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Oklahoma State Bureau of NARCOTICS and Dangerous Drugs Control	475	Oklahoma TAX Commission	710
Board of Regents of NORTHERN Oklahoma College	480	Oklahoma Commission for TEACHER Preparation	712
Oklahoma Board of NURSING	485	TEACHERS' Retirement System	715
Oklahoma State Board of Examiners for LONG-TERM Care Administrators (<i>Formerly: Oklahoma State Board of Examiners for NURSING Home Administrators</i>)	490	State TEXTBOOK Committee	720
Board of Regents of OKLAHOMA City Community College	495	Oklahoma TOURISM and Recreation Department	725
Board of Regents of OKLAHOMA Colleges	500	Department of TRANSPORTATION	730
Board of Examiners in OPTOMETRY	505	Oklahoma TRANSPORTATION Authority (<i>Name changed to Oklahoma TURNPIKE Authority 11-1-05 - See Title 731</i>)	
State Board of OSTEOPATHIC Examiners	510	Oklahoma TURNPIKE Authority (<i>Formerly: Oklahoma TRANSPORTATION Authority AND Oklahoma TURNPIKE Authority - See also Title 745</i>)	731
PARDON and Parole Board	515	State TREASURER	735
Oklahoma PEANUT Commission	520	Board of Regents of TULSA Community College	740
Oklahoma State PENSION Commission	525	Oklahoma TURNPIKE Authority (<i>Name changed to Oklahoma TRANSPORTATION Authority 11-1-99 - no rules enacted in this Title - See Title 731</i>)	745
State Board of Examiners of PERFUSIONISTS	527	Board of Trustees for the UNIVERSITY Center at Tulsa	750
Office of PERSONNEL Management	530	UNIVERSITY Hospitals Authority	752
Oklahoma State Board of PHARMACY	535	UNIVERSITY Hospitals Trust	753
PHYSICIAN Manpower Training Commission	540	Board of Regents of the UNIVERSITY of Oklahoma	755
Board of PODIATRIC Medical Examiners	545	Board of Regents of the UNIVERSITY of Science and Arts of Oklahoma	760
Oklahoma POLICE Pension and Retirement System	550	Oklahoma USED Motor Vehicle and Parts Commission	765
State Department of POLLUTION Control (<i>abolished 1-1-93</i>)	555	Oklahoma Department of VETERANS Affairs	770
POLYGRAPH Examiners Board	560	Board of VETERINARY Medical Examiners	775
Oklahoma Board of PRIVATE Vocational Schools	565	Oklahoma Department of CAREER and Technology Education (<i>Formerly: Oklahoma Department of VOCATIONAL and Technical Education</i>)	780
State Board for PROPERTY and Casualty Rates (<i>abolished 7-1-06; see also Title 365</i>)	570	Oklahoma WATER Resources Board	785
State Board of Examiners of PSYCHOLOGISTS	575	Board of Regents of WESTERN Oklahoma State College	790
Department of CENTRAL Services (<i>Formerly: Office of PUBLIC Affairs</i>)	580	Oklahoma WHEAT Commission	795
PUBLIC Employees Relations Board	585	Department of WILDLIFE Conservation	800
Oklahoma PUBLIC Employees Retirement System	590	WILL Rogers and J.M. Davis Memorials Commission	805
Department of PUBLIC Safety	595		
REAL Estate Appraiser Board	600		
Oklahoma REAL Estate Commission	605		

Notices of Rulemaking Intent

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

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

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

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 205. HAZARDOUS WASTE MANAGEMENT

[OAR Docket #07-1350]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Incorporation by Reference
252:205-3-1. [AMENDED]

SUMMARY:

The purpose of the proposed amendment is to incorporate by reference the federal hazardous waste regulations found in 40 CFR Parts 124 and 260-279 revised as of July 1, 2007.

AUTHORITY:

Environmental Quality Board and Hazardous Waste Management Advisory Council powers and duties; 27A O.S. §§ 2-2-101, 2-2-104, 2-2-201, 2-7-105 and 2-7-106

COMMENT PERIOD:

Written comments may be delivered or mailed to the contact person from September 4, 2007, through October 11, 2007. Oral comments may be made at the meeting of the Hazardous Waste Management Advisory Council, October 11, 2007, and at the Environmental Quality Board meeting, November 15, 2007.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council on October 11, 2007, at 10:00 a.m. at the Oklahoma City office of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board at 9:30 a.m. on November 15, 2007, at Southwestern Oklahoma State University, Student Union Building, 800 North Custer, Weatherford, OK 73096.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities affected by these modifications 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, 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 rule.

COPY OF PROPOSED RULE:

The proposed rule may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N.

Robinson, Oklahoma City, Oklahoma, or reviewed online at <http://www.deq.state.ok.us/LPDnew/LPPProprules.htm>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <http://www.deq.state.ok.us/LPDnew/LPPProprules.htm>.

CONTACT PERSON:

Mike Edwards (405) 702-5226, 707 North Robinson, Fifth Floor, Oklahoma City, Oklahoma 73102. Mailing address is P. O. Box 1677, Oklahoma City, OK 73101-1677. E-mail address is mike.edwards@deq.state.ok.us.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) 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 #07-1350; filed 8-9-07]

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

[OAR Docket #07-1351]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Appendix A. Classification of Community and Nontransient Noncommunity Water Systems, Wastewater Systems and Laboratories [REVOKED]

Appendix A. Classification of Community and Non-transient, Non-community Water Systems, Wastewater Systems and Laboratories (OAC 252:710-3-33) [NEW]

SUMMARY:

The proposed changes to the Waterworks and Wastewater Works Operator Certification rules modify Appendix A to add clarifying language.

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.*

Notices of Rulemaking Intent

COMMENT PERIOD:

Oral comments may be made at the meeting of the Waterworks and Wastewater Works Advisory Council to be held on October 5, 2007, and at the Environmental Quality Board meeting on November 15, 2007. Written comments may be delivered or mailed to the contact person from September 4, 2007, through October 5, 2007.

