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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 85. STATE BANKING DEPARTMENT CHAPTER 15. ~~MONEY ORDERS/SALE OF CHECKS~~ MONEY SERVICE BUSINESSES

[OAR Docket #06-1442]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions and Definitions [NEW]
 - 85:15-1-1. Scope and purpose [NEW]
 - 85:15-1-2. Definitions [NEW]
 - 85:15-1-3. Exclusions [NEW]
- Subchapter 3. Money Transmission Licenses [NEW]
 - 85:15-3-1. License required [NEW]
 - 85:15-3-2. Application for license [NEW]
 - 85:15-3-3. Security [NEW]
 - 85:15-3-4. Issuance of license [NEW]
 - 85:15-3-5. Renewal of license [NEW]
 - 85:15-3-6. Net worth [NEW]
- Subchapter 5. Authorized Delegates [NEW]
 - 85:15-5-1. Relationship between licensee and authorized delegate [NEW]
 - 85:15-5-2. Unauthorized activities [NEW]
- Subchapter 7. Examinations; Reports; Records [NEW]
 - 85:15-7-1. Authority to conduct examinations [NEW]
 - 85:15-7-2. Cooperation [NEW]
 - 85:15-7-3. Reports [NEW]
 - 85:15-7-4. Change of control [NEW]
 - 85:15-7-5. Records [NEW]
 - 85:15-7-6. Money laundering reports [NEW]
- Subchapter 9. Permissible Investments [NEW]
 - 85:15-9-1. Maintenance of permissible investments [NEW]
 - 85:15-9-2. Types of permissible investments [NEW]
- Subchapter 11. Enforcement [NEW]
 - 85:15-11-1. Suspension and revocation [NEW]
 - 85:15-11-2. Suspension and revocation of authorized delegates [NEW]
 - 85:15-11-3. Orders to cease and desist [NEW]
 - 85:15-11-4. Consent orders [NEW]
 - 85:15-11-5. Civil penalties [NEW]
 - 85:15-11-6. Hearings [NEW]

SUMMARY:

The proposed rules will be new to Chapter 15 of Title 85 of the Oklahoma Administrative Code. Chapter 15 had heretofore been "reserved" for rules under the Oklahoma Sale of Checks Act (Title 6 O.S. § 2101 *et seq.*). The heading of Chapter 15 is being amended to reflect its general application

to all types of "money service businesses" ("MSBs") which may include sellers of checks, money transmitters, check cashers, *etc.*

The proposed rules are a result of the enactment of the Oklahoma Financial Transaction Reporting Act (Title 6 O.S. § 1511 *et seq.*), effective April 17, 2006 (the "OFTRA"). The OFTRA requires the registration and licensing of money service businesses and allows for the promulgation of rules by the Oklahoma State Banking Board. The intended effect of the proposed rules is to further clarify the registration and licensing requirements to be imposed on MSBs that transmit currency, implement safety and soundness and consumer protection requirements on MSBs, and define the role of the Banking Department as the licensing agency.

Proposed Subchapter 1 (General Provisions and Definitions) indicates that the scope of the registration and licensing requirements will be more narrow than called for by the OFTRA. The Legislature gave the Banking Board authority to narrow or broaden the scope of the licensing requirement. While the OFTRA imposed licensing requirements on all MSBs (defined in the OFTRA to include money transmission companies and their agents), Subchapter 1 provides that the licensing requirement will apply to money transmitter companies but not their "authorized delegates." The definitions provided in Subchapter 1 define important terms such as "authorized delegate," "licensee," "money transmission," and "unsafe and unsound practice." Additionally, Subchapter 1 identifies ten types of entities to which the OFTRA will not apply, such as government agencies, banks (defined to include banks, trust companies, credit unions, and savings associations), and certain commodities merchants and securities broker-dealers.

Proposed Subchapter 3 (Money Transmission Licenses) includes the requirement and procedures relating to applying for, renewing, and maintaining a license to engage in money transmission. The contents of a license application are set forth in proposed rule 85:15-3-2. Additionally, consumer protection requirements to maintain security (such as a surety bond) and minimum net worth (depending on the number of "authorized delegates") are set out in proposed rules 85:15-3-3 and 85:15-3-6, respectively.

With regard to licensing and renewal fees set by Subchapter 3, the Banking Board's proposed licensing system will significantly lower the fees otherwise called for by the OFTRA. The OFTRA required a separate license for all MSBs (which included money transmission companies and their authorized delegates). The fee set by the OFTRA is \$500 per licensee (*i.e.*, the fee was set at the same amount called for by Title 6

Notices of Rulemaking Intent

O.S. § 104(B), which is implemented by Banking Board Rule 85:10-3-21(j)). Therefore, under the fee set by the OFTRA, if a company utilized 100 authorized delegates in Oklahoma, its annual licensing fee would be at least \$50,000 (100 x \$500). Under the proposed fee schedule, that same company with 100 authorized delegates would incur a one-time application fee of \$3,000, an annual licensing fee of \$2,000, and \$50 (annually) per authorized delegate, for a total initial fee of \$10,000. Annual renewal fees for that same company would be \$7,000 (because the initial application fee would not be charged in subsequent years), for a total annual fee reduction of \$43,000 from that called for by the OFTRA.

Proposed Subchapter 5 (Authorized Delegates) contains provisions that prohibit an authorized delegate (or any other person) from providing money transmission services for a person that does not have a license under the OFTRA or on behalf of a licensee whose license has been suspended or revoked. The use of subdelegates is also prohibited.

Proposed Subchapter 7 (Examinations; Reports; Records) authorizes the Banking Commissioner or another agency authorized by the Commissioner to conduct an on-site examination of a licensee or its authorized delegates. However, while examinations are authorized, the more common form of supervision will be through annual reports, called for by proposed rule 85:15-7-3.

If a licensee undergoes a change of control, proposed rule 85:15-7-4 requires notice to, and approval by, the Banking Commissioner. A fee (equal to that required for a new license application, *i.e.*, \$3,000) must accompany the notice. This is because the rule requires the Commissioner to investigate the new controlling party to assure the competence, experience, character, and general fitness of such party to operate the licensee and that the public interest will not be jeopardized by the change of control.

With respect to record keeping, proposed rule 85:15-7-5 requires both licensees and authorized delegates to maintain certain records for 3 years. Of particular importance is the requirement that authorized delegates maintain a copy of a government-issued photo identification of a customer transmitting more than \$100 per person, per day. This is an important requirement to help deter and detect money laundering, drug trafficking, and terrorist funding.

Proposed Subchapter 9 (Permissible Investments) requires money transmitters to maintain a certain level of investments that are equal to the value of their outstanding obligations as a means of protecting individual consumers. This is another safety and soundness requirement designed to safeguard funds received from consumers. The list of permissible investments reflects exiting industry practice. However, limitations are placed on the percentages of holdings in many of the investment categories because some permissible investments are riskier than others. The current list of permissible investments is an attempt to balance the concerns of regulators for safety and soundness and of industry participants who have concerns about their ability to properly conduct business.

Receivables from authorized delegates are included as a category of permissible investments.

Proposed Subchapter 11 (Enforcement) describes the circumstances under which the Commissioner may suspend or revoke a license or order a licensee to revoke the designation of an authorized delegate. The Commissioner may also take action directly against an authorized delegate. This is an important mechanism for the prevention of money laundering and drug trafficking. If the Commissioner determines that a violation of the OFTRA is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the Commissioner may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The Commissioner may also assess a civil penalty against a person that violates the OFTRA. The issuance of a cease and desist order, suspension and revocation of a license, or assessment of civil money penalties may only occur after a hearing in accordance with the state's administrative procedure act.

AUTHORITY:

State Banking Board; 6 O.S., § 1515.A.

COMMENT PERIOD:

Written and oral comments will be accepted during the period from December 15, 2006, through January 16, 2007, at: Oklahoma State Banking Department, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, Oklahoma 73105, Attn: Dudley Gilbert

PUBLIC HEARING:

A public hearing will be held at 10:00 a.m. on Wednesday, January 17, 2007, at the State Banking Department, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, Oklahoma 73105. Anyone who wishes to speak will be allowed a maximum of 5 minutes and must sign in at the door by 10:05 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Banking Department with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing during the period from December 15, 2006, through January 16, 2007, at: Oklahoma State Banking Department, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, Oklahoma 73105, Attn: Dudley Gilbert.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained by contacting Angela Morris at the State Banking Department, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, Oklahoma 73105, (405) 521-2782.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a rule impact statement will be prepared and available at the State Banking Department office at the above address on and after December 30, 2006.

CONTACT PERSON:

Dudley Gilbert, Legal Counsel, State Banking Department,
(405) 521-2782.

[OAR Docket #06-1442; filed 11-17-06]

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

[OAR Docket #06-1523]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions
210:10-1-13. [AMENDED]

SUMMARY:

Rule amendments will provide direction to school districts on the provision of educational services to students under age eighteen (18) incarcerated in jails throughout Oklahoma.

AUTHORITY:

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

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 24, 2007, at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on Thursday, January 25, 2007, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 16, 2006.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #06-1523; filed 11-22-06]

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

[OAR Docket #06-1524]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-99.1. [NEW]

SUMMARY:

The purpose of the rule is to define provisions for classes of persons who are eligible to receive a bonus and define procedures for documentation of eligibility for the bonus as stipulated in 70 O. S. § 6-206. The bonus must be awarded by January 31.

Classes of persons eligible to receive a state appropriated bonus are nationally certified school psychologists certified by the National School Psychology Certification Board, and speech-language pathologists or audiologists who hold a Certificate of Clinical Competence awarded by the American Speech-Language Hearing Association and are currently serving children in Oklahoma public school districts.

AUTHORITY:

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

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 24, 2007, at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on Thursday, January 25, 2007, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 16, 2006.

Notices of Rulemaking Intent

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #06-1524; filed 11-22-06]

TITLE 230. STATE ELECTION BOARD CHAPTER 10. THE COUNTY ELECTION BOARD

[OAR Docket #06-1467]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Election Training [AMENDED]

Subchapter 7. General Administration of the County
Election Board [AMENDED]

SUMMARY:

The rules in Subchapter 5 concern training for County Election Board members and employees and training for Precinct Officials. The proposed amendments concern reimbursement for travel expenses incurred by County Election Board members and staff in connection with required training. The amendments reflect current reimbursement rates.

The rules in Subchapter 7 concern the operation of the County Election Board office. An amended Section describes the types of meetings that the County Election Board may conduct under the Oklahoma Open Meeting Act. The proposed amendment restores language that was inadvertently removed by an amendment in 2006. The restored language describes the second of two reasons an emergency meeting may be held.

Another proposed amendment concerns the retention of ballots following an election. All ballots are retained at least 30 days following an election. Voted ballots from elections involving candidates for federal office are retained for 24 months. All voted absentee ballots are retained for 24 months. However, unused ballots from federal elections and unused absentee ballots may be destroyed 30 days following an election. The proposed amendment adds language in this Section to clarify that unused absentee ballots may be destroyed after 30 days.

All these amendments are necessary to provide County Election Board personnel with current, accurate information.

AUTHORITY:

Title 26 O.S. Supp. , Section 2-107. Secretary of the State Election Board.

COMMENT PERIOD:

Written comments will be accepted until the conclusion of the public hearing on Friday, January 26, 2007. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P. O. Box 53156, Oklahoma City, OK 73152.

PUBLIC HEARING:

A public hearing will be held Friday, January 26, 2007, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available in the State Election Board office on and after December 29, 2006.

CONTACT PERSON:

Suzanne Cox, Publications Editor, State Election Board.
(405) 521-2391.

ADDITIONAL INFORMATION:

n/a

[OAR Docket #06-1467; filed 11-21-06]

TITLE 230. STATE ELECTION BOARD CHAPTER 15. VOTER REGISTRATION

[OAR Docket #06-1468]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 9. Receiving and Processing Voter Registration
Applications [AMENDED]

SUMMARY:

The rules in Subchapter 9 concern procedures for handling applications for voter registration. An amended Section concerns applications for restricted records status. State law (Title 26, Section 4-115.2) permits members of the judiciary, district attorneys, assistant district attorneys, law enforcement personnel, corrections officers, and persons covered by victim protection orders to apply to the County Election Board Secretary to keep their residence and mailing address information confidential. The proposed amendment includes a reference to the Declaration of Candidacy among the records that are kept confidential and a reference to a list of restricted records status voters that must be prepared and maintained by the County Election Board Secretary. Use of the list is described in another Chapter. (It is intended to be attached to the Precinct Registry for an election because the restricted records status voter's name is not included in the Precinct Registry.) These amendments are necessary to provide additional protection for restricted records status voters while also ensuring their right to vote.

Another amended Section concerns reasons for rejecting voter registration applications. The proposed amendment

removes language stating that a voter registration application is rejected if the applicant fails to include the last four digits of his or her Social Security number. This is incorrect as the last four digits of the Social Security number has not been a requirement for several years in compliance with the requirements of the federal Help America Vote Act of 2002. The Oklahoma Voter Registration Application form requires the Oklahoma driver license number and requests the last four digits of the applicant's Social Security number. However, because of increasing fears of identify theft, many voter registration applicants refuse to provide either identification number. Our voter registration processing software creates and assigns a unique identification number to every application entered. We use the system-generated identification number for voter registration purposes in the absence of both the driver license and last four digits of the Social Security number. Otherwise valid voter registration applications will not be rejected solely for failure to provide an additional identification number.

AUTHORITY:

Title 26 O.S. Supp. , Section 2-107. Secretary of the State Election Board. Additionally, Title 26, Section 4-115.2 instructs the Secretary of the State Election Board to promulgate rules to implement its provisions.

COMMENT PERIOD:

Written comments will be accepted until the conclusion of the public hearing on Friday, January 26, 2007. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P. O. Box 53156, Oklahoma City, OK 73152.

PUBLIC HEARING:

A public hearing will be held Friday, January 26, 2007, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available in the State Election Board office on and after December 29, 2006.

CONTACT PERSON:

Suzanne Cox, Publications Editor, State Election Board. (405) 521-2391.

ADDITIONAL INFORMATION:

n/a

[OAR Docket #06-1468; filed 11-21-06]

**TITLE 230. STATE ELECTION BOARD
CHAPTER 20. CANDIDATE FILING**

[OAR Docket #06-1469]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Filing for State and County Office
[AMENDED]

SUMMARY:

The rules in Subchapter 3 concern filing for state and county office. Title 26, Section 4-115.2 permits members of the judiciary, district attorneys, assistant district attorneys, law enforcement officers, corrections officers, and persons protected by victim protection orders to make a request to keep the residence and mailing address in their voter registration information confidential. (The process for applying for this confidentiality, called restricted records status, is outlined in 230:15-9-25.) A new Section is proposed in Subchapter 3 of this Chapter to permit candidates filing Declarations of Candidacy with the Secretary of the State Election Board or with the Secretary of the County Election Board to request that the address information on said Declarations of Candidacy be kept confidential. A person who has already applied for restricted records status with the County Election Board must submit a written request for confidentiality with the Declaration of Candidacy. The State Election Board will provide a form for such requests. The new Section provides procedures for both the County Election Board and State Election Board Secretaries to accommodate such requests. Both the state law and the proposed rule allow access to a confidential Declaration of Candidacy for other candidates in the same race in connection with contests of candidacy or contests of election. This new Section is needed because several incumbent district attorney, district judge, and/or associate district judge candidates who had applied for restricted records status asked to have their Declarations of Candidacy kept confidential during the 2006 candidate filing period. To our knowledge, no county candidates made similar requests of County Election Board Secretaries. However, a prescribed procedure is necessary to ensure consistent implementation.

AUTHORITY:

Title 26 O.S. Supp. , Section 2-107. Secretary of the State Election Board. Additionally, Title 26, Section 4-115.2 instructs the Secretary of the State Election Board to promulgate rules to implement its provisions.

COMMENT PERIOD:

Written comments will be accepted until the conclusion of the public hearing on Friday, January 26, 2007. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P. O. Box 53156, Oklahoma City, OK 73152.

Notices of Rulemaking Intent

PUBLIC HEARING:

A public hearing will be held Friday, January 26, 2007, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available in the State Election Board office on and after December 29, 2006.

CONTACT PERSON:

Suzanne Cox, Publications Editor, State Election Board.
(405) 521-2391.

ADDITIONAL INFORMATION:

n/a

[OAR Docket #06-1469; filed 11-21-06]

TITLE 230. STATE ELECTION BOARD CHAPTER 25. BALLOT PRINTING

[OAR Docket #06-1470]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 7. Competitive Bidding Process for Ballot Printing [AMENDED]

Subchapter 9. Providing Copy to the Printer [AMENDED]

Subchapter 13. Placing Parties, Candidates on Ballot [AMENDED]

Subchapter 17. Proofing of Ballots [AMENDED]

Subchapter 19. Demonstration Ballots [AMENDED]

SUMMARY:

The rules in Subchapter 7 concern competitive bidding for ballot printing contracts. A Section concerning ballot printing specifications is amended. The specifications for ballots for the voting devices used in Oklahoma were incorporated by reference in 1993. The specifications were prepared and published by the voting device manufacturer, Business Records Corporation. Business Records Corporation is now known as Election Systems and Software. The referenced publication is now produced by Election Systems and Software. The proposed amendment reflects these changes.

The rules in Subchapter 9 concern the materials and information that must be provided to the printer who will produce ballots for an election. In a Section which lists items to be given to the printer, an amendment is proposed to simplify the process of providing the required information to the ballot printer.

The rules in Subchapter 13 concern the placement of political parties and of candidates on ballots. An amended Section concerns the organization of various ballots on the ballot card for a state election. When a county question will not fit on the state ballot card, it must be printed on a separate ballot card. The proposed amendment places the responsibility for printing such separate county question ballot cards upon the County Election Board.

Another amended Section concerns the placement of political parties on the General Election ballot card. Every two years, the Secretary of the State Election Board conducts a drawing to determine the order in which candidates of the various recognized political parties will appear. The amended Section set the time frame for conducting the drawing between August 15 and August 31 in even-numbered years. The proposed amendment will permit the drawing to be held earlier in the year and no later than July 31 in even-numbered years. By holding the drawing earlier, certain election programming and ballot printing tasks related to the General Election can be performed earlier in the year.

A new Section will outline the process of placing the names of nonpartisan judicial candidates on the ballot for Primary and General Elections. This new Section codifies the long-standing practice of the State Election Board. The new Section is being proposed for adoption at this time in response to questions raised by at least one judicial candidate during the 2006 election season.

The rules in Subchapter 17 concern the procedures for proofreading ballots. The proposed amendment removes a reference to a report that is no longer used for proofreading purposes.

The rules in Subchapter 19 concern the procedure that printing companies follow to prove that they are capable of producing ballots that can be read by the voting devices. Amendments are proposed in two sections to simplify the process and to more accurately describe the materials provided to printers who participate in the demonstration ballot process.

AUTHORITY:

Title 26 O.S. Supp. , Section 2-107. Secretary of the State Election Board.

COMMENT PERIOD:

Written comments will be accepted until the conclusion of the public hearing on Friday, January 26, 2007. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P. O. Box 53156, Oklahoma City, OK 73152.

PUBLIC HEARING:

A public hearing will be held Friday, January 26, 2007, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available in the State Election Board office on and after December 29, 2006.

CONTACT PERSON:

Suzanne Cox, Publications Editor, State Election Board. (405) 521-2391.

ADDITIONAL INFORMATION:

n/a

[OAR Docket #06-1470; filed 11-21-06]

**TITLE 230. STATE ELECTION BOARD
CHAPTER 30. ABSENTEE VOTING**

[OAR Docket #06-1471]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 7. Absentee Voting Boards [AMENDED]

SUMMARY:

The rules in Subchapter 7 concern Absentee Voting Boards, the procedures for conducting absentee voting for nursing home residents, and the procedures for conducting in-person absentee voting (early voting). A Section concerning the appointment of Absentee Voting Board members is amended. The proposed amendment changes the time for appointment of Absentee Voting Board members from August 1 to July 1. This change is necessary because of recent changes to the Oklahoma election calendar.

AUTHORITY:

Title 26 O.S. Supp. , Section 2-107. Secretary of the State Election Board.

COMMENT PERIOD:

Written comments will be accepted until the conclusion of the public hearing on Friday, January 26, 2007. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P. O. Box 53156, Oklahoma City, OK 73152.

PUBLIC HEARING:

A public hearing will be held Friday, January 26, 2007, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available in the State Election Board office on and after December 29, 2006.

CONTACT PERSON:

Suzanne Cox, Publications Editor, State Election Board. (405) 521-2391.

ADDITIONAL INFORMATION:

n/a

[OAR Docket #06-1471; filed 11-21-06]

**TITLE 230. STATE ELECTION BOARD
CHAPTER 35. ELECTION CONDUCT**

[OAR Docket #06-1472]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. County Election Board Responsibilities [AMENDED]

Subchapter 5. Instructions for Precinct Election Officials [AMENDED]

SUMMARY:

The rules in Subchapter 3 concern the County Election Board's responsibilities for the conduct of elections. A proposed new Section directs the County Election Board Secretary to compile and maintain a list of voters in restricted records status. Restricted records status is a term applied to voters who request that their voter registration information be kept confidential as outlined in Title 26, Section 4-115.2. Title 26, Section 4-115.2 permits members of the judiciary, district attorneys, assistant district attorneys, law enforcement officers, corrections officers, and persons covered by victim protection orders to request that their voter registration information be kept confidential. As a result of a voter being placed in restricted records status, his or her name does not print in the Precinct Registry for an election. This proposed new Section instructs the Secretary to prepare a list of restricted records status voters, organized by precinct, which can be attached to a Precinct Registry for election day. This provides verification of the voter's eligibility to participate in an election. The list contains only the voter's name, school district code, and municipal code. A restricted records status voter who votes in person at his or her precinct polling place will sign this list instead of the Precinct Registry.

A proposed new Section gives the Secretary of the County Election Board the authority to choose not to issue a voting device to a precinct polling place on election day under certain very narrow circumstances. The proposed new

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Section establishes the circumstances, procedures for County Election Board members and staff, and procedures for Precinct Officials.

The rules in Subchapter 5 concern election day procedures and instructions for Precinct Officials. A proposed amendment in a Section concerning assistance for disabled voters is intended to clarify instructions for using the Voter Assistance Form.

AUTHORITY:

Title 26 O.S. Supp. , Section 2-107. Secretary of the State Election Board. Additionally, Title 26, Section 4-115.2 instructs the Secretary of the State Election Board to promulgate rules to implement its provisions.

COMMENT PERIOD:

Written comments will be accepted until the conclusion of the public hearing on Friday, January 26, 2007. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P. O. Box 53156, Oklahoma City, OK 73152.

PUBLIC HEARING:

A public hearing will be held Friday, January 26, 2007, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available in the State Election Board office on and after December 29, 2006.

CONTACT PERSON:

Suzanne Cox, Publications Editor, State Election Board. (405) 521-2391.

ADDITIONAL INFORMATION:

n/a

[OAR Docket #06-1472; filed 11-21-06]

TITLE 230. STATE ELECTION BOARD CHAPTER 40. TYPES OF ELECTIONS

[OAR Docket #06-1473]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 7. School Elections [AMENDED]

SUMMARY:

The rules in Subchapter 7 concern school district elections. The proposed amendments include one Section which

concerns precincts in school district elections. School districts are permitted by state law (Title 26, Section 13A-101) to close split precincts if no one lives in the area of the precinct that is located within the school district's boundaries or if 100 or fewer voters in the precinct are registered at addresses located within the district's boundaries. The proposed amendment will prohibit a school district from closing a split precinct on the date of the regular state Runoff Primary Election. When a school district holds a special election on the same date as a regular or special state or county election, the state or county pays most of the cost of the election. The only cost usually attributable to a school district for such an election is the cost of its ballots. There is no advantage to the school district to close a split precinct on the date of the Runoff Primary Election.

AUTHORITY:

Title 26 O.S. Supp. , Section 2-107. Secretary of the State Election Board.

COMMENT PERIOD:

Written comments will be accepted until the conclusion of the public hearing o Friday, January 26, 2007. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P. O. Box 53156, Oklahoma City, OK 73152.

PUBLIC HEARING:

A public hearing will be held Friday, January 26, 2007, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available in the State Election Board office on and after December 29, 2006.

CONTACT PERSON:

Suzanne Cox, Publications Editor, State Election Board. (405) 521-2391.

ADDITIONAL INFORMATION:

n/a

[OAR Docket #06-1473; filed 11-21-06]

TITLE 230. STATE ELECTION BOARD CHAPTER 45. CONTESTS OF ELECTION

[OAR Docket #06-1474]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Recounts for County Offices [AMENDED]

SUMMARY:

The rules in Subchapter 3 concern the procedures for recounts of election results. An amendment is proposed in one Section concerning recount expenses. Counters hired to conduct a manual recount are paid at the same rate as the Precinct Judge and Clerk. The amount indicated in the amended Section is out of date and must be corrected.

AUTHORITY:

Title 26 O.S. Supp. , Section 2-107. Secretary of the State Election Board.

COMMENT PERIOD:

Written comments will be accepted until the conclusion of the public hearing on Friday, January 26, 2007. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P. O. Box 53156, Oklahoma City, OK 73152.

PUBLIC HEARING:

A public hearing will be held Friday, January 26, 2007, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available in the State Election Board office on and after December 29, 2006.

CONTACT PERSON:

Suzanne Cox, Publications Editor, State Election Board. (405) 521-2391.

ADDITIONAL INFORMATION:

n/a

[OAR Docket #06-1474; filed 11-21-06]

**TITLE 230. STATE ELECTION BOARD
CHAPTER 50. AUTOMATED SYSTEMS**

[OAR Docket #06-1475]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 9. Telephone Voting System [NEW]

SUMMARY:

Subchapter 9 is new. The new rules in Subchapter 9 authorize the use of the Inspire Vote-by-Phone system

("telephone voting system") in regular and special federal elections in Oklahoma. Implementation of the telephone voting system is intended to satisfy the accessibility requirements of the federal Help America Vote Act of 2002. The telephone voting system is a ballot marking system which enables voters with disabilities, especially voters with visual disabilities, to vote with the same degree of access and participation, including privacy and independence, as other voters.

The telephone voting system was used successfully in the Primary, Runoff Primary, and General Elections in 2006. The proposed new rules establish procedures and provide specific instructions for State Election Board and County Election Board personnel and for Precinct Officials. Some of the proposed rules were previously adopted as emergency rules on June 1, 2006, and were approved by the Governor, becoming immediately effective, on July 13, 2006.

AUTHORITY:

Title 26 O.S. Supp. , Section 2-107. Secretary of the State Election Board.

COMMENT PERIOD:

Written comments will be accepted until the conclusion of the public hearing on Friday, January 26, 2007. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P. O. Box 53156, Oklahoma City, OK 73152.

PUBLIC HEARING:

A public hearing will be held Friday, January 26, 2007, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available in the State Election Board office on and after December 29, 2006.

CONTACT PERSON:

Suzanne Cox, Publications Editor, State Election Board. (405) 521-2391.

ADDITIONAL INFORMATION:

n/a

[OAR Docket #06-1475; filed 11-21-06]

Notices of Rulemaking Intent

TITLE 245. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS CHAPTER 2. ADMINISTRATIVE OPERATIONS

[OAR Docket #06-1439]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

245:2-1-18. [AMENDED]

SUMMARY:

The proposed revisions to Chapter 2, Subchapter 1 are as follows:

(1) Revise schedule of fees and penalties, with an effective date of July 1, 2007.

AUTHORITY:

59 O.S. 475.1 et seq; 65 O.S., 1991 Sections 3-116 et seq; 75 O.S. Sections 301 et seq

COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 12, 2007 at: Oklahoma Engineering Center, 201 N.E. 27th St., Room 120, Oklahoma City, OK 73105, Attn: Kathy Hart.

PUBLIC HEARING:

A Public Hearing will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door. The hearing will be held on January 19, 2007, at 9:00 a.m. at the Oklahoma Engineering Center, 201 N.E. 27th St., Oklahoma City, OK.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the rules may be obtained by contacting Kathy Hart at the Board office, 201 N.E. 27th St., Room 120, Oklahoma City, OK 73105. Persons requesting more than one copy of the proposed rules will be charged \$.25 per page. Copies of the rules may also be downloaded from our website at www.pels.state.ok.us.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a rule impact statement will be issued and made available at the offices of the Board (address above).

CONTACT PERSON:

Kathy Hart, Executive Director, (405) 521-2874 ext. 24

[OAR Docket #06-1439; filed 11-15-06]

TITLE 245. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS CHAPTER 15. LICENSING AND PRACTICE OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

[OAR Docket #06-1438]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 13. Minimum Standards for Land Surveying [AMENDED]

Subchapter 17. Licensee's Seal [AMENDED]

SUMMARY:

The proposed revisions to the subchapters are as follows:

Subchapter 13:

(a) Remove gender bias.

(b) Revise recommended certificate language for mortgage inspection certificates.

(c) Clarify that regardless of what other survey standards are utilized, the Oklahoma Minimum Standards for the Practice of Land Surveying must be met.

(d) Clarify that all evidence of boundary locations are to be considered when conducting a survey.

(e) Clarify what information is required on a curved line shown on a survey.

Subchapter 17: (a) Clarify signing and sealing provisions for site adaptations of standard design plans.

AUTHORITY:

59 O.S. 475.1 et seq; 65 O.S., 1991 Sections 3-116 et seq; 75 O.S. Sections 301 et seq

COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 12, 2007 at: Oklahoma Engineering Center, 201 N.E. 27th St., Room 120, Oklahoma City, OK 73105, Attn: Kathy Hart.

PUBLIC HEARING:

A Public Hearing will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door. The hearing will be held on January 19, 2007, at 9:00 a.m. at the Oklahoma Engineering Center, 201 N.E. 27th St., Oklahoma City, OK.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the rules may be obtained by contacting Kathy Hart at the Board office, 201 N.E. 27th St., Room 120, Oklahoma City, OK 73105. Persons requesting more than one copy of the proposed rules will be charged \$.25 per page. Copies of the rules may also be downloaded from our website at www.pels.state.ok.us.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a rule impact statement will be issued and made available at the offices of the Board (address above).

CONTACT PERSON:

Kathy Hart, Executive Director, (405) 521-2874 ext. 24

[OAR Docket #06-1438; filed 11-15-06]

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

[OAR Docket #06-1489]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

- Subchapter 1. General Provisions
- 252:100-1-3. Definitions [AMENDED]
- Subchapter 7. Permits for Minor Facilities
- Part 1. General Provisions
- 252:100-7-2. Requirement for permits from minor facilities [AMENDED]
- Part 3. Construction Permits
- 252:100-7-15. Construction permit [AMENDED]
- Part 4. Operating Permits
- 252:100-7-18. Operating permit [AMENDED]
- Subchapter 8. Permits for Part 70 Sources
- Part 1. General Provisions
- 252:100-8-1.1. Definitions [AMENDED]
- Subchapter 9. Excess Emission Reporting Requirements
- 252:100-9-1. Purpose [AMENDED]
- 252:100-9-2. Definitions [AMENDED]
- 252:100-9-3.1. Excess emission reporting requirements [AMENDED]
- 252:100-9-3.3. Demonstration of cause [AMENDED]
- Subchapter 17. Incinerators
- Part 5. Municipal Waste Combustors [AMENDED]
- 252:100-17-14. Effective date; applicability [AMENDED]
- 252:100-17-14.1. Definitions [AMENDED]
- 252:100-17-14.2. Terminology related to 40 CFR [AMENDED]
- 252:100-17-15. Exemptions [AMENDED]
- 252:100-17-16. Standards for particulate matter and opacity [AMENDED]
- 252:100-17-17. Standards for municipal waste combustor metals [AMENDED]
- 252:100-17-18. Standards for municipal waste combustor acid gases expressed as sulfur dioxide and hydrogen chloride [AMENDED]
- 252:100-17-19. Standards for municipal waste combustor organics expressed as total mass dioxins/furans [AMENDED]

- 252:100-17-20. Standards for nitrogen oxides [AMENDED]
- 252:100-17-21. Standards for municipal waste combustor operating practices [AMENDED]
- 252:100-17-22. Standards for municipal waste combustor fugitive ash emissions [AMENDED]
- 252:100-17-23. Standards for air curtain incinerators [AMENDED]
- 252:100-17-24. Standards for municipal waste combustor operating training and certification [AMENDED]
- 252:100-17-25. Compliance and performance testing [AMENDED]
- 252:100-17-26. Reporting and recordkeeping requirements [AMENDED]
- 252:100-17-27. Compliance schedules [AMENDED]
- Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs)
- Part 1. General Provisions
- 252:100-37-2. Definitions [AMENDED]
- Part 7. Control of Specific Processes
- 252:100-37-38. Pumps and compressors [REVOKED]
- Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
- Part 1. General Provisions
- 252:100-39-2. Definitions [AMENDED]
- Subchapter 44. Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units [NEW]
- 252:100-44-1. Purpose [NEW]
- 252:100-44-2. [RESERVED]
- 252:100-44-3. Reference to 40 CFR [NEW]

SUMMARY:

The Department is proposing to amend Oklahoma Administrative Code (OAC) Title 252, Chapter 100-1-3, OAC 252:100-8-1.1, OAC 252:100-37-2, and OAC 252:100-39-2 to clarify definitions including particulate matter and volatile organic compounds.

The Department is proposing to amend OAC 252:100-7-2, 252:100-7-15 and 252:100-7-18. The proposed revision will: provide consistency with State statutes and other Air Pollution Control rules; remove reference to Subchapter 41 which has been revoked; correct the emissions calculation methods for determining if a permit is required; clarify when construction permits are required, and provide for administrative amendments to operating permits for minor facilities.

The Department proposes to amend OAC 252:100-9 to modify excess emission reporting requirements.

The Department proposes to amend OAC 252:100-17 Part 5 to meet federal requirements for State plans under section 111(d) of the federal Clean Air Act applicable to existing sources. The proposed change would adopt standards published on May 5, 2006 in the Federal Register at 40 CFR 60, Subpart Cb that apply to Municipal Waste Combustor (MWC) units with the capacity to combust more than 250 tons per day of municipal solid waste. The proposed changes to

Notices of Rulemaking Intent

Subchapter 17 and its accompanying 111(d) plan have been scheduled for hearings at both January and April 2007 Air Quality Advisory Council meetings.

The Department proposes to revoke OAC 252:100-37-38.

The Department is proposing a new Subchapter 44 to incorporate by reference the federal Clean Air Mercury Rule (CAMR) as it appears in the June 9, 2006 Federal Register. The Clean Air Act requires a state to prepare a 111(d) plan in order to incorporate the CAMR. The Air Quality Advisory Council meeting will serve as a public hearing, as required in the 111(d) plan. Prior to and at the January 17, 2007 public hearing, the Department will accept public comments regarding the proposed Subchapter 44 and CAMR 111(d) plan.

AUTHORITY:

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

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on January 17, 2007. For comments received at least 5 business days prior to the Council meeting, staff will post written responses on the Department's web page at least 1 day prior to the Council meeting and provide hard copy written responses to these comments to the Council and the public at that Council meeting. Oral comments may be made at the January 17, 2007 hearing and at the appropriate Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, January 17, 2007 at the OG & E offices, 321 N. Harvey Avenue, Grand Room, Oklahoma City. Before the Environmental Quality Board on February 23, 2007 in Oklahoma City.

This hearing shall also serve as the public hearing to receive comments on the proposed revisions to the State Implementation Plan (SIP) under the requirements of 40 CFR 51.102 of the EPA regulations concerning the SIPs and 27A O.S. '2-5-107(6)(c).

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities or any other members of the public affected by these rules provide the Department, 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, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

The proposed rules are available for review 30 days prior to the hearing at the Air Quality Division of the Department and on the Department's website at: http://www.deq.state.ok.us/AQDnew/council_mtgs/index.htm.

Copies may be obtained from the contact person by calling (405) 702-4100.

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

Please send written comments to Max Price at max.price@deq.state.ok.us for Subchapters 1, 8, 37 and 39, and for Subchapter 9. Send written comments for the proposed revision to Subchapter 17 to Pat Sullivan at pat.sullivan@deq.state.ok.us. For the new Subchapter 44, send written comments to Morris Moffett at morris.moffett@deq.state.ok.us. Written comments for the proposed revision to Subchapter 7 should be sent to Dr. Joyce Sheedy at joyce.sheedy@deq.state.ok.us. The mailing address is: Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, FAX (405)702-4101.

PERSONS WITH DISABILITIES:

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

[OAR Docket #06-1489; filed 11-21-06]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 300. LABORATORY ACCREDITATION

[OAR Docket #06-1488]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 19. Classifications

252:300-19-4. [NEW]

Subchapter 21. Categories

252:300-21-2. [AMENDED]

252:300-21-5. [NEW]

Appendix B. Additional Analytes for General Water Quality Laboratory Categories [REVOKED]

Appendix B. Additional Analytes for General Water Quality Laboratory Categories [NEW]

SUMMARY:

The DEQ Water Quality Division is modifying OPDES permits of several wastewater dischargers to require laboratory toxicity tests with freshwater mussels. Additionally, OPDES permits are being modified to allow discharge of perchlorate. Laboratory analyses must be performed by certified laboratories. Therefore, in Subchapter 19, a new rule is proposed to add ASTM # 2455-06 for toxicity testing in freshwater mussels and to add methods to determine perchlorate in soils and in water. In Subchapter 21, a provision is made whereby a laboratory may be accredited in a general water classification for toxicity testing in freshwater mussels and for perchlorate. Appendix B is currently under revision pursuant to another rulemaking and cannot be amended.

Therefore, a new appendix, B.1., is being proposed to accommodate the two additional analytes for general water quality laboratories.

AUTHORITY:

Environmental Quality Board; 27A O.S. " 2-2-101, 2-2-201 and Article IV., Laboratory Services and Certification, ' 2-4-101 *et seq.*

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from December 15, 2006 through January 18, 2007. Oral comments may be made at the Laboratory Certification Advisory Council meeting on January 25, 2007, or at the meeting of the Environmental Quality Board on February 23, 2007.

PUBLIC HEARINGS:

Before the Laboratory Certification Advisory Council at 1:30 p.m. on January 25, 2007, in the conference room on the 10th floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

Before the Environmental Quality Board at 9:30 on February 23, 2007, at the Association of County Commissioners of Oklahoma building, 429 N.E. 50th Street, Oklahoma City.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by these proposed rules provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease in the level of direct costs such as fees and the indirect costs such as reporting, 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.

COPY OF PROPOSED RULE CHANGES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

David Caldwell, Customer Services Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at david.caldwell@deq.state.ok.us, phone 405-702-1000, or fax 405-702-1001.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the public hearing to be held before the Laboratory Certification Advisory Council and need assistance should notify the contact person

three days in advance of the meeting during business hours at 405-702-5100 or by using TDD relay number 1-800-522-8506.

[OAR Docket #06-1488; filed 11-21-06]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 710. WATERWORKS AND WASTEWATER WORKS OPERATOR CERTIFICATION**

[OAR Docket #06-1487]

INTENDED RULEMAKING ACTION:

Notice of PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions [AMENDED]
- 252:710-1-4. Definitions [AMENDED]
- Subchapter 7. Shared Operators For Small Systems [NEW]
- 252:710-7-1. Purpose [NEW]
- 252:710-7-2. Requirements [NEW]
- Appendix A. Classification of Community and Nontransient Noncommunity Water Systems, Wastewater Systems and Laboratories [REVOKED]
- Appendix A. Classification of Community and Nontransient Noncommunity Water Systems, Wastewater Systems and Laboratories [NEW]

SUMMARY:

This rulemaking is to implement the requirements set forth in Senate Bill 1293 (2006) which was codified at 59 O.S. § 1118. Definitions have been amended to reflect the addition of the new provisions. New provisions include requirements for operators providing services to multiple facilities. Additionally, clarification language was added to Appendix A.

AUTHORITY:

Environmental Quality Board and Waterworks and Wastewater Works Advisory Council; 27A O.S. §§ 2-2-101 and 2-2-201; and 59 O.S. § 1101 *et seq.*

REQUEST FOR COMMENTS:

The DEQ requests that business entities or 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.

COMMENT PERIOD:

Written comments may be delivered or mailed to the contact person from December 15, 2006 through January 19, 2007.

Oral comments may be made at the meeting of the Waterworks and Wastewater Works Advisory Council, January 19, 2007 and at the Environmental Quality Board meeting on February 23, 2007.

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PUBLIC HEARINGS:

Before the Waterworks and Wastewater Works Advisory Council Meeting on January 19, 2007, at 10:00 a.m. at the Oklahoma City Office of the Department of Environmental Quality, 10th Floor Conference Room, 707 N. Robinson, Oklahoma City, Oklahoma 73101.

Before the Environmental Quality Board at 9:30 a.m. on February 23, 2007, at the Association of County Commissioners, 429 N.E. 50th Street, Oklahoma City, Oklahoma.

COPY OF PROPOSED RULE:

The proposed rules are available for review at the Water Quality Division of DEQ and on the DEQ website address <http://www.deq.state.ok.us/WQDnew/wwwac/index.html> then click on Meeting Details, or copies may be obtained from the contact person by calling (405) 702-7189.

RULE IMPACT STATEMENT:

The rule impact statement for the proposed rule will be on file at the Department of Environmental Quality and may be requested from the contact person.

CONTACT PERSON:

Contact Donald D. Maisch at don.maisch@deq.state.ok.us or (405) 702-7189 (phone) or 702-7199 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three days in advance of the hearing. For hearing impaired, the TDD Relay Number is 1-800-722-0353 for TDD machine use only.

[OAR Docket #06-1487; filed 11-21-06]

TITLE 265. STATE FIRE MARSHAL COMMISSION CHAPTER 10. SMOKE DETECTORS

[OAR Docket #06-1476A]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Rationalization

265:10-3-3. [AMENDED]

265:10-3-4. [AMENDED]

SUMMARY:

The proposed revisions to 265:10-3-3 and 265:10-3-4 amend the language to reference updates of state adopted codes.

AUTHORITY:

74 O.S. § 324.11a.; State Fire Marshal Commission

COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so before 10:00 a.m. on January 16, 2007, at the following address: Jerry Pruner, State Fire Marshal's Office, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107.

PUBLIC HEARING:

A public hearing will be held at 10:00 a.m. on Tuesday, January 16, 2007, at the State Fire Marshal's Office, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the State Fire Marshal's Office, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107.

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared as required by law and may be obtained from the State Fire Marshal's Office at the above address beginning January 2, 2007.

CONTACT PERSON:

Jerry Pruner, Assistant State Fire Marshal, (405) 522.5005.

[OAR Docket #06-1476A; filed 11-21-06]

TITLE 265. STATE FIRE MARSHAL COMMISSION CHAPTER 25. ADOPTED NATIONAL CODES AND STANDARDS

[OAR Docket #06-1476]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

265:25-1-3. [AMENDED]

SUMMARY:

The proposed revisions to 265:25-1-3 amend the language to reference updates of state adopted codes.

AUTHORITY:

74 O.S. § 324.11.; State Fire Marshal Commission

COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so before 10:00 a.m. on January 16, 2007, at the following address: Jerry Pruner, State Fire Marshal's Office, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107.

PUBLIC HEARING:

A public hearing will be held at 10:00 a.m. on Tuesday, January 16, 2007, at the State Fire Marshal's Office, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the State Fire Marshal's Office, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107.

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared as required by law and may be obtained from the State Fire Marshal's Office at the above address beginning January 2, 2007.

CONTACT PERSON:

Jerry Pruner, Assistant State Fire Marshal, (405) 522.5005.

[OAR Docket #06-1476; filed 11-21-06]

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

[OAR Docket #06-1496]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

317:2-1-2. [AMENDED]

317:2-1-5. [AMENDED]

(Reference APA WF # 06-34)

SUMMARY:

Rules are revised to provide a more timely and efficient administrative appeals process. When a recipient is denied prior approval of a procedure, service, or durable medical equipment, he/she has the right to an administrative appeal. Current rules require an administrative appeal first be reviewed by a three person program panel (which may or may not contact the recipient prior to rendering a decision). If the denial is upheld, the recipient may then request a fair hearing before an Administrative Law Judge. The panel review may sometimes delay new information being reviewed by Agency staff, such as when a provider submits new information and a panel review has been scheduled, the new information may not be considered until the review. A review of the current process does not show a change in agency decision making nor does it reduce the agency's ability to properly consider administrative appeals. Revisions are needed to remove potential delays in the appeals process that may postpone a recipient's receipt of medically necessary procedures, services or durable medical equipment by eliminating the three person program staff review.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care

Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1496; filed 11-22-06]

**TITLE 317. OKLAHOMA HEALTH CARE
AUTHORITY
CHAPTER 10. PURCHASING**

[OAR Docket #06-1520]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

317:10-1-1. through 317:10-1-5. [AMENDED]

317:10-1-7. [AMENDED]

317:10-1-9. through 317:10-1-12. [AMENDED]

317:10-1-15. through 317:10-1-20. [AMENDED]

(Reference APA WF # 06-04)

SUMMARY:

Purchasing rules are revised to provide clarity and authorize the use of agency purchase cards. State statute permits the use of purchase cards by state agencies in lieu of purchase orders. The use of a purchase card system will be beneficial to the agency by reducing staff time needed to complete and process purchase orders. Definitions, procedures, and terms are updated to comply with language in the Oklahoma Central Purchasing Act. Revisions are needed to provide clarity and authorize the use of agency purchase cards.

