been amended to establish the methods and procedures for collection of entrance or day-use charges established by the Oklahoma Tourism and Recreation Commission.

CONTACT PERSON:

Sara Gibson, Oklahoma Tourism and Recreation Department, 15 N. Robinson, Suite 600, Oklahoma City, OK 73102, 405/521-3287.

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 11, 2005:

SUBCHAPTER 6. FEES, DISCOUNTS AND WAIVERS

725:30-6-1. Fee authority, requirements, discounts and waivers

(a) Recreation fees are hereby established as approved by the Oklahoma Tourism and Recreation Department Commission. The Commission shall prescribe rates, fees, tolls, or charges for the services, facilities and commodities rendered by all property of the Commission [74:1847.1(A)(11)]. Such fees, rates and charges shall be based upon staff recommendation pursuant to prevailing market conditions for similar facilities, services or merchandise. Fees, rates and charges shall be structured in a manner that is competitive with the private sector and avoids undercutting.

(b) All fees and charges shall be posted in a convenient location in each park. Every person using any facility shall be charged with the same fee except:

(1) Individuals 62 years of age and over and his or her spouse~~, provided that their home state provides similar discounts to Oklahoma residents,~~ are entitled to discounts for camping, cabin rental, golf, cave tours, swimming and bicycle rentals. A driver's license shall be used for verification of age~~ and residency state. A current list of reciprocal states and discounts offered shall be available and park offices~~ [74:1847.1(B)(1)].

(2) Individuals who have been certified as totally ~~(100%)~~ disabled ~~or blind~~ as defined by state or federal law and ~~immediate family members (living in household)~~ their spouses shall be entitled to a discount which shall apply to ~~camping, cabins, golf, cave tours, swimming and bicycle rentals,~~ use of, or access to, recreation facilities, regardless of residency. ~~Accepted means of verifying total disability are by the presentation of a medicare card; hunting and fishing license issued by the Veteran's Administration; award letter of disability from a retirement insurance board, commission or administrator which defines total disability, or a letter from their physician defining total disability.~~ Acceptable means of verifying total disability include: the presentation of a Medicare card issued to an individual prior to their 65th birthday; a Notice of Award letter from the Social Security Administration; hunting and fishing license that notes total disability; award letter issued by the Department of Veterans Affairs or a document issued by a retirement or insurance board, commission or administration that attests to the individual's total disability; or a physicians letter, on letterhead stationery, that declares the individual is totally disabled. [74.1847.1(B)(2)].

(3) Children's groups that provide beneficial services are entitled to discounts for camping, shelters and swimming [74:1847.1(B)(3)]. Such services shall be restricted to projects which provide environmental education awareness such as tree planting, refuse clean up, or wildlife habitat improvement. Children's groups performing a minimum of 2 hours service toward such projects shall be entitled to prescribed fee discounts. For the purpose of this section a group is 5 or more persons and a child is a person under the age of 18.

(c) The director may, when in the public interest, prescribe times or periods during which the collection of fees may be waived or suspended.

(d) The director may offer special group or promotional rates in accordance with 74 O.S., Section 1834. Current discounts are offered for camping to the Good Sam Club and Family Campers and RVers Association.

(e) Using campground sites, facilities, equipment or services, or participation in group activities, recreation events, or other specialized recreation used for which fees have been established without paying such fees is prohibited. Violation of the terms and conditions of this section may result in the suspension or revocation of the use of the facility, equipment or service or any other penalties prescribed by state law.

(f) Entrance or day-use charges established by the Oklahoma Tourism and Recreation Department Commission, in accordance with 725:30-6-1, shall be evidenced by a receipt or pass sold upon demand from the public or at the entrance of any designated entrance or day-use charge facility. The method of collection will be by deposit in a self-pay receptacle or payment to Department personnel who will provide a cash receipt.