PUBLIC HEARING:

Before the Waterworks and Wastewater Works Advisory Council at 10:00 a.m. on October 5, 2007, at the offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board at 9:30 a.m. on November 15, 2007, at Southwestern Oklahoma State University, Student Union Building, 800 North Custer, Weatherford, Oklahoma 73096.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities affected by this rule 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, 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 rule.

COPIES OF PROPOSED RULE:

The proposed rule may be obtained from the contact person or reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, 73102. Additionally, the proposed rules are available on-line at www.deq.state.ok.us/wqdnew/index.html under "what's new".

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 (3) days in advance of the hearing. The TDD Relay Number is 1-800-522-8506.

[OAR Docket #07-1351; filed 8-9-07]

TITLE 545. BOARD OF PODIATRIC MEDICAL EXAMINERS CHAPTER 15. EXAMINATION/LICENSURE

[OAR Docket #07-1345]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

545:15-1-2. Examination [AMENDED]

545:15-1-5. License [AMENDED]

SUMMARY:

The amendments move the residency requirement from the Examination section to the License section and allows applicants who have passed the State examination and are within 90 days of completing a two or three year podiatric surgical residency to be issued a license.

AUTHORITY:

Title 59 O.S., Section 141, Board of Podiatric Medical Examiners

COMMENT PERIOD:

The comment period will run from September 4, 2007 to October 26, 2007. Written comments may be sent to the office of the Board, PO Box 18256, Oklahoma City, OK 73154-0256.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on November 2, 2007 at 5:30 p.m. at the Tulsa Marriott Southern Hills, 1902 East 71st Street, Tulsa, OK. Written notice of intent to make oral comment must be received by this office no later than October 26, 2007.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and available after September 4, 2007 at the office of the Board, 5104 North Francis, Suite C, Oklahoma City, Oklahoma.

CONTACT PERSON:

Jan Ewing, Deputy Director (405) 767-1404

[OAR Docket #07-1345; filed 8-6-07]

Emergency Adoptions

An agency may adopt new rules, or amendments to or revocations of existing rules, on an emergency basis if the agency determines that "an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency rule[s] [A]n agency may promulgate, at any time, any such [emergency] rule[s], provided the Governor first approves such rule[s]" [75 O.S., Section 253(A)].

An emergency action is effective immediately upon approval by the Governor or on a later date specified by the agency in the preamble of the emergency rule document. An emergency rule expires on July 15 after the next regular legislative session following promulgation, or on an earlier date specified by the agency, if not already superseded by a permanent rule or terminated through legislative action as described in 75 O.S., Section 253(H)(2).

Emergency rules are not published in the *Oklahoma Administrative Code*; however, a source note entry, which references the *Register* publication of the emergency action, is added to the *Code* upon promulgation of a superseding permanent rule or expiration/termination of the emergency action.

For additional information on the emergency rulemaking process, see 75 O.S., Section 253.

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

[OAR Docket #07-1349]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 15. Expanded Opportunities in Summer Programs
210:35-15-2. Summer school programs. [AMENDED]

AUTHORITY:

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

DATES:

Adoption:

May 24, 2007

Approved by Governor:

July 5, 2007

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2008, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The proposed rule change is considered an emergency because schools are preparing for the summer term. The current rule may limit the programs and activities that may be offered for summer school.

ANALYSIS:

The proposed rule change is considered an emergency because schools are preparing for the summer term. The current rule may limit the programs and activities that may be offered for summer school.

CONTACT PERSON:

Connie Holland, 405-521-3308

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

SUBCHAPTER 15. EXPANDED OPPORTUNITIES IN SUMMER PROGRAMS

210:35-15-2. Summer school programs

Rules and regulations for summer school programs are:

(1) **Application.** Schools, including Technology Centers, desiring accreditation by the State Board of Education shall make application on forms furnished for this purpose (summer high school). The application shall be completely and properly completed and filed with the Accreditation Section, State Department of Education, on or before the end of the first week of the summer session.

(2) **Time in session.**

~~(A) Summer school shall not be in session more than 5 days per week.~~

~~(B)~~ A high school may define a unit of credit as meeting a minimum of 60 hours for 1/2 unit of credit or a minimum of 120 hours for 1 unit of credit.

(3) **Teacher load.**

(A) Teachers teaching in summer schools shall not teach more than two units during the summer term of school, unless special permission is granted by the State Department of Education.

(B) Teachers shall not teach more than two subjects during any one period.

(4) **Teacher certification.** All teachers shall have valid appropriate teacher certificates.

(5) **Summer school Career Orientation classes.** Summer school Career Orientation classes at the technology center may be accredited for grades 9-10.

[OAR Docket #07-1349; filed 8-9-07]

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

[OAR Docket #07-1338]

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 5. Pharmacists
317:30-5-86.1. [REVOKED]

Emergency Adoptions

(Reference APA WF # 07-01)

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. 56 Section 1011.6

DATES:

Adoption:

May 10, 2007

Approved by Governor:

June 28, 2007

Effective:

Immediately upon Governor's approval or July 1, 2007, whichever is later

Expiration:

Effective through July 14, 2008, 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 the provisions of O.S. 56 Section 1011.6 known as the "Oklahoma Medicaid Reform Act of 2006". Section 6 of the "Act" directs the agency to expand the Disease Management program to include quality measurements, reporting of outcome measurement data, intervention through educational tools for patients and providers, and treatment guidelines for physicians.

ANALYSIS:

Rules are revised to expand the Disease Management program to include quality measurements, reporting of outcome measurement data, intervention through educational tools for patients and providers, and treatment guidelines for physicians. Historically, the OU College of Pharmacy has been the designated agent to provide OHCA with disease state management services. Disease management rules are revised and relocated from pharmacy specific to general coverage rules and allows expansion of Disease Management services to be provided by all provider types. The Agency contracts with designated agents to provide disease state management for individuals diagnosed with certain chronic conditions and ensures that treatments are based on protocols developed using evidence-based guidelines. Rules are needed to comply with Section 6 of the Oklahoma Medicaid Reform Act of 2006.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR JULY 1, 2007, WHICHEVER IS LATER:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-57. General SoonerCare coverage - categorically needy

The following are general SoonerCare coverages for the categorically needy:

- (1) Inpatient hospital services other than those provided in an institution for mental diseases.