Notices of Rulemaking Intent

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Title 74, Section 85.5; Title 74, Section 85.1 through 85.45K

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1520; filed 11-22-06]

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

[OAR Docket #06-1506]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 7. SoonerCare Choice
Part 3. Enrollment Criteria
317:25-7-13. [AMENDED]

(Reference APA WF # 06-19)

SUMMARY:

SoonerCare Choice rules are revised to exclude individuals residing in an Institution for Mental Disease (IMD) from the SoonerCare Choice program. Currently, children residing in out-of-state behavioral health facilities, due to the inability of state facilities meeting their special needs, are included in the SoonerCare program. Federal regulations state that Federal Financial Participation is unavailable for individuals in an IMD (42 CFR 435.1008). Therefore, to comply with federal regulations, SoonerCare Choice rules are revised to exclude individuals residing in Institutions for Mental Disease.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 435.1008

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1506; filed 11-22-06]

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

[OAR Docket #06-1514]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 7. SoonerCare Choice

Part 1. General Provisions

317:25-7-2. [AMENDED]

Part 3. Enrollment Criteria

317:25-7-10. [AMENDED]

(Reference APA WF # 06-10)

SUMMARY:

SoonerCare Choice rules are revised to allow all SoonerCare Choice members to self refer for family planning services. SoonerCare came under the Medicaid managed care regulations as a Prepaid Ambulatory Health Plan (PAHP) effective January 1, 2005. PAHPS are contractually required by OHCA to let members see any family planning provider. Currently policy limits the ability to self refer for family planning services to members under the age of 18. Revisions are needed to permit all SoonerCare Choice members this same choice. Other revisions clarify that vision for refraction services are only compensable for children.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 438.52

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1514; filed 11-22-06]

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

[OAR Docket #06-1494]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. General Provider Policies

Part 3. General Medical Program Information

317:30-3-40. [AMENDED]

Subchapter 5. Individual Providers and Specialties

Part 41. Family Support Services

317:30-5-410. through 317:30-5-412. [AMENDED]

Part 51. Habilitation Services

317:30-5-480. through 317:30-5-482. [AMENDED]

(Reference APA WF # 06-48A)

SUMMARY:

Developmental Disabilities Services rules are revised to facilitate consistency with Medicaid provider requirements, comply with current practices and procedures and laws governing such, delete unnecessary language, and update referenced policy cites. The proposed revisions are required to clarify DDSD Home and Community-Based Services Waiver program provisions as well as habilitation services. Rules regarding agency companion services are revised to delineate levels of support criteria. Group home rules are revised to reflect current provisions and requirements. Rules are further revised to provide contracting guidelines for HCBS Waiver employment services.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

Notices of Rulemaking Intent

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1494; filed 11-22-06]

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

[OAR Docket #06-1495]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialities

Part 1. Physicians

317:30-5-2. [AMENDED]

317:30-5-14. [AMENDED]

(Reference APA WF # 06-38)

SUMMARY:

Rules revisions are needed to allow coverage for adult immunizations for vaccine preventable diseases. By maintaining recommended vaccines, SoonerCare members, their families and communities are protected from serious and often life threatening infections. Revisions provide advice and guidance on the most effective means to prevent vaccine-preventable diseases. Revision also clarify a facility's accreditation requirements to be eligible to perform organ transplants and define appropriate transplants that are reimbursable by the Agency.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1495; filed 11-22-06]

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

[OAR Docket #06-1497]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialities

Part 3. Hospitals

317:30-5-40. [AMENDED]

317:30-5-40.1. [NEW]

317:30-5-40.2. [NEW]

317:30-5-41. [AMENDED]

- 317:30-5-41.1. [NEW]
 - 317:30-5-41.2. [NEW]
 - 317:30-5-42. [REVOKED]
 - 317:30-5-42.1. through 317:30-5-42.18. [NEW]
 - 317:30-5-47. [AMENDED]
 - 317:30-5-47.1. through 317:30-5-47.4. [AMENDED]
 - 317:30-5-50. [AMENDED]
 - 317:30-5-56. through 317:30-5-57. [NEW]
 - Part 63 Ambulatory Surgical Centers
 - 317:30-5-566. [AMENDED]
 - 317:30-5-567. [AMENDED]
- (Reference APA WF # 06-33)**

SUMMARY:

Rules are revised to clarify and more accurately reflect utilization and costs for outpatient hospital services and freestanding ambulatory surgery centers. Rules are needed to establish accurate reimbursement and provide clarification to rules for outpatient hospital services for dates of service on or after October 1, 2005. Other revisions adopt the procedures and groupings paid by Medicare under the Ambulatory Surgery Center (ASC) system. This revision applies to hospital-based and freestanding ASC's. Revisions also establish clinic services and observation room services based on Ambulatory Patient Classification (APC) groups.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1497; filed 11-22-06]

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

[OAR Docket #06-1498]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 5. Individual Providers and Specialities
 - Part 33. Transportation by Ambulance
 - 317:30-5-335. [AMENDED]
 - 317:30-5-335.1. [NEW]
 - 317:30-5-336. [AMENDED]
 - 317:30-5-336.1. through 317:30-5-336.13. [NEW]
 - 317:30-5-337. [AMENDED]
 - 317:30-5-339. [AMENDED]
- (Reference APA WF # 06-32)**

SUMMARY:

Transportation rules are revised to establish a payment and billing method for contracted air ambulance providers that transport SoonerCare members out-of-state from the airport to the admitting hospital. Currently, if a member has to be transported by air ambulance, the air ambulance provider bills the agency via an invoice for expenses incurred for ground transportation. Current CPT codes provide for out-of-state ground transportation. The change would enable the air-provider to sub-contract with out-of-state non-contracted ground ambulance providers and bill appropriate CPT codes for such service through the MMIS system. This type of transportation is provided only when medically necessary treatment can not be performed by an in-state provider. Revisions also address non-emergency stretcher services and the required criteria to be eligible for stretcher services. These revisions provide written criteria for current practices.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

Notices of Rulemaking Intent

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1498; filed 11-22-06]

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

[OAR Docket #06-1499]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. General Provider Policies

Part 3. General Medical Program Information

317:30-3-59. [AMENDED]

Subchapter 5. Individual Providers and Specialties

Part 10. Bariatric Surgery [NEW]

317:30-5-137. through 317:30-5-141. [NEW]

(Reference APA WF # 06-29)

SUMMARY:

Agency rules are issued to establish coverage for bariatric surgery for SoonerCare members between the ages of eighteen to sixty-five with a body mass index of thirty-five or greater who have been diagnosed with one of the following conditions, diabetes mellitus, degenerative joint disease of at least one major weight bearing joint or have another co-morbid condition. The agency researched several options to weight

loss programs and concluded the bariatric surgery has the best long term results. The following is an excerpt from the State of Washington clinical trial obtained by the agency as part of its research: Morbidly obese individuals have a 10%-28% incidence of type 2 non-insulin dependent diabetes. After surgery, 69%-100% of patients with diabetes had improvement or resolution of diabetes. One review concluded 76.8% of patients had complete diabetes resolution, and 86% had resolution improvement. Clinical trials demonstrated that surgery cured 11 or 12 diabetics in one study and freed 75% of patients of medication for diabetes in another. An average weight loss after surgery is 55-97 pounds after 1-2 years. Up to 8 years after surgery, there is an average 44 pound total loss. Rules are revised to add bariatric surgery as a covered Medicaid service.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1499; filed 11-22-06]

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

[OAR Docket #06-1500]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-22. [AMENDED]

317:30-5-24. [AMENDED]

(Reference APA WF # 06-28)

SUMMARY:

Rules are revised to allow coverage for first trimester ultrasounds and additional ultrasounds as needed for high risk pregnancies. Through the use of high risk ultrasounds, the provider can more accurately determine the estimated due date which enhances the probability of positive birth outcomes. Current rules do not allow for first trimester ultrasounds nor does it allow for an adequate number of follow up ultrasounds for women with established serious pregnancy conditions or complications. Therefore, rules revisions are needed to enhance the probability of positive birth outcomes through coverage of additional ultrasounds.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 435.1008

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1500; filed 11-22-06]

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

[OAR Docket #06-1501]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties

Part 61. Home Health Agencies

317:30-5-545. [AMENDED]

(Reference APA WF # 06-27)

SUMMARY:

Home Health Agency provider rules are revised to allow Home Health Agencies who have been deemed eligible as a Home Health Medicare provider to contract with this agency to be a SoonerCare provider. Current Home Health Agency rules state that an agency must be Medicare certified or accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO) in order to contract as a SoonerCare provider. Earlier this year, CMS revised federal regulations to approve the Accreditation Commission for Healthcare (ACHC) as a national accreditation program for home health agencies seeking to participate in the Medicare or Medicaid programs. Therefore, agency rules are revised to allow Home Health Agencies who have deemed status with Medicare to contract with SoonerCare, thus assuring SoonerCare members access to services.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.70

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority,

Notices of Rulemaking Intent

4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1501; filed 11-22-06]

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

[OAR Docket #06-1502]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties

Part 62. Private Duty Nursing

317:30-5-556. [AMENDED]

317:30-5-558. [AMENDED]

317:30-5-560. [AMENDED]

317:30-5-560.1. [AMENDED]

317:30-5-560.2. [AMENDED]

(Reference APA WF# 06-25)

SUMMARY:

Agency rules are revised to add Private Duty Nursing (PDN) services to assist in transporting members to medical appointments and emergency room visits within the approved hours in the treatment plan and to require a new or revised treatment plan, signed by the physician, at least annually. Currently PDNs only provide services within the home. The revised rules enable nurses to assist with transporting members to medical appointments and emergency room visits in lieu of using an ambulance. Currently there is no time limitation on the duration of treatment plans. The current language could allow for inappropriate and/or outdated treatment plans

and possible inappropriate PDN services. The revised rules will require physicians to keep treatment plans updated with appropriate services for the member's condition provided by the PDN.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1502; filed 11-22-06]

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

[OAR Docket #06-1503]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. General Provider Policies

Part 3. General Medical Program Information

317:30-3-57. [AMENDED]

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-12. [AMENDED]

317:30-5-24. [AMENDED]

Part 19. Nurse Midwives

317:30-5-226. [AMENDED]

Part 35. Rural Health Clinics

317:30-5-355.1. [AMENDED]

317:30-5-361. [AMENDED]

Part 49. Family Planning Centers

317:30-5-466. [AMENDED]

317:30-5-467. [AMENDED]

Part 89. Radiological Mammographer

317:30-5-901. [AMENDED]

(Reference APA WF# 06-22)

SUMMARY:

Agency rules are revised to allow mammograms for members of any age or gender when they are medically indicated as necessary. Currently rules allow for one screening and one follow-up mammogram annually for women beginning at age 30. The current language is not in line with benefits offered through the Breast and Cervical Cancer (BBC) Program and could limit medically necessary mammograms for members with cancerous conditions. Rules are also revised to remove the contraceptive Norplant system from benefits as it is no longer offered.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1503; filed 11-22-06]

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

[OAR Docket #06-1508]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. General Provider Policies

Part 4. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program/Child Health Services

317:30-3-65.4. [AMENDED]

(Reference APA WF # 06-17)

SUMMARY:

Early and Periodic Screening, Diagnosis and Treatment (EPSDT) rules are revised to add coverage of environmental inspection service for children with elevated blood lead levels. High blood levels can cause serious health effects, including seizures, coma and death. Elevated blood levels have been associated with adverse effects on cognitive development, growth, and behavior among children aged 1 to 5. Because children with elevated blood lead levels ranging from 10 to 25 ug/dL do not develop clinical symptoms, screening is necessary to identify children who need environmental or medical intervention to reduce their blood lead levels. The Oklahoma Childhood Lead Poison Prevention Program (OCLPPP), by and through the Oklahoma State Department of Health, provide educational assistance, case management services and environmental inspections to children who have elevated blood lead in accordance with rules set forth by the Oklahoma State Board of Health (OAC 310:512-3-5). Federal policy requires that all state Medicaid programs cover a one-time environmental investigation to determine the source of lead. Revisions provide Federal Financial Participation to this state funded program.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care

Notices of Rulemaking Intent

Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1508; filed 11-22-06]

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

[OAR Docket #06-1509]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-13. [AMENDED]

(Reference APA WF # 06-16)

SUMMARY:

Physician rules are revised to clarify reimbursement guidelines for rape and abuse exams. Language is added to specify that medically necessary procedures as well as the exam are compensable. Revisions reflect the current form and terminology used when billing for these services. Rule revisions are needed to provide consistency in rules and to reduce the Medicaid provider error rate.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1509; filed 11-22-06]

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

[OAR Docket #06-1510]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties
Part 39. Skilled and Registered Nursing Services
317:30-5-391. through 317:30-5-393. [AMENDED]

(Reference APA WF # 06-14)

SUMMARY:

Agency Skilled and Registered Nursing Services rules are revised to establish a three-tier system to provide skilled nursing services to individuals demonstrating targeted medical needs enrolled in the Developmental Disabilities Services Division (DDSD) Homeward Bound and Community Waivers. One of the growing challenges in meeting the support needs of waiver service recipients is to provide adequate nursing support. Individuals who require nursing services have experienced changes to their health status and require skilled nursing intervention to prevent institutionalization. In recent years, DDSD has experienced a significant loss in the number of skilled nursing services providers, and continues to experience great difficulty in recruitment. DDSD has attempted to contract with other nursing agencies that have declined to service this population based on current reimbursement rates. To assure adequate nursing support for DDSD Waiver service recipients, a revision of the DDSD reimbursement structure is necessary.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1510; filed 11-22-06]

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

[OAR Docket #06-1512]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties
Part 85. ADvantage Program Waiver Services
317:30-5-763. through 317:30-5-764. [AMENDED]
Part 95. Agency Personal Care Services
317:30-5-951. through 30-5-953. [AMENDED]
(Reference APA WF # 06-13A)

SUMMARY:

Personal Care Services rules are revised at the request of the Oklahoma Department of Human Services (OKDHS) to shift the responsibility for the completion of the skilled nursing assessment and service planning from state employed OKDHS registered nurses to provider agency nurses. Existing rules require the OKDHS Long Term Care registered nurse to make a home visit to assess the member's needs, and develop and monitor the care and service plans. Once eligibility is determined for Personal Care Services, the individual chooses an agency Personal Care service provider who is reimbursed to provide the needed services and also monitor the service recipient's care and service plans, duplicating the efforts of the OKDHS Long Term Care nurse. Most individuals receiving Medicaid State Plan Personal Care services require assistance with the instrumental activities of daily living such as meal preparation, cleaning and chore services and do not require hands on care. The Nurse Practice Act does not require a registered nurse to complete the tasks of service planning, monitoring and plan development. By transferring additional responsibility to the Personal Care service agencies, the OKDHS registered nurses will have more time to concentrate on their numerous other responsibilities that require the expertise of registered nurses. Revisions are needed in order for the Oklahoma Department of Human Services to transfer the responsibility of the care plan development and monitoring to home care provider agency nurses.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.167

Notices of Rulemaking Intent

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1512; filed 11-22-06]

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

[OAR Docket #06-1513]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-2. [AMENDED]

317:30-5-8. [AMENDED]

(Reference APA WF # 06-12)

SUMMARY:

Agency rules are revised to add clarification to pre and post operative billing procedures. Current rules exclude payment for pre and post operative care outside of the global payment. However, current CPT guidelines provide for a separate

payment for evaluation services provided prior to the decision to perform surgery has been made.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1513; filed 11-22-06]

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

[OAR Docket #06-1515]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-25. [AMENDED]

(Reference APA WF # 06-09)

SUMMARY:

Physician rules are revised to add post-payment retrospective reviews of medical necessity for outpatient observation services. Currently, outpatient observation services are not a part of post payment review by the agency's Quality Improvement Organization. Revisions are needed to reduce potential abuses of observation services, as documented by the Office of Inspector General. The revised rules would reduce potential abuses and allow the agency to recoup erroneous payments.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 476; Sections 1154, 1866(a)(1)(F) and 1866(f)(2) of the Social Security Act

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1515; filed 11-22-06]

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

[OAR Docket #06-1517]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties
Part 51. Habilitation Services
317:30-5-482. [AMENDED]
(Reference APA WF # 06-07)

SUMMARY:

Developmental Disability Services Division Habilitation Services rules are revised to add the need for a prescription for specific services in the Individual's Plan which lists the service recipient's need for support. Several years ago, a Centers for Medicare and Medicaid Services audit of DDS Medicaid services revealed that a required prescription for several therapies and services were often not found in the service recipient's Individual's Plan. Our requirements for a prescription for occupational therapy, physical therapy, speech/language services, and audiology services are found in the specific rules for those services but currently are not in the Habilitation Services rules. The Oklahoma Department of Human Services Developmental Disability Services Division has requested revisions to rules to add this requirement to the Habilitation Services rules. Revisions are needed to add the requirement for a prescription in the Individual's Plan for specific services.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.110

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

Notices of Rulemaking Intent

Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1517; filed 11-22-06]

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

[OAR Docket #06-1518]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties
Part 77. Speech and Hearing Services
317:30-5-676. [AMENDED]
(Reference APA WF # 06-06)

SUMMARY:

Agency rules are revised to remove the prior authorization requirement for initial speech and hearing services for children. Currently, rules state that all speech and hearing services, including the initial evaluation, for children must be prior authorized by the agency's Medical Authorization Unit. All requests for an evaluation are routinely approved which creates a large volume of unnecessary work for the unit. Revisions allow reimbursement for the initial therapy evaluation and the first three speech and hearing visits without prior authorization. These revisions are needed to remove an unnecessary prior authorization to an evaluation that is always allowed through the Early Periodic Screening and Diagnostic Testing program for children. Additional visits continue to require prior authorization.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1518; filed 11-22-06]

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

[OAR Docket #06-1521]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacists
317:30-5-70.2. [AMENDED]
(Reference APA WF # 06-03)

SUMMARY:

Pharmacists rules are revised to clarify the record retention rule to providers and outside reviewers. There has been some confusion as to the interpretation of "original written prescription". The provider is required to provide original written prescriptions along with other documents at the time of an audit. The rule revision provides the definition of "original written prescription" as defined in the Oklahoma Pharmacy Act. This clarification will eliminate confusion of the interpretation and could eliminate any potential audit findings due to misinterpretation of the required documents.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1521; filed 11-22-06]

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

[OAR Docket #06-1522]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Individual Providers and Specialties
Part 75. Federally Qualified Health Centers
317:30-5-660. [AMENDED]
317:30-5-660.1. through 317:30-5-660.5. [NEW]
317:30-5-661. [AMENDED]

317:30-5-661.1. through 317:30-5-661.7. [NEW]
317:30-5-662. through 317:30-5-664. [REVOKED]
317:30-5-664.1. through 317:30-5-664.15. [NEW]
(Reference APA WF # 06-01)

SUMMARY:

Federally Qualified Health Centers rules are revised to provide needed clarity by reorganizing the rules to be more user friendly for providers and recipients. Terminology is updated and definitions are added. The rule defines the "core" services for these facilities, which will be billed as an encounter, and will allow eligible facilities to bill for multiple encounters with distinctly different diagnosis including a medical encounter, a behavioral health encounter and a dental encounter and in some cases, an emergency encounter. This rule does not expand eligibility; however, the scope of services is expanded to allow eligible facilities to bill Medicaid for covered medically necessary services provided by licensed marital and family therapists, licensed professional counselors, licensed behavioral practitioners, and licensed alcohol and drug counselors within the scope of their practice.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

Notices of Rulemaking Intent

CONTACT PERSON:

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

[OAR Docket #06-1522; filed 11-22-06]

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

[OAR Docket #06-1504]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 21. Breast and Cervical Cancer Treatment
Program

317:35-21-12. [AMENDED]

(Reference APA WF # 06-21)

SUMMARY:

Agency rules are revised to establish specific time frames, following approval for the Breast and Cervical Cancer Treatment program (BCC), in which a member has to seek diagnostic testing and treatment for breast and cervical cancer. Currently, there is no specific time frame for a member to complete diagnostic testing for BCC. Once a member has an abnormal screening for breast and/or cervical cancer and meets eligibility requirements, they are certified for full scope Medicaid benefits. The member maintains full scope of benefits until their diagnostic testing is completed and results are reviewed by OHCA Care Managers to determine if the member is still in need of treatment. There have been circumstances in which a member purposefully delays diagnostic testing while they focus on other personal medical concerns. More commonly, the member does not place high priority on completing their testing and therefore the case will remain open for extended periods of time while the member seeks no care at all. Additionally, some members have no intention of seeking treatment. Under the current policy, OHCA has no recourse to close the case upon the members decision to not seek treatment. The proposed revisions would enable the case to be closed if the member does not seek treatment within the 60 day time frame or if the member refuses treatment.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1504; filed 11-22-06]

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

[OAR Docket #06-1507]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Coverage and Exclusions

317:35-3-2. [AMENDED]

(Reference APA WF # 06-18)

SUMMARY:

Non-emergency transportation (NET) rules are revised to exclude the capitated payment and transportation services for individuals who reside in an Institution for Mental Disease (IMD). Federal regulations state that Federal Financial Participation is unavailable for individuals in an IMD (42 CFR 435.1008). Therefore, to comply with federal regulations, NET rules are revised to exclude the capitated payment and transportation services for individuals residing in Institutions for Mental Disease.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 435.1008

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1507; filed 11-22-06]

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

[OAR Docket #06-1511]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 15. Personal Care Services
 - 317:35-15-2. [AMENDED]
 - 317:35-15-8. through 317:35-15-8.1. [AMENDED]
 - 317:35-15-10. [AMENDED]
 - 317:35-15-13.1. [AMENDED]
- (Reference APA WF # 06-13B)**

SUMMARY:

Personal Care Services rules are revised at the request of the Oklahoma Department of Human Services (OKDHS) to shift the responsibility for the completion of the skilled nursing assessment and service planning from state employed

OKDHS registered nurses to provider agency nurses. Existing rules require the OKDHS Long Term Care registered nurse to make a home visit to assess the member's needs, and develop and monitor the care and service plans. Once eligibility is determined for Personal Care Services, the individual chooses an agency Personal Care service provider who is reimbursed to provide the needed services and also monitor the service recipient's care and service plans, duplicating the efforts of the OKDHS Long Term Care nurse. Most individuals receiving Medicaid State Plan Personal Care services require assistance with the instrumental activities of daily living such as meal preparation, cleaning and chore services and do not require hands on care. The Nurse Practice Act does not require a registered nurse to complete the tasks of service planning, monitoring and plan development. By transferring additional responsibility to the Personal Care service agencies, the OKDHS registered nurses will have more time to concentrate on their numerous other responsibilities that require the expertise of registered nurses. Revisions are needed in order for the Oklahoma Department of Human Services to transfer the responsibility of the care plan development and monitoring to home care provider agency nurses.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.167

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

Notices of Rulemaking Intent

CONTACT PERSON:

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

[OAR Docket #06-1511; filed 11-22-06]

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

[OAR Docket #06-1493]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Client Services

Part 1. Companion/Adult Foster Care Services by Agency
317:40-5-3. [AMENDED]

Part 11. Community Residential Supports
317:40-5-152. [AMENDED]

Subchapter 7. Waiver Employment Services
317:40-7-8. [AMENDED]

317:40-7-18. [AMENDED]

(Reference APA WF # 06-48B)

SUMMARY:

Developmental Disabilities Services rules are revised to facilitate consistency with Medicaid provider requirements, comply with current practices and procedures and laws governing such, delete unnecessary language, and update referenced policy cites. The proposed revisions are required to clarify DDS Home and Community-Based Services Waiver program provisions as well as habilitation services. Rules regarding agency companion services are revised to delineate levels of support criteria. Group home rules are revised to reflect current provisions and requirements. Rules are further revised to provide contracting guidelines for HCBS Waiver employment services.

AUTHORITY:

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

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1493; filed 11-22-06]

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

[OAR Docket #06-1519]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Client Services

Part 5. Specialized Foster Care
317:40-5-55. [AMENDED]

Part 9. Service Provisions
317:40-5-103. [AMENDED]

(Reference APA WF # 06-05)

SUMMARY:

Developmental Disabilities Services rules need revision to allow providers of Specialized Foster Care services as well as some service recipients' family members to receive reimbursement for transporting the person they serve. While DDS service recipients have transportation services authorized on their Plans of Care, under current rules neither Specialized Foster Care providers nor any family member are allowed to receive reimbursement for transporting the service recipient. These revisions will allow a family member other than the service recipient's spouse or the parent of a minor service recipient to contract to provide transportation services to work, medical appointments, or other activities identified in that person's Individual Plan. Rules are revised to allow providers of Specialized Foster Care services and certain

service recipients' family members to be compensated for transportation services.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 1020 of Title 56 of the Oklahoma Statutes; Section 5006 of Title 63 of the Oklahoma Statutes

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1519; filed 11-22-06]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 45. OKLAHOMA EMPLOYER AND EMPLOYEE PARTNERSHIP FOR INSURANCE COVERAGE**

[OAR Docket #06-1505]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 7. O-EPIC PA Employer Eligibility 317:45-7-1. [AMENDED]

(Reference APA WF # 06-20)

SUMMARY:

Agency rules are revised to increase the maximum number of employees that an employer may have on its payroll in order for the employer to participate in the O-EPIC Premium Assistance program. Last fall, the agency initiated the O-EPIC Premium Assistance program for small Oklahoma business employers with 25 employees or less. House Bill 2842 of the 2nd Session of the 50th Oklahoma Legislature amended state statutes to authorize OHCA to expand the Premium Assistance program to include employers with 50 employees or less. The Program is funded through a portion of monthly proceeds from the Tobacco Tax that are collected and dispersed through the Health Employee and Economy Improvement Act (HEEIA) Revolving Fund. Revisions are needed to comply with House Bill 2842 of the 2nd Session of the 50th Oklahoma Legislature.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; O.S.S. §68-302-5 et seq.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1505; filed 11-22-06]

Notices of Rulemaking Intent

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 45. OKLAHOMA EMPLOYER AND EMPLOYEE PARTNERSHIP FOR INSURANCE COVERAGE

[OAR Docket #06-1516]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

317:45-1-2. through 317:45-1-3. [AMENDED]

317:45-1-4. [NEW]

Subchapter 3. O-EPIC PA Carriers

Subchapter 5. O-EPIC PA Qualified Health Plans

317:45-5-1. [AMENDED]

Subchapter 7. O-EPIC PA Employer Eligibility

317:45-7-2. [AMENDED]

317:45-7-8. [AMENDED]

Subchapter 9. O-EPIC PA Employee Eligibility

317:45-9-1. [AMENDED]

317:45-9-3. [AMENDED]

317:45-9-5. [REVOKED]

317:45-9-7. [AMENDED]

Subchapter 11. O-EPIC IP [NEW]

Part 1. Individual Plan Providers [NEW]

317:45-11-1. through 317:45-11-2. [NEW]

Part 3. O-EPIC IP Member Health Care Benefits [NEW]

317:45-11-10. through 317:45-11-11. [NEW]

Part 5. O-EPIC Individual Plan Member Eligibility [NEW]

317:45-11-20. through 317:45-11-28. [NEW]

(Reference APA WF # 06-08)

SUMMARY:

Agency rules are issued to establish criteria that implements the Oklahoma Employer and Employee Partnership for Insurance Coverage (O-EPIC) Individual Plan. Last fall, the agency initiated the O-EPIC Premium Assistance program for small Oklahoma's business employers with 25 employees or less. The O-EPIC Individual Plan program extends affordable health coverage to low income employees who cannot afford to participate in their employer's health plan, employees of non-participating employers, self-employed, unemployed seeking work, and workers with a disability. The Program is funded through a portion of monthly proceeds from the Tobacco Tax that are collected and dispersed through the Health Employee and Economy Improvement Act (HEEIA) Revolving Fund. In addition, rules for the O-EPIC Premium Assistance program are revised to: (1) allow employees with multiple employers to qualify for inclusion in the O-EPIC PA program if their primary employer meets eligibility guidelines; (2) add several definitions to rules; and (3) remove unnecessary requirements that are not being used in the current program. a prescription in the Individual's Plan for specific services.

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; O.S.S. §68-302-5 et seq.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007, during regular business hours by contacting Joanne Terlizzi, Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma, 73105, Telephone 405-522-7272.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m. on Tuesday, January 23, 2007, at the Oklahoma Health Care Authority, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules may provide the OHCA, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Joanne Terlizzi, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1516; filed 11-22-06]

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

[OAR Docket #06-1449]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

325:45-1-9. Furosemide (Salix) use without detention barn [AMENDED]

SUMMARY:

Amendment is proposed to expand the horses subject to blood and/or urine sample to determine Salix levels and/or

presence of other drugs. Currently, only horses that finish first, second or third are subject to the sample.

AUTHORITY:

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

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Tuesday, January 16, 2007, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107.

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Tuesday, January 16, 2007, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the public hearing must sign a speaker's register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the Commission, within the comment period, in dollar amounts, if possible, the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rule. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

A copy of the proposed rule amendment may be obtained from the Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by December 1, 2006 and may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

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

[OAR Docket #06-1449; filed 11-20-06]

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

[OAR Docket #06-1450]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

325:45-1-28. Report of treatment: Procaine penicillin administration [AMENDED]

SUMMARY:

Amendment is proposed in light of several incidents involving the reporting of Procaine Penicillin use. Commission Staff believes that a review of the rule is in order to clarify that Trainers based at locations other than the racetrack may present treatment verification forms by someone other than a licensed veterinarian. Currently, the rule is restrictive as it only applies to those treated horses that are stabled on racetrack grounds.

AUTHORITY:

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

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Tuesday, January 16, 2007, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107.

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Tuesday, January 16, 2007, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the public hearing must sign a speaker's register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the Commission, within the comment period, in dollar amounts, if possible, the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rule. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on January 16, 2007.

COPIES OF PROPOSED RULES:

A copy of the proposed rule amendment may be obtained from the Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by December 1, 2006 and may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

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

[OAR Docket #06-1450; filed 11-20-06]

Notices of Rulemaking Intent

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 1. FUNCTION AND STRUCTURE OF THE DEPARTMENT

[OAR Docket #06-1456]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

340:1-1-17. [AMENDED]

340:1-1-21. [AMENDED]

(Reference APA WF 06-22)

SUMMARY:

Chapter 1 proposed rule revisions reflect current: (1) names of offices within the Oklahoma Department of Human Services (OKDHS); and (2) OKDHS form numbers.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Sections 250 et seq. of Title 75 of the Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007 during regular business hours by contacting Dena Thayer, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-521-4326.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 16, 2007 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

CONTACT PERSON:

Dena Thayer, Programs Manager, 405-521-4326.

[OAR Docket #06-1456; filed 11-21-06]

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

[OAR Docket #06-1458]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 31. ~~Planning, Legislative Relations and Policy, And Research~~

Part 4. ~~Planning And Research~~ Office of Legislative Relations and Policy

340:2-31-10. [AMENDED]

Part 5. Petitioning for Rulemaking

340:2-31-31. through 340:2-31-33. [AMENDED]

Subchapter 33. Rates and Standards

340:2-33-1. through 340:2-33-3. [AMENDED]

340:2-33-4. through 340:2-33-5. [REVOKED]

(Reference APA WF 06-21)

SUMMARY:

Chapter 2, Subchapters 31 and 33, proposed revisions: (1) remove language regarding planning and research due to organizational restructuring; (2) reflect the new name and responsibilities of the Office of Legislative Relations and Policy (OLRP); (3) update language regarding petitions for rulemaking; (4) reflect the current title of the Oklahoma Department of Human Services (OKDHS) and the Committee on Rates and Standards; and (5) revoke language that is internal OKDHS procedures.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Sections 250 et seq. of Title 75 of the Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007 during regular business hours by contacting Dena Thayer, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-521-4326.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 16, 2007 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

CONTACT PERSON:

Dena Thayer, Programs Manager, 405-521-4326.

[OAR Docket #06-1458; filed 11-21-06]

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

[OAR Docket #06-1459]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 39. Planning, Research, and Statistics [NEW]
340:2-39-1. [NEW]

(Reference APA WF 06-20)

SUMMARY:

In Chapter 2 a new Subchapter and Section is created due to the Oklahoma Department of Human Services (OKDHS) reorganization establishing the Office of Planning, Research, and Statistics (OPRS). The proposed new rule describes the purpose and responsibilities of OPRS.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Title XX of the federal Social Security Act; Section 162(a) of Title 56 of the Oklahoma Statutes (O.S.); and Section 45.3(A) of Title 62 O.S.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007 during regular business hours by contacting Loretta Cao, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-521-4356.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 16, 2007 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

CONTACT PERSON:

Dena Thayer, Programs Manager, 405-521-4326.

[OAR Docket #06-1459; filed 11-21-06]

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

[OAR Docket #06-1460]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Human Resources Management Division (HRMD)

Part 3. Internal Human Resources

340:2-1-32. [AMENDED]

(Reference APA WF 06-10)

SUMMARY:

Human Resources Management Division (HRMD) proposed rule revisions: (1) bring the rule into compliance with Section 7004-1.8 of Title 10 of the Oklahoma Statutes (O.S.), by establishing a performance-based incentive compensation program for full-time Child Welfare specialists, levels I through IV, who meet the requirements.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; House Bill 2840; and Section 7004-1.8 of Title 10 O.S.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007 during regular business hours by contacting Kevin Sharp, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-521-6829.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 16, 2007 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

CONTACT PERSON:

Dena Thayer, Programs Manager, 405-521-4326.

[OAR Docket #06-1460; filed 11-21-06]

Notices of Rulemaking Intent

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

[OAR Docket #06-1461]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Office Of Client Advocacy
Part 1. Administration
340:2-3-2. [AMENDED]
Part 3. Investigations
340:2-3-33. through 340:2-3-38. [AMENDED]
Part 5. Grievances
340:2-3-45. through 340:2-3-53. [AMENDED]
340:2-3-55. [AMENDED]
Part 7. Grievance and Abuse Review Committee
340:2-3-64. [AMENDED]
Part 9. Ombudsman Programs
340:2-3-71. [AMENDED]
340:2-3-73. through 340:2-3-74. [AMENDED]
(Reference APA WF 06-17)

SUMMARY:

Office of Client Advocacy (OCA) proposed rule revisions: (1) clarify definitions; (2) correct citations; (3) remove ambiguities; (4) clarify the differences between reporting and referring to OCA; (5) clarify that OCA serves the foster care program of the Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division; (6) clarify the title of the OCA grievance liaison; (7) clarify the local grievance coordinator (LGC) process; (8) clarify the foster parent grievance process to allow for mediation; and (9) insert new OKDHS form numbers.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Sections 10-101 through 10-111 of Title 43A of the Oklahoma Statutes (O.S.); and Sections 175.20 and 601.6 of Title 10 O.S.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007 during regular business hours by contacting Joanne Verity Williams, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-525-4850.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 16, 2007 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

CONTACT PERSON:

Dena Thayer, Programs Manager, 405-521-4326.

[OAR Docket #06-1461; filed 11-21-06]

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

[OAR Docket #06-1457]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions
340:5-1-8. [AMENDED]
(Reference APA WF 06-15)

SUMMARY:

Adult Protective Services (APS) proposed rule revisions change the responsibility of responding to complaints on APS policy and procedures and conducting a case review from the APS field liaison to the county director.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Sections 10-101 through 10-110 of the Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007 during regular business hours by contacting Laura Brown, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-521-4091.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 16, 2007 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

CONTACT PERSON:

Dena Thayer, Programs Manager, 405-521-4326.

[OAR Docket #06-1457; filed 11-21-06]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)**

[OAR Docket #06-1462]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 2. Temporary Assistance for Needy Families (TANF) Work Program

340:10-2-1. [AMENDED]

340:10-2-3. [AMENDED]

340:10-2-5. through 340:10-2-7. [AMENDED]

Subchapter 3. Conditions of Eligibility - Need

Part 3. Income

340:10-3-32. through 340:10-3-33. [AMENDED]

Subchapter 10. Conditions of Eligibility - Deprivation

340:10-10-4. [AMENDED]

340:10-10-6. [AMENDED]

(Reference APA WF 06-08, 06-11, 06-14)

SUMMARY:

Temporary Assistance for Needy Families (TANF) proposed rule revisions: (1) reflect an increase in the standard deduction for work related expenses for TANF applicants and recipients who are employed 30 or more hours per week; (2) denote work activities, work-eligible individuals, and calculation of work participation rates in the TANF Work program; (3) add additional assessment tools to determine participant's interests and skills; (4) limit job search and job readiness activities; (5) add Internal Revenue Service (IRS) Form 1040, Schedule F, for the determination of earned income; (6) reflect current form names and numbers; and (7) remove an out of date rule.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Sections 230.50, 230.52, 230.55, 230.56, 230.60, and 230.62 through 230.66 of Title 56 of the Oklahoma Statutes; the Personal Responsibility and Work Opportunity Act of 1996; and the Deficit Reduction Act of 2005.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007 during regular business hours by contacting Laura Brown, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-521-4091.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 16, 2007 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

CONTACT PERSON:

Dena Thayer, Programs Manager, 405-521-4326.

[OAR Docket #06-1462; filed 11-21-06]

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

[OAR Docket #06-1463]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Initial Application

340:40-3-1. [AMENDED]

Subchapter 5. Plan of Service

340:40-5-1. [AMENDED]

Subchapter 7. Eligibility

340:40-7-1. [AMENDED]

340:40-7-11. [AMENDED]

340: 40-7-13. [AMENDED]

Subchapter 9. Procedures Relating to Case Changes

340:40-9-1. through 340:40-9-3. [AMENDED]

Subchapter 10. Electronic Benefit Transfer (EBT) System for Child Care

340:40-10-4. [AMENDED]

Subchapter 13. Child Care Rates and Provider Issues

340:40-13-1. through 340:40-13-3. [AMENDED]

340:40-13-5. [AMENDED]

(Reference APA WF 06-18)

SUMMARY:

Chapter 40, Child Care Services, proposed rule revisions: (1) allow the use of the same application form when the client is denied benefits and then found eligible within 60 days of the original request date; (2) remove the requirement for an emergency contact; (3) change how business expenses are considered for farmers to coincide with Food Stamp Program policy; (4) permit annual reviews for benefit reporter households; (5) remove the requirement for a yearly

Notices of Rulemaking Intent

consultation for children approved for a severe special needs rate to coincide with Division of Child Care policy; (6) add the requirement that a child care provider applying for a child care contract must provide a copy of the Oklahoma State Bureau of Investigation background investigation report; (7) add the requirement that a center provider must provide proof of employer identification number; (8) remove the requirement that a new child care provider contract must be completed when a provider changes address; (9) add clarifying information; and (10) remove out-of-date language.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law (P.L.) 104-193; the Balanced Budget Act of 1997, P.L. 105-33; and 45 Code of Federal Regulations (CFR) Parts 98 and 99.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007 during regular business hours by contacting Laura Brown, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-521-4091.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 16, 2007 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

CONTACT PERSON:

Dena Thayer, Programs Manager, 405-521-4326.

[OAR Docket #06-1463; filed 11-21-06]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 50. FOOD STAMP PROGRAM

[OAR Docket #06-1466]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 7. Financial Eligibility Criteria
Part 3. Income
340:50-7-30. [AMENDED]

Subchapter 9. Eligibility and Benefit Determination Procedures

340:50-9-5. [AMENDED]

Subchapter 11. Special Procedures

Part 1. Households Entitled to Expedited Service

340:50-11-6. [AMENDED]

(Reference APA WF 06-19)

SUMMARY:

Proposed Food Stamp Program rule revisions: (1) simplify how self-employed farm income and business expenses are considered; (2) update language regarding when a benefit reporter case can be reopened; and (3) remove outdated language.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Section 273.11 of Title 7 of the Code of Federal Regulations (CFR).

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007 during regular business hours by contacting Laura Brown, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-521-4091.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 16, 2007 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

CONTACT PERSON:

Dena Thayer, Programs Manager, 405-521-4326.

[OAR Docket #06-1466; filed 11-21-06]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 65. PUBLIC ASSISTANCE PROCEDURES

[OAR Docket #06-1465]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Eligibility for Benefits
340:65-3-4. [AMENDED]

340:65-3-6. [AMENDED]
340:65-3-8. [AMENDED]
Subchapter 5. Procedures Relating to Case Changes
Part 1. General Provisions
340:65-5-6. [AMENDED]
Part 3. Procedures for Handling Warrants in Special
Circumstances
340:65-5-15. [AMENDED]
340:65-5-18. through 340:65-5-20. [AMENDED]
(Reference APA WF 06-16)

SUMMARY:

Chapter 65 proposed rule revisions: (1) add information regarding when six month Temporary Assistance For Needy Families (TANF) reviews are needed; (2) change information regarding benefit reporter households; (3) clarify existing rules; (4) replace out-of-date language; and (4) reflect current form numbers.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Sections 161 et seq. of Title 56 of the Oklahoma Statutes.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007 during regular business hours by contacting Laura Brown, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-521-4091.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 16, 2007 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

CONTACT PERSON:

Dena Thayer, Programs Manager, 405-521-4326.

[OAR Docket #06-1465; filed 11-21-06]

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

[OAR Docket #06-1477]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions of Child Welfare Services
Part 1. Scope and Applicability
340:75-1-12.2. [AMENDED]
340:75-1-18. through 340:75-1-18.1. [AMENDED]
Part 3. Child Welfare Confidentiality
340:75-1-44. [AMENDED]
Subchapter 4. Family-Centered and Community Services
Part 1. Voluntary Family-Centered Services
340:75-4-12.1. through 340:75-1-12.2. [AMENDED]
340:75-4-13. [AMENDED]
Subchapter 6. Permanency Planning
Part 5. Permanency Planning Services
340:75-6-31. [AMENDED]
340:75-6-31.5. [AMENDED]
Part 7. Case Plans
340:75-6-40.2. through 340:75-6-40.5. [AMENDED]
Part 8. Role of the Child Welfare Worker
340:75-6-48. [AMENDED]
Part 11. Permanency Planning and Placement Services
340:75-6-85. [AMENDED]
340:75-6-85.2. [AMENDED]
340:75-6-85.4. through 340:75-6-85.6. [AMENDED]
340:75-6-85.7. [NEW]
340:75-6-86. [AMENDED]
340:75-6-88. through 340:75-6-89. [AMENDED]
Subchapter 8. Therapeutic Foster Care and Developmental
Disabilities Services
Part 1. Therapeutic Foster Care
340:75-8-1. [AMENDED]
340:75-8-6. through 340:75-8-11. [AMENDED]
Part 3. DDS Services for Custody Children
340:75-8-36. through 340:75-8-39. [AMENDED]
Subchapter 15. Adoptions
Part 14. Post Adoption Services
340:75-15-128.1. through 340:75-15-128.3. [AMENDED]
340:75-15-128.5. through 340:75-15-128.6. [AMENDED]
Subchapter 16. Mental Health Treatment Services
Part 1. Inpatient Mental Health Treatment
340:75-16-29. through 340:75-16-37. [AMENDED]
Part 3. Outpatient Behavioral Health Care Services
340:75-16-45. [AMENDED]
Subchapter 19. Working with Indian Children
340:75-19-1. through 340:75-19-4. [AMENDED]
340:75-19-11. [AMENDED]
340:75-19-16. [AMENDED]
340:75-19-22. [AMENDED]
340:75-19-26. [AMENDED]
340:75-19-26.2. [AMENDED]
340:75-19-28. through 340:75-19-33. [AMENDED]
(Reference APA WF 06-23)

SUMMARY:

The proposed revisions to Subchapters 1, 4, 6, 8, 15, 16, and 19 of Chapter 75 clarify: (1) the appeal process in cases of child abuse or neglect; (2) Oklahoma Department of Human Services (OKDHS) requirements for confidentiality and

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disclosure of information without a court order; (3) reasonable efforts are made in permanency planning to consider in-state and out-of-state placements; (4) options available for voluntary family-centered services; (5) procedures, terminology, and responsibilities regarding permanency placement; (6) the CW worker's role when a child in OKDHS custody is receiving Developmental Disability Services Division (DDSD) services; (7) contact frequency between CW worker and child and CW worker and parent; (8) that the court may not direct placement of a child who is placed in OKDHS custody; (9) new CW worker responsibilities for reuniting youth with parents whose parental rights were terminated; (10) a child may travel outside the country with the placement provider or person approved by the child's CW worker; (11) requirement for therapeutic foster care child care and respite providers; (12) requirements for DDSD needs assessment and referrals; (13) age and exceptions for termination of adoption assistance payments; (14) eligibility for Title IV-E adoption assistance; (15) that APS Healthcare is designated by Oklahoma Health Care Authority to facilitate outpatient and inpatient psychiatric medical necessity care reviews for acute and residential inpatient mental health treatment; (16) the reviewer's decision-making process for length of stay and extension of stay in an inpatient mental health facility; (17) protocol when a child no longer meets medical necessity criteria for inpatient treatment; (18) the criteria for acute medical necessity; (19) the applicability of the Federal and State Indian Child Welfare Acts in child custody proceedings that involve adoptive placement of an Indian child; and (20) protocol for placement of an Indian child in voluntary foster care; and ensure that rule procedures are consistently implemented by updating language and form numbers to conform to current usage and comply with federal, state, and OKDHS standards.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; House Bills 2656 and 2840; Sections 7001-1.1 et. seq, the Oklahoma Children's Code, 7003-6.2, 7005-1.4, and 7510-1.1 et. seq, the Oklahoma Adoption Assistance Act, of Title 10 of the Oklahoma Statutes; House Resolution 5403; and Public Law 109-239.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007 during regular business hours by contacting Caprice Tyner, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 918-588-1750.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S. § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than 5:00 p.m. on January 16, 2007.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and will be available for review by contacting the above listed person.