[OAR Docket #05-1119; filed 6-6-05]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT
CHAPTER 30. DIVISION OF STATE PARKS

[OAR Docket #05-1121]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 22. Concession Leases

725:30-22-8. Grievance Process [NEW]

AUTHORITY:

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N/A
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N/A
ANALYSIS:
New Section 725:30-22-8 creates a process for customers to file grievances against contracted concessionaires in state parks. A customer may file a grievance when he/she feels that the concessionaire has acted outside the bounds of standard business practices for that type of business. The grievances are submitted to the Director of Parks, Resorts and Golf for review.
CONTACT PERSON:
Sara Gibson, Oklahoma Tourism and Recreation Department, 15 N. Robinson, Suite 600, Oklahoma City, OK 73102, 405/521-3287.

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 11, 2005:

SUBCHAPTER 22. CONCESSION LEASES

725:30-22-8. Grievance process

(a) Any customer of a contracted concessionaire may file a grievance with the Oklahoma Tourism and Recreation Department when he/she feels that the concessionaire has acted outside the bounds of standard business practices for that type of business. The written grievance must be noted as "OFFICIAL GRIEVANCE REQUIRING INVESTIGATION" within the document. The grievance letter must state the circumstances or what action by the contracted concessionaire led to the grievance.

(b) The grieved party may submit the grievance in writing to the Director of Parks, Resorts and Golf for review.

(c) Grievances may be filed in regard to, but not limited to, pricing, customer service, or business policy.

(d) Upon receipt of the written grievance, the Director of Parks, Resorts and Golf will investigate the validity and whether or not the grievance falls within an area of contract non-compliance.

(e) After an investigation the Director shall draft a written response to the grieved party with his/her findings and any action, if needed, taken by the department regarding the concessionaire's business transaction with the grieved party.

(f) If the grieved party is not satisfied with the Director of Parks, Resorts and Golf response then the grieved party may make a written request that the grievance be forwarded to the Executive Director of the Oklahoma Tourism and Recreation Department.

(g) The Executive Director of the Oklahoma Tourism and Recreation Department will follow the same procedure as required of the Director of Parks, Resorts and Golf and draft a final written directive of actions, if any, the department will take regarding the contracted concessionaire.

(h) The findings of the Executive Director shall represent the final determination and the grievance process will be considered closed upon completion of the response by the Executive Director.

[OAR Docket #05-1121; filed 6-6-05]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT
CHAPTER 30. DIVISION OF STATE PARKS

[OAR Docket #05-1122]

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PERMANENT final adoption
RULES:
Subchapter 23. Mineral Leases and Operations [NEW]
725:30-23-1. Purpose and authority [NEW]
725:30-23-2. Examination [NEW]
725:30-23-3. Bidding process [NEW]
725:30-23-4. Rules and regulations [NEW]
725:30-23-5. Damages and fees [NEW]
AUTHORITY:
Oklahoma Tourism and Recreation Commission to make rules pursuant to Sections 1830 and 1847.1 of the Oklahoma Statutes.
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N/A
ANALYSIS:
New Section 725:30-23-1 informs the public of the Oklahoma Tourism and Recreation Commission's authority to enter into oil and gas leases.
New Section 725:30-23-2 sets out the factors for determining whether an oil and gas lease would be beneficial to the property and the Department.

New Section 725:30-23-3 sets out the bidding process that will be followed when the Department determines that an oil and gas lease is appropriate.

New Sections 725:30-23-4 and 725:30-23-5 set out the rights and responsibilities of a lessee and outline the damages associated with the lease.

CONTACT PERSON:

Sara Gibson, Oklahoma Tourism and Recreation Department, 15 N. Robinson, Suite 600, Oklahoma City, OK 73102, 405/521-3287.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.SO., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 23. MINERAL LEASES AND OPERATIONS

725:30-23-1. Purpose and authority

(a) The purpose of this subchapter shall be to define the process in which mineral leases located upon Oklahoma Tourism and Recreation Commission (Commission) property are examined, competitively bid, awarded and ultimately leased. General management of mineral operations is also addressed.

(b) In accordance with state law, the Commission is authorized to offer for sale, sell, and execute oil and gas leases, and other mineral and mining leases [74:1850.].

(c) The Commission may authorize the Executive Director to enter into leases, grant easements and execute such instruments as in the judgment of the Commission are necessary or convenient to the exercise of those powers and duties of the Commission pursuant to the Oklahoma Tourism and Recreation Act. [74:1847.1(A)(17)].