(A) Adult coverage for inpatient hospital stays as described at OAC 317:30-5-41.

(B) Coverage for 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 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.

(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) Medically necessary screening mammography. Additional follow-up mammograms are covered when medically necessary.

(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 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 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 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.

(J) Inpatient Psychotherapy services and psychological testing as outlined in OAC 317: 30-5-95 through OAC 317:30-5-97.

(K) Transportation. Provided when necessary in connection with examination or treatment when not otherwise available.

(L) Inpatient hospital services.

(M) Medical supplies, equipment, appliances and prosthetic devices beyond the normal scope of Soonercare.

(N) EPSDT services furnished in a qualified child health center.

(14) Family planning services and supplies for members of child-bearing age, including counseling, insertion of intrauterine device, implantation of subdermal contraceptive device, and sterilization for members 21 years of age and 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 are covered when medically indicated and substantiating documentation is attached to the claim.

~~(15) Family planning centers.~~

~~(16) Physicians' services whether furnished in the office, the member's home, a hospital, a nursing facility, ICF/MR, or elsewhere. For adults, payment 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 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) members under the age of 21 years; and
- (ii) residents of Nursing Facilities or Intermediate Care Facilities for the Mentally Retarded.

(B) seven medically necessary generic prescriptions 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 necessary prescriptions beyond the three brand name or thirteen total prescriptions are covered with prior authorization.

~~(20) Rental and/or purchase of durable medical equipment.~~

~~(21) Adaptive equipment, when prior authorized, for members residing in private ICF/MR's.~~

~~(22) Dental services for members residing in private ICF/MR's in accordance with the scope of dental services for 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, external breast prostheses and support accessories, 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 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 members when administered on an outpatient basis.~~

~~(27) Inpatient services for members age 65 or older in institutions for mental diseases, limited to those members whose Medicare, Part A benefits are exhausted for this particular service and/or those members who are not eligible for Medicare services.~~

~~(28) Nursing facility services, limited to members preauthorized and approved by OHCA for such care.~~

~~(29) Inpatient psychiatric facility admissions for 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 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~~

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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 31)~~ Nursing facility services for members under 21 years of age.

~~(33 32)~~ Personal care in a member's home, prescribed in accordance with a plan of treatment and rendered by a qualified person under supervision of a R.N.

~~(34 33)~~ Part A deductible and Part B medicare Coinsurance and/or deductible.

~~(35 34)~~ Home and Community Based Waiver Services for the mentally retarded.

~~(36 35)~~ Home health services limited to 36 visits per year and standard supplies for 1 month in a 12-month period. The visits are limited to any combination of Registered Nurse and nurse aide visits, not to exceed 36 per year.

~~(37 36)~~ Medically necessary solid organ and bone marrow/stem cell transplantation services for children and adults are covered services based upon the conditions listed in (A)-(D) of this paragraph:

(A) 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.

(C) 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.

(D) Finally, procedures considered experimental or investigational are not covered.

~~(38 37)~~ Home and community-based waiver services for mentally retarded members who were determined to be inappropriately placed in a NF (Alternative Disposition Plan - ADP).

~~(39 38)~~ Case Management services for the chronically and/or severely mentally ill.

~~(40 39)~~ Emergency medical services including emergency labor and delivery for illegal or ineligible aliens.

~~(41 40)~~ Services delivered in Federally Qualified Health Centers. Payment is made on an encounter basis.

~~(42 41)~~ Early Intervention services for children ages 0-3.

~~(43 42)~~ Residential Behavior Management in therapeutic foster care setting.

~~(44 43)~~ Birthing center services.

~~(45 44)~~ Case management services through the Oklahoma Department of Mental Health and Substance Abuse.

~~(46 45)~~ Home and Community-Based Waiver services for aged or physically disabled members.

~~(47 46)~~ Outpatient ambulatory services for members infected with tuberculosis.

~~(48 47)~~ Smoking and Tobacco Use Cessation Counseling for children and adults.

~~(49 48)~~ Services delivered to American Indians/Alaskan Natives in I/T/Us. Payment is made on an encounter basis.

(49) OHCA contracts with designated agents to provide disease state management for individuals diagnosed with certain chronic conditions. Disease state management

treatments are based on protocols developed using evidence-based guidelines.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 5. PHARMACISTS

317:30-5-86.1. Disease state management [REVOKED]

~~OHCA contracts with designated agents to provide disease state management for individuals diagnosed with certain chronic conditions. Disease state management treatments are based on protocols developed using evidence-based guidelines for treatment.~~

[OAR Docket #07-1338; filed 8-1-07]

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

[OAR Docket #07-1339]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 6. Inpatient Psychiatric Hospitals

317:30-5-95. [AMENDED]

317:30-5-95.7. [AMENDED]

317:30-5-95.16. through 317:30-5-95.17. [AMENDED]

317:30-5-95.19. [AMENDED]

317:30-5-95.22. [AMENDED]

317:30-5-95.24. [AMENDED]

317:30-5-95.31. [AMENDED]

317:30-5-95.33. through 317:30-5-95.36. [AMENDED]

317:30-5-95.39. [AMENDED]

317:30-5-95.41. through 317:30-5-95.42. [AMENDED]

317:30-5-96.2. [AMENDED]

(Reference APA WF # 07-11)

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 440.160; 42 CFR 483.350

DATES:

Adoption:

May 10, 2007

Approved by Governor:

June 28, 2007

Effective:

Immediately upon Governor's approval or July 1, 2007, whichever is later

Expiration:

Effective through July 14, 2008, 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 establish newly defined levels of Psychiatric Residential Treatment Facilities (PRTF's). Without these revisions,

SoonerCare members would be forced to receive their treatment in out of state facilities, creating undue hardships on the members.