CONTACT PERSON:

For information regarding processing of proposed rulemaking contact Dena Thayer, OKDHS Policy Management Unit, 405-521-4326.

[OAR Docket #06-1477; filed 11-21-06]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES DIVISION

[OAR Docket #06-1464]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

340:100-1-2. [AMENDED]

Subchapter 3. Administration

Part 1. General Administration

340:100-3-1.1. [REVOKED]

340:100-3-5. through 340:100-3-5.2. [AMENDED]

Part 3. Operations

340:100-3-33.2. [NEW]

340:100-3-34. [AMENDED]

340:100-3-37. [REVOKED]

340:100-3-39. [AMENDED]

Subchapter 5. Client Services

Part 3. Service Provisions

340:100-5-15. [AMENDED]

340:100-5-19. [REVOKED]

340:100-5-22.6. [AMENDED]

Subchapter 6. Group Home Regulations

Part 1. General Provisions

340:100-6-1. [REVOKED]

340:100-6-2. [AMENDED]

Part 3. ~~Basic Licensure~~ Standards

340:100-6-10. through 340:100-6-15. [AMENDED]

340:100-6-16. through 340:100-6-17. [REVOKED]

340:100-6-18. through 340:100-6-21. [AMENDED]

Part 5. ~~Construction Requirements~~ And Physical Plant Requirements

340:100-6-30. [AMENDED]

340:100-6-31. through 340:100-6-35. [REVOKED]

Part 7. Environmental Health, Safety, and Sanitary Requirements

340:100-6-40. [REVOKED]

340:100-6-41. [AMENDED]

340:100-6-42. through 340:100-6-43. [REVOKED]

340:100-6-44. [AMENDED]

- 340:100-6-45. [NEW]
 - Part 9. Dietary Requirements
 - 340:100-6-50. [AMENDED]
 - Part 11. Program Standards
 - 340:100-6-55. [AMENDED]
 - 340:100-6-56. [NEW]
 - Part 13. Individual ~~Habilitation~~ Plan, Training, and Services
 - 340:100-6-60. [AMENDED]
 - 340:100-6-61. through 340:100-6-62. [REVOKED]
 - Part 15. Medication Storage and Administration [REVOKED]
 - 340:100-6-70. [REVOKED]
 - Part 17. Residents' Funds [REVOKED]
 - 340:100-6-75. [REVOKED]
 - 340:100-6-76. [REVOKED]
 - Part 19. Involuntary Transfer or Discharge of ~~Resident~~ Service Recipient
 - 340:100-6-85. through 340:100-6-86. [AMENDED]
 - 340:100-6-87. [REVOKED]
 - 340:100-6-88. [AMENDED]
 - Part 21. ~~Resident's~~ Resident Rights and Responsibilities
 - 340:100-6-95. [AMENDED]
 - 340:100-6-96. [REVOKED]
 - 340:100-6-97. [AMENDED]
 - 340:100-6-98. [REVOKED]
 - Subchapter 17. Employment Services
 - Part 5. Other State Funded ~~Vocational~~ Employment Services
 - 340:100-17-30. [AMENDED]
- (Reference APA WF 06-13)**

SUMMARY:

The proposed revisions to Subchapters 1, 3, 5, 6 and 17 of Chapter 100, Title 340: (1) reflect current terms and definitions used throughout Developmental Disabilities Services Division (DDSD) rules; (2) specify provisions of Home and Community-Based Services (HCBS) Waiver services by legally responsible persons and others; (3) amend procedures for reporting incidents involving service recipients; (4) specify current pre-employment screening procedures; (5) reflect current DDSD case manager activities; (6) specify staffing requirements for alternative group homes; (7) amend group home requirements necessary to comport with House Bill (HB) 2592, effective November 1, 2006; (8) organize existing group home requirements in topical sequence; (9) delineate state funded employment services; and (10) revoke rules that are duplicative or incorporated into other Sections.

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and, in part, 10 O.S. § 1430.1 et seq., Group Homes for Persons with Developmental or Physical Disabilities Act, as amended by HB 2592; 22 O.S. § 1175.6b; Articles I, II, III, and IV of 30 O.S.; 43A § 10-103; 56 O.S. § 1020 and 1025.1 through 1025.3; and 60 O.S. § 863.

COMMENT PERIOD:

Written and oral comments will be accepted December 15, 2006 through January 16, 2007 during regular business hours by contacting Millie Carpenter, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone 405-521-4974.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., § 303(B)(9), "persons may demand a hearing" by contacting the above listed person no later than January 16, 2007 at 5:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available for review by contacting the above listed person.

CONTACT PERSON:

Dena Thayer, Programs Manager, 405-521-4326.

[OAR Docket #06-1464; filed 11-21-06]

**TITLE 505. BOARD OF EXAMINERS IN OPTOMETRY
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #06-1491]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Board Organization and Administration
505:1-3-9. [AMENDED]

SUMMARY:

This proposed rulemaking amends 505: 1-3-9 to increase the yearly license fee from \$150 per year to \$200 per year. The proposed amendment also clarifies that the \$150 examination fee presently in law also applies to persons retaking the examination as may be allowed by law or by the rules of the Board.

AUTHORITY:

Oklahoma Optometry Act; 59 O.S. §§ 583, 587; Board of Examiners in Optometry

COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so before 5:00 p.m. on January 19, 2007 at the following address: 6912 E. Reno, Suite 302, Midwest City, OK 73110.

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PUBLIC HEARING:

The Board of Examiners will hold a public hearing at on Saturday, January 20, 2007 at 4850 N. Lincoln Boulevard, Oklahoma City, OK 73105 at 10:00 a.m. Anyone who wishes to speak must sign in at the door by 9:50 a.m.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Board of Examiners in Optometry at 6912 E. Reno, Suite 302, Midwest City, OK 73110.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement has been prepared and may be obtained from the Board of Examiners in Optometry at 6912 E. Reno, Suite 302, Midwest City, OK 73110 beginning on immediately.

CONTACT PERSON:

Mary Walker, Administrative Assistant to the Board, (405) 733-7836.

[OAR Docket #06-1491; filed 11-21-06]

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

[OAR Docket #06-1452]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

Part 1. General Provisions

530:10-1-2. [AMENDED]

Part 3. Delegation of Human Resource Functions

530:10-1-43. [AMENDED]

Subchapter 3. Affirmative Action and Equal Employment
Opportunity

Part 3. Affirmative Action

530:10-3-33.6. [AMENDED]

530:10-3-33.7. [AMENDED]

Part 5. Noncompliance, Investigations, Hearings, and
Remedies

530:10-3-54. [AMENDED]

Subchapter 7. Salary and Payroll

Part 1. Salary and Rates of Pay

530:10-7-1. [AMENDED]

530:10-7-6. [AMENDED]

530:10-7-7. [AMENDED]

530:10-7-11. [AMENDED]

530:10-7-12. [AMENDED]

530:10-7-14. [AMENDED]

530:10-7-17. [AMENDED]

Subchapter 9. Recruitment and Selection

Part 1. General Provisions

530:10-9-4. [AMENDED]

530:10-9-5. [AMENDED]

Part 3. Written and Performance Tests

530:10-9-37. [AMENDED]

530:10-9-38. [AMENDED]

530:10-9-39. [AMENDED]

530:10-9-40. [AMENDED]

Part 5. Registers

530:10-9-51. [AMENDED]

530:10-9-52. [AMENDED]

530:10-9-54. [AMENDED]

Part 7. Certification

530:10-9-76. [AMENDED]

Part 9. Classified Appointments

530:10-9-99. [AMENDED]

530:10-9-100. [AMENDED]

Part 13. Veterans Preference

530:10-9-130. [AMENDED]

Subchapter 11. Employee Actions

Part 1. General Provisions

530:10-11-1. [AMENDED]

Part 3. Probationary Employees

530:10-11-31. [AMENDED]

530:10-11-32. [AMENDED]

530:10-11-39. [AMENDED]

Part 7. Transfers and Voluntary Demotions

530:10-11-71. [AMENDED]

Subchapter 13. Reduction-in-Force

Part 1. General Provisions for Reduction-in-Force

530:10-13-1. [AMENDED]

530:10-13-2. [AMENDED]

530:10-13-3. [AMENDED]

Part 3. Reduction-in-Force Plan Requirements

530:10-13-32. [AMENDED]

Subchapter 15. Time and Leave

Part 1. General Provisions

530:10-15-1. [AMENDED]

Part 3. Annual and Sick Leave Policies

530:10-15-10. [AMENDED]

530:10-15-12. [AMENDED]

Part 5. Miscellaneous Types of Leave

530:10-15-45. [AMENDED]

530:10-15-49. [AMENDED]

Subchapter 17. Performance Evaluation and Career
Enhancement Programs

Part 7. Carl Albert Public Internship Program

530:10-17-74. [AMENDED]

530:10-17-75. [AMENDED]

530:10-17-77. [AMENDED]

530:10-17-80. [AMENDED]

Part 11. Certified Public Manager Program

530:10-17-110. [AMENDED]

530:10-17-111. [AMENDED]

530:10-17-115. [AMENDED]

SUMMARY:

The proposed amendments to 530:10-3-33.6 are to delete references to the Oklahoma Employment Security Commission's "Labor Force Information Affirmative

Action Programs," and allow the Administrator of the Office of Personnel Management to specify which civilian labor force information is to be used. The proposed amendments to 530:10-3-33.7 are to clarify the process for utilization analysis of affirmative action plans. The proposed amendment to 530:10-7-12 is to clarify and make consistent compensatory time accrual guidelines between FLSA exempt and non-exempt employees. The proposed amendment to 530:10-7-14 is to clarify that an employer may set an employee's salary upon intra-agency lateral transfer at more than 5% of the employee's salary before transfer if it is within the hiring range. The proposed amendments to 530:10-9-4, 530:10-9-5, 530:10-9-37, 530:10-9-38, 530:10-9-39, 530:10-9-40, 530:10-9-51, 530:10-9-52, 530:10-9-54, and 530:10-9-76 are to reflect changes to the application process as a result of new software and to provide flexibility for future software upgrades. The proposed amendments to 530:10-9-100 are to rename the Persons with Severe Disabilities Employment Program and streamline the application process for certified applicants. The proposed amendment to 530:10-9-130 is to clarify the definition of veteran for hiring purposes. The proposed amendment to 530:10-11-71 describes action that may be taken if an employee does not prove satisfactory during the trial period on an intra-agency lateral transfer. The proposed amendments to 530:10-13-2 harmonize the definitions with those in the Oklahoma Personnel Act. The proposed amendment to 530:10-13-32 conforms the rule to statute as to the order of removal during a reduction-in-force and preference for veterans. The proposed amendment to 530:10-15-45 implements statutory change allowing for FMLA leave to be paid with accrued compensatory time. The proposed amendment to 530:10-15-49 clarifies that the section applies to all employees. The proposed amendment to 530:10-17-115 is to clarify the process for assessment and payment of program fees by removing contradictory language.

All other amendments not specifically mentioned are to correct or add citations to permanent rules.

AUTHORITY:

The Administrator of the Office of Personnel Management: 74 O.S., §§ 840-1.6A, 840-2.1, 840.2.10, 840-2.17, 840-2.20, 840-2.22, 840-2.27C, 840-2.29, 840-3.5, 840-3.8, 840-4.11, 840-4.12, 840-4.13, 840-4.14, 840-4.17, and 4121.

COMMENT PERIOD:

Persons wishing to present their views may submit written comments to the Office of Personnel Management. Written comments should be addressed to Mr. Oscar B. Jackson, Jr., Administrator, ATTENTION: Shirley A. Russell, Oklahoma Office of Personnel Management, 2101 North Lincoln Boulevard, Room G-80, Oklahoma City, OK 73105, or may be sent via email to shirley.russell@opm.ok.gov. The comment period will begin on December 18, 2006. To be assured of consideration prior to the adoption of permanent rules, written comments must be received no later than 5:00 p.m., Thursday, January 18, 2007.

PUBLIC HEARING:

A public hearing will be held to provide a means by which persons may offer suggested input on the content of the proposed rules at 2:00 p.m., Friday, January 19, 2007, at the State Office of Personnel Management, 2101 N. Lincoln, Basement Test Room, B-46, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained beginning Monday, December 18, 2006, between 8:00 a.m. and 5:00 p.m. Monday through Friday at the Office of Personnel Management, 2101 N. Lincoln Blvd., Suite G-80, Oklahoma City, OK 73105. Telephone (405) 521-2177.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement will be prepared and will be available beginning Monday, December 18, 2006. Copies may be obtained at the Office of Personnel Management, address and telephone listed above.

CONTACT PERSON:

Shirley A. Russell, Director of Legislative Affairs, (405) 521-6293.

[OAR Docket #06-1452; filed 11-20-06]

**TITLE 530. OFFICE OF PERSONNEL MANAGEMENT
CHAPTER 15. VOLUNTARY PAYROLL DEDUCTION**

[OAR Docket #06-1451]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Administrative Provisions
530:15-3-15. [NEW]

SUMMARY:

The purpose of this proposed rule amendment is to harmonize the rule with statutory changes.

AUTHORITY:

The Administrator of the Office of Personnel Management; Title 62 O.S., § 7.10, Title 74 O.S., §§ 842 and 843 and Title 75 O.S., §§ 302, 305 and 307.

COMMENT PERIOD:

Persons wishing to present their views may submit written comments to the Office of Personnel Management. Written comments should be addressed to Mr. Oscar B. Jackson, Jr., Administrator, ATTENTION: Shirley A. Russell, State of Oklahoma, Office of Personnel Management, 2101 North Lincoln Boulevard, Room G-80, Oklahoma City, OK 73105, or may be sent via email to shirley.russell@opm.ok.gov. The comment period will begin on December 18, 2006. To be assured of consideration prior to the adoption of permanent

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rules, written comments must be received no later than 5:00 p.m., Thursday, January 18, 2007.

PUBLIC HEARING:

A public hearing will be held to provide a means by which persons may offer suggested input on the content of the proposed rules at 3:00 p.m., Friday, January 19, 2007, at the State Office of Personnel Management, 2101 N. Lincoln, Basement Test Room, B-46, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Shirley A. Russell at the above address during the period from December 18, 2006 to January 18, 2007.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained beginning Monday, December 18, 2006, between 8:00 a.m. and 5:00 p.m. Monday through Friday at the State Office of Personnel Management, 2101 N. Lincoln Blvd., Suite G-80, Oklahoma City, OK 73105. Telephone (405) 522-2177.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement will be prepared and will be available beginning December 18, 2006. Copies may be obtained at the Office of Personnel Management, address and telephone listed above.

CONTACT PERSON:

Shirley A. Russell, Director of Legislative Affairs, (405) 521-6293.

[OAR Docket #06-1451; filed 11-20-06]

TITLE 575. STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS CHAPTER 10. LICENSURE OF PSYCHOLOGISTS

[OAR Docket #06-1525]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- 575:10-1-3. Private Practice Under Supervision [AMENDED]
- 575:10-1-7. Hiring of psychological technicians by psychologists [AMENDED]
- 575:10-1-8. Continuing professional education for psychologists [AMENDED]
- 575:10-1-10. A Code of Ethics for psychologists [AMENDED]

SUMMARY:

The proposed rule changes would clarify which examinations must be taken no later than one calendar year

after the day permission to practice under supervision is granted; allow psychologists to either apply the \$50 individual review fee for an extension of the time to complete the required continuing professional education credits or apply it as a late fee which would not extend the CPE year; clarify the requirements for QMRP exemption for psychological technicians; and clarify the definition of "good moral character" by emphasizing it refers to personal ethical character. The Board will review an applicant's professional ethical history in reviewing his/her application for licensure.

AUTHORITY:

The State Board of Examiners of Psychologists has the authority to promulgate Rules for this area of control according to Title 59, O.S. 1991, Section 1352.1(8).

COMMENT PERIOD:

Persons wishing to make written or oral comments may do so by 4:00 p.m., January 19, 2007, at the office of the State Board of Examiners of Psychologists, 201 N.E. 38th Terrace, Suite 3, Oklahoma City, Oklahoma 73105.

PUBLIC HEARING:

A public hearing will be held at 9:00 a.m. on Saturday, January 20, 2007, in Room 419C of the State Capitol, 2300 N. Lincoln, Oklahoma City, Oklahoma.

COPIES OF THE PROPOSED RULES:

Copies of the proposed rules are available for public inspection at the office of the State Board of Examiners of Psychologists, 201 N.E. 38th Terrace, Suite 3, Oklahoma City, Oklahoma. Contact Sue Fleming, Executive Officer, at (405) 524-9094.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. Section 303(D), a rule impact statement is being prepared and will be made available in the office of the Board of Examiners of Psychologists at the above address beginning December 30, 2006.

CONTACT PERSON:

Sue A. Fleming, Executive Officer, (405) 524-9094

[OAR Docket #06-1525; filed 11-22-06]

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

[OAR Docket #06-1443]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- 600:10-1-4. Examination [AMENDED]
- 600:10-1-6. Experience prerequisite [AMENDED]
- 600:10-1-8. Course approval requirements [AMENDED]
- 600:10-1-16. Supervision of trainee appraisers [AMENDED]

SUMMARY:

The proposed amendment to rule 600:10-1-4 removes language requiring that applicants for Trainee Appraiser take an examination. The proposed amendment to rule 600:10-1-6 adds an application fee for applications requiring a work product review. The proposed amendments to rule 600:10-1-8 provide for application fees for appraiser courses and instructors. The above and foregoing changes implement changes to the Real Estate Appraisers Act by HB 2911 of the 2006 session. The proposed amendments to rule 600:10-1-16 are provided as a means of correcting confusing language created by disapproval of certain language in a 2005 permanent rule change by SJR 32, signed by the Governor on May 1, 2006. All proposed changes make permanent the emergency rules adopted effective November 1, 2006.

AUTHORITY:

Real Estate Appraiser Board, 59 O.S. § 858-706(A).

COMMENT PERIOD:

Persons may submit written or oral comments to Rod Stirman at the offices of the Real Estate Appraiser Board, Oklahoma Insurance Department, 2401 NW 23rd Street, Suite 28, Oklahoma City, Oklahoma 73107 during the period December 15, 2006 to January 26, 2007.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on February 2, 2007, in the offices of the Insurance Commissioner of Oklahoma, the Honorable Kim Holland, at 2401 NW 23rd Street, Suite 28, Oklahoma City, Oklahoma 73107.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board with information, in dollar amounts if possible, about any increases in the level of direct costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Rod Stirman at the above address during the period during the period December 15, 2006 to January 26, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #06-1443; filed 11-17-06]

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

[OAR Docket #06-1444]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

600:15-1-14. Disciplinary alternatives [AMENDED]

SUMMARY:

The proposed amendment to rule 600:15-1-14 brings the rule into agreement with changes to the Real Estate Appraisers Act. This change makes permanent an emergency rule adopted by the Board effective November 1, 2006.

AUTHORITY:

Real Estate Appraiser Board, 59 O.S. § 858-706(A).

COMMENT PERIOD:

Persons may submit written or oral comments to Rod Stirman at the offices of the Real Estate Appraiser Board, Oklahoma Insurance Department, 2401 NW 23rd Street, Suite 28, Oklahoma City, Oklahoma 73107 during the period December 15, 2006 to January 26, 2007.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on February 2, 2007, in the offices of the Insurance Commissioner of Oklahoma, the Honorable Kim Holland, at 2401 NW 23rd Street, Suite 28, Oklahoma City, Oklahoma 73107.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board with information, in dollar amounts if possible, about any increases in the level of direct costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Rod Stirman at the above address during the period during the period December 15, 2006 to January 26, 2007.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

Notices of Rulemaking Intent

CONTACT PERSON:

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

[OAR Docket #06-1444; filed 11-17-06]

Submissions for Review

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

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

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

[OAR Docket #06-1445]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 40. Bovine Tuberculosis
Part 5. Herd Status Requirements
35:15-40-71. [AMENDED]

SUBMITTED TO GOVERNOR:

November 16, 2006

SUBMITTED TO HOUSE:

November 16, 2006

SUBMITTED TO SENATE:

November 16, 2006

[OAR Docket #06-1445; filed 11-17-06]

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

[OAR Docket #06-1446]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 42. Tuberculosis Eradication in Cervidae
Part 1. Definitions
35:15-42-1. [AMENDED]
Part 3. Rules adopted from USDA Uniform Methods and Rules for Tuberculosis Eradication in Cervidae
35:15-42-34. [AMENDED]
35:15-42-37. [AMENDED]
35:15-42-39. [AMENDED]
35:15-42-41. [AMENDED]
35:15-42-43. [AMENDED]
35:15-42-44. [AMENDED]
Part 5. Herd status requirements
35:15-42-51. [AMENDED]

SUBMITTED TO GOVERNOR:

November 16, 2006

SUBMITTED TO HOUSE:

November 16, 2006

SUBMITTED TO SENATE:

November 16, 2006

[OAR Docket #06-1446; filed 11-17-06]

TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION CHAPTER 1. GENERAL PROVISIONS

[OAR Docket #06-1453]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. General Provisions
240:1-1-5. Offices of Commission [AMENDED]
Subchapter 3. Records and Inspections
240:1-3-3. Confidential records [AMENDED]
240:1-3-5. Charges [AMENDED]
240:1-3-6. Search fees [AMENDED]

SUBMITTED TO GOVERNOR:

November 17, 2006

SUBMITTED TO HOUSE:

November 17, 2006

SUBMITTED TO SENATE:

November 17, 2006

[OAR Docket #06-1453; filed 11-21-06]

TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION CHAPTER 10. UNEMPLOYMENT INSURANCE PROGRAM

[OAR Docket #06-1454]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. General Provisions
240:10-1-2. Definitions [AMENDED]
240:10-1-3. Time computation [AMENDED]
Subchapter 3. Benefits
Part 1. General Provisions
240:10-3-2. Claimant's notification of change of address [AMENDED]
Part 3. Computations
240:10-3-10. Approved training [AMENDED]
240:10-3-12. Payment of benefits [AMENDED]

Submissions for Review

Part 5. Eligibility
240:10-3-20. Instructions to secure work [AMENDED]
240:10-3-22. Claims for benefits [AMENDED]
240:10-3-23. Claims for total unemployment benefits [AMENDED]
240:10-3-24. Claims for partial unemployment benefits [AMENDED]
240:10-3-26. Payment of benefits to interstate claimants [AMENDED]
240:10-3-27. Social Security account numbers or claim ID number [AMENDED]
240:10-3-28. Application of payments made to repay an overpayment of benefits [AMENDED]
Part 7. Protection of Rights and Benefits
240:10-3-30. Notice to claimants of income tax withholding program [AMENDED]
240-10-3-35. Personal identification numbers [AMENDED]
Part 9. Disqualification
240:10-3-42. Labor disputes [AMENDED]
240:10-3-43. Performed service and earned remuneration; reemployed and has earned wages [AMENDED]
Part 11. Filing Claims - Notice
240:10-3-52. Information to separated workers [AMENDED]
Part 12. Interest Waiver for Benefit Overpayments
10-3-63. Request letter [AMENDED]
240:10-3-65. Appeal of initial determination [AMENDED]
Subchapter 5. Contributions
Part 3. Rates
240:10-5-10. Payment of contributions [AMENDED]
240:10-5-13. Experience rating contribution rates - appeal [REVOKED]
Subchapter 11. Assessment Board ~~Procedure~~ Procedures
Part 1. General Provisions
240:10-11-3. Organization [AMENDED]
Part 5. Hearings
240:10-11-25. Motion to reopen after failure to appear [AMENDED]
Part 7. Witnesses and Subpoenas
240:10-11-30. Subpoenas [AMENDED]
Subchapter 13. Appeal Tribunal ~~Procedure~~ Procedures
Part 3. Appeals to Appeal Tribunal
240:10-13-20. Filing an appeal [AMENDED]
Part 5. Hearings
240:10-13-39. Nonappearance [AMENDED]
240:10-13-40. Reopen [AMENDED]
Part 7. Witnesses and Subpoenas
240:10-13-60. Subpoenas [AMENDED]

SUBMITTED TO GOVERNOR:

November 17, 2006

SUBMITTED TO HOUSE:

November 17, 2006

SUBMITTED TO SENATE:

November 17, 2006

[OAR Docket #06-1454; filed 11-21-06]

**TITLE 240. OKLAHOMA EMPLOYMENT
SECURITY COMMISSION
CHAPTER 15. BOARD OF REVIEW
PROCEDURES**

[OAR Docket #06-1455]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. General Provisions

240:15-1-7. Attorney fees - approval [AMENDED]

SUBMITTED TO GOVERNOR:

November 17, 2006

SUBMITTED TO HOUSE:

November 17, 2006

SUBMITTED TO SENATE:

November 17, 2006

[OAR Docket #06-1455; filed 11-21-06]

**TITLE 252. DEPARTMENT OF
ENVIRONMENTAL QUALITY
CHAPTER 4. RULES OF PRACTICE AND
PROCEDURE**

[OAR Docket #06-1479]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 7. Environmental Permit Process

Part 5. Land Protection Division Tiers and Time Lines

252:4-7-51. [AMENDED]

252:4-7-52. [AMENDED]

252:4-7-53. [AMENDED]

SUBMITTED TO GOVERNOR:

November 21, 2006

SUBMITTED TO HOUSE:

November 21, 2006

SUBMITTED TO SENATE:

November 21, 2006

[OAR Docket #06-1479; filed 11-21-06]

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

[OAR Docket #06-1480]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

- Subchapter 2. Incorporation by Reference [NEW]
 - 252:100-2-1. [NEW]
 - 252:100-2-2. [RESERVED]
 - 252:100-2-3. [NEW]
- Subchapter 4. New Source Performance Standards
 - 252:100-4-1. [REVOKED]
 - 252:100-4-2. [REVOKED]
 - 252:100-4-3. [REVOKED]
 - 252:100-4-4. [REVOKED]
 - 252:100-4-5. [REVOKED]
- Subchapter 40. Control of Emission of Friable Asbestos
 - During Demolition and Renovation Operations [NEW]
 - 252:100-40-1. [NEW]
 - 252:100-40-2. [RESERVED]
 - 252:100-40-3. [NEW]
 - 252:100-40-4. [RESERVED]
 - 252:100-40-5. [NEW]
- Subchapter 41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants [REVOKED]
 - Part 1. General Provisions [REVOKED]
 - 252:100-41-1. [REVOKED]
 - 252:100-41-1.1. [REVOKED]
 - 252:100-41-2. [REVOKED]
 - Part 3. Hazardous Air Pollutants [REVOKED]
 - 252:100-41-13. [REVOKED]
 - 252:100-41-14. [REVOKED]
 - 252:100-41-15. [REVOKED]
 - 252:100-41-16. [REVOKED]
 - Part 5. Toxic Air Contaminants [REVOKED]
 - 252:100-41-35. [REVOKED]
 - 252:100-41-36. [REVOKED]
 - 252:100-41-37. [REVOKED]
 - 252:100-41-38. [REVOKED]
 - 252:100-41-39. [REVOKED]
 - 252:100-41-40. [REVOKED]
 - 252:100-41-41. [REVOKED]
 - 252:100-41-42. [REVOKED]
 - 252:100-41-43. [REVOKED]
 - 252:100-41-44. [REVOKED]
- Appendix Q. Incorporation by Reference [NEW]

SUBMITTED TO GOVERNOR:

November 21, 2006

SUBMITTED TO HOUSE:

November 21, 2006

SUBMITTED TO SENATE:

November 21, 2006

[OAR Docket #06-1480; filed 11-21-06]

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

[OAR Docket #06-1482]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

- Subchapter 17. Incinerators
 - Part 11. Other Solid Waste Incineration Units [NEW]
 - 252:100-17-90. [NEW]
 - 252:100-17-91. [NEW]
 - 252:100-17-92. [NEW]
 - 252:100-17-93. [NEW]
 - 252:100-17-94. [NEW]
 - 252:100-17-95. [NEW]
 - 252:100-17-96. [NEW]
 - 252:100-17-97. [NEW]
 - 252:100-17-98. [NEW]
 - 252:100-17-99. [NEW]
 - 252:100-17-100. [NEW]
 - 252:100-17-101. [NEW]
 - 252:100-17-102. [NEW]
 - 252:100-17-103. [NEW]
 - 252:100-17-104. [NEW]
 - 252:100-17-105. [NEW]
 - 252:100-17-106. [NEW]
 - 252:100-17-107. [NEW]
 - 252:100-17-108. [NEW]

SUBMITTED TO GOVERNOR:

November 21, 2006

SUBMITTED TO HOUSE:

November 21, 2006

SUBMITTED TO SENATE:

November 21, 2006

[OAR Docket #06-1482; filed 11-21-06]

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

[OAR Docket #06-1482A]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

- Subchapter 5. Registration, Emission Inventory and Annual Operating Fees

Submissions for Review

252:100-5-1.1. [AMENDED]
Subchapter 7. Permits for Minor Facilities
Part 1. General Provisions
252:100-7-1.1. [AMENDED]
Subchapter 9. Excess Emission Reporting Requirements
252:100-9-2. [AMENDED]
Subchapter 23. Control of Emission from Cotton Gins
252:100-23-2. [AMENDED]
Appendix P. Regulated Air Pollutants [NEW]

SUBMITTED TO GOVERNOR:

November 21, 2006

SUBMITTED TO HOUSE:

November 21, 2006

SUBMITTED TO SENATE:

November 21, 2006

[OAR Docket #06-1482A; filed 11-21-06]

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

[OAR Docket #06-1483]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 5. Registration, Emissions Inventory and Annual Operating Fees
252:100-5-2.1. [AMENDED]

SUBMITTED TO GOVERNOR:

November 21, 2006

SUBMITTED TO HOUSE:

November 21, 2006

SUBMITTED TO SENATE:

November 21, 2006

[OAR Docket #06-1483; filed 11-21-06]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 205. HAZARDOUS WASTE MANAGEMENT**

[OAR Docket #06-1484A]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 3. Incorporation by Reference
252:205-3-1. [AMENDED]
252:205-3-2. [AMENDED]

SUBMITTED TO GOVERNOR:

November 21, 2006

SUBMITTED TO HOUSE:

November 21, 2006

SUBMITTED TO SENATE:

November 21, 2006

[OAR Docket #06-1484A; filed 11-21-06]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 300. LABORATORY ACCREDITATION**

[OAR Docket #06-1484]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 17. Quality Assurance/Quality Control
Part 1. Quality Assurance/Quality Control General Criteria
252:300-17-3. [AMENDED]
Subchapter 19. Classifications
252:300-19-3. [AMENDED]
Appendix B. Analytes for General Water Quality Laboratory Categories [REVOKED]
Appendix B. Analytes for General Water Quality Laboratory Categories [NEW]

SUBMITTED TO GOVERNOR:

November 21, 2006

SUBMITTED TO HOUSE:

November 21, 2006

SUBMITTED TO SENATE:

November 21, 2006

[OAR Docket #06-1484; filed 11-21-06]

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

[OAR Docket #06-1485]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. General Provisions
252:410-1-7. [AMENDED]
Subchapter 10. Radioactive Materials Program
Part 1. General Provisions
252:410-10-1. [AMENDED]
Part 30. Byproduct Material Licensing in General
252:410-10-30. [AMENDED]
Part 31. Byproduct Material: General Licenses
252:410-10-31. [AMENDED]

Part 32. Byproduct Material: Specific Licenses for Manufacturing and Transferring Certain Items
252:410-10-32. [AMENDED]
Part 34. Industrial Radiographic Operations
252:410-10-34. [AMENDED]
Part 35. Medical Use of Byproduct Material
252:410-10-35. [AMENDED]
Part 39. Well Logging
252:410-10-39. [AMENDED]
Part 70. Special Nuclear Material: Licensing
252:410-10-70. [AMENDED]
Part 71. Packaging and Transporting Radioactive Material
252:410-10-71. [AMENDED]
Subchapter 20. Standards for Protection Against Radiation
252:410-20-1. [AMENDED]

SUBMITTED TO GOVERNOR:

November 21, 2006

SUBMITTED TO HOUSE:

November 21, 2006

SUBMITTED TO SENATE:

November 21, 2006

[OAR Docket #06-1485; filed 11-21-06]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 515. SOLID WASTE MANAGEMENT**

[OAR Docket #06-1486]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 19. Operational Requirements
Part 1. General Provisions
252:515-19-1. [AMENDED]
Part 13. Wheel Washes [NEW]
252:515-19-131. [NEW]
252:515-19-132. [NEW]
252:515-19-133. [NEW]
252:515-19-134. [NEW]
252:515-19-135. [NEW]

252:515-19-136. [NEW]
252:515-19-137. [NEW]
252:515-19-138. [NEW]

SUBMITTED TO GOVERNOR:

November 21, 2006

SUBMITTED TO HOUSE:

November 21, 2006

SUBMITTED TO SENATE:

November 21, 2006

[OAR Docket #06-1486; filed 11-21-06]

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 531. VISION SCREENING**

[OAR Docket #06-1447]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

PROPOSED RULES:

Subchapter 1. General Provisions [NEW]
310:531-1-1. [NEW]
310:531-1-2. [NEW]
310:531-1-3. [NEW]
Subchapter 3. Advisory Committee [NEW]
310:531-3-1. [NEW]
310:531-3-2. [NEW]
310:531-3-3. [NEW]
Subchapter 5. Vision Screening Standards for Children [NEW]
310:531-5-1. [NEW]
310:531-5-2. [NEW]
310:531-5-3. [NEW]

SUBMITTED TO GOVERNOR:

November 17, 2006

SUBMITTED TO HOUSE:

November 17, 2006

SUBMITTED TO SENATE:

November 17, 2006

[OAR Docket #06-1447; filed 11-17-06]

Emergency Adoptions

An agency may adopt new rules, or amendments to or revocations of existing rules, on an emergency basis if the agency determines that "an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency rule[s] [A]n agency may promulgate, at any time, any such [emergency] rule[s], provided the Governor first approves such rule[s]" [75 O.S., Section 253(A)].

An emergency action is effective immediately upon approval by the Governor or on a later date specified by the agency in the preamble of the emergency rule document. An emergency rule expires on July 15 after the next regular legislative session following promulgation, or on an earlier date specified by the agency, if not already superseded by a permanent rule or terminated through legislative action as described in 75 O.S., Section 253(H)(2).

Emergency rules are not published in the *Oklahoma Administrative Code*; however, a source note entry, which references the *Register* publication of the emergency action, is added to the *Code* upon promulgation of a superseding permanent rule or expiration/termination of the emergency action.

For additional information on the emergency rulemaking process, see 75 O.S., Section 253.

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

[OAR Docket #06-1429]

RULEMAKING ACTION: EMERGENCY adoption

RULES:

- 40:25-1-2. Approved evidential breath-alcohol analyzers [AMENDED]
- 40:25-1-3. Alcoholic breath simulators [AMENDED]

AUTHORITY:

47 O.S. §759; Board of Tests for Alcohol and Drug Influence

DATES:

Adoption:

September 13, 2006

Approved by Governor:

November 1, 2006

Effective:

Immediately upon Governor's approval

Expiration:

Effective through June 14, 2007 unless superseded by another rule or disapproved by the legislature.

FINDING OF EMERGENCY:

Many of the apparatus and devices have become degraded through time to the extent that repair is no longer feasible. New technology is available, but unapproved at this time. Purchasing currently approved apparatus and devices is not cost effective for agencies because they will become obsolete well before the end of the effective service life of such apparatus and devices. Waiting for a permanent rule change to replace the worn out items would continue to leave some communities or areas without the ability to test drivers breath alcohol without going to another agency or area. Failure to implement the proposed rule will cause disruption and increased cost of traffic safety for the motoring public of Oklahoma.

Currently, the most technologically advanced breath test control device (Guth 2100 simulator) is acutely sensitive to RFI interference, causing tests to be interrupted and restarted due simply to proximity to an inactivated cell telephone. The new breath test control device is not affected by RFI. Further, the new external control method is impervious to movement and vibration, as well as wide fluctuations in temperature. It is expected that the new breath testing devices will be delivered with nitrogen-ethanol gas external controls. Therefore, in order to begin procurement of the new breath testing devices, the gas external controls must be approved.

ANALYSIS:

The rule change will add a new breath alcohol testing device to the list found in the current rule and a new breath testing control to the list found in the current rule and rules for maintaining the all of the breath testing control systems.

CONTACT PERSON:

J. Robert Blakeburn, (405) 425-2460 (procedural and legal questions); Jeff Dean, (405) 425-2460 (technical questions).

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

40:25-1-2. Approved evidential breath-alcohol analyzers

(a) The Model 5000-D Intoxilyzer (manufactured by CMI, Inc., Owensboro, KY 42301, or its successors) is hereby approved for analysis of alcohol in breath specimens and is designated as an automated analyzer.

(b) The Model 8000 Intoxilyzer (manufactured by CMI, Inc., Owensboro, KY 42301, or its successors) is hereby approved for analysis of alcohol in breath specimens and is designated as an automated analyzer.

40:25-1-3. Alcoholic breath ~~simulators~~ testing external control, methods and devices

The following alcoholic breath testing external control, methods and devices ~~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 2100, Guth Laboratories, Inc., Harrisburg, PA, or its predecessors.
- (6) Nitrogen-ethanol pressurized dry gas mixture (manufactured by CMI, Inc., Owensboro, KY 42301, or its successors)

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(7) Nitrogen-ethanol pressurized dry gas mixture (manufactured by Scott Specialty Gases, 6141 Easton Rd., Bldg 1 Plumsteadville, PA 18949, or its successors)

[OAR Docket #06-1429; filed 11-13-06]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 30. ANALYSIS OF-ALCOHOL IN BREATH

[OAR Docket #06-1430]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

40:30-1-3. Breath-alcohol analysis with the enhanced Intoxilyzer Model 5000-D. [AMENDED]

AUTHORITY:

47 O.S. §759; Board of Tests for Alcohol and Drug Influence

DATES:

Adoption:

September 13, 2006

Approved by Governor:

November 1, 2006

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Immediately upon Governor's approval

Expiration:

Effective through June 14, 2007 unless superseded by another rule or disapproved by the legislature.

SUPERSEDED EMERGENCY RULES:

NA

INCORPORATIONS BY REFERENCE:

NA

FINDING OF EMERGENCY:

Many accurate breath tests are not admitted into evidence because the current rule calls for observation to be able to determine if the licensee "regurgitated". Courts often find an officer has not sufficiently observed a licensee because regurgitated is interpreted to include a burp which may be shown to be impossible to detect.

A concurrent emergency rule change is being sought to approve nitrogen/ethanol gas as an external control. This rule change establishes the maintenance time frame and procedure for said controls.

ANALYSIS:

The rule change will delete the word "regurgitate" from the actions proscribed during a deprivation period prior to testing and clarify that the observation must continue throughout the entire breath specimen collection process. It further establishes times and procedures for maintenance on breath instruments equipped with nitrogen/ethanol external controls.

CONTACT PERSON:

J. Robert Blackburn, (405) 425-2460 (procedural and legal questions); Jeff Dean, (405) 425-2460 (technical questions).

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

40:30-1-3. Breath-alcohol analysis with the enhanced Intoxilyzer Model 5000-D.

(a) **Approved method.** Analysis of breath specimens for the determination of the alcohol content therein by means of the Model 5000-D and Model 8000 (manufactured by CMI, Inc., Owensboro, Kentucky 42301 or its successors), is hereby

approved as a method or technique for analysis of breath specimens for alcohol.

(b) **Operating procedure(s).** Each such analysis shall be performed in compliance with Operating Procedure(s) prescribed and approved by the State Director of Tests for Alcohol and Drug Influence.

(c) **Analysis.** Each such analysis shall include the following steps:

(1) Continuous observation of the subject whose breath is to be tested, for a period of at least fifteen (15) minutes prior to the collection of the first breath specimen, and continuing through the second breath specimen, during which observation period sufficient to determine the subject shall not have ingested alcohol or alcoholic beverages or any other substance, regurgitated, vomited, or smoked. Such observation may be carried out by the breath-alcohol analysis Operator or Supervisor or by any other qualified person.

(2) Analysis for alcohol of two (2) or more specimens of breath consisting substantially of expired alveolar air.

(3) A blank analysis preceding analysis of each breath specimen.

(4) Analysis for alcohol of at least one suitable reference or control sample of known alcohol concentration, such as air equilibrated at a known temperature with a reference solution of known ethyl alcohol content in an alcoholic breath simulator device approved by this Board. The results of each such control analysis must coincide with the corresponding vapor-alcohol concentration target value within plus or minus one-hundredths gram per two hundred and ten liters ($\pm 0.01\text{g}/210\text{L}$).

(5) The operator performing each such analysis shall properly provide complete a Breath-Alcohol Analysis Record and Report form prescribed and designated by the State Director of Tests for Alcohol and Drug Influence, and shall promptly ~~forwarded~~ forward one (1) copy thereof to the Oklahoma Department of Public Safety, and to other agencies and persons listed on the form.

(d) **Reporting results.** The results of each such breath-alcohol analysis shall be reported in terms of the concentration of alcohol and in the subject's breath, in grams of alcohol per two hundred and ten liters of breath ($\text{g}/210\text{L}$), truncated to two (2) decimal places. Results of duplicate breath alcohol analyses, on the same subject on the same occasion, which are within three-hundredths grams per two hundred and ten liters of breath ($\pm 0.03\text{g}/210\text{L}$) shall be deemed to be in acceptable agreement and mutually confirmatory and substantiative. All such results shall be reported, but actions and interpretation of the results of such duplicate analyses shall be based upon the lowest such breath alcohol result obtained.

(e) **Maintenance.** Maintenance shall be performed as follows on the above listed equipment, equipped with wet bath simulators, at least once during each thirty (30) day period and not later than thirty (30) days since the last prior such maintenance, or after the testing of twenty five (25) subjects, whichever occurs first, by a person possessing a valid Breath Alcohol Analysis (Specialist) permit issued by this Board:

(1) ~~A thorough inspection of the equipment for cleanliness and determination that it is in proper operating condition shall be performed.~~

(2) The reference ethyl alcohol solution in the alcoholic breath simulator device shall be replaced with new solution and one (1) or more verification analyses performed with the new solution. Each verification analysis shall be performed in accordance with the Operating Procedure(s) prescribed by the State Director of Tests for Alcohol and Drug Influence. The result of each such verification analysis must coincide with the corresponding vapor-alcohol concentration target value within plus or minus one-hundredths gram per two hundred and ten liters ($\pm 0.01\text{g}/210\text{L}$).

(3) The administrative maintenance performed, shall include; results of said verification analyses, date of inspection, and a ~~written~~ record of the inspection will be entered in the applicable portions of the Intoxilyzer 5000-D or Intoxilyzer 8000 Log of Tests and Maintenance Record retained by the instrument in digital form as (or equivalent) form prescribed and designated by the State Director of Tests for Alcohol and Drug Influence.

(3) Maintenance shall be performed as follows on the above listed equipment, equipped with nitrogen-ethanol dry gas mixture, at such time as the regulator of the nitrogen-ethanol pressurized dry gas container fails to provide a gas sample for analysis. The expiration date on the label of the dry gas pressure tank shall not control the use such gas mixtures. Such maintenance shall be performed by a person possessing a valid Breath Alcohol Analysis (Specialist) permit issued by this Board:

(A) The nitrogen-ethanol dry gas mixture pressure tank shall be replaced with a new nitrogen-ethanol dry gas mixture pressure tank and one (1) or more verification analyses performed with the new tank. Each verification analysis shall be performed in accordance with the Operating Procedure(s) prescribed by the State Director of Tests for Alcohol and Drug Influence. The result of each such verification analysis must coincide with the corresponding vapor-alcohol concentration target value within plus or minus one-hundredths gram per two hundred and ten liters ($\pm 0.01\text{g}/210\text{L}$).

(B) The administrative maintenance performed, shall include; results of said verification analyses, date of inspection, and a record of the inspection will be entered into the applicable portions of the Intoxilyzer 5000-D or Intoxilyzer 8000-D Maintenance Record retained by the instrument in digital form as prescribed and designated by the State Director of Tests for Alcohol and Drug Influence.