725:30-23-2. Examination

(a) Prior to issuing an invitation to bid for a mineral lease, a determination will be made whether the proposed lease would be an acceptable operation at the specific park property. Oklahoma Tourism and Recreation Department (Department) staff shall make this determination after an analysis of the following considerations.

(1) Environmental impact,

(2) Compatibility with the overall property and its nature,

(3) Safety of the park visitor, and

(4) Financial benefit to the Department.

(b) The determination of the Department regarding whether to proceed with issuing an invitation to bid for a minerals lease shall rest solely with the Department and shall not be subject to the Administrative Procedures Act.

725:30-23-3. Bidding process

(a) The Department shall prepare an invitation to bid (ITB) and shall advertise the mineral interest bid as set out in 74 O.S. Section 1850.

(b) All bids must be submitted in accordance with the requirement contained in the ITB.

(c) A separate bid showing the tract number and legal description must be filed on each tract. Each tract will be leased separately to the highest and best bidder. Drilling contracts or production payments will not be considered, except in a special lease sale.

(d) The minimum bid will be specified in the ITB, the notice of sale and lease.

(e) The successful bidder must pay the full cost of advertising.

(f) The successful bidder will be issued a maximum of a three (3) year commence type lease. The royalty and annual delay rental will be specified in the notice of sale.

725:30-23-4. Rules and regulations

The rights and responsibilities of the mineral lessee shall be governed by the lease document and the following rules and regulations.

(1) All pipelines, except those that are used exclusively in lease operations, must be covered by a permit. Applications for pipeline permits must include a plat of pipeline, drawn to scale, in triplicate.

(2) All pipelines, as to location and depth, must be approved by the Department.

(3) Within thirty (30) days of the completion of a producing oil and gas well, a sign shall be posted showing the name and number of the well and the legal description.

(4) On or before the last day of the month following the month of production, the lessee must file a sworn monthly report of oil produced and sold from the leased premises. This report will be filed with the Department.

(5) On or before the last day of the month following the month of production, the lessee must file a sworn monthly report of gas and casinghead gas produced and sold from the leased premises. This report must be filed with the Department and must be complete in detail.

(6) Prior to the commencement of operation, notice shall be given to the Department of intention to drill or recomplete any well, the name and number of the well, the approximate date operations will begin, and the estimated depth.

(7) Notice of intention to plug must be filed with the Department at least five (5) days prior to plugging any oil or gas well. A copy of the plugging record shall be filed with the Department within thirty (30) days of the completion of plugging operations.

(8) The lessee shall file and annual summary of lease operations on or before the first day of March. This report shall be filed with the Department and covers operations on producing leases for the previous calendar year.

(9) The Department may require special reports pertaining to production or operation of a state lease. Upon request, the lessee shall promptly submit the required reports.

(10) Within thirty (30) days after completion or recompletion of any well, a completion report shall be filed with the Department. This report shall be on the form prescribed by the Oklahoma Corporation Commission and shall be signed and sworn to by the lessee or his authorized

representative. In addition to the above report, the lessee, upon request, shall furnish to the Department a copy of any electric or other log runs on this well.

(11) All lessees shall abide by the environmental regulations that are included in the lease agreement.

(12) All lessees must post a performance bond, in the amount requested by the Department, to cover the following agreements with the Department: oil and gas lease, salt water disposal lease, and seismic exploration agreement.

(A) Bonds will be released upon written request of the lessee or bonding company if liability is terminate.

(B) All surety bonds must be made by a company authorized to do business in the State of Oklahoma.

(C) Each assignment must be accompanied by a performance bond in accordance with the Department's bond schedule, with the assignee as principal.

(D) No assignment of a state lease will be valid or vest any interest in the assignee until the same is approved in writing by the Department.

(E) Assignments of state leases may be made on any assignment form in general use in the oil and gas industry and may convey a subdivision.

(F) All assignments presented for approval which are subject to other agreements must be accompanied by a copy of such other agreement.

(G) Assignments or grants of overriding royalty do not require approval of the Department.

(13) All lease forms used in the sale of oil and gas leases shall be provided by the Department upon request.