ANALYSIS:

Inpatient psychiatric hospital rules are revised to establish criteria for newly defined levels of Psychiatric Residential Treatment Facilities (PRTF's). These speciality facilities, which include a higher rate for specialty treatment programs, would allow SoonerCare members to receive treatment in-state as opposed to going out-of-state for these specialty treatments. Revisions are needed to establish staffing ratios, and add definitions and the criteria for use of restraints and seclusion. Inpatient psychiatric hospitals or psychiatric units provide treatment in a hospital setting 24 hours a day and Psychiatric Residential Treatment Facilities provide non-acute inpatient facility care for members who have a behavioral health disorder and need 24-hour supervision and specialized interventions.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR JULY 1, 2007, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-95. General provisions and eligible providers

(a) Inpatient psychiatric hospitals or psychiatric units provide treatment in a hospital setting 24 hours a day. Psychiatric Residential Treatment Facilities (PRTF) provide non-acute inpatient facility care for ~~recipients~~ members who have a behavioral health disorder and need 24-hour supervision and specialized interventions. Payment for psychiatric and/or chemical dependency/detoxification services for adults between the ages of 21 and 64 are limited to acute inpatient hospital settings.

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

- (1) **"AOA"** means American Osteopathic Accreditation.
- (2) **"CARF"** means the Commission on Accreditation of Rehabilitation Facilities.
- (3) **"JCAHO"** means Joint Commission on Accreditation of Healthcare Organizations.
- (4) **"Licensed independent practitioner (LIP)"** means any individual permitted by law and by the licensed hospital to provide care and services, without supervision, within the scope of the individual's license and consistent with clinical privileges individually granted by the licensed hospital. Licensed independent practitioners may include Advanced Practice Nurses (APN) with prescriptive authority and Physician Assistants.
- (4~~5~~) **"Psychiatric Residential Treatment Facility (PRTF)"** (~~PRTF~~) means a facility other than a hospital.

(6) **"Restraint"** means any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely, or drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not the standard treatment or dosage for the patient's condition. Restraint does not include devices such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a patient for the purpose of conducting routine physical examinations or tests, or to protect the patient from falling out of bed, or to permit the patient to participate in activities without the risk of physical harm (this does not include physical escort).

(7) **"Seclusion"** means the involuntary confinement of a patient alone in a room or area from which the patient is physically prevented from leaving and may only be used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the patient, a staff member, or others.

(c) **Hospitals and freestanding psychiatric facilities.** To be eligible for payment under this Section, inpatient psychiatric programs must be provided to eligible ~~Medicaid~~ recipients ~~SoonerCare members~~ in a hospital that is:

- (1) appropriately licensed and surveyed by the state survey agency;
- (2) accredited by JCAHO; and
- (3) ~~have a contract to participate in Oklahoma Medicaid~~ contracted with the Oklahoma Health Care Authority (OHCA).

(d) **Psychiatric Residential Treatment Facility (PRTF).** A PRTF is any non-hospital facility ~~with a provider agreement contracted~~ with the OHCA to provide the inpatient services ~~benefit to Medicaid~~ SoonerCare eligible ~~individuals~~ members under the age of 21. To enroll as a hospital-based or freestanding PRTF, the provider must be appropriately state licensed pursuant to Title 10 O.S. §402 and approved by the OHCA to provide services to individuals under age 21. Out-of-state PRTFs should be appropriately licensed in the state in which they do business. In addition, the following requirements must be met:

(1) **Restraint and seclusion reporting requirements.** In accordance with Federal Regulations at 42 CFR 483.50 ~~483.350~~, the OHCA requires a PRTF that provides ~~Medicaid~~ SoonerCare inpatient psychiatric services to ~~individuals~~ members under age 21 to attest, in writing, that the facility is in compliance with all of the standards governing the use of restraint and seclusion. The attestation letter must be signed by an individual who has the legal authority to obligate the facility. OAC 317:30-5-95.39 describes the documentation required by the OHCA.

- (2) **Attestation letter.** The attestation letter at a minimum must include:
- (A) the name and address, telephone number of the facility, and a provider identification number;
 - (B) the signature and title of the individual who has the legal authority to obligate the facility;

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- (C) the date the attestation is signed;
- (D) a statement certifying that the facility currently meets all of the requirements governing the use of restraint and seclusion;
- (E) a statement acknowledging the right of the State Survey Agency (or its agents) and, if necessary, Center for Medicare and Medicaid Services (CMS) to conduct an on-site survey at any time to validate the facility's compliance with the requirements of the rule, to investigate complaints lodged against the facility, or to investigate serious occurrences;
- (F) a statement that the facility will notify the ~~State Medicaid Agency~~ OHCA and the State Health Department if it no longer complies with the requirements; and
- (G) a statement that the facility will submit a new attestation of compliance in the event the individual who has the legal authority to obligate the facility is no longer in such position.

(3) **Reporting of serious injuries or deaths.** Each PRTF is required to report a resident's death, serious injury, and a resident's suicide attempt to the ~~State Medicaid agency~~ OHCA, and unless prohibited by state law, to the state-designated Protection and Advocacy System (P and As). In addition to reporting requirements contained in this section, facilities must report the death of any resident to the CMS regional office no later than close of business the next business day after the resident's death. Staff must document in the resident's record that the death was reported to the CMS Regional Office.

(e) **Required documents.** The required documents for enrollment for each participating provider can be downloaded from the ~~agency~~ OHCA's website.

317:30-5-95.7. Active treatment for adults age 21 to 64

Active treatment must be provided to each adult ~~patient~~ member age 21 to 64. The active treatment program must be appropriate to the needs of the ~~patient~~ member and be directed toward restoring and maintaining optimal levels of physical and ~~psychosocial~~ psychiatric-social functioning. The services and individual plan of care must be recovery focused, trauma informed, and specific to culture, age and gender.

317:30-5-95.16. Medical psychiatric and social evaluations for persons over 65 years of age receiving inpatient acute psychiatric services

The record of a ~~patient~~ member over 65 years of age receiving inpatient acute psychiatric services must contain complete medical, psychiatric and social evaluations.

- (1) The evaluations must be completed as follows:
 - (A) History and Physical must be completed within 48 hours of admission by a licensed independent practitioner [M.D., D.O., Advanced Practice Nurse (A.P.N.), or Physician Assistant (P.A.)].
 - (B) Psychiatric Evaluation must be completed within 48 hours of admission by a M.D. or D.O.