[OAR Docket #06-1430; filed 11-13-06]

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 50. IGNITION INTERLOCK DEVICES**

[OAR Docket #06-1431]

RULEMAKING ACTION:

Emergency adoption

RULES:

- 40:50-1-1. Explanation of terms and actions [AMENDED]
- 40:50-1-2. Procedure for device approval [AMENDED]
- 40:50-1-3. Technical requirements [AMENDED]
- 40:50-1-4. Miscellaneous requirements [AMENDED]
- 40:50-1-5. Maintenance and calibration requirements [AMENDED]
- 40:50-1-7. Certification and inspection of service centers [AMENDED]
- 40:50-1-8. Service representative [AMENDED]
- 40:50-1-9. Ignition interlock inspector [AMENDED]
- 40:50-1-11. Approved ignition interlock devices [AMENDED]

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. § 759

DATES:

Adoption:

September 13, 2006

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Effective:

Immediately upon Governor's approval

Expiration:

Effective through June 14, 2007 unless superseded by another rule or disapproved by the legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATED BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Statutory law became effective September 1, 2006 requiring an interlock be installed for a period of time in order to reinstate certain revocations and suspensions. At the current time the rules do not adequately explain installation procedure. The new law also calls for reporting violations committed by drivers with interlocks installed. The current rules do not define permit procedures for installers and installation centers.

ANALYSIS:

The emergency changes define violations and the reporting procedures. The rules further refine the requirements to be an installer and a service center for interlocks.

CONTACT PERSON:

J. Robert Blakeburn, (405) 425-2460 (procedural and legal questions); Jeff Dean, (405) 425-2460 (technical questions).

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

40:50-1-1. Explanation of terms and actions

- (a) **Alcohol:** Ethyl Alcohol, also called ethanol.
- (b) **Alcohol concentrations:** The weight amount of alcohol contained in a unit of breath or air, measured in grams of Ethanol/210 liters of breath or air which gives a quantitative measurement of alcohol concentration from which breath alcohol concentrations can be determined. "Alveolar" refers to the alveoli, which are the smallest air passages in the lungs, surrounded by capillary blood vessels and through which an interchange of gases occurs during respiration.

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(c) **Alveolar air:** Also called "deep lung air" or "alveolar breath". An air sample which is the last portion of a prolonged, uninterrupted exhalation and which gives a quantitative measurement of alcohol concentration from which breath alcohol concentrations can be determined. "Alveolar" refers to alveoli, which are the smallest air passages in the lungs, surrounded by capillary blood vessels and through which an interchange of gases occurs during respiration.

(d) **Anti-Circumvention feature(s):** Any feature or circuitry incorporated into the Ignition Interlock Device (IID) that is designated to prevent human tampering which would cause the device not to operate as intended.

(e) **Approval:** Meeting and maintaining the requirements of these rules and placement on the Board of Tests for Alcohol and Drug Influence (Board) list of approved devices. Approval may be denied, cancelled, withdrawn, and/or suspended at any time, for cause by the Board.

~~(f) **Appropriate judicial authority:** — A phrase used throughout these rules that is meant to include personnel or court orders of the Oklahoma judicial system including but not limited to: the actual court order requiring or authorizing installation of an IID, the court (or judge) that ordered or authorized that installation, pretrial services authorities (having to do bail bond requirements in these matters), adult supervision (or adult probation) authorities and/or occupational licensing authorities.~~

(g) **Board:** The unmodified word Board in these rules refers to the Oklahoma Board of Tests for Alcohol and Drug Influence.

(h) **Bogus air sample:** Any gas sample other than the unaltered, undiluted, or unfiltered alveolar air sample coming from the individual required to have an ignition interlock device installed in his/her vehicle.

(i) **Breath-Alcohol analysis:** Analysis of a sample of a person's expired alveolar breath to determine the concentration of alcohol in the person's breath.

(j) **Certification:**

(1) Certification refers to meeting and maintaining the requirements set forth in these rules. Under the provisions of these rules, certification is granted to:

- (A) inspectors,
- (B) service representatives, and
- (C) service centers.

(2) Certification is granted by the Board only when minimum requirements of certification have been met. All aspects of IID business in Oklahoma must be performed under certification in order to ~~be eligible for court purposes~~ satisfy statutory requirements.

(3) Certificates are issued to inspectors, service representatives, and service centers. Certificates are not issued for individual IID's or reference sample devices.

(k) **Certified IID inspectors:** Refers to an individual who meets the requirements stated in 40:50-1-9 of this title (relating to Ignition Interlock Device Inspector).

(l) **Certified service center:** Refers to any IID service center, whether fixed site or mobile, meeting and maintaining the provisions stated in 40:50-1-7 of this title (relating to Certification and Inspection of Service Centers).

(m) **Certified service center representative:** Refers to an individual who has successfully completed the requirements stated in these rules and has received certification from the Board to install, inspect, download, calibrate, ~~repair~~, monitor, maintain, service and/or remove a specific Ignition Interlock Device(s). Service representative certification is contingent upon compliance with all provisions stated in 40:50-1-8 of this title (relating to Service Representative).

(n) **Fees:** The non-refundable original administrative fees plus any and all costs incurred by the Board for approval, or revaluation, of any device. Additionally the cost established by the Board in the form of inspection fees payable by either the manufacturer or vendor, whichever is appropriate. Fees for Reinstatement of an inactivated certificate, revoked certificate, suspended certificate or any other fees which the Board deems necessary to maintain the IID program in a safe and dependable way. Failure to pay or reimburse the Board for these reasonable costs shall result in the denial or loss of certification of affected service center(s). This will be fees charged under Chapter 55 of the Boards Rules and listed in the appropriate sections.

(o) **Data storage system:** A computerized recording of all events monitored by the installed IID, which may be reproduced in the form of required reports.

(p) **Device:** An ignition interlock device (abbreviated in this title as IID).

(q) **Director:** Refers to the position of the State Director of Tests for Alcohol and Drug Influence as defined in OAC 40:50-1-3, and will be under the overall guidance and supervision of the Chairman of the Board, and with the assistance of the Administrative Assistant to the Board, to conduct and administer the affairs and functions of the Board between meetings thereof. The appeals made by an ignition interlock manufacturer, vendor or employee will initially be determined by ~~go from~~ the State Director ~~to~~ of the Board, pursuant to 40:50-1-10 of this rule.

~~(r) **Emergency bypass:** — A one time event, authorized by a service representative that permits the IID equipped vehicle to be started without the requirement of passing the breath test. This event must be recorded in the Data storage system. Also see Illegal Start.~~

~~(s) **Filtered air sample:** Any mechanism by which there is an attempt to remove alcohol from the human breath sample. Filters would include, but are not limited to silica gel, drierite eat litter, cigarette filters, water filters, cotton, or by any other means not mentioned.~~

(t) **Fixed-Site service center:** A certified service center that is at a permanent location, i.e., not mobile.

(u) **Free re-start:** The condition in which a test is successfully completed and the motor vehicle is started, and then at some point the engine stops for any reason (including stalling). A free re-start is the ability to start the engine again, within a reasonable time as approved by the Board, without completion of another breath-alcohol analysis. This free re-start does not apply, however, if the IID was awaiting a rolling re-test that was not delivered.

(v) **IID:** The common abbreviation for Ignition Interlock Device used throughout these Rules.

~~(wu)~~ **Ignition interlock device:** (Abbreviated in this Rule as IID) A device that is a breath-alcohol analyzer that is connected to a motor vehicle ignition. In order to start the motor vehicle engine, a driver must deliver an alveolar breath sample to an approved IID which measures the alcohol concentration using fuel cell analysis. If the alcohol concentration meets or exceeds the startup set point on the interlock device, the motor vehicle will not start.

~~(xv)~~ **Illegal start:** An event wherein the IID equipped vehicle is started without the requisite breath test having been taken and passed and/or is started when the IID is in a lockout condition, ~~or is started by enabling an authorized emergency bypass.~~ Any and all of these events Any illegal start shall be recorded in the Data storage system as a violation and shall result in a violation reset.

~~(yw)~~ **Inactivation:**

(1) Inactivation refers to the voluntary or temporary discontinuance of certification. Unless specifically stated otherwise, this loss of certification will be an administrative program control as opposed to suspension or revocation for violation of these rules or the unreliability or incompetence. Inactivation may be initiated by anyone having authority to suspend or revoke or by the certified entity in case of voluntary surrender of certification. In questionable cases, the decision to accept inactivated suspension or revocation will be determined by the Board or its designee. Re-certification of an inactivated certificate will require a written request from the applicant to the Board and successful completion of requirements outlined in 40:50-1-7, 40:50-1- 8 and 40:50-19 of this title (relating to Certification and Inspection of Service Centers, Service Representative, and Ignition Interlock Device Inspector) as appropriate for re-certification and/or other requirements determined by the Board or its designee. Inactivation will be used in, but not limited to, the following situations:

- (A) an inspector or service representative terminates employment under which certification was acquired and a new employment does not require certification, or the new location of the inspector or service representative cannot be ascertained; or
- (B) a service representative fails to renew current certification and reverts to an inactive status; or
- (C) a service center that no longer meets all the requirements for certification.

(2) Inactivation will not be considered by the Board as a disciplinary action. It is for administrative program control to safeguard the scientific integrity of the IID program.

~~(zx)~~ **Installation Authority:** A phrase used throughout these rules that refers to the actual statute or order requiring or authorizing installation of an IID.

~~(y)~~ **Interlock:** The mechanism which prevents a motor vehicle from starting when the alcohol concentration of a person meets or exceeds a preset value.

~~(aaz)~~ **Interlock:Lockout condition:** A state wherein the IID will not allow the vehicle to be started until a certified service representative completes a ~~violation~~ reset, downloads the data storage system and restores the IID to a state that will

allow the vehicle to be started. ~~Events Violation conditions~~ that trigger the lockout condition will enable a unique auditory and/or visual cue that will warn the driver that the vehicle ignition will enter a lockout condition ~~within a period not to exceed in five (5) days from the date of the event. This event will be uniquely recorded in the data storage system and will simultaneously start a clock that culminates in the actual lockout condition.~~

~~(bbaa)~~ **Manufacturer:** The actual producer of the device.

~~(eebb)~~ **Manufacturer's representative:** An individual and/or entity designated by the manufacturer to act on behalf of or represent the manufacturer of the device. May be synonymous with vendor.

~~(ddcc)~~ **Mobile service center:** Any IID facility that has the personnel and equipment capability to be in use separately and simultaneously with it's parent fixed service center, whether set up in a vehicle or temporarily set up at a site with a permanent foundation.

~~(eedd)~~ **Monitor:** The agency, organization and/or person(s) designated by the Installation Authority to receive reports regarding IID participants.

~~(ee)~~ **Negative result:** A test result indicating that the alcohol concentration is less than the startup set point or re-test set point value.

~~(ff)~~ **Penalty Fail:** A pre-set or pre-determined alcohol concentration setting at which, or above, the device will record the high alcohol result in the data storage system. The pre-set point for persons under 21 years of age shall be 0.03. The pre-set point for persons 21 years of age and over shall be 0.09.

~~(ffgg)~~ **Positive result:** A test result indicating that the alcohol concentration meets or exceeds the startup set point or re-test set point value.

~~(gghh)~~ **Proficiency test:** A test administered by, and in the presence of, an IID inspector to establish and/or ascertain the competency of a service representative with regard to IID equipment.

~~(hhii)~~ **Purge:** Any mechanism which cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

~~(iijj)~~ **Re-certification:** Re-certification refers to the regaining of lost certification; for example, certification loss by inactivation, suspension, or revocation. Unless provided for by specific provision in these rules, application for re-certification requires a written request from the applicant to the Board. Upon receipt of the request, the applicant will be advised of necessary procedure to regain certification. Re-certification requires the successful completion of requirements stated in 40:50-1-7, 40:50-1-8 and 40:50-1-9 of this title (relating to Certification and Inspection of Service Centers, Service Representative, and Ignition Interlock Device Inspector) as appropriate, and/or additional requirements as stated by the ~~department~~ Board.

~~(jjkk)~~ **Reference sample device:** Any alcohol breath testing external control or device approved for use pursuant to OAC 40:25-1-3(A). A device which generates a head space gas above a water/alcohol solution that is maintained at a thermostatically controlled temperature. This head space gas can be

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used to simulate the breath alcohol concentration of an individual who has been drinking alcoholic beverages and whose alcohol concentration is reflected in an analysis of breath sample. The results of this analysis are expressed as grams of alcohol per two hundred and ten liters of breath (g/210L).

(kk) **Re-test set point:** A pre-set or pre-determined alcohol concentration setting, which is the same (0.02g/210L) as the startup set point, at which, or above, during a rolling re-test, the device will record in the data storage system, the high alcohol result as a violation.

(ll) **Reportable violation:** Reportable violations are as follows:

(1) Three (3) Penalty Fails, at startup, within a 15 minute time frame.

(2) Any Illegal Start except when,

(A) Adequate proof, in the form of a Mechanics Affidavit provided by the Board, prepared and executed by the mechanic performing the repair work with a complete description of the work performed and that the illegal start was incidental to the work performed. Any Mechanic's Affidavit submitted shall be accompanied by receipts of said mechanic, or

(B) Adequate proof, in the form of a Mechanics Affidavit provided by the Board, prepared and executed by the program participant, if the work was performed by him, under oath, with a complete description of the work performed and that the illegal start was incidental to the work performed. Any Mechanic's Affidavit submitted shall be accompanied by receipts for parts or sublet labor.

(3) Two (2) Re-test failures in a Sixty (60) day period. Each Sixty (60) day period shall run from the date of installation.

(4) Three (3) Re-test refusals in a Sixty (60) day period, unless accompanied by a Mechanic's Affidavit as specified in 2(a) of this subsection. Each Sixty (60) day period shall run from the date of installation.

(5) Failure to return to the IID to a licensed service center within Eight (8) days from entering a lockout condition may result in a Reportable Violation except when:

(A) The vehicle is being repaired. In the event the vehicle is being repaired, the program participant must inform their licensed service center at least every Eight (8) days as to the location of the vehicle and the anticipated date of completion of the repairs, or

(B) The vehicle is being replaced. In the event the vehicle is being replaced by another vehicle, the re-installation of the IID in the subsequent vehicle must be accomplished within Eight (8) days of original removal, and

(6) IID Removal except;

(A) Upon receipt of documentation from the Installation Authority or Monitor authorizing said removal, which shall only be performed by an Interlock Technician duly licensed by the Board.

(B) The vehicle is being repaired. In the event the vehicle is being repaired, the program participant

must inform their licensed service center at least every Eight (8) days as to the location of the vehicle and the anticipated date of completion of the repairs. In the event the IID must be disconnected during any repairs, said work must be performed or authorized by an Interlock Technician duly licensed by the Board. The reinstallation request must be accompanied by the Mechanics Affidavit as described herein, or

(C) When the vehicle is being replaced. In the event the vehicle is being replaced by another vehicle, the removal and reinstallation of the IID in the subsequent vehicle must be accomplished within Eight (8) days of original removal and performed by an Interlock Technician duly licensed by the Board.

(7) Tampering as defined in paragraph (vv) of this chapter. Reportable violations shall be reported to the Installation Authority and/or Monitor by the first business day, banking holidays accepted, after the vendor verifies the violation.

(mm) **Re-test:** After passing the test allowing the engine to start, the IID shall require a second test within a randomly variable interval ranging from 5-15 minutes and shall allow a preset time period ranging from 4-6 minutes for the test to be completed. The third and subsequent retests shall be required at intervals ranging from 15 to 45 minutes from the previously requested test for the duration of the travel and shall allow the said 4-6 minutes for the test to be completed. The re-test set point value shall be 0.03.

(nn) **Revocation:**

(1) Revocation refers to the immediate cancellation of certification. Revocation is an action taken only by the Board or its designee. To regain certification after revocation requires a written request from the applicant to the Board and successful completion of the requirements for certification and/or re-certification and/or a cost for this reinstatement, plus any other requirements determined by the Board. Revocation invalidates any current IID program certification issued to the revoked entity for the period of revocation and until recertification. Unless provided for by specific provision in these rules, revocation will apply when the holder of the certification no longer meets the criteria for certification. Examples of cases for which revocation will apply include, but not limited to, the following:

(A) a certified IID service center that no longer meets the requirements of these rules because of unreliability, incompetence, or violation of these rules.

(B) A certified inspector or service representative who is no longer in compliance with the requirements for certification under these rules including a certified inspector or certified service representative who, subsequent to certification, is convicted of driving while intoxicated, theft, a crime involving moral turpitude, or any offense classified as a felony.

(C) any case where, in the opinion of the Board or its designee, continuance of certification would not uphold the scientific integrity of the IID program.

(2) If after the allowed appeals process, the revocation of a service center is sustained; the revoked entity shall be required to replace the IID service and/or the IID as in 40:50-1-5 of this title (relating to Maintenance and Calibration Requirements).

(3) In the event that no appeal from the revoked service center is forthcoming, the revoked entity shall have 30 days to achieve the requirements of 40:50-1-5 of this title (relating to Maintenance and Calibration Requirements).

~~(mm) **Rolling re-start:** After passing the test allowing the engine to start, the IID shall require a second test within a randomly variable interval ranging from 5-15 minutes. The third and subsequent retests shall be required at intervals not to exceed 15 to 45 minutes from the previously requested test for the duration of the travel. See re-test set point.~~

~~(oo) **Re-test refusal:** Failure to complete a Re-test within the 4-6 minutes allowed. Any retest refusal shall be recorded in the data storage system as a retest violation.~~

~~(pp) **Re-test failure:** A Re-test breath test resulting in a positive result. Any retest failure shall be recorded in the data storage system as a retest violation.~~

~~(qq) **Rolling re-test violation:** An event, recorded in the data storage system when the rolling retest requirements are not met. Any re-test violation recorded in the data storage system shall result in a violation reset.~~

~~(rr) **Service center:** The physical location where the service representative performs their IID services. Also see certified service center.~~

~~(ss) **Service representative:** See Certified service representative.~~

~~(tt) **Startup set point:** A pre-set or pre-determined alcohol concentration setting at which, or above, the device will prevent the ignition of a motor vehicle from operating. That value shall be an alcohol concentration of 0.02g/210 liters of breath.~~

~~(uu) **Suspension:** Suspension refers to the immediate cancellation or curtailment of certification and may be applied to any certified IID entity when, because of unreliability, incompetence, or violation of these rules that entity is not in compliance with the provisions stated in these rules or when continuance of such certification, in the opinion of the Board, would not uphold the scientific integrity of the IID program. A suspension can be initiated by an IID inspector or designated representative of the Board. Prior to appeal to the Board, suspensions may be set aside or sustained only after investigation by the Board. The minimum period of suspension as determined by the Board will be for a period of time not less than 30 days. The IID inspector or a designated representative of the Board may recommend a specific period of suspension to the Board.~~

(1) A suspension cancels any certification issued to a suspended inspector or service representative for a period of suspension until recertification. During a suspension, the suspended entity is barred from providing any service to the IID program.

(2) A suspension curtails any certification issued to a suspended service center for a period of suspension until recertification. During a suspension, the suspended

service center may continue to provide service to those IID customers in existence prior to the suspension, but shall not acquire new IID customers during the period of suspension.

(3) To regain certification after the period of suspension requires a written request from the suspended entity to the Board. Upon receipt of the written request, the applicant will be advised of the necessary steps to be taken in order to regain certification. Suspension will not be considered by the Board to be a disciplinary action but shall be for the purpose of maintaining the scientific integrity of the ignition interlock program and upholding these rules. Suspension may be appealed in accordance to 40:50-1-10 of these rules.

~~(vv) **Tampering:** An overt or conscious attempt to provide means whereby the operator may physically disable, disconnect the IID from its power source, wire around the device or otherwise use an artificial air source and thereby allow the operator to start the engine without taking and passing the requisite breath test. This attempt, whether successful or not, shall be recorded in the data storage system as a violation. Tampering may result in a Reportable Violation.~~

~~(ww) **Vendor:** The person or entity representing the manufacturer(s) of an approved IID and responsible for the day-to-day operations and continuing of an IID service center. Must have manufacturer's approval for use of a particular approved IID either through purchase or lease agreement. May be synonymous with manufacturer's representative.~~

~~(xx) **Violation:** Any of several events including but not limited to such things as penalty failhigh alcohol, whether from a violation set point or from a retest set point, rolling retest violations, tampering, or an illegal start, or any other event prohibited by the installation authority or monitor. These events, recorded in the data storage system must be reported as per appropriate judicial requirements and which, when accumulated to a total determined by the appropriate judicial authority, shall enter a lockout condition within a period to exceed seven (7) days and require a violation reset.~~

~~(yy) **Violation re-set:** An unscheduled service of the IID and download of the data storage system by the service center required because an accumulation of violations has reached a number (predetermined by appropriate judicial authority) that generates a lock out condition a violation has been recorded in the data storage system. This information shall be reported to the appropriate judicial authority within 48 hours after the vendor confirms the violation. A violation reset shall cause the IID to enter a lockout condition in five (5) days from the date of the violation. Completion of this service will include restoring the IID to a state that will allow the vehicle to be started.~~

~~(zz) **Violation set point:** A pre set or pre determined alcohol concentration setting at which, or above, the device will record the high alcohol result in data storage system as a violation. Until modified by the Board of Tests for Alcohol and Drug Influence, said pre set point shall be 0.05.~~

~~(zz) **Withdrawal of approval:** Cancellation of approval of a device; to wit, not meeting or maintaining these regulations.~~

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40:50-1-2. Procedure for device approval

(a) All ignition interlock devices to be used in the state of Oklahoma must be approved by ~~the State Director of Tests for Alcohol and Drug Influence, of the Board of Tests for Alcohol and Drug Influence.~~ The rules and requirements only apply to the IID usage in the Oklahoma legal system in applications such as (but not limited to) court orders, probation requirements or ~~by the Department of Public Safety's Legal Division and/or occupational licensing requirements.~~ They are not intended to apply to or limit IID use in a voluntary or non-adjudicated scenario such as a parent having an IID placed on a child's motor vehicle.

(b) The Board will establish and maintain a list of approved devices, published in these rules, by model and/or class for use in the state. **Only fuel cell devices will be accepted in Oklahoma.**

(c) If application is made for approval of a device by model and/or class not on the approved list, the following procedures and standards shall apply.

(1) A manufacturer or manufacturer's representative requesting approval of a device must submit a product model of the device, along with a written request for approval. It shall be the responsibility of the manufacturer or manufacturer's representative to incur costs of mailing, shipping or physically bring the device to and from the Board. It shall also be the responsibility of the manufacturer or the manufacturer's representative to submit a certified check or money order in the amount of \$75.00, as designated on the Board's fee schedule posted in Chapter 55 (this is an administrative processing fee and is non-refundable). In the event of non-approval, additional requests for approval may be limited by the Board. The Board shall not ~~get involved~~ participate in research and development procedures of these devices.

(2) Accompanying each device ~~shall be~~ shall be a notarized affidavit from a testing laboratory certifying that the submitted device by model and/or class meets or exceeds all requirements set forth in 40:50-1-3 of this title (relating to Technical requirements) and 40:50-1-4 of this title (relating to Miscellaneous Requirements and/or any other requirements as determined by the Board. This affidavit shall also include:

- (A) the name and location of the laboratory;
- (B) the address and phone number of the testing laboratory;
- (C) a description of the test ~~performed~~ performed;
- (D) copies of the data and results of the testing procedures; and
- (E) the names and qualifications of the individuals performing the test.

(d) Prior to approval of the device, the manufacturer or the manufacturer's representative shall complete and submit an approved application Affidavit available through the Board. The notarized Affidavit shall be signed by the manufacturer or the manufacturer's representative. This affidavit shall state that the device by model and/or class will be calibrated and maintained pursuant to these rules and as designated by the Board. The affidavit shall include the following information:

(1) Name of individuals designated as the state service representative responsible for installation, periodically maintaining, and calibrating ~~and repairing~~ the IID in accordance with the rules of the Board.

(2) Address of these individuals.

(3) Phone number of these individuals.

(4) Qualifications of these individuals.

(A) If a device is submitted for approval by a party other than the manufacturer, the submitting party shall submit a notarized affidavit from the manufacturer of the device certifying that the submitting party is an authorized manufacturer's representative and that it is agreed and understood that any action taken by the Board or any cost incurred in accordance with the provisions of these rules shall ultimately be the responsibility of the manufacturer.

(B) After the device is approved, in order to do business in the Oklahoma IID program, a manufacturer must vend through a Certified IID Service Center as described in 40:50-1-7 of this title (relating to Certification and Inspection of Service Centers).

(e) An annual reevaluation of the approved IID, pursuant to Board of Tests for Alcohol and Drug Influence Title 40 Chapter 50 shall be required in order for continued approval (\$75.00). This reevaluation shall consider those requirements, and 40:50-1-3, 40:50-1-4 and 40:50-1-5 of this title (relating to Technical Requirements, Miscellaneous Requirements, and Maintenance and Calibration Requirements). The cost of this reevaluation shall be the same as for the initial approval process noted in subsection c (1) of the section.

(f) Annually provide to the Board a written report of each service and feature of all approved IIDs made available by the manufacturer. The Board shall make available the form for this report.

(g) The vendor shall notify the Board in writing if the Certification or approval of a device that is approved for use in Oklahoma is or ever has been suspended, revoked or denied in another state, whether such action occurred before or after approval in Oklahoma. This notification shall be made in a timely manner, not to exceed 30 days, after the vendor has received notice of the suspension, revocation or denial of certification or approval of the device, whether or not the action is or has been appealed.

40:50-1-3. Technical requirements

(a) **Accuracy.** The startup set point value for the interlock device shall be an alcohol concentration of 0.020g/210L of breath. The accuracy of the device shall be 0.020g/210L \pm 0.01g/210L. The accuracy will be determined by analysis of an external standard generated by a reference sample device, wet bath simulator, dry gas or other methodologies approved by the Board. The startup set point value for voluntary or non-adjudicated IID clients may not exceed an alcohol concentration of 0.030g/210L of breath.

(b) **Alveolar breath sample.** The device shall have a demonstrable feature designed to assure that the breath sample that is measured is essentially alveolar air.

(c) **Precision.** The device shall correlate with a known alcohol concentration of 0.020g/210L with accuracy set forth in subsection ~~set forth in subsection~~ (a) of this section. A correlation of 95% will be considered reliable precision; 95 of 100 times the device must respond to, detect, and prevent the motor vehicle engine from operating when the operator has alcohol concentration of 0.02g/210L or greater, or any other limits as set by the Board.

- (1) The proportion of false positive results shall not exceed 5.0%
- (2) The proportion of false negative results shall not exceed 5.0%.

(d) **Specificity.** A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to positive results.

(e) **Temperature.** The device shall meet the requirements of subsections (a) and (b) of this section when used at ambient temperature of -20 ° C to 50 ° C or other limits as set by the Board.

(f) ~~**Rolling restart or retest**~~**Retest.** To thwart curbside assistance, after passing the test allowing the engine to start, the IID shall require a retest as defined in 40:50-1-1(mm), second test within a randomly variable interval ranging from 5 to 15 minutes. Third and subsequent retests shall be required at intervals not to exceed 15 minutes from previously requested test for the duration of the travel. During the rolling retest, the retest set point shall be the same as the startup set point. In order to alert the driver that a retest is to be required, a warning light and/or tone shall come on. ~~The driver will then be afforded sufficient time to retest.~~ If the engine is intentionally or accidentally shutdown after or during the warning but before retesting, the free restart shall not be operative. ~~The failure to take a retest shall be recorded in the data storage system as a violation.~~

(g) **Vibrational stability.** The device shall meet the requirements of subsections (a) and 9 (c) of this section when subjected to simple harmonic motion having an amplitude of 0.38 mm (0.015 inches) applied initially at a frequency of 10 Hz and increased at a uniform rate to 30 Hz in 2½ minutes, then decrease at a uniform rate to 10 Hz in 2½ minutes. The device shall also meet the requirements to simple harmonic motion having an amplitude of 0.19mm (0.0075 inches) applied initially at a frequency of 30 Hz in 2½ minutes.

40:50-1-4. Miscellaneous requirements

(a) **Anticircumvention.** The device shall be designed so that anticircumvention features will be difficult to bypass.

- (1) Anticircumvention provisions shall include, but not be limited to, prevention or preservation of evidence of cheating by attempting to use bogus or filtered breath samples or bypass the breath sampling requirements of the device ~~electronically.~~
- (2) The device may use special seals or other methods that record attempts to bypass anticircumvention provisions.

(3) The device shall be checked for evidence of tampering at least every sixty (60) days or more frequently if the need arises.

(4) When evidence of tampering is discovered, the licensed Interlock Technician shall notify the installation authority and/or monitor appropriate judicial authority and /or the Department of Public Safety shall be notified in writing and these records shall be made available to the Board upon request subject to the limitation specified in 40:50-1-7(4)(B).

(b) **Operational features.**

(1) The device shall be designed to permit a free restart of the motor vehicle's ignition within a reasonable time as approved by the Board after the ignition has shut off, without requiring a further alcohol analysis.

(2) The device shall also automatically purge alcohol before allowing subsequent analyses. In addition to the operational features of these rules, the Board may impose additional requirements, as needed, depending upon design and functional changes in device technology.

(3) The device shall have a data storage system of sufficient capacity to facilitate the recording and maintaining of all daily driving activities for the period of time elapsed from one maintenance and calibration check, as referred to in 40:50-1-5 of this title (relating to Maintenance and Calibration Requirements) to the next.

(c) **Product liability.** The manufacturer of the device shall carry liability insurance covering product liability, including coverage in Oklahoma with a minimum policy limit ~~of~~ one million dollars (\$1,000,000.00).

(d) **Service report.** The manufacturer shall ensure responsibility for service within a maximum of 48 hours after notification of a reported malfunction. This support shall be in effect during the period the device is required to be installed in a motor vehicle or during such time as lease of the device shall be in effect.

(e) **Modifications.** Once a device by model and/or class has been approved, no modification in design or operational concept may be made without prior written consent of the Board or its designee. This does not include replacement or substitution of repair parts to maintain the device nor software changes that do not modify the operational concept of the device.

(f) **Warning label.** A label warning against tampering, circumventing, or misuse shall be affixed to each device.

(g) **Safety.** The device shall be designed to comply with generally recognized safety requirements.

(h) **Specification and operating instructions.** Manufacturers shall provide to the Board with each device submitted for approval, a precise set of specifications, which describe the features of the device concerned in the evaluation of its performance. A set of detailed operating instructions shall be supplied with each device.

(i) **Product indemnity.** The manufacturer shall provide a signed statement that the manufacturer shall indemnify and hold harmless the state of Oklahoma, the Board and its members, employees and agents from claim, demands, and actions, as a result of damage or injury to persons or property which

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may arise, directly or indirectly, out of any act or omission by the manufacturer or their representative relating to the installation, service, repair, use and/or removal of an IID.

(j) **General.** Any other requirements as may be determined necessary by the Board or its designee to ensure that the device functions properly and reliably.

40:50-1-5. Maintenance and calibration requirements

(a) The device shall be inspected, maintained, and calibrated for accuracy and operational performance at least once every sixty (60) days and more frequently, if necessary, as specified by the Board or the ~~appropriate judicial installation authority and/or monitor~~. This maintenance and calibration check will be performed by a certified IID service center as described in 40:50-1-7 of this title (relating to Certification and Inspection of Service Centers).

(b) The maintenance and calibration check will consist of, but not be limited to, a check of the device to determine that the device is properly functioning in accordance with the following sections:

(1) **Accuracy** - 40:50-1-3 (a) of this title (relating to Technical Requirements);

(A) The device shall be calibrated before placing into service. The calibration described herein shall verify the IID accuracy to be within plus or minus (\pm) 0.010g/210L of the reference sample predicted value.

(B) Upon return to the service center as in subsection (a) of this section, the device shall be subjected to a calibration confirmation test. The test results described herein shall verify the accuracy of the IID to be within plus or minus (\pm) 0.010g/210L of the reference sample predicted value.

(i) Should the device fail the calibration confirmation test referred to in subsection (b) (1) (B) of this section that information shall be ~~made available to the appropriate judicial authority and provided upon request to the Board and/or the installation authority and/or the monitor~~.

(ii) Should the calibration confirmation test referred to in subsection (b) (1) (B) of this section not agree within plus or minus (\pm) 0.010 g/210L of the reference sample predicted value, the device shall be recalibrated so as to restore accuracy described in subsection (b) (1) (A) of this section before the device may be returned to service.

(2) **Anticircumvention** - 40:50-1-4 of this title (relating to Miscellaneous Requirements); and

(3) **Operational features** - 40:50-1-4 of this title (relating to Miscellaneous Requirements).

(c) Maintenance and calibration records shall be maintained by the manufacturer, the manufacturer's representative, and/or the vendor and shall be provided upon request to the Board, ~~the installation authority and/or any appropriate judicial authority and/or the Department of Public Safety, the monitor~~.

(d) If at any time the device fails to meet the provisions of this section, the device shall be removed from service or recalibrated and/or repaired, and these ~~reports~~ shall be ~~made~~

~~available to the appropriate judicial authority and/or the Department of Public Safety and provided upon request to the Board.~~

(e) A manufacturer shall be responsible for providing continuing service by a certified service center during the installation period, without interruption, should a certified service center go out of business or be revoked.

(1) If the out of business or revoked service center is being replaced, the manufacturer shall make all reasonable efforts to obtain participant records and data from certified service center being replaced and provide them to the new service center. The Board shall be notified of this event within thirty (30) days.

(2) If the out of business or revoked service center is not replaced, the manufacturer shall retain the records and data as required in subsection (e)(1) of this section. The Board shall be notified of this event as soon as possible.

(A) The manufacturer shall be responsible for, and shall bear the cost of, removal of the original IID, regardless of the manufacturer of the device being substituted, if another manufacturer's device is available. The manufacturer shall also determine that each participant with an existing installed IID is able to obtain the required service within a reasonable distance, or the closest service center available, of participant's residence or place of business.

(B) The manufacturer shall make every reasonable effort to notify all participants of the change of the certified service center or replacement of the device thirty (30) days before the change or replacement will occur, or as soon as is possible.

(3) If neither subsection (e) (1) nor subsection (e) (2) of this section can be accomplished, the manufacturer shall be responsible for notifying the clients and ~~the installation authority and/or monitor appropriate judicial authority~~ that service will be terminated within sixty (60) days, and then removing the device at no cost to the clients in question.

40:50-1-7. Certification and inspection of service centers

(a) All IID service centers conducting business in this state, whether fixed or mobile, must have the approval of and be certified by the Board and pay a fee for site inspection of \$100.00.

(b) To initiate certification for an IID service center, a vendor or IID manufacturer's representative shall submit an application to the Board for approval. The application, available from the Board, shall show physical location of service center, the brand and/or model of the ignition interlock device(s) to be merchandised and reference sample device(s) to be used. The application shall also contain a statement acknowledging permission from the IID manufacturer to vend the IID described by application. Only IID's listed on the approved (40:50-1-11) list referenced in 40:50-1-2 of this title (relating to Procedure for Device Approval) may be merchandised. A vendor applying for certification of an IID service center must agree to:

(1) Allow access for inspection under subsection (d) of this section,

- (2) comply with subsection (g) of this section,
 - (3) comply with subsection (c) of 40:50-1-4 of this title (relating to Miscellaneous Requirements) concerning product liability insurance requirements, and
 - (4) comply with subsection (d) 40:50-1-4 of this title (relating to Miscellaneous Requirements) concerning service support requirements.
 - (5) pay fees for inspection of site as stated in (a) of this section.
- (c) All IID testing techniques, in order to be approved, shall meet, but not be limited to, the following:
- (1) A certified IID service center shall be located in a facility which properly and successfully accommodates installing, inspection, downloading, calibrating, ~~repairing~~, monitoring, maintaining, servicing an /or removing a specific IID device(s). The service center must incorporate the use of analysis of a reference sample such as head space gas from a mixture of water and known weight of alcohol at a known temperature, the results of which must agree with the reference sample predicted value as in 40:50-1-5 of this title (relating to Maintenance and Calibration Requirements), or other methodology that may be approved by the Board (40:50-1-3, Technical Requirements, (a) Accuracy) Preparatory documentation (such as certificate of analysis) on then reference sample solution(s) shall be available to the Board. Only reference sample devices approved by the Board and specified in 40:25-1-3 may be used in certified IID operations.
 - (2) Services rendered by IID service center must be performed by a properly trained and certified service representative. IID service centers shall maintain sufficient staff to ensure an acceptable level of service. Monitor checks shall be scheduled in a manner such as not to deprive the client of an acceptable level of service. The IID service center must at all times be staffed with at least one certified service representative. Potential service representative candidates may train in the certified IID service center only under the direct supervision of a currently certified service representative. The potential service representative candidate will be given a reasonable time as determined by the Board to train before being required to take and pass the IID service representative examination.
 - (3) All analytical results shall be expressed in grams of alcohol per two hundred and ten liters (g/210L).
 - (4) The applicant must agree to maintain any specified records designated by the Board, including but not limited to:
 - (A) ~~submitting reportable violation(s) if any, of any court order to appropriate judicial authority and/or the Department of Public Safety, not later than 48 hours after the vendor confirms the violation to the installation authority and/or the monitor as specified in 40:50-1-1(II).~~
 - (B) maintaining complete records of each device installed for five (5) years from the date of the removal.
 - (C) making IID records available, either by inspection or via copy to any ~~appropriate judicial installation~~

- authority and/or the monitor and/or Department of Public Safety and upon request to the Board.
- (5) Anticircumvention features must be activated ~~an~~ on any installed IID.
- (6) ~~If applicable, the~~ The device must be installed and inspected in accordance with ~~these rules applicable court order.~~ Furthermore, the service center, through the certified IID representative(s), shall perform a visual inspection of the vehicle, the devices, and the device's wiring to ensure no tampering or circumvention has occurred during the monitoring period. ~~In the case wherein the client returns to the service center as in 40:50-1-5 of this title (relating to Maintenance and Calibration Requirements) absent their vehicle, such fact shall be made available to the appropriate judicial authority or the Department of Public Safety.~~
- (d) An IID inspector or a designated representative of the Board may at any time make an inspection of the certified IID service center to ensure compliance with these rules.
- (e) A designated custodian of records, when required, shall be provided by the vendor to testify in court and provide testimony concerning the interpretation of any data storage system records, as required by these courts and to answer questions concerning certification of the IID program.
- (f) Upon proof of compliance with subsection (a)-(c) of this section, certification will be issued by the Board. Issuance of a certificate to the service center shall be evidence that the service center meets all necessary criteria for approval and certification. Prior to issuance of the certification, an on-site evaluation may be required by the Board to ensure compliance with the provisions of this section.
- (g) Certification of the IID service center is contingent upon the applicant's agreement to conform and abide by any directives, orders or policies issued or to be issued by the Board regarding any aspect of the IID service center; this shall include, but not be limited to, the following:
 - (1) program administration;
 - (2) reports;
 - (3) records and forms;
 - (4) inspections;
 - (5) methods of operation and testing techniques;
 - (6) personnel training and qualifications;
 - (7) criminal history considerations for service representative; and
 - (8) records custodian.
- (h) Certification of an IID service center may be denied, withdrawn, inactivated, suspended, or revoked by the Board if a vendor, service center, service representative, or IID equipment fails to meet all criteria stated in this section, or if the vendor violates any law of this state that applies to the vendor. An IID service center whose pending application for certification has been denied, or an IID service center whose certification has been withdrawn, inactivated, suspended or revoked may appeal may be made by following the appeal process established in 40:50-1-10 of these rules. The Board may allow the pending application for certification of the IID service center, or the Board may reinstate certification of the

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IID service center appealing the withdrawal, activation, suspension or revocation of certification under such conditions deemed necessary.

(i) Recertification of a service center whose certification has been withdrawn, inactivated, suspended or revoked will require a written request from the applicant to the Board and successful completion of the original requirements for certification as outlined in subsection (b) of this section and/or other requirements as determined by the Board.

(j) Recertification of a service center whose certification has been withdrawn, inactivated, suspended or revoked will require a fee as show in Chapter 55 of the Boards Rules before recertification will take place

40:50-1-8. Service representative

(a) Initial certification.

(1) In order to apply for certification as a service representative of an ignition interlock device service center, an applicant must successfully attain the following and pay a fee of \$100.00:

(A) proof of employment by an ignition interlock device service center that meets the requirements set forth in 40:50-1-7 of this title (relating to Certification and Inspection of Service Centers); and

(B) documentation from the aforementioned employee that the applicant is currently trained in all necessary aspects of the specific IIDs involved in the vendors service center.

(C) If a service representative is certified to work with a specific brand and/or model of equipment and is required to be certified on an additional brand and/or model of equipment, the Board may waive portions of subsection (a)(1)(B) of this section and require only that instruction needed to acquaint the applicant with proper operation of the new brand and/or model of equipment.

(2) Prior to initial certification as a service representative of an ignition interlock device service center, an applicant must satisfactorily complete a written examination which shall cover the regulatory aspects of the Oklahoma IID program.

(A) Failure of the initial written examination will cause the applicant to be ineligible for reexamination for a period of thirty (30) days.

(B) A subsequent failure will be handled the same as an initial failure.

(3) An applicant who has been convicted of an alcohol related offense, theft, crime involving moral turpitude, or any offense classified as a felony, within five (5) years prior to the date of filing of the applicant's application for certification as an IID service representative ~~is~~ may not be eligible for certification. For purposes of this section, a conviction means the applicant was adjudicated guilty ~~to~~ to ~~contend~~ contend or received a deferred sentence by a court of competent jurisdiction.

(b) **Renewal of current certification.** The service representative is required to renew certification prior to its expiration

date. The minimum requirement for renewal of service representative certification will be:

(1) a biennial written acknowledgment from the service representative's employing IID vendor that this service representative is both;

(A) employed by the vendor in the capacity of service representative, and

(B) currently trained in all necessary aspects of the IIDs involved in the vendor's service center.

(C) Renewal fee of \$75.00 has been paid.

(2) a biennial written acknowledgment from the service representative that he or she still meets the requirements of subsection (a)(3) of this section.

(3) Renewal of certification will be denied and current certification will be inactivated when the service representative:

(A) fails to ~~finish~~ furnish proper documentation required in subsection (b)(1)(A) and of this section or

(B) fails to meet requirements of subsection (a)(3) of this section.

(4) Upon successful completion of the requirements for renewal of certification, the Board will issue the individual a service representative's certificate valid for a period of time designated by the Board or until next renewal unless certification is withdrawn, inactivated, suspended, or revoked.

(c) Certification of the service representative may denied, withdrawn, inactivated, suspended or revoked by the director if the service representative fails to meet the requirements of these rules. A person whose pending application for certification has been denied, or service representative whose certification has been withdrawn, inactivated, suspended or revoked may appeal such action as established in 40:50-1-10 of ~~this~~ these rules. The Board may allow the pending application for certification as an IID service representative, or the Board may reinstate certification of the IID service representative appealing the withdrawal, inactivation, suspension or revocation of certification under such conditions deemed necessary.

(d) Recertification of a service representative whose certification has been withdrawn, inactivated, suspended or revoked will require written request from the applicant to the Board and successful completion of the original requirements for certification as outlined in subsection (a) of this section and/or other requirements as determined by the Board.

(e) Recertification of a service representative whose certification has been withdrawn, inactivated, suspended or revoked will require a reinstatement fee, this fee will be found in Chapter 55 of the Boards Rules.

40:50-1-9. Ignition interlock inspector

(a) The **minimum qualifications** for certification as an IID inspector are:

(1) graduation from a standard senior high school or the equivalent plus two (2) years or more responsible work experience. College may substitute for experience on a year-year basis.

- (2) the satisfactory completion of IID inspector training that is approved by the Board, the content of which shall include, but not be limited to familiarity with:
- (A) record keeping appropriate to approved IIDs in use in the State of Oklahoma;
 - (B) operational principles and theories applicable to the program; and
 - (C) legal aspects of the IID program.
- (3) Knowledge and understanding of the scientific theory and principles as to the operation of the IID and reference same device.
- (4) Persons who are currently engaged in business with or employed by an IID manufacturer or an IID vendor shall not be eligible to become a certified IID inspector.
- (5) An applicant who has been convicted of an alcohol related offense, theft, a crime involving moral turpitude, or any offense classified as a felony, within five (5) years prior to the date of filing of the applicant's application for certification as an IID inspector ~~is may~~ may not be eligible for certification. For purposes of this section, a conviction means the applicant was adjudicated guilty ~~no to con-tendere or received a deferred sentence~~ by a court of competent jurisdiction.
- (6) Upon satisfactory proof to the Board by the applicant that the minimum qualifications of this subsection have been met, the Board will approve and direct the State Director to issue a certificate that will be valid unless certification is withdrawn, inactivated, suspended or revoked for cause.
- (b) Duties. A certified IID inspector will make a minimum of one onsite inspection of each service center as needed or directed by the State Director. Such an inspection will include but not limited to:
- (1) Any and all IID technician requirements as per 40:50-1-3 of this section (relating to Technical Requirements).
 - (2) Any and all IID miscellaneous requirements as per 40:50-1-4 of this title (relating to Miscellaneous Requirements).
 - (3) Any and all IID maintenance and calibration requirements as per 40:50-1-5 of this title (relating to Maintenance and Calibration Requirements).
 - (4) Any and all service center representative requirements as per 40:50-1-7 of this title (relating to Certification and Inspection of Service).
 - (5) Any and all service representative requirements as per 40:50-1-8 of this title (relating to Service Representative).
- (c) Fees. Vendors shall reimburse the Board for conducting each inspection of the vendor's facility under this section. These fees shall be \$100.00 for initial and \$75.00 renewal each year thereafter. This cost shall be uniform for all facilities inspected.
- (1) The Board may conduct more inspections for cause, such as complaints from judicial, or adult supervision, or client at additional cost to the service center being inspected.