(14) Nothing in these rules and regulations shall be construed as excepting lessees from other applicable state and federal laws, and receipt of certification of non-compliance from responsible agencies may result in the suspension of the lease.

(15) The lessee shall be liable for violation of any of the provisions herein set forth and shall make full restitution to the Department for such damages. Such damages shall be determined by the Department with the assistance of other agencies of state government.

(16) The lessee may be required to screen the mineral operation from access or viewing of the public. Such screening may include, but is not limited to fencing, berms, painting of the equipment or other actions as identified by the Department.

725:30-23-5. Damages and fees

(a) At properties where mineral operations are desired, but the Department may or may not be the owner of mineral interests, the Commission shall establish the means for evaluating the damage that occurs as a result of the operation and shall set fees attributable to the mineral operation.

(b) Mineral exploration related fees that shall be established by the Commission shall include the following:

(1) Permit fee up to $500.00.

(2) Monitoring fee up to $500.00.

(3) Roadway easement up to $2,000.00 per acre; Use of existing Department road up to $1,000.00 per mile per year.

(4) Well site up to $2,000.00 per acre.

(5) Tank and batteries up to $2,000.00 per acre if separators and related production facilities are located at other that the well site; if at same location up to $500.00 per acre.

(6) Use of water - from lakes or ponds there is a minimum of $100.00 per day or $2.00 per 1,000 gallons. Drilling of a water well will be up to $1,000.00.

(7) Pipelines shall be assessed based on a fifty (50) feet minimum width at up to $2,000.00 per acre of right of way for buried pipeline for gas or freshwater; $5,000.00 per acre of right of way for buried pipelines for oil or salt water. Above ground pipelines will not be allowed, except temporary fresh water lines during drilling or well servicing at up to $500.00 per mile.

(8) Seismograph work shall be assessed based on a twenty-five (25) feet minimum width at up to $2,000.00 per acre of land surveyed.

(9) Timber damage fees will be assessed in accordance with the actual type and number of trees damaged or removed. The expertise of state agency professionals in the appropriate field shall be utilized to assess the cost/fee associated with such damage.

(10) Other damages not specifically identified that may occur at a mineral exploration site shall be assessed based on the actual damage in the area. The expertise of state agency professionals in the appropriate field shall be utilized to assess the cost/fee associated with such damage.

[OAR Docket #05-1122; filed 6-6-05]

TITLE 735. STATE TREASURER
CHAPTER 80. UNCLAIMED PROPERTY

[OAR Docket #05-1128]

RULEMAKING ACTION:
PERMANENT final adoption.

RULES:
Subchapter 3. Reporting Requirements
Part 1. General Application
735:80-3-1. [AMENDED]
735:80-3-7. [AMENDED]
Part 3. Financial Institutions
735:80-3-10. [AMENDED]
Subchapter 9. Office Audit
735:80-9-2. [AMENDED]
Subchapter 11. Field Audit
Part 9. Insurance Corporations
735:80-11-25. [AMENDED]

AUTHORITY:
State Treasurer, 62 O.S. §§517.1 - 517.7.

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ANALYSIS:
These Permanent Rules amend the text of Chapter 80. Unclaimed Property. General reporting requirements for negative reporting will be changed from required to encouraged. A sentence will be added when mineral interest should be reported. A sentence adding statutory citation to the removal of property from safety deposit boxes or safekeeping repositories. Detailed information will be added regarding interest and penalties. Statutory reference will be added to demutualization or reorganization of insurance companies.
CONTACT PERSON:
Susan Bateman, Office of the State Treasurer, 2300 North Lincoln Boulevard, Room 217, Oklahoma City, Oklahoma 73105-4895, telephone number (405) 521-3191.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2005:

SUBCHAPTER 3. REPORTING REQUIREMENTS

PART 1. GENERAL APPLICATION

735:80-3-1. General reporting requirements

(a) Annually a holder must file a verified report of unclaimed property. If a holder has no property that is reportable, a negative report (a report or a letter stating no property is reportable) is ~~required~~ encouraged. Report forms may be obtained from OST.

(b) The report must be filed on the form(s) provided on the unclaimed property. Computer generated reports will be accepted only if provided in a format which has received prior approval from OST and if accompanied by an OST form provided for verification. Any report submitted in any format other than the prescribed format required by OST will be returned to the holder for correction.