(C) Psychosocial Evaluation must be completed within 72 hours of admission by a licensed independent practitioner (~~M.D., D.O., A.P.N., or P.A.~~) or a ~~mental-licensed~~ behavioral health professional (LBHP) as defined in OAC 317:30-5-240(c).

- (2) The evaluations must be clearly identified as such and must be signed and dated by the evaluator.

317:30-5-95.17. Active treatment for persons over 65 years of age receiving inpatient acute psychiatric services

Active treatment must be provided to each ~~patient~~ member over 65 years of age who is receiving inpatient acute psychiatric services. The active treatment program must be appropriate to the needs of the ~~patient~~ member and be directed toward restoring and maintaining optimal levels of physical and ~~psychosocial~~ psychiatric-social functioning. The services and individual plan of care must be recovery focused, trauma informed, and specific to culture, age and gender.

317:30-5-95.19. Therapeutic services for persons over 65 years of age receiving inpatient acute psychiatric services

An interdisciplinary team of a physician, ~~mental health professional(s)~~ LBHPs, registered nurse, and other staff who provide services to ~~patients~~ members over 65 years of age who are receiving inpatient acute psychiatric services in the facility oversee all components of the active treatment and provide services appropriate to their respective discipline. The team developing the individual plan of care must include, at a minimum, the following:

- (1) Allopathic or Osteopathic Physician with a current license and a board certification/eligible in psychiatry, or a current resident in psychiatry practicing as described in OAC 317:30-5-2(a)(1)(U); and
- (2) a ~~mental health professional-licensed~~ LBHP licensed to practice by one of the following boards:
 - (A) Psychology (health service specialty only);
 - (B) Social Work (clinical specialty only);
 - (C) Licensed Professional Counselor;
 - (D) Licensed Behavioral Practitioner;
 - (E) Licensed Marital and Family Therapist; or
 - (F) Advanced Practice Nurse (certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which the services are provided); and
- (3) a registered nurse with a minimum of two years of experience in a mental health treatment setting.

317:30-5-95.22. Coverage for children

(a) In order for services to be covered, services in acute hospitals, free-standing hospitals, and Psychiatric Residential Treatment Facilities must meet the requirements in OAC 317:30-5-95.25 through 317:30-5-95.30. OHCA rules that apply to inpatient psychiatric coverage for children are found in Sections OAC 317:30-5-95.24 through 317:30-5-95.42.

(b) **Definitions.** The following words and terms, when used in Sections OAC 317:30-5-95.22 through 317:30-5-95.42, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Acute care"** means care delivered in a psychiatric unit of a general hospital or free-standing psychiatric hospital that provides assessment, medical management and monitoring, and short-term intensive treatment and stabilization to individuals experiencing acute episodes of behavioral health disorders.

(2) **"Border Placement"** means a placement in a facility that is in one of the states that borders Oklahoma (Arkansas, Colorado, Kansas, Missouri, New Mexico, and Texas). Border "status" may include other states that routinely provide PRTF services. Providers are subject to the same OHCA rules and program requirements as in-state providers, including claims submission procedures and are paid the same daily per diem as Oklahoma providers.

(3) **"Chemical Dependency/Substance Abuse services/Detoxification"** means services offered to individuals with a substance-related disorder whose biomedical and emotional/behavioral problems are sufficiently severe to require inpatient care.

(4) **"Designated Agent"** means the entity contracted with the OHCA to provide certain services to meet federal and state statutory obligations of the OHCA.

(5) **"Enhanced Treatment Unit or Specialized Treatment Unit"** means an intensive residential treatment unit that provides a program of care to a population with a special need or issues requiring increased staffing requirements, co-morbidities and longer lengths of stay.

(6) **"Evidenced Based Practice (EBP)"** according to the Substance Abuse and Mental Health Services Administration (SAMHSA) means programs or practices that are supported by research methodology and have produced consistently positive patterns of results.

(67) **"Out-of-State Placement"** means a placement for intensive or specialized services not available in Oklahoma requiring additional authorization procedures and approval by the OHCA Behavioral Health Unit.

(78) **"Residential Treatment services"** means psychiatric services that are designed to serve children who need longer term, more intensive treatment, and a more highly structured environment than they can receive in family and other community based alternatives to hospitalization.

(9) **"Trauma Informed"** means the recognition and responsiveness to the presence of the effects of past and current traumatic experiences in the lives of patients.

317:30-5-95.24. Pre-authorization of inpatient psychiatric services for children

(a) All inpatient psychiatric services for ~~patients~~ members under 21 years of age must be prior authorized by the OHCA or its designated agent designated by the Oklahoma Health Care Authority. All inpatient acute and residential psychiatric services will be prior authorized for an approved length of stay. ~~Additional steps are information will be required for a placement~~ SoonerCare compensable approval on enhanced

treatment units or in special population programs. Residential treatment at this level is a longer term treatment that requires a higher staff to patient ratio because it is constant, intense, and immediate reinforcement of new behaviors to develop an understanding of the behaviors. The environment of specialized residential treatment centers requires special structure and configuration (e.g., sensory centers for autistic patients) and specialized training for the staff in the area of the identified specialty. The physician will see the child at least one time a week. A PRTF will not be considered a specialty treatment program for SoonerCare without prior approval of the OHCA behavioral health unit and will require a contract addendum. A treatment program that has been approved as a specialized treatment program must maintain medical records that document the degree and intensity of the psychiatric care delivered to the children.