- (2) The calculated cost per inspection will be standardized throughout the IID program unless there are individual vendor circumstances that require additional costs to the Board and will consequently be passed through to the affected vendor(s).
- ~~(d) Certified IID inspector will be appointed by the State Director of Tests and this appointment will be reviewed and approved by the Board and a fee of \$100.00 for initial issuance and \$75.00 for renewal.~~
- ~~(e)~~ Certification of an IID inspector may be **denied, withdrawn, inactivated, suspended or revoked** by the Director, if the inspector fails to meet the requirements of these rules.
- ~~(f)~~ A person whose pending application for certification has been denied, or an IID inspector whose certification has been withdrawn, inactivated, suspended or revoked **may appeal** such action as required in 40:50-1-10 of these rules. The Board may allow the pending application for certification as an IID inspector, or the Board may reinstate certification of the IID inspector appealing the withdrawal, inactivation, suspension or revocation of certification under such conditions deemed necessary.
- ~~(g)~~ Recertification of an IID inspector whose certification has been withdrawn, inactivated, suspended, or revoked will require a written request from the applicant to the State Director. Such request must ~~will~~ be reviewed and approved by the Board, ~~and~~ after successful completion of the original requirements for certification as outlined in subsection (a) of this section and/or other requirements as determined by the State Director.

40:50-1-11. Approved ignition interlock devices

- (a) Draeger ~~Interlock (Dräger)~~ Model 920 and Model XT
- (b) ~~CSI~~ CST, Inc., Model 1001A
- (c) Guardian Interlock System AMS 2000
- (d) ~~Lifesaver~~ Lifesaver Interlock System Model FC100
- (e) SmartStart Instrument Model SSI-1000

[OAR Docket #06-1431; filed 11-13-06]

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

[OAR Docket #06-1478]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 8. Permits for Part 70 Sources
- Part 11. Visibility Protection Standards [NEW]
- 252:100-8-70. [NEW]
- 252:100-8-71. [NEW]
- 252:100-8-72. [NEW]
- 252:100-8-73. [NEW]
- 252:100-8-74. [NEW]
- 252:100-8-75. [NEW]
- 252:100-8-76. [NEW]
- 252:100-8-77. [NEW]

Emergency Adoptions

AUTHORITY:

Environmental Quality Board; 27A O.S., §§ 2-2-101, 2-2-201 and 2-5-101, *et seq.*

DATES:

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August 22, 2006

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October 8, 2006

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SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

Incorporated standards:

40 CFR 51 Appendix Y

Incorporating rules:

252:100-8-72

Availability:

From the contact person

FINDING OF EMERGENCY:

The Environmental Quality Board finds that a compelling public interest necessitates the seeking of emergency certification of the rule being adopted today. The new Part 11, Visibility Protection Standards incorporates the Federal Best Available Retrofit Technology (BART) requirements into Chapter 100. States are required to submit a Regional Haze Implementation Plan no later than December 2007. The implementation plan should include emission limitations and schedules for compliance with BART for each BART-eligible source that contributes to any impairment of visibility in any mandatory Class I Federal area. Dispersion modeling must be done by each BART-eligible source to determine if that source is subject to BART. This requires time, so it is important that these requirements for BART-eligible sources be promulgated as soon as possible so these sources will know how to proceed. An emergency rule would be effective about 9 months prior to the effective date of the permanent rule and allow BART-eligible sources to meet the deadlines contained in Part 11, which in turn will allow the Department to meet the deadlines established by EPA.

ANALYSIS:

The Department is proposing to add new Part 11, Visibility Protection Standards, to Subchapter 8. This new Part incorporates the Federal Best Available Retrofit Technology (BART) requirements into Chapter 100. States are required to implement the Federal BART requirements as part of a Regional Haze Implementation Plan no later than December 2007. Stationary sources that were not in operation prior to August 7, 1962, and were in existence on August 7, 1977, that have the potential to emit 250 tpy or more of any air pollutant, are BART-eligible sources if they belong to one of the 26 categories listed in the definition of "existing stationary facility" contained in proposed OAC 252:100-8-71. BART-eligible sources that cause visibility impairment in any Class I Area are subject to BART and must establish emissions limitations by the application of BART. Owners or operators of BART-eligible sources who wish to obtain an exemption or a waiver from BART must submit an application for an exemption or a waiver to the Director by December 1, 2006. The owner or operator of any BART-eligible source that has not applied for an exemption or a waiver for that source shall submit a BART determination to the Director by March 30, 2007. BART must be installed and operated at the sources subject to BART no later than five years after EPA approves the Oklahoma Regional Haze SIP.

CONTACT PERSON:

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

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 11. VISIBILITY PROTECTION STANDARDS

252:100-8-70. Applicability

This Part applies to any BART-eligible source (existing stationary facility as defined in OAC 252:100-8-71) which may reasonably be anticipated to cause or contribute to visibility impairment at any mandatory Class I Federal area.

252:100-8-71. Definitions

The following words and terms when used in this Part shall have the following meaning, unless the context clearly indicates otherwise. All terms used in this Part that are not defined in this Subsection shall have the meaning given to them in OAC 252:100-1-3, 252:100-8-1.1, 252:100-8-31, or in the Oklahoma Clean Air Act.

"BART-eligible source" means an existing stationary facility as defined in this Section.

"Best Available Retrofit Technology" or "BART" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by a BART-eligible source. The emission limitation must be established on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

"Deciview" means a measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements): Deciview haze index = $10 \ln_e (b_{ext}/10 \text{ Mm}^{-1})$. Where b_{ext} = the atmospheric light extinction coefficient, expressed in inverse megameters (Mm^{-1}).

"Existing stationary facility" means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 TPY or more of any air pollutant. In determining potential

to emit, fugitive emissions, to the extent quantifiable, must be counted.

- (A) Fossil-fuel fired steam electric plants of more than 250 million Btu/hr input,
- (B) Coal cleaning plants (thermal dryers),
- (C) Kraft pulp mills,
- (D) Portland cement plants,
- (E) Primary zinc smelters,
- (F) Iron and steel mill plants,
- (G) Primary aluminum ore reduction plants,
- (H) Primary copper smelters,
- (I) Municipal incinerators capable of charging more than 250 tons of refuse per day,
- (J) Hydrofluoric, sulfuric, and nitric acid plants,
- (K) Petroleum refineries,
- (L) Lime plants,
- (M) Phosphate rock processing plants,
- (N) Coke oven batteries,
- (O) Sulfur recovery plants,
- (P) Carbon black plants (furnace process),
- (Q) Primary lead smelters,
- (R) Fuel conversion plants,
- (S) Sintering plants,
- (T) Secondary metal production facilities,
- (U) Chemical process plants,
- (V) Fossil-fuel boilers of more than 250 million Btu per hour heat input,
- (W) Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels,
- (X) Taconite ore processing facilities,
- (Y) Glass fiber processing plants, and
- (Z) Charcoal production facilities

"In existence" means that the owner or operator has obtained all necessary preconstruction approvals or permits required by the Department and EPA and either has:

- (A) begun, or caused to begin, a continuous program of physical on-site construction of the facility; or
- (B) entered into binding agreements or contractual obligations which cannot be cancelled or modified without substantial loss to the owner or operator to undertake a program of construction of the facility to be completed in a reasonable time.

"In operation" means engaged in activity related to the primary design function of the source.

"Integral vista" means a view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.

"Mandatory Class I Federal area" means any area identified in 40 CFR part 81, subpart D.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary

emissions do not count in determining the potential to emit of a stationary source.

"Reasonably attributable" means attributable by visual observation or any other technique the Department deems appropriate.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a BART-eligible source but do not come from the BART-eligible source. Secondary emissions may include, but are not limited to, emissions from ships or trains coming to or from the BART-eligible source.

"Visibility in any mandatory Class I Federal area" includes any integral vista associated with that area.

252:100-8-72. Incorporation by reference

Appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule, of 40 CFR 51 is hereby incorporated by reference as it exists July 6, 2005.

252:100-8-73. BART applicability

(a) Each BART-eligible source that emits any air pollutant which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area is subject to BART. This shall be determined using the criteria in Section III of Appendix Y of 40 CFR 51 in effect on July 6, 2005. Thresholds for visibility impairment are set forth in OAC 252:100-8-73(a)(1) and (2).

(1) A source that is responsible for an impact of 1.0 deciview or more is considered to cause visibility impairment.

(2) A source that causes an impact greater than 0.5 deciviews contributes to visibility impairment.

(b) Air pollutants emitted by sources in Oklahoma which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area are NO_x, SO₂, PM-10, and PM-2.5.

(c) The owner or operator of a BART-eligible source may request and obtain a waiver from the Department that a BART determination is not required:

(1) for SO₂ or for NO_x if the BART-eligible source has the potential to emit less than 40 TPY of such pollutant(s),

(2) for PM-10 if the BART-eligible source has the potential to emit less than 15 TPY of such pollutant, or

(3) if the owner or operator of the BART-eligible source demonstrates by modeling, in accordance with a protocol approved by the Director, that a source does not emit any air pollutant which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area.

252:100-8-74. Exemption from BART requirements

(a) The owner or operator of any BART-eligible source subject to the requirements of this Part to install, operate, and maintain BART may apply to the Administrator for exemption from that requirement.

(b) Should the owner or operator of a BART-eligible source wish to apply for exemption as provided for in 40 CFR 51.303,

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such application must be accompanied by a written concurrence from the Director.

252:100-8-75. Visibility standards for existing stationary facilities

(a) The owner or operator of a BART-eligible source that emits any air pollutant which causes or contributes to visibility impairment in any mandatory Class I Federal area shall establish emissions limitations by the application of BART.

(1) The determination of BART must be based on an analysis of the best system of continuous emission control technology available and associated emission reduction achievable for each BART-eligible source that is subject to BART.

(2) After the level of control that represents BART is determined, an emission limit representing this level of control must be established.

(3) BART may be established as design, equipment, work practice, or other operational standards or combination thereof, when limitations on measurement technologies make emission standards infeasible, if such application achieve equivalent results. Such standard, to the degree possible, shall set forth the emission reduction to be achieved and must provide for compliance by means which achieve equivalent results.

(b) The determination of BART shall be made pursuant to the guidelines in Appendix Y of 40 CFR 51 in effect on July 6, 2005.

(c) The owner or operator of a BART-eligible source shall submit to the Director by December 1, 2006:

(1) an application for a waiver pursuant to OAC 252:100-8-73, or

(2) an application for an exemption pursuant to OAC 252:100-8-74.

(d) A BART-eligible source that has not applied for a waiver pursuant to OAC 252:100-8-73 or an exemption pursuant to OAC 252:100-8-74 shall submit to the Director a BART determination by March 30, 2007.

(e) The owner or operator of each BART-eligible source subject to BART shall install and operate BART no later than five years after EPA approves the Oklahoma Regional Haze SIP.

(f) The owner or operator of each source subject to BART shall maintain the control equipment required by this Part and establish procedures to ensure such equipment is properly and continuously operated and maintained.

(g) The owner or operator of any BART-eligible source that might cause or contribute to visibility impairment in any mandatory Class I Federal area must provide a BART analysis at such times, as determined by the Administrator, as new technology for control of the pollutant becomes reasonably available if:

(1) the pollutant is emitted by that BART-eligible source;

(2) controls representing BART for the pollutant have not previously been required under this Part; and

(3) the visibility impairment in any mandatory Class I Federal area is reasonably attributable to the emissions of that pollutant.

252:100-8-76. Permit requirements

The BART requirements for any BART-eligible source that is subject to BART shall be submitted to the Director in an application for a permit modification pursuant to OAC 252:100-8-7.2 no later than March 30, 2007.

252:100-8-77. Cap and/or trade program

Nothing in this rule precludes the establishment of a cap and/or trade program that will achieve greater reasonable progress than would be achieved through the installation and operation of BART.

252:100-8-78. Modeling

All modeling required by this Part shall be performed in accordance with a protocol approved by the Director.

[OAR Docket #06-1478; filed 11-21-06]

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

[OAR Docket #06-1437]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

317:2-1-2. [AMENDED]

317:2-1-5. [AMENDED]

(Reference APA WF # 06-34)

AUTHORITY:

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

DATES:

Adoption:

October 12, 2006

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Immediately upon Governor's approval or December 1, 2006, whichever is later

Expiration:

Effective through July 14, 2007, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions that provide a more timely and efficient administrative appeals process. Revisions remove potential delays in the appeals process that may postpone a recipient's receipt of medically necessary procedures, services or durable medical equipment.

ANALYSIS:

Rules are revised to provide a more timely and efficient administrative appeals process. When a recipient is denied prior approval of a procedure,

service, or durable medical equipment, he/she has the right to an administrative appeal. Current rules require an administrative appeal first be reviewed by a three person program panel (which may or may not contact the recipient prior to rendering a decision). If the denial is upheld, the recipient may then request a fair hearing before an Administrative Law Judge. The panel review may sometimes delay new information being reviewed by Agency staff, such as when a provider submits new information and a panel review has been scheduled, the new information may not be considered until the review. A review of the current process does not show a change in agency decision making nor does it reduce the agency's ability to properly consider administrative appeals. Revisions are needed to remove potential delays in the appeals process that may postpone a recipient's receipt of medically necessary procedures, services or durable medical equipment by eliminating the three person program staff review.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR DECEMBER 1, 2006, WHICHEVER IS LATER:

317:2-1-2. Appeals

(a) Recipient Member Process Overview.

- (1) The appeals process allows a recipient member to appeal a decision which adversely affects their rights. Examples are decisions involving medical services, prior authorizations for medical services, or discrimination complaints.
- (2) In order to file an appeal, the recipient member files a LD-1 form within 20 days of the triggering event. The triggering event occurs at the time when the Appellant (Appellant is the person who files a grievance) knew or should have known of such condition or circumstance for appeal).
- (3) If the LD-1 form is not received within 20 days of the triggering event, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely. In the case of tax warrant intercept appeals, if the LD-1 form is not received within 30 days of written notice sent by OHCA according to Title 68 O.S. § 205.2, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.
- (4) If the LD-1 form is not completely filled out and necessary documentation not included, then the appeal will not be heard.
- (5) The staff advises the Appellant that if there is a need for assistance in reading or completing the grievance form that arrangements will be made.
- (6) Recipient appeals are first reviewed by a three person program panel that may or may not contact the recipient [Section OAC 317:2-1-5]. The recipient may then request a fair hearing before the ALJ. Upon receipt of the member's appeal, a fair hearing before the Administrative Law Judge (ALJ) will be scheduled. The member will be notified in writing of the date and time for this procedure. The recipient member must appear at this hearing and it is conducted according to Section OAC 317:2-1-5. The

ALJ's decision may be appealed to the CEO, which is a record review at which the parties do not appear (Section OAC 317:2-1-13).

(7) Recipient Member appeals are to be decided within 90 days from the date OHCA receives the recipient's member's timely request for a fair hearing ~~of the program panel's decision~~ unless the recipient member waives this requirement. [Title 42 U.S.C. Section 431.244(f)]

(8) Tax warrant intercept appeals will be heard directly by the ALJ. A decision will be rendered by the ALJ within 20 days of the hearing before the ALJ.

(b) Provider Process Overview.

(1) The proceedings as described in this Section contain the hearing process for those appeals filed by providers. These appeals encompass all subject matter cases contained in OAC 317:2-1-2(c)(2).

(2) All provider appeals are initially heard by the OHCA Administrative Law Judge under OAC 317:2-1-2(c)(2).

(A) The Appellant (Appellant is the provider who files a grievance) files an LD form requesting a grievance hearing within 20 days of the triggering event. The triggering event occurs at the time when the Appellant knew or should have known of such condition or circumstance for appeal. (LD-2 forms are for provider grievances and LD-3 forms are for nursing home wage enhancement grievances.)

(B) If the LD form is not received within 20 days of the triggering event, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.

(C) The staff advises the Appellant that if there is a need for assistance in reading or completing the grievance form that arrangements will be made.

(D) A decision will be rendered by the ALJ within 45 days of the close of all evidence in the case.

(E) The Administrative Law Judge's decision is appealable to OHCA's CEO under OAC 317:2-1-13.

(c) ALJ jurisdiction. The administrative law judge has jurisdiction of the following matters:

(1) Recipient Member Appeals:

(A) Discrimination complaints regarding the Medicaid program;

(B) Appeals which relate to the scope of services, covered services, complaints regarding service or care, enrollment, disenrollment, and reenrollment in the SoonerCare Program;

(C) Fee for Service appeals regarding the furnishing of services, including prior authorizations;

(D) Appeals which relate to the tax warrant intercept system through the Oklahoma Health Care Authority. Tax warrant intercept appeals will be heard directly by the ALJ. A decision will be rendered by the Administrative Law Judge within 20 days of the hearing before the ALJ;

(E) Complaints regarding the possible violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and

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- (2) Provider Appeals:
 - (A) Whether Pre-admission Screening and Resident Review (PASRR) was completed as required by law;
 - (B) Denial of request to ~~dis-enroll~~ disenroll ~~recipient~~ member from provider's SoonerCare Choice panel;
 - (C) Appeals by Long Term Care facilities for nonpayment of wage enhancements, determinations of overpayment or underpayment of wage enhancements, and administrative penalty determinations as a result of findings made under OAC 317:30-5-131.2(b)(5), (e)(8), and (e)(12);
 - (D) Petitions for Rulemaking;
 - (E) Appeals of insureds participating in O-EPIC which are authorized by OAC 317:45-9-8(a);
 - (F) Appeals to the decision made by the Business Contracts manager related to Purchasing as found at OAC 317:10-1-5, ~~317:10-1-13~~, ~~317:25-1-5~~, ~~317:25-1-12~~, and other appeal rights granted by contract;
 - (G) Drug rebate appeals;
 - (H) Nursing home contracts which are terminated, denied, or non-renewed; and
 - (I) Proposed administrative sanction appeals pursuant to OAC 317:35-13-7. Proposed administrative sanction appeals will be heard directly by the ALJ. A decision will be rendered by the ALJ within 20 days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions.

317:2-1-5. Hearing procedures

~~(a) Program Panel Hearings. Program Panel Hearings will be by a Program Panel, except in the case of tax warrant intercept appeals and proposed administrative sanction appeals refer to OAC 317:2-1-2(e)].~~

- ~~(1) The Program Panel will be composed of three or more members selected by the ALJ.~~
- ~~(2) The Program Panel may conduct a paper review of the complaint, or, at their option, hold a personal interview with the appellant to discuss the complaint. The Panel has the power to gather information it finds necessary from any available source, and thereafter, render a decision.~~
- ~~(3) The Panel must complete their paper review or conduct their formal personal interview and issue a majority decision within 25 days of the date stamped on the request for hearing.~~
- ~~(4) The Panel's decision will be in writing and will be signed by each of the Panel members. The decision will contain a summary of the complaint and an explanation of the reasoning of the Panel in making their decision. A copy of the decision will be sent to the member outlining the right to appeal the decision. Any appeal of the Panel decision must be instituted within 20 days of the mailing of the adverse ruling.~~
- ~~(5) A copy of the decision will be forwarded to the docket clerk.~~

~~(6) Appeal from a decision of the Program Panel will be heard by the Administrative Law Judge. A decision will be rendered by the Administrative Law Judge within forty days of the appeal to the ALJ.~~

~~(b) Administrative Law Judge.~~

- ~~(1) Hearings will be conducted in an informal manner without formal rules of evidence or procedure.~~
- ~~(2) No party is required to be represented by an attorney. Recipients Members may represent themselves or authorize another party to represent them. A person or entity desiring to represent a ~~recipient~~ member must provide documentation of the consent of the ~~recipient-member~~ to be represented by that person or entity. An appeal will be rejected without documentation of representation. Individuals appearing for corporate entities will be deemed to be authorized to represent the corporation in a hearing.~~
- ~~(3) The docket clerk will send the Appellant and any other necessary party notice which states the hearing hearing location, date, and time.~~
- ~~(4) The OHCA Administrative Law Judge or designee may:
 - (A) Rule on any requests for extension of time;
 - (B) Hold pre-hearing conferences to settle, simplify, or identify issues in a proceeding or to consider other matters that may end in the expeditious disposition of the proceeding;
 - (C) Require the parties to state their positions concerning the various issues in the proceeding;
 - (D) Require the parties to produce for examination those relevant witnesses and documents under their control;
 - (E) Rule on motions and other procedural items;
 - (F) Regulate the course of the hearing and conduct of the participants;
 - (G) Establish time limits for the submission of motions or memoranda;
 - (H) Impose appropriate sanctions against any person failing to obey an order of the ALJ or authorized under the rules in this Chapter which may include:
 - (i) Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
 - (ii) Excluding all testimony of an unresponsive or evasive witness; or
 - (iii) Expelling the person from further participation in the hearing;
 - (I) Take official notice of any material fact not appearing as evidence in the record, if the fact is among traditional matters of judicial notice;
 - (J) Administer oaths or affirmations;
 - (K) Determine the location of the hearing;
 - (L) Allow either party to request that the hearing be recorded by a court reporter with costs to be borne by the requesting party. The original of such transcription, if ordered, will be given to the ALJ with a copy to be given to the requesting party;
 - (M) Recess and reconvene the hearing;~~

- (N) Set and/or limit the time frame of the hearing;
 - (O) Reconsider or rehear a matter for good cause shown; and
 - (P) Send a copy of the decision by the ALJ to both parties outlining their rights to appeal the decision. The decision letter need not contain findings of fact or conclusions of law.
- (5) The burden of proof during the hearing will be upon the appellant and the ALJ will decide the case based upon a preponderance of evidence standard as defined by the Oklahoma Supreme Court. Parties who fail to appear at a hearing, after notification of said hearing date, will have their cases dismissed for failure to prosecute.
- (6) Parties may file preliminary motions in the case. Any such motions must be filed within 15 calendar days prior to the hearing date. Response to preliminary motions must be made within 7 calendar days of the date the motion is filed with OHCA. Preliminary motions will be ruled upon 3 days prior to the hearing date.
- (7) In any case in which a recipient member requests a continuance, OHCA will not be prejudiced to complete the case within 90 days.

[OAR Docket #06-1437; filed 11-14-06]

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

[OAR Docket #06-1436]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:

- Subchapter 3. General Provider Policies
- Part 3. General Medical Program Information
- 317:30-3-57. [AMENDED]
- Subchapter 5. Individual Providers and Specialties
- Part 1. Physicians
- 317:30-5-12. [AMENDED]
- 317:30-5-24. [AMENDED]
- Part 19. Nurse Midwives
- 317:30-5-226. [AMENDED]
- Part 35. Rural Health Clinics
- 317:30-5-355.1. [AMENDED]
- 317:30-5-361. [AMENDED]
- Part 49. Family Planning Centers
- 317:30-5-466. [AMENDED]
- 317:30-5-467. [AMENDED]
- Part 89. Radiological Mammographer
- 317:30-5-901. [AMENDED]
- (Reference APA WF# 06-22)**

AUTHORITY:

The 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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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 5. Individual Providers and Specialties
- Part 1. Physicians
- 317:30-5-24. [AMENDED]

Gubernatorial approval:

October 18, 2006

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24 Ok Reg 207

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06-1387

(Reference APA WF # 06-28)

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of the rule revisions to allow medically necessary screening and follow-up mammograms and to remove the contraceptive Norplant System from benefits. Revisions would bring SoonerCare rules in line with benefits offered through the Breast and Cervical Cancer Program to allow SoonerCare members of any age or gender to receive mammograms when they have conditions requiring screenings or diagnostics for breast cancer. The additional mammograms could potentially save lives by identifying cancerous or pre-cancerous conditions in members, some of whom under current rules, would not be able to access or might incur delays in accessing additional mammogram benefits under the program. Other rules for organ transplants are incorporated to provide consistency with other rules submitted to the Governor this date for approval in APA WF # 06-38.

ANALYSIS:

Agency rules are revised to allow mammograms for members of any age or gender when they are medically indicated as necessary. Currently rules allow for one screening and one follow-up mammogram annually for women beginning at age 30. The current language is not in line with benefits offered through the Breast and Cervical Cancer (BBC) Program and could limit medically necessary mammograms for members with cancerous conditions. Rules are also revised to remove the contraceptive Norplant system from benefits as it is no longer offered.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR DECEMBER 1, 2006, WHICHEVER IS LATER:

SUBCHAPTER 3. GENERAL PROVISIONS

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-57. General Medicaid SoonerCare coverage - categorically needy

The following are general Medicaid SoonerCare coverage coverages for the categorically needy:

- (1) Inpatient hospital services other than those provided in an institution for mental diseases.

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- (A) Adult coverage ~~limited to the compensable for inpatient hospital days stays as~~ described at OAC 317:30-5-41.
- (B) Coverage for ~~persons~~ members under 21 years of age is not limited. All admissions must be medically necessary. All psychiatric admissions require prior authorization for an approved length of stay.
- (2) Emergency department services.
- (3) Dialysis in an outpatient hospital or free standing dialysis facility.
- (4) Outpatient therapeutic radiology or chemotherapy for proven malignancies or opportunistic infections.
- (5) Outpatient surgical services - facility payment for selected outpatient surgical procedures to hospitals which have a contract with ~~the Authority~~ OHCA.
- (6) Outpatient Mental Health Services for medical and remedial care including services provided on an outpatient basis by certified hospital based facilities that are also qualified mental health clinics.
- (7) Rural health clinic services and other ambulatory services furnished by rural health clinic.
- (8) Optometrists' services - only as listed in Subchapter 5, Part 45, Optometrist specific rules of this Chapter.
- (9) Maternity Clinic Services ~~through the Oklahoma State Health Department~~.
- (10) Outpatient diagnostic x-rays and lab services. Other outpatient services provided to adults, not specifically addressed, are covered only when prior authorized by the agency's Medical Authorization Unit.
- (11) ~~One Medically necessary screening mammogram and one follow up mammogram every year for women beginning at age 30~~ mammography. Additional follow-up mammograms are covered when medically necessary. ~~Additional follow up mammograms require a prior authorization from the agency's Medical Authorization Unit.~~
- (12) Nursing facility services (other than services in an institution for tuberculosis or mental diseases).
- (13) Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) are available for ~~each eligible individual~~ members under 21 years of age to provide access to regularly scheduled examinations and evaluations of the general physical and mental health, growth, development, and nutritional status of infants, children, and youth. Federal regulations also require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the State Plan, as long as federal funds are available for these services. These services must be necessary to ameliorate or correct defects and physical or mental illnesses or conditions and ~~will~~ require prior authorization. EPSDT/OHCA Child Health services are outlined in OAC 317:30-3-65.2 through 317:30-3-65.4.
- (A) Child health screening examinations for eligible children by a medical or osteopathic physician, physician assistant, or advanced practice nurse practitioner.
- (B) Diagnostic x-rays, lab, and/or injections when prescribed by a ~~physician~~ provider.
- (C) Immunizations.
- (D) Outpatient care.
- (E) Dental services as outlined in OAC 317:30-3-65.8.
- (F) Optometrists' services. The EPSDT periodicity schedule provides for at least one visual screening and glasses each 12 months. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal. Interperiodic screenings and glasses at intervals outside the periodicity schedule for optometrists are allowed when a visual condition is suspected.
- (G) Hearing services as outlined in OAC 317:30-3-65.9.
- (H) Prescribed drugs.
- (I) Outpatient Psychological services as outlined in OAC 317:30-5-275 through OAC 317:30-5-278. ~~for eligible individuals under 21 years of age must be prior authorized. Payment is made to eligible psychologists who are duly licensed to practice. Outpatient testing and diagnosis is limited to one hour per patient each 12 months. Additional hours may be prior authorized.~~
- (J) Inpatient Psychotherapy Services ~~services~~ and psychological testing as outlined in OAC 317:30-5-95 through OAC 317:30-5-97. ~~Payment is made to eligible psychologists and psychiatrists. Inpatient psychotherapy by a psychologist must be prior authorized.~~
- (K) Inpatient psychological testing for eligible individuals under 21 years of age. Services are limited to one hour per each 12 months. If medically necessary, additional hours must be prior authorized. ~~Payment is made to eligible psychologists who are duly licensed to practice.~~
- (~~L~~ K) Transportation. Provided when necessary in connection with examination or treatment when not otherwise available.
- (~~M~~ L) Inpatient hospital services.
- (~~N~~ M) Medical supplies, equipment, appliances and prosthetic devices beyond the normal scope of ~~Medicaid~~ SoonerCare.
- (~~O~~ N) EPSDT services furnished in a qualified child health center.
- (14) Family planning services and supplies for ~~individuals~~ members of child-bearing age, including counseling, insertion of intrauterine device, implantation of subdermal contraceptive device, and sterilization for ~~persons~~ members 21 years of age and ~~over~~ older who are legally competent, not institutionalized and have signed the "Consent Form" at least 30 days prior to procedure. Reversal of sterilization procedures for the purposes of conception is not covered. Reversal of sterilization procedures ~~may be~~ are covered when medically indicated and substantiating documentation is attached to the claim. ~~The Norplant System for birth control is covered; however, removal of the Norplant System prior to five years is covered only when documented as medically necessary. Reinsertion of~~

~~Nonplant contraceptive will be is considered on a case by case basis.~~

(15) Family planning centers.

(16) Physicians' services whether furnished in the office, the ~~patient's~~ member's home, a hospital, a nursing facility, ICF/MR, or elsewhere. For adults, payment ~~will be is~~ made for up to the limited number of compensable hospital days described at OAC 317:30-5-41. These days will be maintained on the recipient record. Physician claims for hospital visits will be paid until the last compensable hospital day is captured. After the limited number of hospital days have been captured, inpatient physician services will not be paid beyond the last compensable hospital day. Office visits for adults are limited to four per month except when in connection with ~~emergency medical~~ conditions as specified in OAC 317:30-5-9(b).

(17) Medical care and any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law. See applicable provider section for limitations to covered services for:

- (A) Podiatrists' services
- (B) Optometrists' services
- (C) Psychologists' services
- (D) Certified Registered Nurse Anesthetists
- (E) Certified Nurse Midwives
- (F) Advanced Practice Nurses

(18) Free-standing ambulatory surgery centers.

(19) Prescribed drugs not to exceed a total of six prescriptions with a limit of three brand name prescriptions per month. Exceptions to the six prescription limit are:

- (A) unlimited medically necessary monthly prescriptions for:
 - (i) ~~individuals~~ members under the age of 21 years; and
 - (ii) residents of Nursing Facilities or Intermediate Care Facilities for the Mentally Retarded.

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

(20) Rental and/or purchase of durable medical equipment.

(21) Adaptive equipment, when prior authorized, for ~~persons~~ members residing in private ICF/MR's.

(22) Dental services for ~~persons~~ members residing in private ICF/MR's in accordance with the scope of dental services for ~~persons~~ members under age 21.

(23) Prosthetic devices limited to catheters and catheter accessories, colostomy and urostomy bags and accessories, tracheostomy accessories, nerve stimulators, hyperalimentation and accessories, home dialysis equipment and supplies, oxygen/oxygen concentrator equipment and

supplies, respirator or ventilator equipment and supplies, and those devices inserted during the course of a surgical procedure.

(24) Standard medical supplies.

(25) Eyeglasses under EPSDT for ~~individuals~~ members under age 21. Payment is also made for glasses for children with congenital aphakia or following cataract removal.

(26) Blood and blood fractions for ~~eligible persons~~ members when administered on an outpatient basis.

(27) Inpatient services for ~~individuals~~ members age 65 or older in institutions for mental diseases, limited to those ~~persons~~ members whose Medicare, Part A benefits are exhausted for this particular service and/or those ~~persons~~ members who are not eligible for Medicare services.

(28) Nursing facility services, limited to ~~individuals~~ members preauthorized and approved by OHCA for such care.

(29) Inpatient psychiatric facility admissions for ~~in~~ ~~individuals~~ members under 21 are limited to an approved length of stay effective July 1, 1992, with provision for requests for extensions.

(30) Transportation and subsistence (room and board) to and from providers of medical services to meet ~~patient's~~ member's needs (ambulance or bus, etc.), to obtain medical treatment.

(31) Extended services for pregnant women including all pregnancy-related and postpartum services to continue to be provided, as though the women were pregnant, for 60 days after the pregnancy ends, beginning on the last date of pregnancy.

(32) Nursing facility services for ~~patients~~ members under 21 years of age.

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

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

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

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

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

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

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

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(C) To be compensable under the Medicaid Soon-erCare program, all ~~organ~~ transplants must be performed at a Medicare approved transplantation center facility which meets the requirements contained in Section 1138 of the Social Security Act.

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

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

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

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

(41) Services delivered in Federally Qualified Health Centers. Payment ~~will be~~ is made on an encounter basis.

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

(43) Residential Behavior Management in therapeutic foster care setting.

(44) Birthing center services.

(45) Case management services through the Oklahoma Department of Mental Health and Substance Abuse.

(46) Home and Community-Based Waiver services for aged or physically disabled ~~individuals~~ members.

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

(48) Smoking and Tobacco Use Cessation Counseling for children and adults.

(49) Services delivered to American Indians/Alaskan Natives in I/T/Us. Payment ~~will be~~ is made on an encounter basis.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-12. Family planning

(a) Pregnancy tests are covered.

(b) ~~Physician services are covered for insertion and removal of Levonorgestrel implant—Norplant System, including payment for Norplant System Kit. It is anticipated, when the Norplant System is the contraceptive of choice, that the client will be counseled regarding the long term nature of this contraceptive system. Removal of the Norplant capsules prior to five years will be covered for medically necessary reasons only. Removal of the Norplant capsules is not covered for the convenience of the client or for purposes of conception. Reinsertion of Norplant contraceptive will be considered on a case by case basis.~~

(e**b**) Reverse vasectomy is not covered.

(d**c**) Reversal of sterilization procedures for the purpose of conception are not covered.

317:30-5-24. Radiology

(a) **Outpatient and emergency department.**

(1) The technical component of outpatient radiological services performed during an emergency department visit is included in the emergency department ease all inclusive payment rate on a per visit basis which is paid to the hospital.

(2) The professional component of x-rays performed during an emergency department visit is covered.

(3) ~~Payment will be made separately from the total obstetrical care for one Level I complete ultrasound per pregnancy when the patient has been referred to a radiologist or maternal fetal specialist trained in ultrasonography. The patient's record must be documented as to the reason the ultrasound was requested and the components of the ultrasound. The appropriate HCPC code must be used. Payment will be made separately from the total obstetrical care for one medically necessary targeted ultrasound per pregnancy for high risk pregnancies. Documentation as to the medical justification must be made a part of the patient's record. The targeted ultrasound must be performed: Ultrasounds for obstetrical care are paid in accordance with provisions found at OAC 317:30-5-22(b)(2)(A-C).~~

(A) ~~with equipment capable of producing targeted quality evaluations; and~~

(B) ~~by an obstetrician certified by the American Board of Obstetrics and Gynecology as a diplomat with special qualifications in maternal fetal medicine.~~

(C) ~~a complete ultrasound code is used if during the procedure it is apparent that a targeted ultrasound is not medically necessary.~~

(4) ~~Outpatient chemotherapy is compensable for proven malignancies and opportunistic infections. Outpatient radiation therapy is covered for the treatment of proven malignancies or when treating benign conditions utilizing stereotactic radiosurgery (e.g., gamma knife). Payment is made for charges incurred for the administration of chemotherapy for the treatment of medically necessary and medically approved procedures. Payment for radiation therapy is limited to the treatment of proven malignancies and benign conditions appropriate for stereotactic radiosurgery (e.g., gamma knife).~~

(5) ~~One Medically necessary screening mammogram and one follow up mammogram every year for women beginning at age 30 mammography is a covered benefit. Additional follow-up mammograms are covered when medically necessary. A prior authorization by the Medical Professional Services Division of the Oklahoma Health Care Authority is required for additional follow up mammograms.~~

(b) **Inpatient procedures.** Inpatient radiological procedures are compensable if done on a referral basis. Claims for inpatient interpretations by the attending physician are not compensable unless the attending physician reads interpretations for the hospital on all patients.

(c) **Inpatient radiology performed outside of hospital.** When patient a member is an inpatient but has to be taken elsewhere for an x-ray, such as to an office or another hospital

because the admitting hospital did not have proper equipment, the place of service ~~should~~ must still be ~~inpatient hospital~~, since the patient member is considered to be in the hospital at the time of service.

(d) **Radiology therapy management.** Weekly clinical management is based on five fractions delivered comprising one week regardless of the time interval separating the delivery of treatments. Weekly clinical management ~~should~~ must be billed as one unit of service rather than five.

(e) **Miscellaneous.**

(1) **Arteriograms, angiograms and aortograms.** When arteriograms, angiograms or aortograms are performed by a radiologist, they are considered radiology, not surgery.

(2) **Injection procedure for arteriograms, angiograms and aortograms.** The "interpretation only" code and the "complete procedure" code are not both allowed for one of these procedures.

(3) **Evac-U-Kit or Evac-O-Kit.** Evac-U-Kit and Evac-O-Kit are included in the charge for the Barium Enema.

(4) **Examination.** Examination at bedside or in operating room allows an additional charge to be made. Examination outside regular hours is not a covered charge.

(5) **Supplies.** Separate payment is not made for supplies such as "administration set" used in provision of office chemotherapy.

(6) **Fluoroscopy or Esophagus study.** Separate charge for fluoroscopy or esophagus study in addition to a routine gastrointestinal tract examination is not covered unless a report is submitted indicating an esophagram was done as a separate procedure.

(f) **Magnetic Resonance Imaging.** MRI/MRA scans are covered when medically necessary. Documentation in the progress notes must reflect the medical necessity. The diagnosis code must be shown on the claim.

(g) **Placement of radium or other radioactive material.**

(1) For Radium Application use the appropriate HCPCS code.

(2) When a physician supplies the therapeutic radionuclides (implant grains or Gold Seeds) and provides a copy of the invoice, payment ~~will be~~ is made at 100% of the invoice charges. Fee ~~may~~ must include cost of radium, container, and shipping and handling.

PART 19. NURSE MIDWIVES

317:30-5-226. Coverage by category

(a) **Adults.** Payment is made for nurse midwife services including management of normal care of the mother and newborn(s) throughout the maternity cycle.

(1) The county DHS OKDHS office where the mother resides must be notified in writing within five days of the child's birth in order for an individual person code to be assigned to the newborn. A claim may then be filed for charges for the baby under the case number and the baby's name and assigned person code.

(2) Charges billed on the mother's person code will be denied.

(3) Providers must use DHS OKDHS Form FSS-NB-1 to notify the county DHS office of the child's birth.

(4) Obstetrical care should be billed using the appropriate CPT codes for Maternity Care and Delivery. The date of delivery should be used as the date of service for charges for total obstetrical care. Inclusive dates of care should be indicated on the claim form as part of the description. ~~Show the~~ The date the patient was first seen must be on the claim form. Payment for total obstetrical care includes all routine care, and any ultrasounds performed by the attending provider. For payment of total OB care, the provider must have provided care for more than one trimester. To bill for prenatal care only, the claim is filed after the patient member leaves the provider's care. Payment for routine or minor medical problems will not be made separately to the OB provider outside of antepartum visits. The antepartum care during the prenatal care period includes all care by the OB provider except major illness distinctly unrelated to the pregnancy.

~~(5) It is anticipated, when the Norplant System is the contraceptive of choice, that the client will be counseled regarding the long term nature of this contraceptive system. Removal of the Norplant capsules prior to five years will be covered for medically necessary reasons only. Removal of the Norplant capsules is not covered for the convenience of the client or for purposes of conception. Reinsertion of Norplant contraceptive will be considered on a case by case basis.~~

(b) **Children.** Payment to nurse midwives for services to children is the same as for adults.

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services.

PART 35. RURAL HEALTH CLINIC

317:30-5-355.1. Definition of services

The RHC benefit package, as described in Title 42 of the Code of Federal Regulations (CFR), part 440.20, consists of two components: RHC Services and Other Ambulatory Services.

(1) **RHC services.** RHC services ~~may be~~ are covered when furnished to a ~~patient~~ member at the clinic or other location, including the ~~patient's~~ member's place of residence. In all instances where possible, Medicaid SoonerCare defines a Rural Health Clinic service the same as Medicare as set out in Information Bulletin 93-15 issued by Blue Cross/Blue Shield of Oklahoma, Medicare Part A. These services are described in this Section.

(A) **Core services.** As set out in Federal Regulations at 42 CFR 440.20(b), RHC "core" services include, but are not limited to:

- (i) Physician's services;
- (ii) Services and supplies incident to a physician's services;

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- (iii) Services of advanced practice nurses (APNs), physician assistants (PAs), nurse midwives (NMs) or specialized advanced practice nurse practitioners;
 - (iv) Services and supplies incident to the services of APNs and PAs (including services furnished by nurse midwives);
 - (v) Visiting nurse services to the homebound;
 - (vi) Clinical psychologist (CP) and clinical social worker (CSW) services;
 - (vii) Services and supplies incident to the services of CPs and CSWs; and
 - (viii) Laboratory tests essential to the immediate diagnosis and treatment of the ~~patient~~ member including:
 - (I) chemical examinations of urine by stick or tablet,
 - (II) hemoglobin or hematocrit,
 - (III) blood sugar,
 - (IV) examination of stool specimens for occult blood,
 - (V) pregnancy tests,
 - (VI) primary culturing for transmittal to a certified laboratory;
- (B) **Physicians' services.** In addition to the professional services of a physician, and services provided by an APN, PA and NMW which would be covered as RHC services under Medicare, certain primary preventive services ~~may be~~ are covered under the ~~Medicaid~~ SoonerCare RHC benefit. The services must be furnished by or under the direct supervision of a RHC practitioner who is a clinic employee:
- (i) prenatal and postpartum care;
 - (ii) screening examination under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program for ~~persons~~ members under 21;
 - (iii) family planning services;
 - (iv) medically necessary screening mammograms ~~from mammography and follow-up mammograms when medically necessary for women beginning at age 30.~~
- (C) **Services and supplies "incident to".** Services and supplies incident to the service of a physician, physician assistant, advanced practice nurse, clinical psychologist, or clinical social worker ~~may be~~ are covered if the service or supply is:
- (i) ~~of~~ a type commonly furnished in physicians' offices;
 - (ii) ~~of~~ a type commonly rendered either without charge or included in the rural health clinic's bill;
 - (iii) furnished as an incidental, although integral, part of a physician's professional services;
 - (iv) A separate charge is allowable for immunizations covered under EPSDT. Also, injections not otherwise discussed below ~~may~~ must be billed separately using the appropriate HCPC codes. However, drugs and biologicals which cannot be

self-administered or are specifically covered by Medicare law, are included within the scope of RHC services. Drugs and biologicals commonly used in life saving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids are not billed separately.

(D) **Visiting nurse services.** Visiting nurse services ~~may be~~ are covered if:

- (i) the RHC is located in an area in which the ~~Health Care Financing Administration (HCFA)~~ Centers for Medicare and Medicaid Services (CMS) has determined there is a shortage of home health agencies;
- (ii) the services are rendered to ~~patients~~ members who are homebound;
- (iii) the ~~patient~~ member is furnished nursing care on a part time or intermittent basis by a registered nurse, licensed practical nurse or licensed vocational nurse who is employed by or receives compensation for the services from the RHC; and
- (iv) the services are furnished under a written plan of treatment.

(E) **RHC encounter.** RHC "core" services (including preventive services, i.e., prenatal, EPSDT or family planning) are part of an all-inclusive visit. A "visit" means a face-to-face encounter between a clinic patient and a RHC health professional (i.e., physicians, physician assistants, advanced practice nurses, nurse midwives, clinical psychologists and clinical social workers). Encounters with more than one health professional and multiple encounters with the same health professional that takes place on the same day and a single location, constitute a single visit except when the ~~patient~~ member, after the first encounter, suffers illness or injury requiring additional diagnosis or treatment.

(F) **Off-site services.** RHC services provided off-site of the clinic are covered as long as the RHC has a compensation arrangement with the RHC practitioner that ~~Medicaid~~ SoonerCare reimbursement ~~will be~~ is made to the RHC and the RHC practitioner receives his or her compensation from the RHC. The rural health clinic ~~should~~ must have a written contract with the physician and other RHC "core" practitioners that specifically identify how the rural health clinic services provided off-site are to be billed to ~~Medicaid~~ SoonerCare. It is expected that services provided in off-site settings ~~should be~~ are, in most cases, temporary and intermittent, i.e., when the ~~client~~ member cannot come to the clinic due to health reasons.