(c) Any holder who refuses to file an Unclaimed Property report as required under the provisions of the Uniform Unclaimed Property Act or refuses to furnish records or information requested by OST to determine the amount of unclaimed property in the holder's possession, and subsequent examination of holder's records establishes that the holder willfully or without reasonable cause has failed to deliver unclaimed property, the holder shall be subject to the penalties imposed by the Uniform Unclaimed Property Act. [See: 60 O.S. §§679, 680]

(d) If holders report and remit property to Oklahoma that should be reported and remitted to another state, pursuant to the reciprocal agreements with the other states, OST shall transmit the monies to the respective states of owners last known addresses. [See: 60 O.S. §683.1]

735:80-3-7. Requirement to report and remit current balance

Holders of presumed abandoned intangible property shall annually report and remit all proceeds accrued to date; i.e., the current balance held by the holder. When and if any part of the proceeds has been held for the statutory abandonment period or longer, the holder must report and remit all interest, additions, and increments accrued to the owner's account. Any additional amounts accruing to an owner who has been reported previously will be reported and remitted on an annual basis; i.e., additional amounts from the "as of date" of the previous report year through the "as of date" of the current report year. In no event shall mineral interest proceeds be reported or remitted sooner than six months after the date of the first sale from the applicable well.

PART 3. FINANCIAL INSTITUTIONS

735:80-3-10. Banks, savings and loans or other financial institutions; reporting requirements

(a) Any deposit with a banking or financial organization, including deposits that are automatically renewable, or a mutual investment certificate, or any other interest in a banking or financial organization, is presumed abandoned unless the owner has, within the previous five (5) years (15 years in the case of automatically renewable time deposits):

(1) In the case of a deposit, increased or decreased the amount of the deposit or presented the passbook for the crediting of interest;

(2) Communicated in writing with the banking or financial organization indicating an interest in the property;

(3) Owned other property to which paragraph (1) or (2) of this subsection is applicable and, if the banking or financial organization communicated in writing with the owner in regard to the property that would otherwise be presumed abandoned under this subsection at the address to which communications regarding the other property are regularly sent; or

(4) Had another relationship with the banking or financial organization concerning which the owner has:

(A) Communicated in writing with the banking or financial organization; or

(B) Otherwise made contact with the banking or financial organization, and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to

which communications regarding the other relationship are regularly sent.

(b) For the purpose of this Section, property includes, but is not limited to, undelivered shares and the interest or dividends associated with them.

(c) Any property described in 60 O.S. §652 (d), that is automatically renewable, such as a certificate of deposit having rollover provisions, is matured for purposes of that Section upon the expiration of its initial time period. But in the case of any renewal to which the owner consents by communicating in writing with the banking or financial organization at or about the time of renewal, or otherwise indicates consent, as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration date of the last time period for which consent was given. However, loss of contact with the owner will be considered to have occurred if the statement or any communication mailed by the bank, savings and loan, or other financial institution has come back undelivered. If, at the time for delivery to OST provided by the Uniform Unclaimed Property Act, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery shall be extended until the time when no penalty or forfeiture would result. Automatically renewable time deposits may be retained, at the holder's option, or delivered to OST.

(d) The following categories of property normally held by a bank or financial institution shall be subject to reporting under the Uniform Unclaimed Property Act (the Act):

(1) Checking or demand accounts, savings accounts or matured time deposits, including any interest or dividend thereon. Any charges withheld must be withheld at the express or implied consent of the owner.

(2) Monies paid toward the purchase of shares or other interest or any deposit thereon. Any charges withheld must be withheld at the express or implied consent of the owner.

(3) Certified checks, travelers checks, cashier checks, drafts, certificates of deposit and expense and vendor checks. If cashier checks or certified checks are reported, the bank or financial institution shall include on the report if known, the names and last known addresses of the payee(s), payor(s) and the purchaser(s).

(4) Monies or personal property removed from a safe-deposit box or other safekeeping repository not otherwise declined by the State Treasurer pursuant to 60 O.S. §677, or surplus amounts arising from the sale of such contents.