(b) Criteria for classification as a specialized PRTF will require a staffing ratio of 1:3 at a minimum during awake hours and 1:6 during time residents are asleep with 24 hour nursing care supervised by a RN for management of behaviors and medical complications. The PRTF will be a secure unit, due to the complexity of needs and safety considerations. Admissions will be restricted to children that meet the medical necessity criteria for RTC and also meet at least two or more of the following:

(1) Have failed at other levels of care or have not been accepted at other levels of care;

(2) Behavioral, emotional, and cognitive problems requiring secure residential treatment that includes 1:1, 1:2, or 1:3 staffing due to the patient being a danger to themselves and others, for impairments in socialization problems, communication problems, and restricted, repetitive and stereotyped behaviors. These symptoms are severe and intrusive enough that management and treatment in a less restrictive environment places the child and others in danger but, do not meet acute medical necessity criteria. These symptoms which are exhibited across multiple environments must include at least two or more of the following:

(A) Marked impairments in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction;

(B) Inability to regulate impulse control with frequent displays of aggression or other dangerous behavior toward self and/or others regularly;

(C) Failure to develop peer relationships appropriate to developmental level;

(D) Lack of spontaneously seeking to share enjoyment, interests, or achievements with other people;

(E) Lack of social or emotional reciprocity;

(F) Lack of attachment to caretakers;

(G) Require a higher level of assistance with activities of daily living requiring multiple verbal cues 50 percent of the time to complete tasks;

(H) Delay, or total lack of, the development of spoken language which is not accompanied by an attempt

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to compensate through alternative modes of communication such as gesture or mime;

(I) Marked impairment in individuals with adequate speech in the ability to initiate or sustain a conversation with others;

(J) Stereotyped and repetitive use of language or idiosyncratic language;

(K) Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level;

(L) Encompassing preoccupation with one or more stereotyped and restricted pattern and interest that is abnormal in intensity of focus;

(M) Inflexible adherence to specific, nonfunctional routines or rituals;

(N) Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting or complex whole body movements);

(O) Persistent occupation with parts of objects;

(3) Patient is medically stable, but has co-morbid medical conditions which require specialized medical care during treatment;

(4) Full scale IQ below 40 (profound mental retardation).

(c) Non-authorized inpatient psychiatric services will not be Medicaid SoonerCare compensable.

(+d) **Length of stay.** The designated agent will prior authorize all services for an approved length of stay based on the medical necessity criteria described in OAC 317:30-5-95.25 through 317:30-5-95.31.

(2e) **Facility placements.** Out of state placements must be approved by the agent designated by the OHCA and subsequently approved by the OHCA ~~Medicaid~~, Medical Services Behavioral Health Division. Requests for admission to Psychiatric Residential Treatment Facilities or acute care units will be reviewed for consideration of level of care, availability, suitability, and proximity of suitable services. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in Active Treatment, including discharge and reintegration planning. Out of state facilities are responsible for insuring appropriate medical care as needed under ~~Oklahoma Medicaid~~ SoonerCare provisions as part of the per-diem rate. Out of state facilities are responsible for insuring appropriate medical care as needed under ~~Oklahoma Medicaid~~ SoonerCare provisions as part of the per-diem rate.

(3f) **Service limitations.** Inpatient psychiatric services in all acute hospitals and psychiatric residential treatment facilities are limited to the approved length of stay. The Agent designated by the OHCA will approve lengths of stay using the current OHCA Behavioral Health medical necessity criteria and following the current inpatient provider manual approved by the OHCA. The approved length of stay applies to both hospital and physician services.

317:30-5-95.31. Pre-authorization and extension procedures for children

(a) Pre-admission authorization for inpatient psychiatric services for children must be requested from the OHCA designated agent. The OHCA or designated agent will evaluate and render a decision within 24 hours of receiving the request. A prior authorization will be issued by the OHCA or its designated agent, if the recipient member meets medical necessity criteria. For the safety of ~~Medicaid recipients~~ SoonerCare members, additional approval from the OHCA designated agent is required for placement on specialty units or in special population programs or for ~~recipients members~~ with special needs such as very low intellectual functioning.

(b) Extension requests (psychiatric) must be made through the OHCA designated agent. All requests are made prior to the expiration of the approved extension following the guidelines in the Inpatient Provider Manual published by the OHCA designated agent. Requests for the continued stay of a child who has been in an acute psychiatric program for a period of 15 days and in a psychiatric residential treatment facility for 3 months will require a review of all treatment documentation completed by the OHCA designated agent to determine the ~~efficacy~~ efficiency of treatment.

(c) Providers seeking prior authorization will follow OHCA's designated agent's prior authorization process guidelines for submitting behavioral health case management requests on behalf of the ~~Medicaid recipient~~ SoonerCare member.

(d) In the event a recipient member disagrees with the decision by the OHCA's designated agent, the provider member receives an evidentiary hearing under OAC 317:2-1-2(a). The ~~recipient's member's~~ request for such an appeal must commence within 20 calendar days of the initial decision. ~~Providers may access a reconsideration process by OHCA's designated agent, whose decision is final. The provider has ten business days of receipt of the decision to request the designated agent to reconsider its decision. The agent will return the decision within ten working days from the time of receiving the provider's reconsideration request. The reconsideration process will end on July 1, 2006.~~

317:30-5-95.33. Individual plan of care for children

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

(1) "**Mental Licensed Behavioral Health Professional (MHP LBPH)**" means licensed psychologists, licensed clinical social workers (LCSW), licensed marital and family therapists (LMFT), licensed professional counselors (LPC), licensed behavioral practitioners (LBP), and advanced practice nurses (APN).

(2) "**Individual plan of Care (IPC)**" means a written plan developed for each ~~recipient member~~ within four calendar days of any admission to a PRTF and is the document that directs the care and treatment of ~~a patient that member~~. The individual plan of care must be recovery focused, trauma informed, and specific to culture, age and gender and includes:

- (A) the complete record of the DSM-IV-TR five-axis diagnosis, including the corresponding symptoms, complaints, and complications indicating the need for admission;
 - (B) the current functional level of the individual;
 - (C) treatment goals and measurable time limited objectives;
 - (D) any orders for psychotropic medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the patient;
 - (E) plans for continuing care, including review and modification to the plan of care; and
 - (F) plan for discharge, all of which is developed to improve the child's condition to the extent that the inpatient care is no longer necessary.
- (b) The individual plan of care:
- (1) must be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral and developmental aspects of the individual ~~patient member~~ and reflects the need for inpatient psychiatric care;
 - (2) must be developed by a team of professionals as specified in OAC 317:30-5-95.35 in collaboration with the ~~recipient member~~, and his/her parents for ~~patients members~~ under the age of 18, legal guardians, or others in whose care he/she will be released after discharge;
 - (3) must establish treatment goals that are general outcome statements and reflective of informed choices of the ~~patient member~~ served. Additionally, the treatment goal must be appropriate to the patient's age, culture, strengths, needs, abilities, preferences and limitations;
 - (4) must establish measurable and time limited treatment objectives that reflect the expectations of the ~~patient member~~ served and parent/legal guardian (when applicable) as well as being age, developmentally and culturally appropriate. When modifications are being made to accommodate age, developmental level or a cultural issue, the documentation must be reflected on the individual plan of care. The treatment objectives must be achievable and understandable to the ~~patient member~~ and the parent/guardian (when applicable). The treatment objectives also must be appropriate to the treatment setting and list the frequency of the service;
 - (5) must prescribe an integrated program of therapies, activities and experiences designed to meet the objectives;
 - (6) must include specific discharge and after care plans that are appropriate to the ~~patient's member's~~ needs and effective on the day of discharge. At the time of discharge, after care plans will include referral to medication management, out-patient behavioral health counseling and case management to include the specific appointment date(s), names and addresses of service provider(s) and related community services to ensure continuity of care and reintegration for the ~~recipient member~~ into their family school, and community;

- (7) must be reviewed at least every seven calendar days when in acute care and a regular PRTF and every 14 calendar days in the OHCA approved longer term treatment programs or specialty PRTF treatment programs by the team specified to determine that services are being appropriately provided and to recommend changes in the individual plan of care as indicated by the ~~recipient's member's~~ overall adjustment, progress, symptoms, behavior, and response to treatment;
- (8) development and review must satisfy the utilization control requirements for physician re-certification and establishment of periodic reviews of the individual plan of care; and,
- (9) each individual plan of care review must be clearly identified as such and be signed and dated individually by the physician, ~~licensed mental health professional LBHP~~, ~~patient member~~, parent/guardian (for patients under the age of 18), registered nurse, and other required team members. Individual plans of care and individual plan of care reviews are not valid until completed and appropriately signed and dated. All requirements for the individual plan of care or individual plan of care reviews must be met or a partial per diem recoupment will be merited. In those instances where it is necessary to fax an Individual Plan of Care or Individual Plan of Care review to a parent or OKDHS/OJA worker for review, the parent and/or OKDHS/OJA worker may fax back their signature. The Provider must obtain the original signature for the clinical file within 30 days. Stamped or Xeroxed signatures are not allowed for any parent or member of the treatment team.

317:30-5-95.34. Active treatment for children

- (a) The following words and terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise:
- (1) "**Expressive group therapy**" means art, music, dance, movement, poetry, drama, psychodrama, structured therapeutic physical activities, experiential (ROPES), recreational, or occupational therapies that encourage the ~~patient member~~ to express themselves emotionally and psychologically.
 - (2) "**Family therapy**" means interaction between a ~~MHP LBHP~~, ~~patient member~~ and family member(s) to facilitate emotional, psychological or behavioral changes and promote successful communication and understanding.
 - (3) "**Group rehabilitative treatment**" means behavioral health remedial services, as specified in the individual care plan which are necessary for the treatment of the existing primary behavioral health disorders and/or any secondary alcohol and other drug (AOD) disorders in order to increase the skills necessary to perform activities of daily living.
 - (4) "**Individual rehabilitative treatment**" means a face to face, one on one interaction which is performed to assist ~~patients members~~ who are experiencing significant

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functional impairment due to the existing primary behavioral health disorder and/or any secondary AOD disorder in order to increase the skills necessary to perform activities of daily living.

(5) **"Individual therapy"** means a method of treating existing primary behavioral health disorders and/or any secondary AOD disorders using face to face, one on one interaction between a ~~MHP~~ LBHP and a patient member to promote emotional or psychological change to alleviate disorders.

(6) **"Process group therapy"** means a method of treating existing primary behavioral health disorders and/or secondary AOD disorders using the interaction between a ~~MHP~~ LBHP as defined in OAC 317:30-5-240(c), and two or more patients to promote positive emotional and/or behavioral change.

(b) Inpatient psychiatric programs must provide "Active Treatment". Active Treatment involves the patient member and their family or guardian from the time of an admission throughout the treatment and discharge process. For individuals in the age range of 18 up to 21, it is understood that family members and guardians will not always be involved in the patient's member's treatment. Active Treatment also includes an ongoing program of assessment, diagnosis, intervention, evaluation of care and treatment, and planning for discharge and aftercare under the direction of a physician. Evidence based practices such as trauma informed methodology should be utilized to minimize the use of seclusion and restraint.

(c) The components of Active Treatment consist of integrated therapies that are provided on a regular basis and will remain consistent with the patient's member's ongoing need for care. The services and individual plan of care must be recovery focused, trauma informed, and specific to culture, age, and gender. Sixty minutes is the expectation to equal one hour of treatment. The following components meet the minimum standards required for Active Treatment, although an individual child's needs for treatment may exceed this minimum standard:

(1) Individual treatment provided by the physician. Individual treatment provided by the physician is required three times per week for acute care and one time a week in Residential Treatment Facilities. Individual treatment provided by the physician will never exceed ~~40~~ ten days between sessions in PRTFs and never exceed seven days in a specialty PRTF. Individual treatment provided by the physician may consist of therapy or medication management intervention for acute and residential programs.

(2) Individual therapy. ~~MHPs~~ LBHPs performing this service must use and document an approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. Ongoing assessment of the patient's member's status and response to treatment as well as psycho-educational intervention are appropriate components of individual therapy. Individual therapy must be provided in a confidential setting. The therapy must be goal directed utilizing techniques appropriate to the individual patient's plan of care and the patient's developmental and cognitive abilities. Individual therapy

must be provided two hours per week in acute care and one hour per week in residential treatment by a ~~mental health professional~~ LBHP as described in OAC 317:30-5-240(c). One hour of family therapy may be substituted for one hour of individual therapy at the treatment team's discretion.

(3) Family therapy. The focus of family therapy must be directly related to the goals and objectives on the individual ~~patient's~~ member's plan of care. Family therapy must be provided one hour per week for acute care and residential treatment for ~~patients~~ members under the age of 18. One hour of individual therapy addressing relevant family issues may be substituted for a family session in an instance in which the family is unable to attend a scheduled session by a ~~mental health professional~~ LBHP as described in OAC 317:30-5-240(c).