(2) **Other ambulatory services.** A Rural Health Clinic ~~may~~ must provide other items and services which are not "RHC services" as described in (a)(1) of this Section, and are separately billable to the ~~Medicaid~~ SoonerCare program. Coverage of services ~~will be~~ are based upon the scope of coverage under the ~~Medicaid~~ SoonerCare program.

(A) Other ambulatory services include, but are not limited to:

- (i) dental services for ~~persons~~ members under age 21;
- (ii) optometric services;
- (iii) clinical lab tests performed in the RHC lab (other than the specific laboratory tests set out for RHC certification and covered as RHC services);
- (iv) technical component of diagnostic tests such as x-rays and EKGs (interpretation of the test provided by the RHC physician is included in the encounter rate);
- (v) durable medical equipment;
- (vi) emergency ambulance transportation;
- (vii) prescribed drugs;
- (viii) prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags) and supplies directly related to colostomy care and the replacement of such devices;
- (ix) specialized laboratory services furnished away from the clinic;
- (x) inpatient services;
- (xi) outpatient hospital services.

(B) Payment ~~may be~~ is made directly to the RHC on an encounter basis for on-site dental services by a licensed dentist or optometric services by a licensed optometrist for ~~persons~~ members under age 21. Encounters ~~may be~~ are billed as one of the following:

- (i) **EPSDT dental screening.** An EPSDT dental screening ~~will include~~ includes oral examination, prophylaxis and fluoride treatment, ~~and~~ charting of needed treatment, and, if necessary, x-rays (including two bite wing films). This service must be filed on claim form ADM-36-D for EPSDT reporting purposes.
- (ii) **Dental encounter.** A dental encounter consists of all dental treatment other than a dental screening. This service must be billed on the ADM-36-D.
- (iii) **Visual analysis.** Visual analysis (initial or yearly) for a child with glasses, or a child who needs glasses, or a medical eye exam. This includes the refraction and medical eye health evaluation. Glasses ~~may~~ must be billed separately.

(C) Services listed in (a)(2)(A), (v)-(viii), of this Section, furnished on-site, require separate provider agreements with the OHCA. Service item (a)(2)(A)(iii) does not require a separate contract when furnished on-site, however, certain conditions of participation apply. (Refer to OAC 317:30-5-361 for conditions.)

(D) Other ambulatory services provided off-site by independent practitioners (through subcontracting agreements or arrangements for services not available at the clinic) must be billed to the ~~Medicaid~~ Medicaid Sooner-Care program by the provider rendering the service.

Independent practitioners must meet provider eligibility criteria and must have a current contract with the OHCA.

317:30-5-361. Billing

(a) **Encounters.** Payment is made for one type of encounter per ~~recipient~~ member per day. Rural health clinics must bill the combined fees of all "core" services provided during an encounter on the appropriate claim form. Claims must include reasonable and customary charges.

- (1) **RHC.** The appropriate revenue code is required. No HCPC or CPT code is required.
- (2) **Mental health.** Mental health services must include a revenue code and a HCPCS code.
- (3) **Obstetrical care.** The appropriate revenue code and HCPCS code are required. The date ~~patient~~ the member was is first seen is required. The primary pregnancy diagnosis code is also required. Secondary diagnosis codes ~~may be~~ are used to describe complications of pregnancy. Delivery must be billed by the independent practitioner who has a contract with the OHCA.
- (4) **Family planning.** Family planning encounters require a revenue code, HCPCS code, and a family planning diagnosis.
- (5) **EPSDT screening.** EPSDT screenings must be billed by the attending provider using the appropriate Preventative Medicine procedure code from the Current Procedural Terminology Manual (CPT).
- (6) **Dental.** Dental services for children must be billed on the appropriate dental claim form.
- (7) **Visual analysis.** Optometric services for children are billed using the appropriate revenue code and a HCPCS code.

(b) **Services ~~which may be~~ billed separately from encounters.** Other ambulatory services and preventive services itemized separately from encounters must be billed using the appropriate revenue, HCPC and/or CPT codes. Claims must include reasonable and customary charges.

- (1) **Laboratory.** The rural health clinic must be CLIA certified for specialized laboratory services performed. Laboratory services which are not included in the all-inclusive rate must be itemized separately using the appropriate CPT or HCPCS code.
- (2) **Radiology.** Radiology must be identified using the appropriate CPT or HCPC code with the technical component modifier. Radiology services are paid at the technical component rate. The professional component is included in the encounter rate.
- (3) **Immunizations.** The administration fee for immunizations provided on the same day as the EPSDT exam is billed separately.
- (4) **Contraceptives.** Contraceptives ~~may be~~ are billed independently from the family planning encounter. A revenue code and the appropriate CPT or HCPC codes are required. The following are examples:
 - (A) DepoProvera 150 mg. (Medroxyprogesterone Acetate).

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~~(B) Insertion, implantable contraceptive capsules and implantation of a subdermal contraceptive device.~~

~~(C) Removal, implantable contraceptive capsules devices. (It is anticipated, when the Norplant System is the contraceptive of choice, that the client will be counseled regarding the long term nature of this contraceptive system. Removal of the Norplant capsules prior to five years will be covered for medically necessary reasons only. Medically necessary is defined as having absolute contraindications as listed in the Physicians' Desk Reference (PDR) or the insert material provided with the Norplant system. Removal of the Norplant capsules is not covered for the convenience of the client or for purposes of conception. Reinsertion of Norplant contraceptive will be considered on a case by case basis).~~

~~(D) Removal, with reinsertion, implantable contraceptive capsules device.~~

~~(E) Norplant, system kit.~~

~~(FE) Insertion of intrauterine device (IUD).~~

~~(GF) Removal of intrauterine device.~~

~~(HG) ParaGard IUD.~~

~~(HH) Progestasert IUD.~~

(5) **Glasses.** Glasses prescribed by a licensed optometrist are billed using the appropriate revenue code and HCPCS code.

PART 49. FAMILY PLANNING CENTERS

317:30-5-466. Coverage by category

Payment is made to family planning centers as set forth in this Section.

(1) **Adults.** Payment is made for adults on an encounter basis. Each encounter is all inclusive of the following and payment includes all services provided:

(A) **Initial examination services.** Initial examination services that are provided to new family planning patients include:

(i) Complete physical examination including assessment of height, weight, blood pressure, thyroid, extremities, heart, lungs, breasts, abdomen, pelvic examination, including visualization of the cervix, external genitalia, bimanual exam, and rectal exam as indicated. (Male clients receive examination of genitals and rectum including palpation of the prostate in lieu of pelvic exam given females.)

(ii) Complete general history of patient and pertinent history of immediate family members. This general history addresses allergies, immunizations, past illnesses, hospitalizations, surgery, review of systems, use of alcohol, tobacco and drugs. Reproductive function history in female patients includes menstrual history, sexual activity, sexually transmitted diseases, contraceptive use, pregnancies, and in utero exposure to DES. Male

reproductive general history includes sexual activity, sexually transmitted diseases, fertility, and exposure to DES.

(iii) Laboratory services to include hematocrit, dip stick urinalysis, pap smear, gonorrhea culture, serologic test for syphilis and rubella screening if indicated.

(iv) Education and counseling are offered to provide information regarding reproductive anatomy, range of clinic services, risks benefits and side effects of various methods of contraception, and health promotion/disease prevention topics as needed.

(v) Provision for an annual supply of chosen contraceptive method to include, but not limited to, injections (administration and medication), oral contraceptive, IUD, diaphragm, foam, condoms or natural family planning.

(vi) Treatment of minor gynecological problems, infections, and other conditions.

(vii) Referral to appropriate providers for problems or conditions which are beyond the scope of the clinic to treat.

(B) **Annual examination services.** Annual examination services are provided to continuing patients to include:

(i) Annual update physical examination to include height, weight, blood pressure, extremities, and examination of breasts and pelvic organs. If required, a complete physical examination may be provided as described under the initial visit services above.

(ii) A medical history update is taken to update the general history and includes noting the patient's adaptation to and correct use of contraceptive method, menstrual history, specific warning signs and other side effects related to the contraceptive method. If indicated, a complete general history of the patient will be taken at the annual visit.

(iii) Laboratory services to include pap smear, gonorrhea culture, hematocrit, and serologic test for syphilis.

(iv) Education and counseling regarding specific problems, risks and side effects of the method in use.

(v) Provision for an annual supply of chosen contraceptive method to include, but not limited to, injections (administration and medication), oral contraceptive, IUD, diaphragm, foam, condoms or natural family planning.

(vi) Treatment of minor gynecological problems, infections, and other conditions.

(vii) Referral to appropriate providers for problems or conditions which are beyond the scope of the clinic to treat.

(C) **Encounter visits.**

(i) Encounter visits covers services provided to patients which are not part of the initial/annual examinations. This may include:

(I) A follow-up visit for all new patients to insure they understand and are experiencing no problems with their particular contraceptive method.

(II) A scheduled revisit for a new or continuing patient who may have conditions which places the patient in a high risk category requiring more intensive medical management as outlined in the program medical protocol.

(ii) Encounter visits may also be scheduled at the request of the patient as they are encouraged to return to the clinic at any time they experience difficulty with a particular contraceptive method or have concerns related to their reproductive health. Pregnancy diagnosis and counseling services are also provided under this category.

(D) **Vasectomy.** For vasectomies, payment will be made as an all-inclusive rate for all services provided in connection with the surgery. Claims must have the Federally mandated consent form properly completed and attached.

(E) **Tubal ligations.** For tubal ligations, payment will be made as an all-inclusive rate for the cost of the surgeon, anesthesiologist, pre and post-operative care and outpatient surgery facility. Claims must have the properly completed Federally mandated consent form attached.

~~(F) **Norplant system kit.** This is a levonorgestrel implant that is used as a long-term reversible contraceptive method that provides continuous contraception for as long as five years.~~

~~(i) The Levonorgestrel implant of Norplant system is a minor in-office surgical procedure for implanting the Norplant System consisting of six flexible capsules.~~

~~(ii) Removal of the Levonorgestrel Norplant System is a minor in-office surgical procedure for the removal of the Norplant System.~~

(2) **Children.** Payment is made for children as set forth for adults. However payment cannot be made for the sterilization of persons under the age of 21.

(3) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services. Claims for services which are not covered by Medicare should be filed directly with the Fiscal Agent for payment within the scope of the program.

317:30-5-467. Coverage limitations

(a) Sterilizations require proper consent form and are not compensable for patients under 21 years of age.

(b) The following coverage limitations apply to services provided by family planning centers:

(1) Service: Initial Examination; Unit: Completed Examination and Services; Limitation: one initial examination.

(2) Service: Annual; Unit: Completed Examination and Services; Limitation: one annual examination.

(3) Service: Encounter Visit; Unit: Completed Examination and Services; Limitation: one per day.

(4) Service: Vasectomy; Unit: Completed Examination and Services; Limitation: one each (required consent restricted to persons age 21 and over, at time consent form is signed).

(5) Service: Tubal Ligation; Unit: Completed Examination and Services; Limitation: one each (required consent restricted to persons age 21 and over, at time consent form is signed).

~~(A) Norplant System; One kit; One every 5 years.~~

~~(B) Levonorgestrel Implant - Norplant System; Completed Examination and Services; One every 5 years.~~

~~(C) Removal of Levonorgestrel Norplant System; Completed Examination and Services; One every 5 years.~~

PART 89. RADIOLOGICAL MAMMOGRAPHER

317:30-5-901. Coverage by category

(a) **Adults.** ~~Payment to mammographers is limited to one Medically necessary screening mammogram and one follow-up mammogram provided once every year to eligible women beginning at age 30 mammography is a covered benefit.~~ Additional follow-up mammograms are covered when medically necessary. ~~A prior authorization by the Medical Professional Services Division of the Oklahoma Health Care Authority is required for additional follow-up mammograms.~~

(b) **Children.** ~~There is no coverage for children except as set out under EPSDT. Coverage for children is the same as for adults.~~

[OAR Docket #06-1436; filed 11-14-06]

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

[OAR Docket #06-1433]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-2. [AMENDED]

317:30-5-14. [AMENDED]

(Reference APA WF # 06-38)

AUTHORITY:

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

DATES:

Adoption:

October 12, 2006

Approved by Governor:

November 1, 2006

Emergency Adoptions

Effective:

Immediately upon Governor's approval or December 1, 2006, whichever is later

Expiration:

Effective through July 14, 2007, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2. [AMENDED]

Gubernatorial approval:

October 8, 2006

Register publication:

24 Ok Reg 143

Docket number:

06-1349

(Reference APA WF # 06-12)

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to allow coverage for adult immunizations per the Advisory Committee on Immunization Practices (ACIP) guidelines. This revision provides for advice and guidance on the most effective means to prevent vaccine-preventable diseases. The proposed rule will reduce the risk to public health, safety and environment by offering safe and effective protection from infectious diseases. The revisions also clarify the accreditation requirements to be eligible to perform organ transplants and defines the appropriate transplants that are reimbursable by the Oklahoma Health Care Authority.

ANALYSIS:

Rules revisions are needed to allow coverage for adult immunizations for vaccine preventable diseases. By maintaining recommended vaccines, SoonerCare members, their families and communities are protected from serious and often life threatening infections. Revisions provide advice and guidance on the most effective means to prevent vaccine-preventable diseases. Revision also clarify a facility's accreditation requirements to be eligible to perform organ transplants and define appropriate transplants that are reimbursable by the Agency. Other revisions related to mammogram coverage are incorporated to agree with rules submitted this same date in APA WF # 06-22 for Gubernatorial approval. Further revisions are incorporated due to superseding emergency rules previously approved by the Governor in APA WF # 06-12.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR DECEMBER 1, 2006, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-2. General coverage by category

(a) **Adults.** Payment for adults is made to physicians for medical and surgical services within the scope of the Oklahoma Health Care Authority's (OHCA'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. Coverage of certain services ~~may~~ must be based on a determination made by the OHCA's medical consultant in individual circumstances.

(1) ~~Coverages~~ Coverage include includes the following medically necessary services:

(A) ~~Medically appropriate inpatient~~ Inpatient hospital visits ~~are covered~~ for all Medicaid SoonerCare covered stays. All inpatient services are subject to post-payment review by the OHCA, or its designated agent.

(B) Inpatient psychotherapy by a physician.

(C) Inpatient psychological testing by a physician.

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

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

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

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

(H) ~~Direct physicians' physician~~ physician services in a nursing facility for those ~~patients~~ members approved for nursing care residing in a long-term care facility. ~~Payment is made for a~~ A maximum of two nursing facility visits per month are allowed. To receive payment for a second nursing facility visit in a month denied by Medicare for a ~~Medicare/Medicaid patient~~ Medicare/SoonerCare patient, attach the EOMB from Medicare showing denial and mark "carrier denied coverage".

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

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

(K) ~~Obstetrical care.~~

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

(M) Prior authorized examinations for the purpose of determining medical eligibility for programs under the jurisdiction of the Authority. A copy of the

authorization, ~~DHS~~ OKDHS form ABCDM-16, Authorization for Examination and Billing, must accompany the claim.

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

(O) Family planning ~~including~~ includes sterilization procedures for legally competent ~~persons~~ members 21 years of age and over who voluntarily request such a procedure and, ~~with their physician,~~ execute ~~executes~~ the ~~Federally~~ federally mandated consent form (ADM-71) with his/her physician. A copy of the consent form must be attached to the claim form. Separate payment is ~~made~~ allowed for an I.U.D. ~~inserted~~ insertion during an office visit. Certain family planning products may be obtained through the Vendor Drug Program. Reversal of sterilization procedures for the purposes of conception ~~are~~ is not covered allowed. Reversal of sterilization procedures ~~may be~~ are covered allowed when medically indicated and substantiating documentation is attached to the claim. ~~The Norplant System for birth control is covered; however, removal of the Norplant System prior to five years is covered only when documented as medically necessary. Reinsertion of Norplant contraceptive will be considered on a case by case basis.~~

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

(Q) ~~Blood count weekly~~ Weekly blood counts for ~~persons~~ members receiving the drug Clozaril.

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

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

(T) Payment to the attending physician in a teaching medical facility for compensable services when the physician signs as claimant and renders personal and identifiable services to the patient member in conformity with ~~Federal~~ federal regulations.

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

- (i) Recognition as clinical faculty with participation in such activities as faculty call, faculty meetings, and having hospital privileges;
- (ii) Board certification or completion of an accredited residency program in the fellowship specialty area;
- (iii) Hold unrestricted license to practice medicine in Oklahoma;
- (iv) If Clinical Fellow, practicing during second or subsequent year of fellowship;

(v) Seeing ~~patients~~ members without supervision;

(vi) Services provided not for primary purpose of medical education for the clinical fellow or chief resident;

(vii) Submit billing in own name with appropriate Oklahoma ~~Medicaid~~ SoonerCare provider number.

(viii) Additionally if a clinical fellow practicing during the first year of fellowship, the clinical fellow must be practicing within their area of primary training. The services must be performed within the context of their primary specialty and only to the extent as allowed by their accrediting body.

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

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

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

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

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

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

(Z) ~~Medically necessary~~ Organ solid organ and tissue bone marrow/stem cell transplantation services for children and adults, ~~limited to bone marrow, stem cells, cornea, heart, kidney, liver, lung, SPK (simultaneous pancreas kidney), PAK (pancreas after kidney), and heart lung,~~ are covered services based upon the conditions listed in (i)-(iv) of this subparagraph:

- (i) ~~All transplantation services~~ Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.
- (ii) To be prior authorized all procedures are reviewed based on appropriate medical criteria.
- (iii) To be compensable under the ~~Medicaid~~ SoonerCare program, all organ transplants must be performed at a ~~Medicare approved transplantation center facility which meets the requirements contained in Section 1138 of the Social Security Act.~~

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- (iv) ~~Finally, procedures~~ Procedures considered experimental or investigational are not covered.
- (AA) Total parenteral nutritional therapy (TPN) for ~~certain~~ identified diagnoses and when prior authorized.
- (BB) Ventilator equipment.
- (CC) Home dialysis equipment and supplies.
- (DD) Ambulatory services for treatment of ~~persons~~ members with tuberculosis (TB). This includes, but is not limited to, physician visits, outpatient hospital services, rural health clinic visits and prescriptions. Drugs prescribed for the treatment of TB not listed in OAC 317:30-3-46 require prior authorization by the ~~University of Oklahoma~~ College of Pharmacy Help Desk using form "Petition for TB Related Therapy". Ambulatory services to ~~persons~~ members infected with TB are not limited to the scope of the ~~Medicaid~~ SoonerCare program, but require prior authorization when the scope is exceeded.
- (EE) Smoking and Tobacco Use Cessation Counseling for treatment of individuals using tobacco.
- (i) Smoking and Tobacco Use Cessation Counseling consists of the 5As:
- (I) Asking the ~~patient~~ member to describe their smoking use;
- (II) Advising the ~~patient~~ member to quit;
- (III) Assessing the willingness of the ~~patient~~ member to quit;
- (IV) Assisting the ~~patient~~ member with referrals and plans to quit; and
- (V) Arranging for follow-up.
- (ii) Up to eight sessions are covered per year per individual.
- (iii) Smoking and Tobacco Use Cessation Counseling is a covered service when performed by physicians, physician assistants, nurse practitioners, nurse midwives, and Oklahoma State Health Department and FQHC nursing staff. It is reimbursed in addition to any other appropriate global payments for obstetrical care, PCP capitation payments, evaluation and management codes, or other appropriate services rendered. It must be a significant, separately identifiable service, unique from any other service provided on the same day.
- (iv) Chart documentation must include a separate note and signature along with the ~~patient~~ member specific information addressed in the five steps and the time spent by the practitioner performing the counseling. Anything under three minutes is considered part of a routine visit.
- (FF) Immunizations as specified by the Advisory Committee on Immunization Practices (ACIP) guidelines.
- (2) General coverage exclusions include the following:
- (A) Inpatient diagnostic studies that could be performed on an outpatient basis.
- (B) Services or any expense incurred for cosmetic surgery.
- (C) Services of two physicians for the same type of service to the same ~~patient~~ member at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the ~~patient's~~ member's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the ~~patient's~~ member's care, the procedure codes for subsequent hospital care ~~should~~ must be used.
- (D) Refractions and visual aids.
- (E) ~~Separate A separate~~ Separate A separate payment for ~~pre pre-operative care, if provided on the day before or the day of surgery, or for typical post-operative follow-up care and post-operative care when payment is made for surgery.~~ pre pre-operative care, if provided on the day before or the day of surgery, or for typical post-operative follow-up care and post-operative care when payment is made for surgery.
- (F) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.
- (G) Sterilization of ~~persons~~ members who are under 21 years of age, mentally incompetent, or institutionalized; ~~or Reversal~~ reversal of sterilization procedures for the purposes of conception.
- (H) Non-therapeutic hysterectomy.
- (I) Medical services considered to be experimental or investigational.
- (J) Payment for more than four outpatient visits per month (home or office) per ~~patient~~ member except those visits in connection with family planning, or related to emergency medical conditions.
- (K) Payment for more than two nursing facility visits per month.
- (L) More than one inpatient visit per day per physician.
- (M) Physician supervision of hemodialysis or peritoneal dialysis.
- (N) Physician services which are administrative in nature and not a direct service to the ~~patient~~ member including such items as quality assurance, utilization review, treatment staffing, tumor board, dictation, and similar functions.
- (O) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.
- (P) Payment for the services of physicians' assistants, social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.
- (Q) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury, or illness; ~~including related to~~ including related to a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or ~~that~~ when the pregnancy is

the result of an act of rape or incest. (~~See Refer~~ to OAC 317:30-5-6 or 317:30-5-50.)

- (R) Night calls or unusual hours.
- (S) Speech and Hearing services.
- ~~(T) Treatment for obesity, including weight reduction surgery.~~
- ~~(U) Mileage.~~
- ~~(V) Other than A routine hospital visit on the date of discharge unless the patient member expired.~~
- ~~(W) Direct payment to perfusionist as this is considered part of the hospital cost reimbursement.~~
- ~~(X) Inpatient chemical dependency treatment.~~
- ~~(Y) Fertility treatment.~~
- ~~(Z) Routine immunizations.~~
- ~~(Y) Payment for removal of benign skin lesions unless medically necessary.~~

(b) **Children.** Payment is made to physicians for medical and surgical services for ~~persons~~ members under the age of 21 within the scope of the Authority's medical programs, provided the services are medically necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services for children are comparable to those listed for adults. In addition to those services listed for adults, the following services are covered for children.

(1) **Pre-authorization of inpatient psychiatric services.** All inpatient psychiatric services for ~~patients~~ members under 21 years of age must be prior authorized by an agency designated by the Oklahoma Health Care Authority. All psychiatric services ~~will be~~ are prior authorized for an approved length of stay. Non-authorized inpatient psychiatric services ~~will be~~ are not be ~~Medicaid~~ SoonerCare compensable.

(A) Effective October 1, 1993, all residential and acute psychiatric services ~~will be~~ are authorized based on the medical necessity criteria as described in OAC ~~317:30-5-46~~ 317:30-5-95.25, 317:30-5-95.27 and 317:30-5-95.29.

(B) Out of state placements will not be authorized unless it is determined that the needed medical services are more readily available in another state or it is a general practice for ~~recipients~~ members in a particular border locality to use resources in another state. If a medical emergency occurs while a ~~client~~ member is out of the ~~state~~ State, treatment for medical services ~~will be~~ is covered ~~in the same way as they would be covered as if provided~~ within the state State. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in discharge and reintegration planning.

(2) **General acute care inpatient service limitations.** All general acute care inpatient hospital services for ~~persons~~ members under the age of 21 are not limited. All inpatient care must be medically necessary.

(3) **Procedures for requesting extensions for inpatient services.** The physician and/or facility must provide necessary justification to enable OHCA, or its designated

agent, to make a determination of medical necessity and appropriateness of treatment options.

(A) Extension requests for psychiatric admissions must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation ~~which validates~~ validating the need for continued treatment in accordance with the medical necessity criteria described in OAC ~~317:30-5-46~~ 317:30-5-95.26, 317:30-5-95.28 and 317:30-5-95.30. Requests ~~shall~~ must be made prior to the expiration of the approved inpatient stay. All decisions of OHCA or its designated agent are final.

(B) ~~If a denial decision is made, a reconsideration request may be made directly to the OHCA, or its designated agent and should occur within 3 days of the denial notification due to the timeliness of processing such a request with the patient still in the facility. The request for reconsideration shall include new and/or additional medical information to justify the need for continued care.~~

(4) **Utilization control requirements for psychiatric beds.** ~~Medicaid utilization~~ Utilization control requirements for inpatient psychiatric services for ~~persons~~ members under 21 years of age apply to all hospitals and residential psychiatric treatment facilities.

(5) **Early and periodic screening diagnosis and treatment program.** Payment is ~~also~~ made to eligible providers for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of ~~individuals~~ members under age 21. These services include medical, dental, vision, hearing and other necessary health care. Refer to OAC 317:30-3-65.2 through 317:30-3-65.11 for specific guidelines.

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

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

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

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

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

(D) ~~Separate A separate~~ payment for ~~pre pre-operative care, if provided on the day before or the day of surgery, or for typical post-operative follow-up care and post-operative care when payment is made for surgery.~~

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

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

(G) Non-therapeutic hysterectomy.

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

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

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

(K) Physician supervision of hemodialysis or peritoneal dialysis.

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

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

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

~~(O) Treatment of obesity including weight reduction surgery.~~

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

~~(Q) Night calls or unusual hours.~~

~~(R) Mileage.~~

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

~~(T) Tympanometry.~~

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

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

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

317:30-5-14. Injections

(a) Coverage for injections is limited to those categories of drugs included in the vendor drug program for ~~Medicaid~~ SoonerCare. OHCA administers and maintains an open formulary subject to the provisions of Title 42, United States Code (U.S.C.), Section 1396r-8. The Authority covers any drug for its approved purpose that has been approved by the Food and Drug Administration (FDA). Administration of injections is paid in addition to the medication.

(1) **Immunizations for children.** An administration fee will be paid for vaccines administered by providers participating in the Vaccines for Children Program. When the vaccine is not included in the program, the administration fee is included in the vaccine payment. Payment will not be made for vaccines covered by the Vaccines for Children Program.

(2) **Immunizations for adults.** Coverage for adults is ~~limited to:~~ provided as per the Advisory Committee on Immunization Practices (ACIP) guidelines.

~~(A) influenza immunizations,~~

~~(B) Pneumococcal Immunizations, and~~

~~(C) Gamma Globulin and Hepatitis A Vaccine when documentation shows the individual has been exposed to Hepatitis.~~

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

- (1) Agents used for the treatment of anorexia, weight gain, or obesity;
- (2) Agents used to promote fertility;
- (3) Agents used to promote hair growth;
- (4) Agents used for cosmetic purposes;
- (5) Agents used for the symptomatic relief of coughs and colds. Cough and cold drugs are not covered;
- (6) Agents that are experimental or whose side effects make usage controversial; and
- (7) Vitamins and Minerals with the following exception:

- (A) Vitamin B-12 is covered only when there is a documented occurrence of malabsorption disease;
- (B) Vitamin K injections are compensable; and
- (C) Iron injections when medically necessary and documented by objective evidence of failure to respond to oral iron.

(c) Use the appropriate HCPC code when available. When drugs are billed under miscellaneous codes, a paper claim must be filed. The claims must contain the drug name, strength, dosage amount, and National Drug Code (NDC).

(d) Payment is made for allergy injections for adults and children. When the contracted provider actually administers or supervises the administration of the injection, the administration fee is compensable. No payment is made for administration when the allergy antigen is self-administered by the patient member. When the allergy antigen is purchased by the physician, payment is made by invoice attached to the claim.

(e) Rabies vaccine, Imovax, Human Diploid and Hyperab, Rabies Immune Globulin are covered under the vendor drug program and may be covered as one of the covered prescriptions per month. Payment can be made separately to the physician for administration. If the vaccine is purchased by the physician, payment is made by invoice attached to the claim.

(f) Trigger point injections (TPI's) are covered using appropriate CPT codes. Modifiers are not allowed for this code. Payment is made for up to three injections (3 units) per day at the full allowable. Payment is limited to 12 units per month. The medical records must clearly state the reasons why any TPI services were medically necessary. All trigger point records must contain proper documents and be available for review. Any services beyond 12 units per month or 36 units per 12 months will require mandatory review for medical necessity. Medical records must be automatically submitted with any claims for services beyond 36 units.

(g) If a physician bills separately for surgical injections and identifies the drugs used in a joint injection, payment will be made for the cost of the drug in addition to the surgical injection. The same guidelines apply to aspirations.

(h) When IV administration in a Nursing Facility is filed by a physician, payment may be made for medication. Administration should be done by nursing home personnel.

(i) Intravenous fluids used in the administration of IV drugs are covered. Payment for the set is included in the office visit reimbursement.

[OAR Docket #06-1433; filed 11-14-06]

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

[OAR Docket #06-1432]

RULEMAKING ACTION:
EMERGENCY adoption

- RULES:**
- Subchapter 5. Individual Providers and Specialities
 - Part 3. Hospitals
 - 317:30-5-40. [AMENDED]
 - 317:30-5-40.1. [NEW]
 - 317:30-5-40.2. [NEW]
 - 317:30-5-41. [AMENDED]
 - 317:30-5-41.1. [NEW]
 - 317:30-5-41.2. [NEW]
 - 317:30-5-42. [REVOKED]
 - 317:30-5-42.1. through 317:30-5-42.18. [NEW]
 - 317:30-5-47. [AMENDED]
 - 317:30-5-47.1. through 317:30-5-47.4. [AMENDED]
 - 317:30-5-50. [AMENDED]
 - 317:30-5-56. through 317:30-5-57. [NEW]
 - Part 63 Ambulatory Surgical Centers
 - 317:30-5-566. [AMENDED]
 - 317:30-5-567. [AMENDED]

(Reference APA WF # 06-33)

AUTHORITY:

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

DATES:

Adoption:

October 12, 2006

Approved by Governor:

November 1, 2006

Effective:

Immediately upon Governor's approval or December 1, 2006, whichever is later

Expiration:

Effective through July 14, 2007, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions that clarify outpatient hospital service requirements for reimbursement of services on or after October 1, 2005. Revisions will reduce inaccurate claims processing and reimbursement time frames.

ANALYSIS:

Rules are revised to clarify and more accurately reflect utilization and costs for outpatient hospital services and freestanding ambulatory surgery centers. Rules are needed to establish accurate reimbursement and provide clarification to rules for outpatient hospital services for dates of service on or after October 1, 2005. Other revisions adopt the procedures and groupings paid by Medicare under the Ambulatory Surgery Center (ASC) system. This revision applies to hospital-based and freestanding ASC's. Revisions also establish clinic services and observation room services based on Ambulatory Patient Classification (APC) groups. Additional revisions are incorporated to agree with mammogram and organ transplant rules submitted for approval to the Governor this date in APA WF # 06-22 and 06-38.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION

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253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR DECEMBER 1, 2006, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-40. Eligible providers

To be eligible for reimbursement all licensed acute care general and rehabilitation hospitals must be Medicare certified and have a current contract on file with the Oklahoma Health Care Authority (OHCA). Children' specialty hospitals must be appropriately licensed and certified and have a current contract with the OHCA.

(a) All general medical/surgical hospitals and critical access hospitals eligible for reimbursement under this Part must be licensed by the appropriate state survey agency, meet Medicare conditions of participation, and have a current contract on file with the Oklahoma Health Care Authority (OHCA).

(b) Children specialty hospitals must be appropriately licensed and certified and have a current contract with the OHCA.

(c) Eligibility requirements for specialized rehabilitation hospitals are covered in OAC 317:30-5-110; inpatient psychiatric hospitals are covered in OAC 317:30-5-95. Requirements for long term care hospitals are found in OAC 317:30-5-60.

(d) Certain providers who provide professional and other services within an inpatient or outpatient hospital require separate contracts with the OHCA.

(e) Reimbursement for laboratory services is made in accordance with the Clinical Laboratory Improvement Amendment of 1988 (CLIA). These regulations provide that payment may be made only for services furnished by a laboratory that meets CLIA conditions. Eligible providers must be certified under the CLIA program and have obtained a CLIA ID number from the Center for Medicare and Medicaid Services (CMS) and have a current contract on file with this Authority.

317:30-5-40.1. General information

(a) This Chapter applies to coverage in an inpatient and/or outpatient setting. Coverage is the same for adults and children unless otherwise indicated.

(b) **Professional Services.** Payment is made to a participating hospital group or corporation for hospital based physician's services. The hospital must have a Hospital Group Physician's Contract with OHCA for this method of billing.

(c) **Prior Authorization.** OHCA requires prior authorization for certain procedures to validate the medical need for the service.

(d) **Medical necessity.** Medical necessity requirements are listed at OAC 317:30-3-1(f).

317:30-5-40. 2 Definitions

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

"CMS" means the Center for Medicare and Medicaid Services

"**Diagnosis Related Group**" means a patient classification system that relates types of patients treated to the resources they consume.

317:30-5-41. Inpatient hospital coverage/limitations for adults

(a) For persons 21 years of age or older, payment is made to hospitals for services as described in this Section. Covered hospital inpatient services are those medically necessary services which require an inpatient stay ordinarily furnished by a hospital for the care and treatment of inpatients and which are provided under the direction of a physician or dentist in an institution approved under OAC:317:30-5-40.1(a) or (b). Effective October 1, 2005, claims for inpatient admissions provided on or after October 1st in acute care or critical access hospitals are reimbursed utilizing a Diagnosis Related Groups (DRG) methodology.

(+) Inpatient hospital services.

(A) Effective August 1, 2000, all general inpatient hospital services for all persons 21 years of age or older is limited to 24 days per person per state fiscal year (July 1 through June 30). The 24 day limitation applies to both hospital and physician services. No exceptions or extensions will be made to the 24 day inpatient services limitation.

(B) Effective October 1, 2005, claims for inpatient admissions provided on or after October 1st in acute care hospitals will no longer be subject to the 24 days per person per fiscal year limit. Claims will be reimbursed utilizing a Diagnosis Related Groups (DRG) methodology.

(C) All inpatient services are subject to post payment utilization review by the Oklahoma Health Care Authority, or its designated agent. These reviews will be based on OHCA's, or its designated agent's, admission criteria on severity of illness and intensity of treatment.

(i) It is the policy and intent to allow hospitals and physicians the opportunity to present any and all documentation available to support the medical necessity of an admission and/or extended stay of a Medicaid recipient. If the OHCA, or its designated agent, upon their initial review determines the admission should be denied, a notice is sent to the facility and the attending physician(s) advising them of the decision. This notice also advises that a reconsideration request may be submitted within 60 days. Additional information submitted with the reconsideration request will be reviewed by the OHCA, or its designated agent, who utilizes an independent physician advisor. If the denial decision is upheld through this review of additional

information, OHCA is informed. At that point, OHCA sends a letter to the hospital and physician requesting refund of the Medicaid payment previously made on the denied admission.

(ii) If the hospital or attending physician did not request reconsideration by the OHCA, or its designated agent, the OHCA, or its designated agent, informs OHCA that there has been no request for reconsideration and as a result their initial denial decision is final. OHCA, in turn, sends a letter to the hospital and physician requesting refund of the amount of Medicaid payment previously made on the denied admission.

(iii) If an OHCA, or its designated agent, review results in denial and the denial is upheld throughout the review process and refund from the hospital and physician is required, the Medicaid recipient cannot be billed for the denied services.

(D) If a hospital or physician believes that an acute care hospital admission or continued stay is not medically necessary and thus not Medicaid compensable but the patient insists on treatment, the patient should be informed that he/she will be personally responsible for all charges. If a Medicaid claim is filed and paid and the service is later denied the patient is not responsible. If a Medicaid claim is not filed and paid the patient can be billed.

(E) Payment is made to a participating hospital for hospital based physician's services. The hospital must have a Hospital Based Physician's Contract with OHCA for this method of billing.

(2) **Outpatient hospital services.**

(A) **Emergency hospital services.** Emergency department services are covered. Payment is made at a case rate which includes all non-physician services provided during the visit.

(B) **Level I - Complete Ultrasound.** Payment will be made separately from the total obstetrical care for one complete ultrasound per pregnancy when the patient has been referred to a radiologist or maternal fetal specialist trained in ultrasonography. The patient's record must be documented as to the reason the ultrasound was requested and the components of the ultrasound. The appropriate HCPC code must be used.

(C) **Level II - Targeted Ultrasound.** Payment will be made separately from the total obstetrical care for one medically necessary targeted ultrasound per pregnancy for high risk pregnancies. Documentation as to the medical justification must be made a part of the patient's record. The targeted ultrasound must be performed:

- (i) with equipment capable of producing targeted quality evaluations; and
- (ii) by an obstetrician certified by the American Board of Obstetrics and Gynecology as a diplomat with special qualifications in maternal fetal medicine or an active candidate for certification in maternal fetal medicine.

(iii) a complete ultrasound code is used if during the procedure it is apparent that a targeted ultrasound is not medically necessary.

(D) **Dialysis.** Payment for dialysis is made at the Medicare allowable facility rate. This rate includes all services which Medicare has established as an integral part of the dialysis procedure, such as routing medical supplies, certain laboratory procedures, oxygen, etc. Payment is made separately for injections of Epoetin Alfa (EPO or Epogen).

(E) **Technical component.** Payment is made for the technical component of outpatient radiation therapy and compensable x ray procedures.

(F) **Laboratory.** Payment is made for medically necessary outpatient services.

(G) **Blood.** Payment is made for outpatient blood and blood fractions when these products are required for the treatment of a congenital or acquired disease of the blood.

(H) **Ambulance.**

(I) **Pharmacy.**

(J) **Home health care.** Hospital based home health providers must be Medicare certified and have a current Home Health Agency contract with the Oklahoma Health Care Authority.

(i) Payment is made for home health services provided in a patient's residence to all categorically needy individuals.

(ii) Payment is made for a maximum of 36 visits per year per eligible recipient.

(iii) Payment is made for standard medical supplies.

(iv) Payment is made on a rental or purchase basis for equipment and appliances suitable for use in the home.

(v) Non-covered items include sales tax, enteral therapy and nutritional supplies, and electro spinal orthosis systems (ESO).

(vi) Payment may be made at a statewide procedure based rate. Payment for any combination of skilled and home health aide visits shall not exceed 36 visits per year.

(vii) Payment may be made to home health agencies for prosthetic devices.

(I) Coverage of oxygen includes rental of liquid oxygen systems, gaseous oxygen systems and oxygen concentrators when prior authorized. A completed HCFA 484 must accompany the initial claim for oxygen. Purchase of oxygen systems may be made where unusual circumstances exist and purchase is considered most appropriate. Refer to the Medical Suppliers Manual for further information.

(II) Payment is made for permanent indwelling catheters, drain bags, insert trays and irrigation trays. Male external catheters are also covered.

(III) Sterile tracheostomy trays are covered.

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- (IV) Payment is made for colostomy and urostomy bags and accessories.
- (V) Payment is made for hyperalimentation, including supplements, supplies and equipment rental in behalf of persons having permanently inoperative internal body organ dysfunction. CC 17 should be submitted to the Medical Authorization Unit. Information regarding the patient's medical condition that necessitates the hyperalimentation and the expected length of treatment, should be attached.
- (VI) Payment is made for ventilator equipment and supplies when prior authorized. CC 17 should be submitted to the Medical Authorization Unit.
- (VII) Medical supplies, oxygen, and equipment should be billed using appropriate HCPCS codes which are included in the HCPCS Level II Coding Manual.
- (K) **Outpatient hospital services, not specifically addressed.** Outpatient hospital services, not specifically addressed, are covered for adults only when prior authorized by the Medical Professional Services Unit of the Oklahoma Health Care Authority.
- (L) **Outpatient chemotherapy and radiation therapy.** Payment is made for charges incurred for the administration of chemotherapy for the treatment of malignancies and opportunistic infections. Payment for radiation therapy is limited to the treatment of proven malignancies and benign conditions appropriate for stereotactic radiosurgery (e.g., gamma knife).
- (M) **Ambulatory surgery.**
- (i) **Definition of Ambulatory Surgical Center.** An ambulatory surgical center (ASC) is a distinct entity that operates exclusively for the purpose of furnishing outpatient surgical services to patients and which enters into an agreement with HCFA to do so. An ASC may be either independent (i.e., not part of a provider of services or any other facility) or may be operated by a hospital (i.e., under the common ownership, licensure or control of a hospital). If an ASC is the latter type it has the option of being covered and certified under Medicare as an ASC, or of being covered as an outpatient hospital facility. In order to be covered as an ASC operated by a hospital, a facility must:
- (I) elect to do so, and continue to be so covered unless HCFA determines there is good cause to do otherwise;
 - (II) be a separately identifiable entity, physically, administratively, and financially independent and distinct from other operations of the hospital; and
 - (III) meet all the requirements with regard to health and safety, and agree to the assignment, coverage and reimbursement rules applied to independent ASC's.

(ii) **Certification.** In order to be eligible to enter into an agreement with HCFA to be covered as an ASC, a facility must be surveyed and certified as complying with the conditions for coverage for ASC's in 42 CFR 416.39-49.

(N) **Outpatient surgery services.** The covered facility services are defined as those services furnished by an ASC or OHF in connection with a covered surgical procedure.

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

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

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

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

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

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

(VI) Blood, blood plasma, platelets, etc. Under normal circumstances, blood and blood products furnished during the course of the procedure will be included in the payment for

the facility charge. In cases of patients with congenital or acquired blood disorders, additional payment can be made within the scope of the Authority's Medical Programs.

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

(ii) ~~Services not included in facility reimbursement rates.~~ The following services are not included in the facility reimbursement rate:

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

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

(III) ~~Prosthetic devices.~~ Prosthetic devices, whether implanted, inserted, or otherwise applied by covered surgical procedures are not included in the facility payment. One of the more common prosthesis is intra-ocular lenses (IOL's). Prosthetic devices should be billed as a separate line item using appropriate HCPCS code.

(IV) ~~Ambulance services.~~ If the facility furnishes ambulance services, they are covered separately as ambulance services if otherwise compensable under the Authority's Medical Programs.

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

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

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

(iii) ~~Reimbursement—facility services.~~ The facility services are reimbursed according to the group in which the surgical procedure is listed. If more than one surgical procedure is performed at the same setting, reimbursement will be made for only the major procedure. Reimbursement will be

made at a state-wide payment rate based on Medicare's established groups.

(iv) ~~Compensable procedures.~~ The HCPCS codes identify the compensable procedures and should be used in billing.

(O) ~~Outpatient hospital services for persons infected with tuberculosis (TB).~~ Outpatient hospital services are covered for persons infected with tuberculosis. Coverage includes, but may not be limited to, outpatient hospital visits, laboratory work and x-rays. Services to persons infected with TB are not limited to the scope of the Medicaid program; however, prior authorization is required for services that exceed the scope of coverage under Medicaid. Drugs prescribed for the treatment of TB not listed in OAC 317:30-3-46 require prior authorization by the University of Oklahoma College of Pharmacy using form "Petition for TB Related Therapy".

(P) ~~Mammograms.~~ Medicaid covers one screening mammogram and one follow-up mammogram every year for women beginning at age 30. Additional follow-up mammograms are covered when medically necessary. A prior authorization by the Medical Professional Services Division of the Oklahoma Health Care Authority is required for additional follow-up mammograms.

(Q) ~~Treatment/Observation.~~ Payment is made for the use of a treatment room, or for the room charge associated with outpatient observation services. Observation services must be ordered by a physician or other individual authorized by state law. Observation services are furnished by the hospital on the hospital's premises and include use of the bed and periodic monitoring by hospital staff. Payment is not made for treatment/observation on the same day as an emergency room visit. Observation services are limited to one 24 hour period per incident. Observation services are not covered in addition to an outpatient surgery.

(R) ~~Clinic charges.~~ Payment is made for a facility charge for services provided in non-emergency clinics operated by a hospital. This payment does not include the professional charges of the treating physician, nurse practitioner, physician assistant or charges for diagnostic testing. A facility charge is also allowed when drug and/or blood are administered outpatient.

(3) ~~Exclusions.~~ The following are excluded from coverage:

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

(B) ~~Procedures that result in sterilization which do not meet the guidelines set forth in this Chapter of rules.~~

(C) ~~Reversal of sterilization procedures for the purposes of conception are not covered.~~

(D) ~~Medical services considered to be experimental.~~

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- (E) ~~Services or any expense incurred for cosmetic surgery including removal of benign skin lesions.~~
- (F) ~~Refractions and visual aids.~~
- (G) ~~Payment for the treatment of obesity.~~
- (H) ~~Charges incurred while patient is in a skilled nursing or swing bed.~~

(b) **Inpatient status.** OHCA considers a member an inpatient when the member is admitted to the hospital and is counted in the midnight census. In situations when a member inpatient admission occurs and the member dies, is discharged following an obstetrical stay, or is transferred to another facility on the day of admission, the member is also considered an inpatient of the hospital.

(1) **Same day admission.** If a member is admitted and dies before the midnight census on the same day of admission, the member is considered an inpatient.