(5) Any other intangible personal property not otherwise covered by the Act. [See: 60 O.S. 652]

SUBCHAPTER 9. OFFICE AUDIT

735:80-9-2. Interest/penalty; amended reports

(a) Interest/penalties ~~will~~ may be assessed against unclaimed property reported to OST, under the following conditions: [See: 60 O.S. §680]

(1) When the holder fails to remit items reported as unclaimed property;

(2) When the holder fails to remit in full or submits a partial remittance for items reported as unclaimed property;

(3) When the date of last transaction given for the owner on the report indicates that the item should have been reported and remitted in prior years.

(b) For items reported and not remitted, interest/penalty may be assessed beginning with January 1, 1983, or the date that the property should have been remitted, whichever is later, through the date the remittance is received by OST from the holder.

(c) For items that should have been remitted in prior years, interest/penalty may be assessed beginning with January 1, 1983, or the date on which the property should have been remitted, whichever is later, through the date the remittance is received by OST from the holder.

(d) For items remitted to OST under protest, interest/penalties will cease on the date the remittance and accompanying written protest is received by OST.

(e) If the holder protests the assessment, a copy of the assessment and the written protest submitted by the holder shall be forwarded to the hearing examiner designated by the Treasurer, who shall set up a date and time for an administrative hearing on the matter. Interest/penalties will continue to accrue on unpaid items as set forth in the assessment until such time as the Treasurer renders a decision and/or all other legal action regarding the assessment is completed, and the remittance is received by OST from the holder.

(f) Application for waiver of interest or penalty shall be in a form as prescribed by the Treasurer. The Treasurer may, at the Treasurer's discretion, waive the interest or penalty ~~if a holder has failed to remit unclaimed property due to misinterpretation of the law or the facts, or if a holder is unable to pay interest or penalty due to insolvency.~~for reasonable cause if the imposition of interest or penalty would be deemed to be inequitable. Reasonable cause includes, but is not limited to, the following reasons:

(1) Natural disasters;

(2) Acts of war or terrorism;

(3) Initial report filed by the holder which was not induced by an examination from the State Treasurer or one of its auditors;

(4) Report filed by the holder using an electronic medium for the first time;

(5) Significant changes in holder personnel;

(6) Report and remittance was made within 30 days of the due date;

(7) Penalty amount in excess of the reported amount; or,

(8) Penalty assessed in error.

(g) The holder of unclaimed property has the burden of proving reasonable cause.

SUBCHAPTER 11. FIELD AUDIT

PART 9. INSURANCE CORPORATIONS

735:80-11-25. Insurance corporations; life and property and casualty; field audits

(a) Insurance corporations shall be examined under any or all of the circumstances defined in 735:80-11-2.

(b) The following categories of property normally held by an insurance corporation shall be subject to reporting under the Unclaimed Property Act:

(1) Proceeds due on life or endowment insurance policies;

(2) Proceeds due on annuity contracts which have matured or terminated;

(3) Proceeds due on policies in which the insured has reached the limiting age under the mortality table on which the reserve is based.

(c) The property(ies) in (b) of this Section shall not be presumed abandoned if the holder has mailed statements or other communications to the owner within five (5) years (two (2) years if the insured has reached the limiting age) from the date of last customer generated activity or transaction, and no such statement or communication has been returned as non-deliverable. OST may, at its discretion, require a holder to produce evidence of mailing of such statements or other business communications during the aforementioned abandonment period.

(d) In addition to the categories of property described in (b) of this Section, the following categories of property normally held by an insurance corporation shall be subject to reporting under the Unclaimed Property Act:

(1) Outstanding or unclaimed expense and vendor checks, payroll checks, claim checks or drafts or other miscellaneous checks or drafts;

(2) Unclaimed stock (undeliverable and underlying shares) and unclaimed dividends;

(3) Agents credit balances and commissions;

(4) Policy dividends;

(5) Unidentified remittances;

(6) Property distributable in the course of a demutualization or reorganization of an insurance company, pursuant to 60 O.S. §653.1;

(~~6~~7) Any other intangible personal property not otherwise covered by the Unclaimed Property Act.

[OAR Docket #05-1128; filed 6-8-05]

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

1:2005-15A.