(2) **Same day admission/discharge - obstetrical and newborn stays.** A hospital stay is considered inpatient stay when a member is admitted and delivers a baby, even when the mother and baby are discharged on the date of admission (i.e., they are not included in the midnight census). This rule applies when the mother and/or newborn are transferred to another hospital.

(3) **Discharges and Transfers.**

(A) **Discharges.** A hospital inpatient is considered discharged from a hospital paid under the DRG-based payment system when:

(i) The patient is formally released from the hospital; or

(ii) The patient dies in the hospital; or

(iii) The patient is transferred to a hospital that is excluded from the DRG-based payment system, or transferred to a distinct part psychiatric or rehabilitation unit of the same hospital. Such instances will result in two or more claims. Effective January 1, 2007, distinct part psychiatric and rehabilitation units excluded from the Medicare Prospective Payment System (PPS) of general medical surgical hospitals will require a separate provider identification number.

(B) **Transfers.**

(i) A discharge of a hospital inpatient is considered to be a transfer for purposes of payment if the discharge is made from a hospital included under the DRG-based payment system to the care of another hospital that is:

(I) paid under the DRG-based payment system and in such instances the result will be that two (or more) claims will be generated; or

(II) to a hospital excluded from the DRG-based payment system. Such instances will result in two or more claims.

(ii) Transfers from one inpatient area or unit of a DRG-based hospital to another inpatient area or unit of the same hospital will result in a single claim unless it is a distinct part unit as defined in (A)(iii).

(C) **Leaves of Absence.** OHCA considers a discharge as occurring when the member leaves the hospital for any reason other than a "leave of absence." Normally a patient will leave a hospital only as a result of a discharge or transfer. However, there are some circumstances where a patient is admitted for care, and for some reason is sent home temporarily before that care is completed. Hospitals may place patients on leave of absence when readmission is expected and the patient does not require a hospital level of care during the interim period. Examples of such situations include, but are not limited to, situations where surgery could not be scheduled immediately, additional testing which is not available at that particular time, or a change in the patient's condition.

317:30-5-41.1. Acute inpatient psychiatric services

(a) Inpatient stays in a psychiatric unit of a general medical/surgical hospital are covered for members of any age. See OAC 317:30-5-95 for coverage in a freestanding psychiatric hospital or psychiatric residential treatment facility.

(b) **Utilization Control.** All psychiatric admissions must be prior authorized. SoonerCare utilization control requirements applicable to inpatient psychiatric services in freestanding psychiatric hospitals apply to acute care hospitals. Acute care hospitals are required to maintain the same level of documentation on individuals receiving psychiatric services as the freestanding psychiatric facilities (refer to OAC 317:30-5-95.12).

317:30-5-41.2. Organ transplants

Solid organ and bone marrow/stem cell transplants are covered when appropriate and medically necessary.

(1) Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.

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

(3) To be compensable under the SoonerCare program all transplants must be performed at a facility which meets the requirements contained in Section 1138 of the Social Security Act.

(4) Procedures considered experimental or investigational are not covered.

(5) Donor expenses are not covered.

317:30-5-42. Coverage for children [REVOKED]

Payment is made to hospitals for medical and surgical services for persons under the age of 21 within the scope of the Authority's Medical Programs, provided the services are reasonable for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services are comparable to those listed for adults except as follows.

(1) **Inpatient general acute care services limitations.** All medically necessary inpatient hospital services, other than psychiatric services, for all persons under the age of 21 will not be limited.

(2) **Utilization control requirements for psychiatric beds.** Medicaid utilization control requirements applicable to inpatient psychiatric services for persons under 21 years of age in psychiatric facilities apply to acute care hospitals. Acute care hospitals are required to maintain the same level of documentation on individuals receiving psychiatric services as the free standing psychiatric facilities (refer to OAC 317:30-5-95.2).

(3) **Outpatient hospital services.** Payment is made for outpatient hospital services, including lab and x rays.

(4) **Outpatient physical therapy.** Payment is made for preauthorized outpatient physical therapy. Payment is limited to four visits per month.

(5) **Hospice Services.** Hospice is palliative and/or comfort care provided to the client and his/her family when a physician certifies that the client has a terminal illness and has six months or less to live and orders hospice care. A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. The hospice services must be related to the palliation and management of the client's illness, symptom control, or to enable the individual to maintain activities of daily living and basic functional skills. Payment is made for home based hospice services for terminally ill individuals with a life expectancy of six months or less when the patient and/or family has elected hospice benefits in lieu of standard Medicaid services that have the objective to treat or cure the client's illness. Once the client has elected hospice care, the hospice medical team assumes responsibility for the client's medical care for the terminal illness in the home environment. Hospice care includes nursing care, physician services, medical equipment and supplies, drugs for symptom control and pain relief, home health aide and personal care, physical, occupational and/or speech therapy, medical social services, dietary counseling and grief and bereavement counseling to the client and/or family. Services must be prior authorized. Hospice care is available for two 90 day periods and an unlimited number of 60 day periods during the remainder of the patient's lifetime. However, the patient and/or the family may voluntarily terminate hospice services. To be covered, hospice services must be reasonable and necessary for the palliation or management of a terminal illness or related conditions. A certification that the individual is terminally ill must be completed by the patient's attending physician or the Medical Director of an Interdisciplinary Group. Nurse practitioners serving as the attending physician may not certify or re certify the terminal illness. A plan of care must be established before services are provided. The plan of care should be submitted with the prior authorization request.

(6) **Exclusions.** The following are excluded from coverage:

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

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

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

(D) Reversal of sterilization procedures for the purposes of conception.

(E) Hysterectomy, unless therapeutic and unless a copy of an acknowledgment form, signed by the patient or an acknowledgment by the physician that the patient has already been rendered sterile is attached to the claim.

(F) Medical services considered to be experimental.

317:30-5-42.1. Outpatient hospital services

(a) Hospitals providing outpatient hospital services are required to meet the same requirements that apply to OHCA contracted, non-hospital providers performing the same services. Outpatient services performed outside the hospital facility are not reimbursed as hospital outpatient services.

(b) Covered outpatient hospital services must meet all of the criteria listed in (1) through (4) of this subsection.

(1) The care is directed by a physician or dentist.

(2) The care is medically necessary.

(3) The member is not an inpatient.

(4) The service is provided in an approved hospital facility.

(c) Covered outpatient hospital services are those services provided for a member who is not a hospital inpatient. A member in a hospital may be either an inpatient or an outpatient, but not both (see OAC 317:30-5-41).

317:30-5-42.2. Blood and blood fractions

Payment is made for blood and blood fractions and the administration of blood and blood fractions when these products are required for the treatment of a congenital or acquired disease of the blood and not available from another source.

317:30-5-42.3. Chemotherapy and radiation therapy

Payment is made for charges incurred for the administration of chemotherapy for the treatment of medically necessary and medically approved procedures. Payment for radiation therapy is limited to the treatment of proven malignancies and benign conditions appropriate for stereotactic radiosurgery (e.g., gamma knife).

317:30-5-42.4. Clinic/treatment room services; urgent care

(a) An outpatient hospital clinic is a non-emergency service providing diagnostic, preventive, curative and rehabilitative services on a scheduled basis.

(b) Urgent care payment is made for services provided in non-emergency clinics operated by a hospital. This payment

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does not include the professional charges of the treating physician, nurse practitioner, physician assistant or charges for diagnostic testing. A facility charge is also allowed when drug and/or blood are administered outpatient.

(c) Urgent Care services will not require a referral for SoonerCare Choice members however other claims will deny without a referral.

(d) Adults are limited to four clinic visits per month.

317:30-5-42.5. Diagnostic testing therapeutic services

(a) Reimbursement is made for diagnostic testing to diagnose a disease or medical condition.

(b) Separate payment may be made for ancillary services that are not covered as an integral part of a facility fee.

317:30-5-42.6. Dialysis

Payment for dialysis is made at the all-inclusive Medicare allowable composite rate. This rate includes all services which Medicare has established as an integral part of the dialysis procedure, such as routine medical supplies, certain laboratory procedures, oxygen, etc. Payment is made separately for injections of Epoetin Alfa (EPO or Epogen). The physician is reimbursed separately.

317:30-5-42.7. Emergency department (ED) care/services

Emergency department care must:

(1) Be provided in a hospital with a designated emergency department; and

(2) Provide direct patient care, including patient assessment, monitoring, and treatment by hospital medical personnel such as physicians, nurses, or lab and x-ray technicians.

(A) Medical records must document the emergency diagnosis and the extent of direct patient care.

(B) Emergency department care does not include unattended waiting time.

(C) Emergency services are covered for a medical emergency. This means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

(i) Placing the physical or mental health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy; or continuation of severe pain;

(ii) serious impairment to bodily functions; serious dysfunction of any bodily organ or part; or death.

(D) Labor and delivery is a medical emergency, if it meets this definition.

(3) Prescheduled services are not considered an emergency.

(4) Services provided as follow-up to initial emergency care are not considered emergency services.

317:30-5-42.8. Hearing and speech therapy

Payment is covered for hearing and speech services, including evaluations, for children when prior authorized.

317:30-5-42.9. Infusions/injections

Intramuscular, subcutaneous or intravenous injections and intravenous (IV) infusions are covered when medically necessary and not considered a compensable part of the procedure.

317:30-5-42.10. Laboratory

Payment is made for all laboratory tests listed in the Clinical Diagnostic Laboratory fee schedule from CMS. To be eligible for payment as a laboratory/pathology service, the service must be:

(1) Ordered and provided by or under the direction of a physician or other licensed practitioner within the scope of practice as defined by state law;

(2) Provided in a hospital or independent laboratory;

(3) Directly related to the diagnosis and treatment of a medical condition; and

(4) Authorized under the laboratory's CLIA certification.

317:30-5-42.11. Observation/treatment

(a) Payment is made for the use of a treatment room associated with outpatient observation services. Observation services must be ordered by a physician or other individual authorized by state law. Observation services are furnished by the hospital on the hospital's premises and include use of the bed and periodic monitoring by hospital staff. Observation services must include a minimum of 8 hours of continuous care. Outpatient observation services are not covered when they are provided:

(1) On the same day as an emergency department visit.

(2) Prior to an inpatient admission, as those observation services are considered part of the inpatient DRG.

(3) For the convenience of the member, member's family or provider.

(4) When specific diagnoses are not present on the claim.

(b) Payment is made for observation services in a labor or delivery room. Specific pregnancy-related diagnoses are required. During active labor, a fetal non-stress test is covered in addition to the labor and delivery room charge.

317:30-5-42.12. Physical therapy

Payment is made for preauthorized outpatient physical therapy, including evaluations, for children.

317:30-5-42.13. Radiology

Payment is made for the technical component of outpatient radiation therapy and compensable x-ray procedures.

(1) Mammograms. Medically necessary screening mammography is a covered benefit. Additional follow-up mammograms are covered when medically necessary.

(2) **Ultrasounds.** Ultrasounds for obstetrical care are paid in accordance with provisions found at OAC 317:30-5-22(b)(2)(A)-(C).

317:30-5-42.14. Surgery

(a) **Reimbursement.** Reimbursement is made for selected surgeries performed in an outpatient hospital. When an ambulatory surgery is performed in the inpatient hospital setting, the physician must provide exception rationale justifying the need for an inpatient setting to OHCA medical staff for review.

(b) **Ambulatory Surgery Center Groups.** The Medicare definition of covered Ambulatory Surgery Center (ASC) facility services includes services furnished on a outpatient basis in connection with a covered surgical procedure. This is a bundled payment that includes operating and recovery rooms, patient preparation areas, waiting rooms, and other areas used by the patient or offered for use to patients scheduled for surgical procedures. It includes all services and procedures in connection with covered procedures provided by facility personnel and others involved in patient care. These services do not include physician services, or other health services for which payment can be made under other OHCA medical program provisions (e.g., services of an independent laboratory located on the same site as the ASC, prosthetic devices other than intra ocular lenses (IOLs), anesthetist services, DME).(See OAC 317:30-5-565 for items separately billable.)

(c) **Ambulatory Patient Classification (APC) Groups.** Certain surgical services filed with revenue code series 36X and 49X and that do not fall within an Ambulatory Patient Classification (ASC) group will pay a SoonerCare rate based on Medicare's APC groups. This is not a bundled rate. Other lines on the claim may pay.

(d) **Multiple Surgeries.** Multiple surgeries refers to more than one surgical procedure done on the same person on the same day. The multiple surgery rule provides that under certain circumstances the second and subsequent surgeries are paid at a lesser amount. When multiple ASCs or APCs are performed in the same operative session, payment will be the rate of the procedure in the highest payment group.

(e) **Minor procedures.** Minor procedures that are normally performed in a physician's office are not covered in the outpatient hospital unless medically necessary.

(f) **Dental Procedures.** Dental services are routinely rendered in the dental office, unless the situation requires that the dental service be performed in the outpatient hospital setting. However, services are not covered in the outpatient hospital setting for the convenience of the dentist or member. Dental procedures are not covered as Medicare ASC procedures. For OHCA payment purposes, the ASC list has been expanded to cover these services for children. Non-emergency routine dental that is provided in an outpatient hospital setting is covered only under the following circumstances for children or adults who are residents in ICFs/MR:

- (1) A concurrent hazardous medical condition exists;
- (2) The nature of the procedure requires hospitalization or;
- (3) Other factors (e.g. behavioral problems due to mental impairment) necessitate hospitalization.

(g) **Special Procedures.** Certain procedures rendered in a designated area of a licensed hospital dedicated to specific procedures (i.e. Cardiac Catheterization Lab, etc.) are covered and are not paid at a bundled rate. When multiple APC procedures are performed in the same visit, payment will be the rate of the procedure in the highest payment group.

317:30-5-42.15. Outpatient hospital services for members infected with tuberculosis

Outpatient hospital services are covered for members infected with tuberculosis. Coverage includes, but may not be limited to, outpatient hospital visits, laboratory work and x-rays.

(1) Services to members infected with TB are not limited to the scope of the SoonerCare program; however, prior authorization is required for services that exceed the scope of coverage under SoonerCare.

(2) Drugs prescribed for the treatment of TB not in accordance with OAC 317:30-3-46 require prior authorization by the OHCA Pharmacy Helpdesk using form "Petition for TB Related Therapy."

317:30-5-42.16. Related services

(a) **Ambulance.** Ambulance services furnished by the facility are covered separately if otherwise compensable under the Authority's Medical Programs.

(b) **Home health care.** Hospital based home health providers must be Medicare certified and have a current Home Health Agency contract with the OHCA.

(1) Payment is made for home health services provided in a member's residence to all categorically needy individuals.

(2) Payment is made for a maximum of 36 visits per year for eligible members 21 years of age or older. Payment for any combination of skilled and home health aide visits can not exceed 36 visits per year.

(3) Payment is made for standard medical supplies.

(4) Payment is made on a rental or purchase basis for equipment and appliances suitable for use in the home.

(5) Non-covered items include sales tax, enteral therapy and nutritional supplies, and electro-spinal orthosis systems (ESO).

(6) Payment may be made to home health agencies for prosthetic devices.

(A) Coverage of oxygen includes rental of liquid oxygen systems, gaseous oxygen systems and oxygen concentrators when prior authorized. Purchase of oxygen systems may be made where unusual circumstances exist and purchase is considered most appropriate.

(B) Payment is made for permanent indwelling catheters, drain bags, insert trays and irrigation trays. Male external catheters are also covered.

(C) Sterile tracheotomy trays are covered.

(D) Payment is made for colostomy and urostomy bags and accessories.

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(E) Payment is made for hyperalimentation, including supplements, supplies and equipment rental in behalf of persons having permanently inoperative internal body organ dysfunction. Information regarding the member's medical condition that necessitates the hyperalimentation and the expected length of treatment, should be attached when requesting prior authorization.

(F) Payment is made for ventilator equipment and supplies when prior authorized.

(G) Payment for medical supplies, oxygen, and equipment is made when using appropriate HCPCS codes which are included in the HCPCS Level II Coding Manual.

(c) **Hospice Services.** Hospice is defined as palliative and/or comfort care provided to the member family when a physician certifies that the member has a terminal illness and has a life expectancy of six months or less. A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and death. Hospice services must be related to the palliation and management of the member's illness, symptom control, or to enable the individual to maintain activities of daily living and basic functional skills.

(1) Payment is made for home based hospice services for terminally ill individuals under the age of 21 with a life expectancy of six months or less when the member and/or family has elected hospice benefits in lieu of standard SoonerCare services that have the objective to treat or cure the member's illness. Once the member has elected hospice care, the hospice medical team assumes responsibility for the member's medical care for the terminal illness in the home environment. Hospice care includes nursing care, physician services, medical equipment and supplies, drugs for symptom control and pain relief, home health aide and personal care, physical, occupational and/or speech therapy, medical social services, dietary counseling and grief and bereavement counseling to the member and/or family.

(2) Hospice care is available for two initial 90-day periods and an unlimited number of subsequent 60-day periods during the remainder of the member's lifetime. However, the member and/or the family may voluntarily terminate hospice services.

(3) Hospice services must be reasonable and necessary for the palliation or management of a terminal illness or related conditions. A certification that the member is terminally ill must be completed by the member's attending physician or the Medical Director of an Interdisciplinary Group. Nurse practitioners serving as the attending physician may not certify or re-certify the terminal illness.

(4) Services must be prior authorized. A written plan of care must be established before services are provided. The plan of care should be submitted with the prior authorization request.

317:30-5-42.17. Non-covered services

In addition to the general program exclusions [OAC 317:30-5-2(a)(2)] the following are excluded from coverage:

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

(2) Procedures that result in sterilization which do not meet the guidelines set forth in this Chapter of rules.

(3) Reversal of sterilization procedures for the purposes of conception are not covered.

(4) Medical services considered to be experimental.

(5) Payment for removal of benign skin lesions unless medically necessary.

(6) Refractions and visual aids.

(7) Charges incurred while patient is in a skilled nursing or swing bed.

317:30-5-42.18. Coverage for children

(a) Services, deemed medically necessary and allowable under federal Medicaid regulations, may be covered under the EPSDT/OHCA Child Health program even though those services may not be part of the Oklahoma Health Care Authority SoonerCare program. Such services must be prior authorized.

(b) Federal Medicaid regulations also require the State to make the determination as to whether the service is medically necessary and do not require the provision of any items or services that the State determines are not safe and effective or which are considered experimental.

317:30-5-47. Reimbursement for inpatient hospital services

Reimbursement will be made for inpatient hospital services rendered on or after October 1, 2005, in the following manner:

(1) Covered inpatient services provided to eligible Medicaid Recipients SoonerCare members admitted to in-state acute care and critical access hospitals will be reimbursed at a prospectively set rate which compensates hospitals an amount per discharge for discharges classified according to the Diagnosis Related Group (DRG) methodology. For each Medicaid recipient's SoonerCare member's stay, a peer group base rate is multiplied by the relative weighting factor for the DRG which applies to the hospital stay. In addition to the DRG payment, an outlier payment may be made to the hospital for very high cost stays. Additional outlier payment is applicable if the DRG payment is less than a threshold amount \$50,000 of the hospital cost. Each inpatient hospital claim is tested to determine whether the claim qualified for a cost outlier payment. Payment is equal to a percentage 70% of the cost after the \$50,000 threshold is met.

(2) The DRG payment and outlier, if applicable, represent full reimbursement for all non-physician services provided during the inpatient stay. Payment includes but is not limited to:

(A) laboratory services;

- (B) prosthetic devices, including pacemakers, lenses, artificial joints, cochlear implants, implantable pumps;
- (C) technical component on radiology services;
- (D) transportation, including ambulance, to and from another facility to receive specialized diagnostic and therapeutic services;
- (E) pre-admission diagnostic testing performed within 72 hours of admission; and
- (F) organ transplants.

(3) Hospitals may submit a claim for payment only upon the final discharge of the patient or upon completion of a transfer of the patient to another hospital.

(4) Covered inpatient services provided to eligible recipients members of the Oklahoma Medicaid SoonerCare program, when treated in out-of-state hospitals will be reimbursed in the same manner as in-state hospitals.

(5) Cases which indicate transfer from one acute care hospital to another will be monitored under a retrospective utilization review policy to help ensure that payment is not made for inappropriate transfers.

(6) If the transferring or discharge hospital or unit is exempt from the DRG, that hospital or unit will be reimbursed according to the method of payment applicable to the particular facility or units.

(7) Readmissions occurring within 15 days of prior acute care admission for a related condition will be reviewed under a retrospective utilization review policy to determine medical necessity and appropriateness of care. If it is determined that either or both admissions were unnecessary or inappropriate, payment for either or both admissions may be denied. Such review may be focused to exempt certain cases at the sole discretion of the OHCA.

(8) Hospital stays less than three days in length will be reviewed under a retrospective utilization review policy for medical necessity and appropriateness of care. (Discharges involving healthy mother and healthy newborns may be excluded from this review requirement.) If it is determined that the inpatient stay was unnecessary or inappropriate, the prospective payment for the inpatient stay will be denied.

(9) Organ transplants must be performed at an institution approved by the OHCA for the type of transplant provided. The transplant must be reviewed for medical appropriateness.

(10) Covered inpatient services provided in out-of-state specialty hospitals may be reimbursed at a negotiated rate not to exceed 100% of the cost to provide the service. Negotiation of rates will only be allowed when the OHCA determines that the specialty hospital or specialty unit provides a unique (non-experimental) service required by SoonerCare Medicaid recipients members and the provider will not accept the DRG payment rate. Prior authorization is required.

(11) New providers entering the Medicaid SoonerCare program will be assigned a peer group and will be reimbursed at the peer group base rate for the DRG payment

methodology or the statewide median rate for per diem methods.

(12) Payments will be made to hospitals qualifying for Disproportionate Hospital adjustments, and graduate medical education activities pursuant to the methodologies described in the Oklahoma Title XIX Inpatient Hospital Reimbursement Plan, effective date October 1, 2005, and incorporated herein by reference.

317:30-5-47.1. Reimbursement for newborn screening services provided by the OSDH

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. Newborn screening performed by the Oklahoma State Department of Health in accordance with State Law is excluded from the inpatient per diem DRG payment.

317:30-5-47. 2 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%.

(1) 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.

(2) Beyond meeting either of the tests found in (1) of this subsection, there are three additional requirements which are:

(A) 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.

(B) In the case of an urban hospital, a hospital located in a MSA, an obstetrician is defined as any board-certified obstetrician with staff privileges who performs non-emergency obstetrical services at the

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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.

(C) A hospital must have a Medicaid inpatient utilization rate of at least one percent.

(b) **Payment adjustment.**

(1) 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:

(A) public private acute care teaching hospital which has 150 or more full time equivalent residents enrolled in approved teaching programs (using the most recently of Oklahoma. Public private hospital is a former state operated hospital that has entered into a joint operating agreement with a private hospital system;

(B) other state hospitals; or

(C) private hospitals and all out of state hospitals.

(2) 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:

(A) Step 1. The Medicaid revenue and imputed revenue for charity are totaled for each hospital qualifying for disproportionate share adjustments.

(B) 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.

(C) 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.

(D) Step 4. The weighted values of all hospitals qualifying for disproportionate share adjustments are totaled.

(E) 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.

(F) Step 6. The weighted values of all state hospitals (except public/private acute care teaching hospital) are totaled.

(G) Step 7. The weighted values of all private and out of state hospitals qualifying for disproportionate share adjustments are totaled.

(H) 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.

(I) 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.

(J) Step 10. The weighted percentages for the three hospital groups are next applied to the capped disproportionate share amount allowed by CMS 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 (H) of this paragraph] 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. (3) 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. Payment will be made to hospitals qualifying for Disproportionate Share Hospital adjustments pursuant to the methodology described in the Oklahoma Title XIX Inpatient Hospital State Plan.

317:30-5-47. 3 Indirect medical education (IME) adjustment

(a) Effective February 11, 1999, acute care hospitals that qualify as major teaching hospitals will receive an indirect medical education (IME) payment adjustment, which covers the increased operating, or patient care, costs that are associated with approved intern and resident programs.

(b) In order to qualify as a major teaching hospital and be deemed eligible for an IME adjustment, the hospital or hospitals of common ownership must:

- (1) belong to the Council on Teaching Hospitals or have a medical school affiliation; and
- (2) be licensed by the State of Oklahoma; and
- (3) have 150 or more full time equivalent (FTE) residents enrolled in approved teaching programs.

(c) Eligibility for an IME adjustment will be determined by the OHCA, using the provider's most recently received annual cost report or the application (see OAC 317:30-5-47.3) for the quarterly Direct Medical Education Supplemental payment adjustment.

(d) An annual fixed IME payment pool will be established based on the State matching funds made available by transfers from other State agencies. The pool of funds will be distributed annually each State fiscal year. The total pool of monies made available by funds transferred by any State agency will be limited to \$10,038,714, the 1999 base year amount. The base year payment amount will be updated annually each July 1 using the first quarter publication of the DRI PPS-type Hospital market basket forecast for the midpoint of the upcoming fiscal year, if funds are available.

(e) The payments will be distributed equally. For hospitals that have public-private ownership, or have entered into a joint operating agreement, payment will be made to the public entity that is organizationally responsible for the public teaching mission.

(f) If payment causes total payments to exceed Medicare upper limits as required by 42 CFR 447.272, the payment will be reduced to not exceed the Medicare upper limit. Payment will be made to hospitals qualifying for Indirect Medical Education payment adjustments pursuant to the methodology described in the Oklahoma Title XIX Inpatient Hospital State Plan.

317:30-5-47. 4 Direct medical educationsupplemental incentivepayment adjustment

(a) Effective July 1, 1999, in-state hospitals that qualify as teaching hospitals will receive a supplemental payment adjustment for direct medical education (DME) expenses. These payments will be made in order to encourage training in rural hospital and primary care settings and to recognize the loss of support for GME due to the advent of Managed Care capitated programs.

(b) In order to qualify as a teaching hospital and be deemed eligible for DME supplemental incentive payment adjustments, the hospital must:

- (1) be licensed by the State of Oklahoma;
- (2) have costs associated with approved or certified Oklahoma medical residency programs in medicine, osteopathic medicine, and associated specialties and sub-specialties. An approved medical residency program is one approved by the Accrediting Council for Graduate Medical Education of the American Medical Association, by the Bureau of Professional Education of the American Osteopathic Association, or other professional accrediting associations. A resident is defined as a Post-Graduate Year 1 (PGY1) and above resident who participates through hospital or hospital based rotations in approved medical residency/internship programs in Family Medicine, Internal Medicine, Pediatrics, Surgery, Ophthalmology, Psychiatry, Obstetrics/Gynecology, Anesthesiology, Osteopathic medicine, or other Certified

Medical Residencies, including specialties and sub-specialties as required in order to become certified by the appropriate board; and

(3) apply for certification by the OHCA prior to receiving payments for any quarter during a State Fiscal year. To qualify, a hospital must have a contract with the Oklahoma Health Care Authority (OHCA) to provide Medicaid services and belong to The Council on Teaching Hospitals or otherwise show proof of affiliation with an approved Medical Education Program. Affiliation means an agreement to support the costs of medical residency education in the approved programs.

(4) Federal and state hospitals, including Veteran's Administration, Indian Health Service/Tribal and Oklahoma Department of Mental Health and Substance Abuse Services Hospitals are not eligible for supplemental DME payments. Major teaching hospitals are eligible.

(e) Determination of a hospital's eligibility for a DME supplemental payment adjustment will be done quarterly by the OHCA based on reports designed by the OHCA. The reports will detail the resident months of support provided by the hospital and the total eligible Medicaid days of service from the paid claims for the same quarter and be attested to by the hospital Administrator, or designated personnel. The annual application must be attested to by the hospital administrator and by the residency program director. All reports will be subject to audit and payments will be recouped for inaccurate or false data. The amount of resident months will also be compared to the annual budgets of the schools, the annual CMS form 2552 (Cost Report) and the monthly assignment schedules.

(d) An annual fixed DME payment pool will be established based on the State Matching funds made available by the University Hospitals Authority or other State agencies.

(e) The payments will be distributed based on the relative value of the weighted resident months at each participating hospital. A resident month is defined as a PGY1 and above resident fulltime equivalent (FTE) for that month. Resident is defined in (b)(2) of this section. An FTE is defined as a resident assigned by the residency program to a rotation that is hospital or hospital based. The resident must be assigned to a specific hospital for a supervised hospital based residency experience. Required residency clinical or educational experience will be allowed. The time residents spend in non-provider settings such as freestanding clinics, nursing homes and physicians' offices in connection with approved programs may be included in determining the number of FTE's in the count if the following conditions are met:

- (1) The resident spends his or her time in patient care activities.
- (2) The written agreement between the hospital and the non-hospital site must indicate that the hospital will incur the cost of the resident's salary and fringe benefits while the resident is training in the non-hospital site and the hospital is providing reasonable compensation to the non-hospital site for supervisory teaching activities.
- (3) The hospital must incur all or substantially all of the costs for the training program in the non-hospital setting,

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which means the residents' salaries and fringe benefits (including travel and lodging where applicable) and the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct graduate medical education.

(f) ~~Training outside the formal residency program (moonlighting) is not eligible for this payment. The pool of available funds will be distributed quarterly based on the relative value of the eligible hospitals' resident months weighted for Medicaid services rendered.~~

(1) ~~The weighted relative value is determined as follows:~~

(A) ~~Annually (prior to each state fiscal year) the OHCA will determine each participating hospital's individual acuity factor from data taken from the Oklahoma MMIS system (or reported claims data) by using the days of services and weights determined for the levels of care.~~

(B) ~~Determine the total resident months from the quarterly reports in (c) of this section for each hospital.~~

(C) ~~Determine the total eligible patient days for the quarter from the quarterly reports in (c) of this section for each hospital reporting.~~

(D) ~~Determine the relative value for each hospital. The relative value is defined as the product of the individual acuity factor [see (A) of this paragraph] times the total resident months [see (B) of this paragraph] times the eligible patient days [see (C) of this paragraph].~~

(2) ~~The pool of available funds will be allocated quarterly based on the prior quarter's relative value as determined in (1)(D) of this subsection. The per resident month amount will be limited to \$11,000 and the total payments will be limited to and not exceed the upper payment limits described in (g) of this section.~~

(g) ~~If payment in (d) of this section causes total payments to exceed Medicare upper limits as required by CFR 447.272, the payment will be reduced to not exceed the Medicare upper limit. Payment will be made to hospitals qualifying for Direct Medical Education payment adjustments pursuant to the methodology described in the Oklahoma Title XIX Inpatient Hospital State Plan.~~

317:30-5-50. Abortions

(a) Payment is made only for abortions in those instances where the abortion is necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed, or where the pregnancy is the result of an act of rape or incest. ~~Medicaid—SoonerCare~~ coverage for abortions to terminate pregnancies that are the result of rape ~~or incest will only be or incest are considered~~ to be medically necessary services and federal financial participation is available specifically for these services.

(1) For abortions necessary due to a physical disorder, injury or illness, including a life-endangering physical

condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, the physician must certify in writing that the abortion is being performed due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed. The mother's name and address must be included in the certification and the certification must be signed and dated by the physician. The certification must be attached to the claim.

(2) For abortions in cases of rape or incest, there are two requirements for the payment of a claim. First, the patient must fully complete the Patient Certification For Medicaid Funded Abortion. Second, the patient must have made a police report or counselor's report of the rape or incest. In cases where an official report of the rape or incest is not available, the physician must certify in writing and provide documentation that in his or her professional opinion, the patient was unable, for physical or psychological reasons, to comply with the requirement. The statement explains the reason the rape or incest was not reported. The mother's name and address must be included in the certification and the certification must be signed and dated by the physician. In cases where a physician provides certification and documentation of a client's inability to file a report, the Authority will perform a prepayment review of all records to ensure there is sufficient documentation to support the physician's certification.

(b) The Oklahoma Health Care Authority performs a look-behind procedure for abortion claims paid from ~~Medicaid~~ SoonerCare funds. This procedure will require that this Agency obtain the complete medical records for abortions paid under ~~Medicaid~~ SoonerCare. On a post payment basis, this Authority will obtain the complete medical records on all claims paid for abortions.

(c) Claims for spontaneous abortions, including Dilution and Curettage do not require certification. The following situations also do not require certification:

(1) If the physician has not induced the abortion, counseled or otherwise collaborated in inducing the abortion, and

(2) If the process has irreversibly commenced at the point of the physician's medical intervention.

(d) Claims for the diagnosis incomplete abortion require medical review. The appropriate diagnosis codes should be used indicating spontaneous abortion, etc.; otherwise the procedure will be denied.

317:30-5-56. Utilization review

All inpatient services are subject to post-payment utilization review by the Oklahoma Health Care Authority, or its designated agent. These reviews will be based on OHCA's, or its designated agent's, admission criteria on severity of illness and intensity of treatment. In addition to the random sample of all admissions, retrospective review policy includes the following:

(1) Hospital stays less than three days in length will be reviewed for medical necessity and appropriateness of

care. (Discharges involving healthy mother and healthy newborns may be excluded from this review requirement.) If it is determined that the inpatient stay was unnecessary or inappropriate, the prospective payment for the inpatient stay will be denied.

(2) Cases which indicate transfer from one acute care hospital to another will be monitored to help ensure that payment is not made for inappropriate transfers.

(3) Readmissions occurring within 15 days of prior acute care admission for a related condition will be reviewed to determine medical necessity and appropriateness of care. If it is determined that either or both admissions were unnecessary or inappropriate, payment for either or both admissions may be denied. Such review may be focused to exempt certain cases at the sole discretion of the OHCA.

317:30-5-57. Notice of denial

(a) **General.** It is the policy and intent to allow hospitals and physicians the opportunity to present any and all documentation available to support the medical necessity of an admission and/or extended stay of a SoonerCare member. If the OHCA, or its designated agent, upon their initial review determines the admission should be denied, a notice is sent to the facility and the attending physician(s) advising them of the decision. This notice also advises that a reconsideration request may be submitted within 60 days.

(b) **Reconsideration request.** All inpatient stays and outpatient observation services are subject to post-payment utilization review by the OHCA's designated Quality Improvement Organization (QIO). These reviews are based on severity of illness and intensity of treatment. It is the policy and intent of OHCA to allow hospitals and physicians the opportunity to present any and all documentation available to support the medical necessity of an admission and/or extended stay or outpatient observation of a SoonerCare member. If the QIO, upon their initial review determines the admission or outpatient observation services should be denied, a notice is issued to the facility and the attending physician advising them of the decision. This notice also advises that a reconsideration request may be submitted within the specified time frame on the notice and consistent with the Medicare guidelines. Additional information submitted with the reconsideration request is reviewed by the QIO that utilizes an independent physician advisor. If the denial decision is upheld through this review of additional information, the QIO sends written notification of the denial decision to the hospital, attending physician and the OHCA. Once the OHCA has been notified, the overpayment is processed as per the final denial determination.

(c) **Reconsideration request not made.** If the hospital or attending physician did not request reconsideration from the QIO, the QIO informs OHCA there has been no request for reconsideration and as a result their initial denial decision is final. OHCA, in turn, processes the overpayment as per the denial notice sent to the OHCA by the QIO.

(d) **Patient liability.** If an OHCA, or its designated agent, review results of a denial and the denial is upheld throughout the appeal process and refund from the hospital and physician

is required, the member cannot be billed for the denied services.

(1) If a hospital or physician believes that an acute care hospital admission or continued stay is not medically necessary and thus not compensable but the member insists on treatment, the member should be informed in writing that he/she will be personally responsible for all charges.

(2) If a claim is filed and paid and the service is later denied the member is not responsible.

317:30-5-566. Outpatient surgery services

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

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

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

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

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

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

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

(F) Blood, blood plasma, platelets, etc. Under normal circumstances, blood and blood fractions furnished during the course of the procedure will be included in the payment for the facility charge. In cases of patients with congenital or acquired blood

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disorders, additional payment can be made within the scope of the Authority's Medical Programs.

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

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

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

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

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

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

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

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

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

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

(3) **Compensable procedures.** The List of Covered Surgical Procedures in (1) of this Section sets out those procedures for which the Authority will recognize a facility charge if otherwise compensable under the Authority's

Medical Programs. If a procedure code is not on the list the Authority will not pay a facility charge.

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

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

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

317:30-5-567. Coverage by category

Payment is made for ambulatory surgical center services as set forth in this Section.

(1) **Children.** Payment is made for children for medically necessary surgical procedures which are included on the List of Covered Surgical Procedures.

(A) Services, deemed medically necessary and allowable under federal regulations, may be covered by the EPSDT/OHCA Child Health program even though those services may not be part of the OHCA SoonerCare program. Such services must be prior authorized.

(B) Federal regulations also require the State to make the determination as to whether the service is medically necessary and do not require the provision of any items or services that the State determines are not safe and effective or which are considered experimental.

(2) **Adults.** Payment is made for adults for medically necessary surgical procedures which are included on the List of Covered Surgical Procedures.

(3) **Individuals eligible For Part B of Medicare.** Payment is made utilizing the ~~Medicaid~~ OHCA allowable for comparable services.

[OAR Docket #06-1432; filed 11-14-06]

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

[OAR Docket #06-1435]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 61. Home Health Agencies

317:30-5-545. [AMENDED]

(Reference APA WF # 06-27)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.70

DATES:

Adoption:

October 12, 2006

Approved by Governor:

November 1, 2006

Effective:

Immediately upon Governor's approval or December 1, 2006, whichever is later

Expiration:

Effective through July 14, 2007, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to comply with federal regulations and to insure SoonerCare members adequate access to SoonerCare contracted providers.

ANALYSIS:

Home Health Agency provider rules are revised to allow Home Health Agencies who have been deemed eligible as a Home Health Medicare provider to contract with this agency to be a SoonerCare provider. Current Home Health Agency rules state that an agency must be Medicare certified or accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO) in order to contract as a SoonerCare provider. Earlier this year, CMS revised federal regulations to approve the Accreditation Commission for Healthcare (ACHC) as a national accreditation program for home health agencies seeking to participate in the Medicare or Medicaid programs. Therefore, agency rules are revised to allow Home Health Agencies who have deemed status with Medicare to contract with SoonerCare, thus assuring SoonerCare members access to services.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR DECEMBER 1, 2006, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 61. HOME HEALTH AGENCIES

317:30-5-545. Eligible providers

All eligible home health service providers must be Medicare certified, ~~or~~ accredited by the Joint Commission on Accreditation of Health Care ~~Organization~~ Organizations (JCAH-JCAHO), or have deemed status with Medicare. and have a current contract with the Oklahoma Health Care Authority. Home Health Agencies billing for durable medical equipment (DME) must have a supplier contract and bill equipment on claim form ~~HCFA-1500~~ CMS-1500. Additionally, home health services providers that did not participate in Medicaid prior to January 1, 1998, ~~but wish to become participating~~

~~Medicaid providers of skilled home health services (those services defined within 42 CFR 440.70) on or after January 1, 1998, must meet the "Capitalization Requirements" set forth in 42 CFR 489.28. Home health services providers that do not meet these requirements will not be permitted to participate in the Medicaid program.~~

[OAR Docket #06-1435; filed 11-14-06]

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

[OAR Docket #06-1434]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 62. Private Duty Nursing

317:30-5-556. [AMENDED]

317:30-5-558. [AMENDED]

317:30-5-560. [AMENDED]

317:30-5-560.1. [AMENDED]

317:30-5-560.2. [AMENDED]

(Reference APA WF# 06-25)

AUTHORITY:

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

DATES:

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to allow private duty nursing (PDNs) nurses to assist during transport of members to medical appointments and emergency room visits within the approved number of hours in the treatment plan and to include a requirement for a new and/or updated treatment plan signed by the physician at least annually. Revisions would save the agency in ambulance costs when the member's condition can be appropriately addressed by a PDN in private transportation. Requiring an updated treatment plan at least annually would ensure the member is receiving appropriate and updated services for his/her current condition.

ANALYSIS:

Agency rules are revised to add Private Duty Nursing (PDN) services to assist in transporting members to medical appointments and emergency room visits within the approved hours in the treatment plan and to require a new or revised treatment plan, signed by the physician, at least annually. Currently PDNs only provide services within the home. The revised rules enable nurses to assist with transporting members to medical appointments and emergency room visits in lieu of using an ambulance. Currently there is no time limitation on the duration of treatment plans. The current language could allow for inappropriate and/or outdated treatment plans and possible inappropriate PDN services. The revised rules will require physicians to keep treatment plans

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updated with appropriate services for the member's condition provided by the PDN.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR DECEMBER 1, 2006, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 62. PRIVATE DUTY NURSING

317:30-5-556. Definitions

The definition of private duty nursing is medically necessary care provided on a regular basis by a Licensed Practical Nurse or Registered Nurse in the patient's member's residence or to assist outside the home during transport to medical appointments and emergency room visits in lieu of transport by ambulance.

317:30-5-558. Private duty coverage limitations

(a) The following regulations apply to all private duty nursing services and provide coverage limitations:

(1) All services must be prior authorized to receive payment from the ~~Medicaid agency~~ Oklahoma Health Care Authority (OHCA). Prior authorization means authorization in advance of services provided in accordance with OAC 317:30-5-560.1;

(2) A treatment plan must be completed by the Nursing agency prior to the before requesting prior authorization and must be updated at least annually and signed by the physician throughout the course of nursing treatment;

(3) A personal visit by an ~~Oklahoma Health Care Authority Care~~ OHCA Care Management Nurse is required prior to the authorization for services;

(4) Care in excess of the designated hours per day granted in the prior authorization are is not Medicaid-compensable. The banking, saving or accumulation of unused prior authorized hours to be used later are not compensable. Prior-authorized but unused service hours cannot be "banked," "saved," or otherwise "accumulated" for use at a future date or time. If such hours or service are provided, they are not Medicaid-compensable.

(5) ~~The agency requesting prior authorization must have adequate staff and resources to meet the Plan of Care requirements. Failure to provide care in the manner described on the Plan of Care will result in termination of the prior authorization and selection of another provider. Any care provided outside of the home is limited to assisting during transport to medical appointments and~~

emergency room visits in lieu of transport by ambulance and is limited to the number of hours requested on the treatment plan and approved by OHCA.

(6) Private duty nursing services ~~does do~~ not include office time or administrative time in providing the service. The time billed is for direct nursing services only.

(7) Staff must be engaged in purposeful activity that directly benefits the person member receiving services. Staff must be physically able and mentally alert to carry out the duties of the job. At no time will ~~the Authority~~ OHCA compensate an organization for nursing staff time when sleeping.

(8) OHCA will not ~~compensate~~ approve Private Duty Nursing service if all health and safety issues cannot be met in the home setting.

(9) A provider ~~may~~ must not misrepresent or omit facts in a treatment plan ~~or omit facts from a treatment plan.~~

(10) It is outside the scope of coverage to deliver care in a manner outside the treatment plan or to deliver units over the authorized units of care.

(11) Private duty nursing ~~will is~~ not be authorized in excess of 16 hours per day except immediately following a hospital stay or the temporary incapacitation of the primary caregiver. Under these two exceptions, care in excess of 16 hours ~~may be~~ is authorized for a period up to 30 days. As expressed in this subsection, incapacity means an involuntary ability to provide care.

(12) Family and/or caregivers and/or guardians are required to provide some of the nursing care to the member without compensation.

~~(b) A violation of any private duty nursing coverage limitation will result in an overpayment. Continued violations may result in contract termination.~~

317:30-5-560. Treatment Plan

(a) An eligible organization must create a treatment plan for the patient member as part of the authorization process to have for private duty nursing services authorized. The initial treatment plan must be signed by the patient's member's attending physician. It must be updated and signed annually.

(b) The treatment plan must include all of the following medical and social data so that OHCA Care Managers can appropriately determine medical necessity by the use of the Private Duty Nursing Acuity Grid:

- (1) diagnosis;
- (2) prognosis;
- (3) anticipated length of treatment;
- (4) number of hours of private duty nursing requested per day;
- (5) assessment needs and frequency (e.g., vital signs, glucose checks, neuro checks, respiratory);
- (6) medication method of administration and frequency;
- (7) age-appropriate feeding requirements (diet, method and frequency);
- (8) respiratory needs;
- (9) mobility requirements including need for turning and positioning, and the potential for skin breakdown;

- (10) developmental deficits;
- (11) casting, orthotics, therapies;
- (12) age-appropriate elimination needs;
- (13) seizure activity and precautions;
- (14) age-appropriate sleep patterns;
- (15) disorientation and/or combative issues;
- (16) age-appropriate wound care and/or personal care;
- (17) communication issues;
- (18) social support needs;
- (19) name, skill level, and availability of all caregivers;
- and
- (20) other pertinent nursing needs such as dialysis, isolation.

317:30-5-560.1. Prior authorization requirements

- (a) Authorizations are provided for a maximum period of six months.
- (b) Authorizations ~~may only be received by creating require:~~
 - (1) a treatment plan for the ~~patient member;~~ and
 - (2) ~~requesting a visit by an OHCA Care Management Nurse, and having to determine medical necessity the Care Management Nurse using the Private Duty Nursing Acuity Grid.~~
- (c) The number of hours ~~requested on the treatment authorized plan may be modified differ from the hours requested on the treatment plan based on the assessment of OHCA staff during a visit by a the Care Management Nurse.~~
- (d) If the ~~patient's member's~~ condition necessitates a change in the treatment plan, the provider must request a new prior authorization.
- (e) Changes in the treatment plan may necessitate another visit by the Care Management staff.

317:30-5-560.2. Record documentation

~~Copies of the treatment plan signed by the attending physician. The treatment plan must be updated and signed by the attending physician at least annually.~~ Copies of the attending physician's orders and, at a minimum, the last 30 days of medical records for the actual care provided must be maintained in the home. Medical records must include the beginning and ending time of the care and must be signed by the person providing care. The nurse's credentials must also be included. All provisions of the treatment plan, such as vital signs, medication administration, glucose/neuro checks, vital signs, respiratory assessments, and all applicable treatments must be documented in the record. All records must meet the requirements set forth in OAC 317:30-3-15.

[OAR Docket #06-1434; filed 11-14-06]

**TITLE 320. OKLAHOMA HISTORICAL SOCIETY
CHAPTER 10. OKLAHOMA ART IN PUBLIC PLACES DIVISION**

[OAR Docket #06-1448]

RULEMAKING ACTION:
EMERGENCY adoption

- RULES:**
- Subchapter 1. General Provisions [NEW]
 - 320:10-1-1. Purpose [NEW]
 - 320:10-1-2. Definitions [NEW]
 - Subchapter 3. General Course and Method of Operating [NEW]
 - 320:10-3-1. Division office [NEW]
 - 320:10-3-2. Division office hours [NEW]
 - 320:10-3-3. Communications with the Art in Public Places Division [NEW]
 - 320:10-3-4. Meetings/quorum of the Art in Public Places Division [NEW]
 - 320:10-3-5. Art in Public Places Guidelines [NEW]
 - 320:10-3-6. Availability of Division records, guidelines and policies [NEW]
 - 320:10-3-7. Copies of official records [NEW]
 - 320:10-3-8. Officers of the Division [NEW]
 - 320:10-3-9. Oversight Committee [NEW]
 - 320:10-3-10. Powers and duties of the Oversight Committee [NEW]
 - 320:10-3-11. Conflict of interest of Oversight Committee [NEW]
 - 320:10-3-12. Resignation of Oversight Committee members [NEW]
 - 320:10-3-13. Director [NEW]
 - 320:10-3-14. Eligible projects [NEW]
 - 320:10-3-15. Excluded projects [NEW]
 - 320:10-3-16. Appeal procedure [NEW]
 - 320:10-3-17. Project agency/duties [NEW]
 - 320:10-3-18. Public notification of calls for entries [NEW]
 - 320:10-3-19. Materials submitted to the Division become property of the State of Oklahoma [NEW]
 - 320:10-3-20. Artwork becomes property of the State of Oklahoma [NEW]
 - 320:10-3-21. Prohibition of statements on behalf of the Site Committees or Art in Public Places Oversight Committee [NEW]
 - Subchapter 5. Site Committees [NEW]
 - 320:10-5-1. Establishment of site committees [NEW]
 - 320:10-5-2. Duties [NEW]
 - 320:10-5-3. Composition of committee [NEW]
 - 320:10-5-4. Conflict of interest [NEW]
 - 320:10-5-5. Quorum [NEW]
 - 320:10-5-6. Length of service [NEW]
 - 320:10-5-7. Resignation [NEW]
 - Subchapter 7. Financial Provisions [NEW]
 - 320:10-7-1. Funding by state agencies [NEW]
 - 320:10-7-2. Basis of Allocation Computation [NEW]
 - 320:10-7-3. Maximum assessment [NEW]
 - 320:10-7-4. Allocations to Commissioning of Art in Public Places Revolving Fund [NEW]
 - 320:10-7-5. Art in Public Places Administrative and Maintenance Revolving Fund [NEW]
 - 320:10-7-6. Monies donated from private sources [NEW]
 - 320:10-7-7. Authority to make expenditures [NEW]
 - 320:10-7-8. Monies for commissioning of art not spent [NEW]
 - 320:10-7-9. Transfer of funds in excess of one million dollars [NEW]
 - 320:10-7-10. Exclusion from the Oklahoma Central Purchasing Act [NEW]
 - Subchapter 9. Management of the Collection [NEW]
 - 320:10-9-1. Management and care of the collection [NEW]
 - 320:10-9-2. Maintenance and conservation procedures [NEW]
 - 320:10-9-3. Process for deaccessioning or relocating a work of art [NEW]

AUTHORITY:

Oklahoma Art in Public Places Act; 74 O.S., Section 9030 et seq.

DATES:

Adoption:

September 20, 2006

Approved by Governor:

October 31, 2006

Emergency Adoptions

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2007, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The emergency rules are necessary to allow the Art in Public Places Division to comply with the legislation that created the program in 2004. As a newly enacted, self-funded program, it is imperative to begin functioning as per the legislation or the program will not be able to exist and fulfill its mandated mission. It is crucial to have emergency rules to establish the program's operations for the benefit of the public and all state agencies, entities and institutions.

A compelling public interest exists that requires the program to have emergency rules in place to establish the program's operations for the public's benefit as well as for all state agencies, entities and institutions.

ANALYSIS:

These new rules establish the necessary organization and method of operation in order to create a functioning division pursuant to the Oklahoma Art in Public Places Act (74 O.S., Section 9030 et seq). These rules also provide state agencies, institutions and entities with clarification of eligibility of capital projects and their responsibility under the Act.

CONTACT PERSON:

Debby Williams (405) 522-8959

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

SUBCHAPTER 1. GENERAL PROVISIONS

320:10-1-1. Purpose

(a) The Legislature recognizes the responsibility of Oklahoma to foster culture and the arts and declares that a portion of expenditures for capital projects including, but not limited to, bond issues for state construction be set aside for the acquisition of works of art to be placed in public construction or on public lands.

(b) The purpose of the Oklahoma Art in Public Places Act is to enhance public construction and encourage state cultural development.

(c) The administering agency shall be the Oklahoma Historical Society which is authorized to promulgate rules to administer the Oklahoma Art in Public Places Act. [74 O.S., Section 9030.1]

320:10-1-2. Definitions

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

"Accession" means the formal process used to accept a work of art into the Oklahoma Public Art Collection and record the artwork as a Collection item.

"Acquisition" means existing artwork bought or obtained.

"Act" means the Oklahoma Art in Public Places Act, 74 O.S., Section 9030 et seq.

"Appointing authority" shall be the Director or designee of the Project Agency. [74 O.S., Section 9030.2].

"Art", "artwork", or "work of art" means all forms of original creations of visual art, except for blasphemous material as defined by Section 901 of Title 21 of the Oklahoma Statutes or indecent or obscene material as defined by Section 1024.1 of Title 21 of the Oklahoma Statutes, including, but not limited to:

(A) sculpture, in any material or combination of materials, whether in the round, bas-relief, high relief, mobile, fountain, kinetic, or electronic,

(B) painting, including murals and frescoes,

(C) mosaic,

(D) photography,

(E) fine crafts made from clay, fiber and textiles, wood, glass, metal, plastics or any other material, or any combination thereof,

(F) drawing,

(G) calligraphy,

(H) mixed media composed of any combination of forms or media,

(I) unique architectural stylings or embellishments, including architectural crafts,

(J) ornamental gateways, and

(K) restoration or renovation of existing works of art of historical significance [74 O.S., Section 9030.2].

"Art in Public Places Program Guidelines" means the written program procedures and standards as approved by the Art in Public Places Oversight Committee.

"Artist" means a practitioner in the visual arts committed to producing high quality work, as recognized by the peers and critics of the artist, on a regular basis. The term "artist" shall not include the architect of a public building under construction or any member of the architectural firm of the architect. [74 O.S., Section 9030.2]

"Basis of Allocation" means the total cost of design and construction.

"Commission" means a task or job awarded to a person or group, especially an order to produce a particular product or piece of work.

"Deaccession" means the process of removing an object permanently from the Collection, usually through sale or exchange or any other transaction by which title of outgoing works of art are transferred from the Collection to another institution or individual. Under certain conditions, it may also include disposal by intentional destruction.

"Division" means the Art in Public Places Division. [74 O.S., Section 9030.2]

"Maintenance" means the ongoing upkeep required for artworks to retain their structural and aesthetic integrity. [74 O.S., Section 9030.2]

"Oklahoma Public Art Collection" means all accessioned works of art that have been created or purchased for, restored or renovated in accordance with the Oklahoma Art in Public Places Act.

"Preservation" means actions taken to retard or prevent deterioration or damage in artworks by control of their environment and/or treatment of their structure; and to maintain them in as unchanging a state as possible.

"Project" means any capital expenditure, including, but not limited to, bond issues, with the purpose of renovating or constructing public buildings costing Two Hundred Fifty Thousand Dollars (\$250,000.00) or more. [74 O.S., Section 9030.2]

"Project agency" means institutions within The Oklahoma State System of Higher Education or the department, board, commission, institution, or agency of the state subject to the Oklahoma Art in Public Places Act. The legislative and judicial branches of the State of Oklahoma shall be subject to the procedures of the Oklahoma Art in Public Places Act or shall implement another process to include art in locations subject to the control of those branches. Provided, that the expenditure for commissioning art by the legislative and judicial branches shall be no less than that established by Section 6 of this act. [74 O.S., Section 9030.2]

"Project architect" means the person or firm designing the public construction project. [74 O.S., Section 9030.2]

"Project Cost" means the total cost of design and construction.

"Public construction" or **"public building"** means any state building, facility, structure or park constructed, including any state-owned lands or space surrounding or integral to the building, facility, structure or park. The term "public construction" or "public building" shall not include:

(A) water, sewer, public utility projects, prisons, projects with the primary purpose of complying with the standards of the Americans with Disabilities Act, and data processing purchases which are not part of a public construction project and any capital projects undertaken by political subdivisions of the state as defined by paragraph 8 of Section 152 of Title 51 of the Oklahoma Statutes on buildings or land that they control, and

(B) capital projects subject to federal public art laws. Participation in the Oklahoma Art in Public Places Act shall be permissive for road, highway turnpike, and bridge construction projects of the Department of Transportation and the Oklahoma Transportation Authority. [74 O.S., Section 9030.2]

"Public land" means a site owned by the State of Oklahoma with major public access and visibility that serves a business, social, or environmental need. [74 O.S., Section 9030.2]

"Relocate" means moving a work of art and resiting it.

"Renovate" means to restore to a former state, renew or make over.

"Repair" means those extraordinary activities required to repair or restore a malfunctioning or damaged work of art [74 O.S., Section 9030.2] or to restore by replacing a part or putting together what is torn or broken.

"Replacement" means substitution.

"Restoration" means the treatment of a deteriorated or damaged artwork to approximate, as nearly as possible, its original form, design, color, and function with minimal further sacrifice of aesthetic and historic integrity.

"Society" means the Oklahoma Historical Society. [74 O.S., Section 9030.2]

"Work of art", "art", or "artwork" means all forms of original creations of visual art, except for blasphemous material as defined by Section 901 of Title 21 of the Oklahoma Statutes or indecent or obscene material as defined by Section 1024.1 of Title 21 of the Oklahoma Statutes, including, but not limited to:

(A) sculpture, in any material or combination of materials, whether in the round, bas-relief, high relief, mobile, fountain, kinetic, or electronic.

(B) painting, including murals and frescoes.

(C) mosaic.

(D) photography.

(E) fine crafts made from clay, fiber and textiles, wood, glass, metal, plastics or any other material, or any combination thereof.

(F) drawing.

(G) calligraphy.

(H) mixed media composed of any combination of forms or media.

(I) unique architectural stylings or embellishments, including architectural crafts.

(J) ornamental gateways, and

(K) restoration or renovation of existing works of art of historical significance. [74 O.S., Section 9030.2]

SUBCHAPTER 3. GENERAL COURSE AND METHOD OF OPERATING

320:10-3-1. Division office

The office of the Art in Public Places Division shall be located in Oklahoma City.

320:10-3-2. Division office hours

The office hours of the Art in Public Places Division shall be from 8:00 a.m. to 5:00 p.m. each day except Saturday and Sunday and any legal holiday established by statute or by proclamation of the Governor.

320:10-3-3. Communications with the Art in Public Places Division

Every communication in writing to the Art in Public Places Division shall be addressed to the Director at the office in Oklahoma City, unless otherwise directed.

320:10-3-4. Meetings/quorum of the Art in Public Places Division

Meetings shall be held at the call of the [Oversight Committee] chair . . . [and] a majority of the members present shall constitute a quorum. [74 O.S., Section 9030.3]

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320:10-3-5. Art in Public Places Guidelines

The Art in Public Places Division shall establish guidelines to implement the enacting legislation and the mission of the Art in Public Places Act. The Art in Public Places Guidelines will be evaluated and revised as needed. Guidelines can be viewed on the Art in Public Places Web site and copies of the guidelines are available to the public by writing or calling the Division office.

320:10-3-6. Availability of Division records, guidelines and policies

All rules, regulations, guidelines and other written statements of policy or interpretations formulated, adopted and used by the Division in the discharge of its functions and all final orders and decisions will be made available upon approval of written request to the Division Director.

320:10-3-7. Copies of official records

Copies of official records of the Art in Public Places Division may be made for \$.25 per page. Any material of the Art in Public Places Division protected from publication by State law shall not be released.

320:10-3-8. Officers of the Division

The Director of the Oklahoma Historical Society shall be the initial chair of the Committee. The officers of the Committee shall be a chair, a vice-chair, and a secretary elected at the last meeting of each fiscal year. Appointments to fill officer vacancies shall be made by the chair between elections. [74 O.S., Section 9030.3]

320:10-3-9. Oversight Committee

(a) The Oklahoma Historical Society may create an Art in Public Places Division to administer the Oklahoma Art in Public Places Act.

(b) There is hereby created an Art in Public Places Oversight Committee comprised of:

- (1) The Director of the Department of Central Services, or designee;
- (2) The Director of the Oklahoma Arts Council, or designee;
- (3) The Director of the Oklahoma Historical Society, or designee;
- (4) The Director of the Department of Transportation, or designee;
- (5) The Chancellor of the Oklahoma State Regents for Higher Education or designee;
- (6) One artist appointed by the Director of the Oklahoma Arts Council;
- (7) One architect appointed by the Director of Central Services;
- (8) One engineer appointed by the Director of Central Services; and
- (9) One museum director/curator appointed by the Director of the Oklahoma Historical Society.

(c) All appointed members shall serve a term of three (3) years and may be reappointed for one additional three-year term. [74 O.S., Section 9030.3]

(d) The State Capitol Preservation Commission shall retain its administrative control over art projects for the Capitol and the Governor's Mansion as provided for in Section 4104 of Title 74 of the Oklahoma Statutes [74 O.S., Section 9030.3] following the process as outlined in the Art in Public Places Program Guidelines. The Oklahoma Art in Public Places Oversight Committee shall request periodic notification of the progress of State Capitol Preservation Commission project(s).

(e) The governing boards for institutions of higher education or local boards of trustees shall perform the duties of the Oversight Committee for art projects on the campuses that they oversee [74 O.S., Section 9030.3] following the process as outlined in the Art in Public Places Program Guidelines. The entities performing those duties shall give periodic notification of the progress of the project(s) to the Oklahoma Art in Public Places Oversight Committee when requested.

320:10-3-10. Powers and duties of the Oversight Committee

[T]he Oversight Committee is empowered with overseeing each of the following phases of the development and management of the Oklahoma Art in Public Places Act:

- (1) Develop job specifications for a Division Director of the Art in Public Places Division, who shall not be subject to the Merit System of Personnel Administration;
- (2) Make recommendations for the implementation of the Art in Public Places Program to the Director of the Oklahoma Historical Society; and
- (3) Develop methods of selection of artists, criteria for selection, final approval of site projects, maintenance and repair of works of art, and periodic evaluation of the Program. [74 O.S., Section 9030.3]

320:10-3-11. Conflict of interest Oversight Committee

All voting Oversight Committee members must execute a conflict of interest agreement stating they will refrain from conduct which creates an appearance of impropriety or otherwise impairs their judgment in their oversight of the selection of a site, finalist or artist. If there is a conflict of interest for an Oversight Committee member on a specific project, that committee member will withdraw from participating in discussions, decision-making, or voting on that project.

320:10-3-12. Resignation of Oversight Committee members

If an appointed Oversight Committee member cannot meet his/her obligations to the Committee, the resignation of that member will be accepted and a replacement will be named as provided by Statute.

320:10-3-13. Director

The Director shall be employed by the Oklahoma Historical Society. Such other staff as is required shall be employed by the Oklahoma Art in Public Places Director who will assign their duties.

320:10-3-14. Eligible projects

(a) *All state agencies, including institutions within The Oklahoma State System of Higher Education, all state departments, boards, councils, and commissions shall allocate, as a nondeductible item out of any expenditures for capital projects including, but not limited to, bond issues for state construction excluding costs for bond issuance and related reserves, an amount of one and one-half percent (1 1/2%) of the expenditure to the Oklahoma Historical Society for the purpose of funding the Oklahoma Art in Public Places Act. [74 O.S., Section 9030.5]*

(b) This allocation shall be applicable to capital projects funded with state monies including those financed by appropriations or bonds. The cost of renovation or construction must be \$250,000 or more and the maximum assessment shall not exceed \$500,000. This allocation shall be applicable to all state agency capital projects when:

(1) projects are approved by the appointing authority after September 1, 2004, by a formally written action of the governing board, commission or director as evidenced by official minutes; or

(2) projects are approved in writing by execution of the initial construction contract on or after July 1, 2006.

(c) *The works of art commissioned pursuant to the Oklahoma Art in Public Places Act may be placed on public lands, integral to or attached to a public building or structure, or detached within or outside a public building or structure. [74 O.S., Section 9030.5]*

(d) For the purposes of the Art in Public Places Program, each building or structure receiving state capital improvement funds is a separate project and each separate project will be evaluated and assessed on its own. Under certain circumstances and with the prior approval of the Oversight Committee, when one project agency has two or more concurrent capital improvement projects in one general location, monies allocated for the art component may be pooled.

(e) When a building or renovation project is approved (either in official minutes or by executing the initial construction contract), the art allocation is figured on the projected costs at that time. If more state money is received but the project has not materially or substantially changed, there is not an additional assessment on those funds. In those instances, the additional funds are assumed to be for unexpected inflation, unplanned contingencies or to cover a financial deficit. If, however, the project has been altered, expanded or modified in a significant way causing the need for additional monies, then those additional state funds will be included in the Art in Public Places assessment.

(f) If a building or renovation project is completed in pre-determined phases or stages with separate funding for each phase, there is an assessment on each appropriation or bond for the specific phases. However, with prior approval of the Oversight

Committee, the assessments may be pooled in order to create one significant work of art.

320:10-3-15. Excluded projects

Projects not included in the assessment are those that are primarily:

(1) Water

(2) Sewer

(3) ADA or code compliance

(4) Asbestos removal

(5) Public utility projects

(6) Prisons

(7) Data processing purchases which are not part of a public construction project

(8) Capital projects of political subdivisions of the state

(9) Capital projects subject to federal public art laws

(10) Projects that are solely roof repair or replacement, HVAC system, electrical or plumbing repair or replacement

(11) Any project deemed an emergency by the Department of Central Services and as defined in 61 O.S., Section 130.

320:10-3-16. Appeal procedure

Any state institution or agency has the right to appeal to the Art in Public Places Oversight Committee. Said institution or agency must submit a written letter of appeal to the Oversight Committee within thirty (30) days of receiving the decision by the Art in Public Places staff. The letter of appeal must be delivered to the Director at the Art in Public Places office. The Oversight Committee will consider the appeal and make a final determination within thirty days of receipt of the letter of appeal.

320:10-3-17. Project agency/duties

(a) Project agencies shall allocate, as a nondeductible item out of any expenditures for capital projects including, but not limited to, bond issues for state construction excluding costs for bond issuance and related reserves, an amount of one and one-half percent (1 1/2%) of the expenditure to the Oklahoma Historical Society for the purpose of funding the Oklahoma Art in Public Places Act [74 O.S., 9030.5] except as provided by the Act.

(b) Representatives from the Project Agency shall meet with the Art in Public Places Program staff to discuss the program and their project at the earliest possible date and shall provide the Art in Public Places staff with all pertinent information relative to their project as set forth in the Oklahoma Art in Public Places Program Guidelines. The Project Agency shall ensure that the project architect and general contractor work within the intent of the Art in Public Places program as described in the Oklahoma Art in Public Places Program Guidelines.

320:10-3-18. Public notification of calls for entries

All calls for entries will be posted on the Oklahoma Art in Public Places Web site, Oklahoma Arts Council Web site,

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other Web sites known for posting public art notices, as appropriate, and if requested, a hard copy will be forwarded to any individual or organization.

320:10-3-19. Materials submitted to the Division become property of the State of Oklahoma

All materials submitted to the Division may become the property of the State of Oklahoma unless otherwise indicated. Materials may include, but not be limited to, resumes, submissions, drawings, projection slides, CDs, models, maquettes, videos, and publications of any kind.

320:10-3-20. Artwork becomes the property of the State of Oklahoma

Upon completion of installation and final acceptance, any work of art commissioned or acquired in accordance with the Art in Public Places Act shall become property of the State of Oklahoma. [74 O.S., Section 9030.4] All accepted artwork shall be accessioned into the Oklahoma Public Art Collection.

320:10-3-21. Prohibition of statements on behalf of the Site Committees or Art in Public Places Oversight Committee

Individual members of the Site Committees and the Oversight Committee are not authorized to make statements on behalf of the Art in Public Places Division without prior approval of the Division Director.

SUBCHAPTER 5. SITE COMMITTEES

320:10-5-1. Establishment of site committees

(a) A site committee shall be appointed by the appointing authority of the project agency, except for art projects on higher education campuses, for each project and, if the project involves a facility with more than one agency, a representative from each agency shall be appointed. [74 O.S., Section 9030.4]

(b) For projects on higher education campuses, either a committee, appointed by the governing board of the institution or the local board of trustees, shall be formed to assume the duties of the Site Committee or the board itself can assume those responsibilities in addition to their statutory duties as the Oversight Committee.

(c) The site committee for the Capitol and the Governor's Mansion shall be the State Capitol Preservation Commission. [74 O.S., Section 9030.4]

320:10-5-2. Duties

The site committee is charged with making recommendations to the Oversight Committee, selection of the location for the artwork, media for the artwork, artist selection, development of a project-specific educational program for tourism and

public school curriculum, and coordination of the dedication ceremony. The site committee shall report back to the Oversight Committee which has final approval authority. [74 O.S., Section 9030.4]

320:10-5-3. Composition of committee

Each site committee shall include the Art in Public Places Division Director, the project agency appointing authority or designee, and the project architect. The site committee shall also be comprised of not less than one local arts professional, one local artist, two community representatives, and one art educator who will be appointed by the project agency director. [74 O.S., Section 9030.4]

320:10-5-4. Conflict of interest

All voting and nonvoting Site Committee members must execute a conflict of interest agreement stating they will refrain from conduct which creates an appearance of impropriety or otherwise impairs their judgment in the selection of a site, finalist or artist and that they may be asked to withdraw from the Site Committee if they engage in such conduct.

320:10-5-5. Quorum

A majority of the Site Committee constitutes a quorum. A quorum is required for a vote and decisions will be made by a majority vote.

320:10-5-6. Length of service

The committee is limited to the duration of the project. [74 O.S., Section 9030.4]

320:10-5-7. Resignation

If a committee member cannot meet his/her obligations to the respective committee, the resignation of that committee member will be accepted and a replacement will be named by the project agency director.

SUBCHAPTER 7. FINANCIAL PROVISIONS

320:10-7-1. Funding by state agencies

All state agencies, including institutions within The Oklahoma State System of Higher Education, all state departments, boards, councils, and commissions shall allocate, as a noneductible item out of any expenditures for capital projects including, but not limited to, bond issues for state construction excluding costs for bond issuance and related reserves, an amount of one and one-half percent (1 1/2%) of the expenditure to the Oklahoma Historical Society for the purpose of funding the Oklahoma Art in Public Places Act, except as otherwise provided by subsection B of [74 O.S., Section 9030.5]. [74 O.S., Section 9030.5]

320:10-7-2. Basis of allocation computation

(a) For all eligible capital projects subject to the Art in Public Places Act as described herein, the Project Agency shall set aside 1 $\frac{1}{2}$ % of the capital cost of construction and transfer that amount to the Oklahoma Historical Society for the use and benefit of the Art in Public Places Division as soon as the funds are available and the Total Project Budget is known. The basis of the allocation calculation is the Project Cost which is the combined cost of design and construction. The cost of land, personal property or the cost of issuance of bonds or borrowing money is not included in the Project Cost, nor does it include the cost of pre-project planning that may be necessary to determine a project budget.

(b) However, the cost of design and construction (which together set the Basis of Allocation); the 1 $\frac{1}{2}$ % allocation for the Art in Public Places; the costs for obtaining funds; the cost of any land acquisition, furnishings; moving expenses; and any other incidental costs associated with planning, building, moving to and operating a new or newly renovated building normally attributed to the Project Budget are all included when calculating the Total Project Budget for planning purposes.

(c) After the art allocation is determined and transferred to the Oklahoma Historical Society for the Art in Public Places Division, the amount of that assessment will not change unless the scope of the project is materially or substantially changed and more state funds are issued or appropriated for the project.

(d) Any state institution or agency has the right to appeal to the Art in Public Places Oversight Committee following the procedure as set forth in 320:10-3-16.

320:10-7-3. Maximum assessment

The maximum assessment for any project shall not exceed Five Hundred Thousand Dollars (\$500,000.00). This assessment shall not apply to any private donations for a capital project. This allocation shall be applicable to all state agency capital projects when:

- (1) projects are approved by the appointing authority after September 1, 2004 after September 1, 2004 by a formally written action of the governing board, commission or director as evidenced by official minutes; or
- (2) projects are approved in writing by execution of the initial construction contract on or after July 1, 2006.

320:10-7-4. Allocations to Commissioning of Art in Public Places Revolving Fund

Of the assessment provided for in subsection A of [74 O.S., Section 9030.5], four-fifths (4/5) shall be placed in the Commissioning of Art in Public Places Revolving Fund, created in Section 7 of Enrolled Senate Bill No. 1347 of the 2nd Session of the 49th Oklahoma Legislature, for the commissioning of any work of art for the Oklahoma Art in Public Places Act. Institutions within The Oklahoma State System of Higher Education shall remain in complete administrative control of their four-fifths (4/5) assessment pursuant to this subsection for the acquisition of art. The remaining one-fifth (1/5) of the assessment shall be reserved for the Art in Public Places Administrative and Maintenance Revolving Fund created by

Section 8 of Enrolled Senate Bill No. 1347 of the 2nd Session of the 49th Oklahoma Legislature. [74 O.S., Section 9030.5]

320:10-7-5. Art in Public Places Administrative and Maintenance Revolving Fund

Monies deposited in the Art in Public Places Administrative and Maintenance Revolving Fund shall be divided equally between the subaccounts in the fund for:

- (1) *the maintenance and repair of works of art commissioned pursuant to the Oklahoma Art in Public Places Act, and*
- (2) *the administrative and educational costs incurred by the Division. [74 O.S., Section 9030.5]*

320:10-7-6. Monies donated from private sources

(a) *The Society shall establish a separate subaccount for each project. Monies in these subaccounts may be used to match monies from other private and public sources for commissioning art in accordance with the Oklahoma Art in Public Places Act. [74 O.S., Section 9030.6] However, all private monies donated or received from sources other than the State of Oklahoma for the commissioning, designing, fabricating, installing, dedicating, conserving, repairing or any adjunct activity shall be deposited in the appropriate Oklahoma Art in Public Places Revolving Fund for disbursement through the Art in Public Places Division.*

(b) *The total cost of the artwork for a project cannot be donated in lieu of participation in the Art in Public Places process. One and one-half percent (1 $\frac{1}{2}$ %) of the expenditures for capital projects must be dedicated to work(s) of art.*

320:10-7-7. Authority to make expenditures

(a) *All monies accruing to the credit of the Commissioning of Art in Public Places Revolving Fund and the Art in Public Places Administrative and Maintenance Revolving Fund may be budgeted and expended by the Oklahoma Historical Society. [74 O.S., Section 9030.6] [74 O.S., Section 9030.7]*

(b) *Expenditures from the funds shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment. [74 O.S., Section 9030.6] [74 O.S., Section 9030.7]*

320:10-7-8. Monies for commissioning of art not spent

If there are monies from a project for the commissioning of art not spent, those monies may be pooled in the fund for the commissioning of art in, on, or near other state buildings. [74 O.S., Section 9030.6]

320:10-7-9. Transfer of funds in excess of one million dollars

Whenever the unencumbered balance in [the Art in Public Places Administrative and Maintenance Revolving Fund] exceeds One Million Dollars (\$1,000,000.00), the assessment

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shall be placed in the Commissioning of Art in Public Places Revolving Fund to the credit of the subaccount established for the project upon which the assessment was made. [74 O.S., Section 9030.6]

320:10-7-10. Exclusion from the Oklahoma Central Purchasing Act

Artwork or art restoration projects in the administrative control of the Oversight Committee pursuant to the Oklahoma Art in Public Places Act shall not be subject to the Oklahoma Central Purchasing Act, but the projects shall be subject to a call for entries process established by the Oversight Committee. [74 O.S., Section 9030.3]

SUBCHAPTER 9. MANAGEMENT OF THE COLLECTION

320:10-9-1. Management and care of the collection

The Oklahoma Art in Public Places Division will adhere to professional standards of accessioning methodology, collection care and management at all times. Policies are consistent with those of the Oklahoma Historical Society and are set forth more specifically in the Oklahoma Art in Public Places Program Guidelines.

320:10-9-2. Maintenance and conservation procedures

Maintenance and conservation procedures are set forth in the Oklahoma Art in Public Places Program Guidelines including the required information that must be documented on every work of art in the Oklahoma Public Art Collection.

320:10-9-3. Process for deaccessioning or relocating a work of art

Deaccessioning or relocating a work of art will follow a process consistent with the collection management policies of the Oklahoma Historical Society and as described in the Oklahoma Art in Public Places Program Guidelines.

[OAR Docket #06-1448; filed 11-20-06]

TITLE 340. DEPARTMENT OF HUMAN SERVICES

CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #06-1441]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. Human Resources Management Division (HRMD)

Part 3. Internal Human Resources

340:2-1-32. [AMENDED]

(Reference APA WF 06-10)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; HB 2840; and 10 O.S. 7004-1.8. .

DATES:

Adoption:

October 24, 2006

Approved by Governor:

November 1, 2006

Effective:

January 1, 2007

Expiration:

Effective through July 14, 2007, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Emergency approval is requested as the Oklahoma Department of Human Services (OKDHS) finds compelling public interest to preserve the health, safety, and well-being of families with children who receive services provided by Child Welfare (CW) specialists, by revising rules to promote achievement of meet or exceed in the current federal standards for outcomes related to safety, permanency, and well-being by children and families served by CW specialists, levels I through IV. If the proposed rule is not implemented, OKDHS will not be in compliance with Section 7004-1.8 of Title 10 of the Oklahoma Statutes (10 O.S. 7004-1.8) that mandates OKDHS to establish a performance-based incentive compensation program by January 1, 2007.

ANALYSIS:

The proposed revisions bring the rule into compliance with 10 O.S. 7004-1.8, as provided in House Bill (HB) 2840 that mandates OKDHS, on or before January 1, 2007, establish a performance-based incentive compensation program for full-time CW specialists.

340:2-1-32 is revised to add language that allows OKDHS to pay a performance-based incentive to full-time CW specialists, levels I through IV, who meet the requirements.

CONTACT PERSON:

Dena Thayer at (405)521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF JANUARY 1, 2007:

SUBCHAPTER 1. HUMAN RESOURCES MANAGEMENT DIVISION (HRMD)

PART 3. INTERNAL HUMAN RESOURCES

340:2-1-32. Salary Administration Plan (SAP) and Agency Compensation Guidelines

(a) **Salary Administration Plan (SAP).** The Salary Administration Plan (SAP) is based on the standard that employees performing similar work receive similar pay and that variation in the requirements is reflected equitably in the pay band. The salary range established for each job family and level provides a minimum and maximum salary rate.

(1) **Computation of salary payments — general.** Oklahoma Department of Human Services (OKDHS) employees are paid on a monthly basis in accordance with applicable salary schedules. The pay period extends from

the 16th of the month through the 15th of the following month.

(2) **Entrance salary.** The entrance salary for positions in the classified service is the entry salary identified in the SAP, except as provided in the Merit System of Personnel Administration Rules (Merit Rules). The entrance salary for positions in the unclassified service is normally a comparable salary. Requests to establish salary above the minimum may be processed by completing Form 11PE017E, Salary Exception Request, in accordance with the ~~Special Entrance Rate/Salary Exception Process (P-17)~~ special entrance rate or salary exception request as described in the Agency Compensation Guidelines (ACG). The salary of a new employee is effective on the employee's first working day.

(3) **Salary increase.** Salary increases are not automatic but are granted in accordance with the SAP and applicable legislation.

(4) **Equity and salary adjustments.** For classified employees, an equity pay adjustment is a mechanism authorized in accordance with appropriate Merit Rules and the Agency Compensation Guidelines. For employees in the unclassified service, a change in salary is in accordance with the ~~Agency Compensation Guidelines~~ ACG or applicable legislation.

(b) **Performance-based incentive compensation program.** A person employed full-time as child welfare specialist I through IV, exclusively working as a child welfare specialist, may be eligible once per year for the performance-based incentive compensation program authorized by Section 7004-1.8 of Title 10 of the Oklahoma Statutes.

(1) **Incentive compensation.** The incentive compensation is a lump sum performance incentive of one and one-half percent of the established annual base salary of the eligible employee. The lump sum incentive compensation does not increase the base salary of the employee.

(2) **Requirements.** To be eligible for the incentive compensation, the employee must meet the criteria included in (A) or (B) of this paragraph.

(A) Master-level employees must:

(i) have an overall rating of exceeds standards on the most recent completed Form OPM-111, Performance Management Process (PMP);

(ii) have a master's degree, from an institution accredited by a generally accepted accrediting body and accepted for transfer credit by the Oklahoma Regents for Higher Education, in:

- (I) social work;
- (II) human relations;
- (III) psychology;
- (IV) sociology;
- (V) guidance and counseling;
- (VI) juvenile justice; or
- (VII) child development;

(iii) have completed all required OKDHS sponsored field training per OAC 340:75-1-231 and 340:75-1-232; and

(iv) be assigned to the same human services center for 12 consecutive months on the day of the employee's annual performance review.

(B) Employees in counties who meet the OKDHS Child and Family Services Review (CFSR) standards must:

(i) have an overall rating of meets standards on the most recent completed Form OPM-111;

(ii) have completed all required OKDHS sponsored field training per OAC 340:75-1-231 and 340:75-1-232; and

(iii) be assigned to the same human services center for 12 consecutive months on the date of the CFSR per OAC 340:75-18-10.

(I) The human services center must meet or exceed all current federal standards for outcomes in safety, permanency, and well-being by children and families.

(II) The CFSR is completed yearly by OKDHS utilizing current CFSR national standards as adopted by the Administration for Children and Family Services of the United States Department of Health and Human Services pursuant to Sections 1355.31 through 1355.37 of Title 45 of the Code of Federal Regulations, as amended.

[OAR Docket #06-1441; filed 11-16-06]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)**

[OAR Docket #06-1440]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 2. Temporary Assistance For Needy Families (TANF) Work Program
340:10-2-1. [AMENDED]
(Reference APA WF 06-11)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Sections 230.50, 230.52, 230.55, 230.56, 230.60, and 230.62 through 230.66 of Title 56 of the Oklahoma Statutes; the Personal Responsibility and Work Opportunity Act of 1996; and the Deficit Reduction Act of 2005.

DATES:
Adoption:
October 24, 2006

Approved by Governor:
November 1, 2006

Effective:
Upon approval by the Governor or November 1, 2006, whichever is later.

Expiration:
Effective through July 14, 2007, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

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FINDING OF EMERGENCY:

Emergency approval is requested as the Oklahoma Department of Human Services (OKDHS) finds compelling public interest to preserve the health, safety, and welfare of families with children to comply with the Temporary Assistance for Needy Families (TANF) Work program as required by federal and state law. Federal regulations regarding work-eligible individuals, core and non-core work activities, and participation for holidays and excused absences for unpaid work activities have been finalized and must be implemented to meet the required participation rate. Without approval of the proposed rule, OKDHS may face fiscal sanctioning for failing to meet the work participation requirements imposed by the Deficit Reduction Act.

ANALYSIS:

The proposed revisions amend TANF rules in accordance with the Deficit Reduction Act of 2005 regarding calculation of work participation rates in the TANF Work program. 340:10-2-1 is revised to: (1) define each work activity, core or non-core, to promote consistency in the measurement of the work participation rates; (2) define work-eligible individuals to determine how the individual counts in the calculation of the work participation rate; and (3) include calculations for work participation hours for individuals in unpaid allowable work activities who missed participation due to holidays and a maximum number of excused absences.

CONTACT PERSON:

Dena Thayer at (405)521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D) AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR NOVEMBER 1, 2006, WHICHEVER IS LATER:

SUBCHAPTER 2. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) WORK PROGRAM

340:10-2-1. Work requirements

All parents or needy caretakers who apply for or receive cash assistance from the State of Oklahoma are required to be engaged in a work activity. The parent(s) or needy caretaker must participate in work activities for the number of hours weekly that are necessary to move that individual into employment and self-sufficiency.

(1) **Work-eligible individual.** A work-eligible individual is defined as an adult or minor head-of-household included in the Temporary Assistance for Needy Families (TANF) assistance unit. Excluded from this definition is a parent providing care for a disabled family member living in the home who does not attend school on a full-time basis, provided the need for such care is supported by medical documentation.

(2) **Minimum hours of work activities.** Minimum hours of work activities for federal reporting purposes differ for single parent and two parent families.

(A) All families, which include single parents with children, both adults with deprivation based on incapacity, and all Temporary Assistance for Needy Families (TANF) applicants, and recipients who meet the definition of a work-eligible individual are required to participate the minimum hours of work activities.

(i) A work-eligible individual is required to participate an average of 30 hours per week, with the exception of a single custodial parent with a child under age six who must participate an average of 20 hours per week for Federal Fiscal Year (FFY) 1997 and 1998.

(ii) In a two-parent family when deprivation is based on incapacity, the non-incapacitated adult must average 30 hours per week for FFY 1999; and, unless required in the home to provide care for the incapacitated work-eligible parent.

(iii) In a two-parent family when deprivation is based on unemployment, one adult must participate in work activities an average of 35 hours per week and the other adult must participate an average of 30 hours per week for FFY 2000 and thereafter. If one parent is an ineligible alien, the other parent must participate an average of 35 hours per week.

~~(B) In two parent families one adult is required to be engaged in work activities at least 35 hours per week and the other adult must meet the all family requirement listed in subparagraph (A) of this paragraph. If one parent is an ineligible alien the other parent must participate 35 hours a week.~~

(B) Hours missed due to holidays and a maximum of an additional 80 hours of excused absences count as hours of participation for any unpaid scheduled work activity.

(i) Federal law establishes public holidays. State holidays are ordered observed by the Governor. Scheduled short-term closures by the facility the participant attends can be included as holidays. If the facility where the participant is scheduled to attend is open on a designated holiday, this day is not considered a holiday for participation purposes.

(ii) Excused absences are reasonable, short-term hours missed from a scheduled work activity. There are a maximum of 10 days or 80 hours of excused absences in any 12-month period. No more than two days or 16 hours of excused absences in a month are counted as hours of TANF Work participation. All excused absences must be approved by the worker. An excused absence is defined as:

(I) unavailability of appropriate child care;

(II) illness or injury of the participant or a family member who lives in the household. The family member must meet the definition of a relative per OAC 340:10-9-1;

(III) scheduled doctor appointments for the participant or a family member who lives in the household;

(IV) court-required appearance by the participant;

(V) required attendance at parent and teacher conferences by the participant;

(VI) temporary unavailability of planned transportation when needed or inability to arrange for transportation;

(VII) occurrence of inclement weather that prevented the participant, and other persons similarly situated, from traveling to, or participating in, the prescribed activity;

(VIII) crisis intervention needed due to domestic violence issues;

(IX) family crisis; or

(X) required attendance of the participant for a specific appointment by another governmental entity.

(iii) To count an excused absence or holiday as hours of participation, the individual must have been scheduled to participate in an allowable work activity for the period of the absence. Participation allowances are paid for approved holidays and approved excused absences.

(23) **Work activities.** Work activities are defined as, but are not limited to: core and non-core and must be scheduled, structured, and supervised. TANF Work participants are placed in core work activities when appropriate.

(A) Core work activities are:

(A*i*) unsubsidized employment that is full-time or part-time employment in the public or private sector that is not subsidized by TANF or any other public program;

(B*ii*) subsidized private sector employment that is employment in the private sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a recipient;

(C*iii*) subsidized public sector employment that is employment in the public sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a recipient;

(D*iv*) Work Experience Program (WEP) participation if sufficient private sector employment is not available that is a work activity that provides an individual with an opportunity to acquire general skills, training, knowledge, and work habits necessary to obtain employment;

(E*v*) on-the-job training that is training in the public or private sector that a paid employee receives while he or she is engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job;

(F*vi*) job search that is the act of seeking or obtaining employment and job readiness that prepares the person to seek or obtain employment, and includes life skills training, substance abuse treatment, mental health treatment, or rehabilitation activities for those who are otherwise employable;

(G*vii*) job readiness assistance community services that are structured programs in which TANF recipients perform work for the direct benefit of the community under the auspices of public or non-profit organizations; and

(H*viii*) vocational training, not to exceed 12 months, with respect to any individual that are organized educational programs directly related to the preparation of individuals for employment in current or emerging occupations requiring training other than a baccalaureate or advanced degree.

(B) Non-core work activities are:

(i) job skills training directly related to employment that is training or education for job skills required by an employer to provide an individual with the ability to obtain employment or to advance or adapt to the changing demands of the workplace;

(ii) education directly related to employment, in the case of a recipient who has not received a high school equivalency, that is education related to a specific occupation, job, or job offer; and

(iii) satisfactory school attendance at a secondary school or in a course of study leading to a General Educational Development (GED) certificate, in the case of a recipient who has not completed secondary school or received such a certificate, that is regular attendance with the requirements of the secondary school, or in a course of study leading to a GED certificate.

(34) **Limitations and special rules.** A single custodial parent who has:

(A) who has not attained 20 years of age and has not completed high school is determined to be in a work activity for a the month if the recipient maintains satisfactory attendance at a secondary school or the equivalent during the month; or

(B) with a child under the age of three four months is not required to participate in a work activity. The recipient can use this special rule for a lifetime period limit not to exceed 12 months.

[OAR Docket #06-1440; filed 11-16-06]

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

1:2006-24.

EXECUTIVE ORDER 2006-24

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the powers vested in me by the Oklahoma Statutes in 25 O.S. Section 82.1, 88 and 91.3, hereby order the following additional date be observed as a holiday by the State of Oklahoma in 2007:

November 16, 2007, Statehood Day.

Oklahoma celebrates its 100th anniversary of statehood on November 16, 2007. I urge all Oklahomans to celebrate Oklahoma's unique history and its extraordinary future. I encourage you to join Oklahomans throughout this great state to proclaim we are proud of Oklahoma and prouder to be Oklahomans.

This Executive Order shall be forwarded to the Director of the Office of Personnel Management who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 15th day of November, 2006.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:

M. Susan Savage
Secretary of State

[OAR Docket #06-1490; filed 11-21-06]

1:2006-25.

EXECUTIVE ORDER 2006-25

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the authority vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution and 63 O.S. §§ 683.1 et seq., hereby declare that because there is a state of emergency existing in the State of Oklahoma due to extremely dry weather

and lack of significant rainfall, it is necessary to assist and expedite all efforts of drought relief and wildfire suppression. In order to accommodate this need and to provide assistance to the citizens in this extraordinary situation, I hereby order the temporary suspension of the following as they apply to vehicles used in the support efforts:

1. The requirements for special permits for use of overweight/oversized vehicles under Title 47;
2. The requirements for licensing/operating authority as required by the Oklahoma Corporation Commission; and,
3. The requirements for licensing/registration as required by the Oklahoma Tax Commission.

In addition, due to the wildfires and severe drought conditions occurring statewide it is necessary to expedite access to hay and water for livestock. In order to accommodate this need and to provide assistance to our farmers and ranchers in this extraordinary situation, I hereby order the temporary suspension of the requirements for special permits for use of overweight/oversized vehicles under Title 47 as they apply to vehicles used to transport round baled hay and water for livestock.

This temporary order shall terminate at the end of thirty (30) days.

This executive order shall be forwarded to the Oklahoma Corporation Commission, the Oklahoma Tax Commission and the Commissioner Of Public Safety, who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 16th day of November, 2006.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:

M. Susan Savage
Secretary of State

[OAR Docket #06-1492; filed 11-21-06]