EXECUTIVE ORDER 2005-15
AMENDED EXECUTIVE ORDER 2005-15

To the Honorable Members of the House of Representatives and the Honorable Members of the State Senate of Oklahoma:

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the authority vested in me by the provisions of Section 7 of Article VI of the Oklahoma Constitution, hereby amend Executive Order 2005-15 which convoked the First Extraordinary Session of the Fiftieth Oklahoma Legislature to convene at the State Capitol on May 27, 2005. The following subject was recommended for consideration:

1. Legislation relating to Oklahoma's workers compensation system.

I hereby amend Executive Order 2005-15 dated May 27, 2005, to reconvene at the State Capitol at any time on or after June 3, 2005, as called by the Speaker of the House of Representitives and the President Pro Tempore of the State Senate, for consideration of the following subjects in addition to the subject listed above:

2. Funding for the Oklahoma Capitol Complex and the Centennial Commemoration Commission.

3. Funding for the Department of Corrections.

Copies of this Executive Order shall be distributed to every member of the Oklahoma House of Representatives, every member of the Oklahoma State Senate, the Clerk of the House of Representatives, the Secretary of the Senate and the Director of the Office of State Finance.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma this 3rd day of June 2005.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

BRAD HENRY

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #05-1097; filed 6-3-05]

TITLE 75. ATTORNEY GENERAL CHAPTER 15. STANDARDS AND CRITERIA FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

TRANSFER OF RULEMAKING AUTHORITY:

Effective July 1, 2005, . . . rules promulgated by the Department of Mental Health and Substance Abuse Services relating to domestic violence and sexual assault programs [were] transferred to and [have] become a part of the administrative rules of the Office of the Attorney General. . . . Such rules shall continue in force and effect as rules of the Office of the Attorney General from and after July 1, 2005, and any amendment, repeal or addition to the transferred rules shall be under the jurisdiction of the Attorney General [Senate Bill 236 (2005), Section 6(A)].

As directed by SB 236, notice is hereby given that the following rules of the Oklahoma Department of Mental Health and Substance Abuse Services in OAC 450:15 and OAC 450:19 have now been placed under the Attorney General's rules in OAC 75:15, and will be published as such in the 2005 Supplement to the *Oklahoma Administrative Code*:

Old number	New number
450:19-1-1	75:15-1-1
450:19-1-2	75:15-1-2
450:19-1-3	75:15-1-3
450:19-1-4	75:15-1-4
450:19-1-6	75:15-1-6
450:19-3-1	75:15-3-1
450:19-3-2	75:15-3-2
450:19-3-7	75:15-3-7
450:19-3-8	75:15-3-8
450:19-3-9	75:15-3-9
450:19-3-10	75:15-3-10
450:19-5-1	75:15-5-1
450:19-5-2	75:15-5-2
450:19-5-3	75:15-5-3
450:19-5-3.1	75:15-5-3.1
450:19-5-4	75:15-5-4
450:19-5-5	75:15-5-5
450:19-5-6	75:15-5-6
450:19-5-10	75:15-5-10
450:19-7-1	75:15-7-1
450:19-7-2	75:15-7-2
450:19-7-3	75:15-7-3
450:19-7-4	75:15-7-4
450:19-7-5	75:15-7-5
450:19-7-6	75:15-7-6
450:19-7-7	75:15-7-7
450:19-9-1	75:15-9-1
450:19-9-2	75:15-9-2
450:19-9-7	75:15-9-7
450:19-9-8	75:15-9-8
450:19-9-9	75:15-9-9
450:19-9-10	75:15-9-10
450:19-11-1	75:15-11-1
450:19-11-2	75:15-11-2
450:19-11-3	75:15-11-3
450:19-13-1	75:15-13-1
450:19-13-2	75:15-13-2
450:19-13-3	75:15-13-3
450:19-13-4	75:15-13-4
450:19-13-5	75:15-13-5
450:19-13-8	75:15-13-8
450:19-13-9	75:15-13-9
450:19-13-10	75:15-13-10
450:19-13-20	75:15-13-20
450:19-13-20.1	75:15-13-20.1
450:19-13-20.2	75:15-13-20.2
450:19-13-24	75:15-13-24
450:19-13-25	75:15-13-25
450:19-13-26	75:15-13-26
450:19-13-27	75:15-13-27
450:19-13-28	75:15-13-28
450:19-13-29	75:15-13-29
450:19-13-30	75:15-13-30
450:19-15-1	75:15-15-1
450:19-15-2	75:15-15-2
450:19-15-3	75:15-15-3
450:19-15-4	75:15-15-4
450:15-3-70	75:15-17-1
450:15-3-71	75:15-17-2
450:15-3-72	75:15-17-3
450:15-3-73	75:15-17-4

For additional information relating to this transfer, see Senate Bill 236 (2005).

TITLE 450. OKLAHOMA DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 15. CONSUMER RIGHTS and CHAPTER 19. STANDARDS AND CRITERIA FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

TRANSFER OF RULEMAKING AUTHORITY:

Effective July 1, 2005, . . . rules promulgated by the Department of Mental Health and Substance Abuse Services relating to domestic violence and sexual assault progams [were] transferred to and [have] become a part of the administrative rules of the Office of the Attorney General. . . . Such rules shall continue in force and effect as rules of the Office

of the Attorney General from and after July 1, 2005, and any amendment, repeal or addition to the transferred rules shall be under the jurisdiction of the Attorney General [Senate Bill 236 (2005), Section 6(A)].

For additional information, see Editor's Notice published in this issue for Title 75, Chapter 15.

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

RULES PROMULGATED WITHOUT PRIOR LEGISLATIVE APPROVAL:

The Oklahoma Department of Agriculture, Food, and Forestry promulgated permanent additions and revisions to Chapter 15, Animal Industry, in the 5-2-05 issue of the *Register*, with an effective date of 5-12-05 [Docket #597; 22 Ok Reg 688]. However, TWO of the promulgated rules (35:15-40-90 and 35:15-40-91) had been previously withdrawn by the agency from legislative review [see Notice of Withdrawn Rules at 22 Ok Reg 683]. **Therefore, new and amended language in 35:15-40-90 and 35:15-40-91, as published in the 5-2-05 issue, had not been approved by the Legislature and should not have been promulgated by the agency.**

A second permanent rulemaking action on the same two sections (35:15-40-90 and 35:15-40-91) was NOT withdrawn by the agency, and is being promulgated in this issue, with an effective date of 7-11-05. [See Docket #05-1058 under Permanent Final Adoptions for Title 35, Chapter 15 in this issue.]

TITLE 690. BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY CHAPTER 10. LICENSURE AND FEES

[OAR Docket #05-745]

CORRECTION OF DISCREPANCY IN PERMANENT RULE DOCUMENT PUBLISHED IN JUNE 1 ISSUE:

On page 1508 in the 6-1-05 issue of the *Register*, there is a discrepancy between the effective date published in the preamble and the effective date published in the enacting clause of the permanent rule document for Title 690, Chapter 10 [OAR Docket #05-745; 22 Ok Reg 1508]. The effective date in the enacting clause was incorrectly published as April 29, 2005, but it was published correctly as June 11, 2005 under the "Effective" heading in the preamble. By law, permanent rules cannot become effective until at least 10 days after the permanent rule document is published in the *Register*, so April 29 is not a valid effective date for permanent rules published on June 1. Therefore, the June 11 effective date, as stated in the preamble, is the correct effective date, and the enacting clause SHOULD HAVE READ as follows:

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 JUNE 11, 2005:

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

[OAR Docket #05-707]

CORRECTION OF GUBERNATORIAL APPROVAL DATE PUBLISHED IN EMERGENCY RULE DOCUMENT IN MAY 16 ISSUE:

On page 1030 in the 5-16-05 issue of the *Register*, the "Approved by Governor" date was incorrectly cited in the preamble of the emergency rule document published for the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control [Docket #05-707; 22 Ok Reg 1030]. The emergency rules (Chapter 55, Pseudoephedrine Control) were approved by the Governor on June 16, 2004; however, the date was incorrectly published as June 16, 2005. Therefore, the gubernatorial approval date in the preamble SHOULD HAVE READ as follows:

Approved by Governor:
June 16, 2004