(4) Process group therapy. The focus of process group therapy must be directly related to goals and objectives on the individual ~~patient's~~ member's plan of care. The individual ~~patient's~~ member's behavior and the focus of the group must be included in each ~~patient's~~ member's medical record. This service does not include social skills development or daily living skills activities and must take place in an appropriate confidential setting, limited to the therapist, appropriate hospital staff, and group members. Group therapy must be provided three hours per week in acute care and two hours per week in residential treatment by a ~~mental health professional~~ LBHP as defined in OAC 317:30-5-240(c). In lieu of one hour of process group therapy, one hour of expressive group therapy may be substituted.

(5) Expressive group therapy. Through active expression, inner-strengths are discovered that can help the patient member deal with past experiences and cope with present life situations in more beneficial ways. The focus of the group must be directly related to goals and objectives on the individual ~~patient's~~ member's plan of care. Documentation must include how the patient member is processing emotions/feelings. Expressive therapy must be a planned therapeutic activity, facilitated by staff with a relevant Bachelor's degree and/or staff with relevant training, experience, or certification to facilitate the therapy. Expressive group therapy must be provided four hours per week in acute care and three hours per week in residential treatment. In lieu of one hour of expressive group therapy, one hour of process group therapy may be substituted.

(6) Group Rehabilitative treatment. Examples of educational and supportive services, which may be covered under the definition of group rehabilitative treatment services, are basic living skills, social skills (re)development, interdependent living, self-care, lifestyle changes and recovery principles. Each service provided under group rehabilitative treatment services must have goals and objectives, directly related to the individual plan of care. Group rehabilitative treatment services will be provided two hours each day for all inpatient psychiatric care. In lieu of two hours of group rehabilitative services per day,

one hour of individual rehabilitative services per day may be substituted.

(7) Individual rehabilitative treatment. Services will be for the reduction of psychiatric and behavioral impairment and the restoration of functioning consistent with the requirements of independent living and enhanced self-sufficiency. This service includes educational and supportive services regarding independent living, self-care, social skills (re)development, lifestyle changes and recovery principles and practices. Each individual rehabilitative treatment service provided must have goals and objectives directly related to the individualized plan of care and the patient's diagnosis. One hour of individual rehabilitative treatment service may be substituted daily for the two hour daily group rehabilitative services requirement.

(8) Modifications to active treatment. When a patient member is too physically ill or their acuity level precludes them from active behavioral health treatment, documentation must demonstrate that alternative clinically appropriate services were provided.

317:30-5-95.35. Credentialing requirements for treatment team members for children

(a) The team developing the individual plan of care for the child must include, at a minimum, the following:

(1) Allopathic or Osteopathic Physician with a current license and a board certification/eligible in psychiatry, or a current resident in psychiatry practicing as described in OAC 317:30-5-2(a)(1)(U), and

(2) a mental health professional licensed to practice by one of the following boards: Psychology (health service specialty only); Social Work (clinical specialty only); Licensed Professional Counselor, Licensed Behavioral Practitioner, (or) Licensed Marital and Family Therapist or Advanced Practice Nurse (certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which the services are provided), and

(3) a registered nurse with a minimum of two years of experience in a mental health treatment setting.

(b) Candidates for licensure for Licensed Professional Counselor, Social Work (clinical specialty only), Licensed Marital and Family Therapist, Licensed Behavioral Practitioner and Psychology (health services specialty only) can provide individual therapy, family therapy and process group therapy as long as they are involved in the supervision that complies with their respective approved licensing regulations and the Department of Health and their work must be co-signed by a licensed ~~MHP~~ LBHP who is additionally a member on the treatment team. Individuals who have met their supervision requirements and are waiting to be licensed by one of the licensing boards in OAC 317:30-5-95.35(a)(1) must have their work co-signed by a licensed MHP who is additionally a member on the treatment team.

(c) Services provided by treatment team members not meeting the above credentialing requirements are not Medicaid compensable and can not be billed to the Medicaid recipient.

317:30-5-95.36. Treatment team for inpatient children's services

An interdisciplinary team of a physician, mental health professionals, registered nurse, patient, parent/legal guardian for ~~patients members~~ under the age of 18, and other personnel who provide services to ~~patients members~~ in the facility must develop the individual plan of care, oversee all components of the active treatment and provide the services appropriate to their respective discipline. Based on education and experience, preferably including competence in child psychiatry, the teams must be ~~capable of~~:

(1) ~~capable of assessing~~ Assessing the ~~recipient's~~ member's immediate and long range therapeutic needs, developmental priorities and personal strengths and liabilities;

(2) ~~capable of assessing~~ Assessing the potential resources of the ~~recipient's member's~~ family, and actively involving the family of ~~patients members~~ under the age of 18 in the ongoing plan of care;

(3) ~~capable of setting~~ Setting treatment objectives;

(4) ~~capable of prescribing~~ Prescribing therapeutic modalities to achieve the plan objectives; ~~and~~

(5) ~~capable of developing~~ Developing appropriate discharge criteria and plans; ~~and~~

(6) trained in a recognized behavioral/management intervention program such as MANDT System, Controlling Aggressive Patient Environment (CAPE), SATORI, Professional Assault Crisis Training (PRO-ACT), or a trauma informed methodology with the utmost focus on the minimization of seclusion and restraints.

317:30-5-95.39. Seclusion, restraint, and serious incident reporting requirements for children

(a) Restraint or seclusion may only be used when less restrictive interventions have been determined to be ineffective to protect the member, a staff member or others from harm and may only be imposed to ensure the immediate physical safety of the member, a staff member or others. The use of restraint or seclusion must be in accordance with a written modification to the member's individual plan of care. The type or technique of restraint or seclusion used must be the least restrictive intervention that will be effective to protect the member or others from harm. Restraint or seclusion must be discontinued at the earliest possible time, regardless of the length of time identified in the order.

(1) Each facility must have policies and procedure to describe the conditions in which seclusion and restraint would be utilized, the behavioral/management intervention program followed by the facility and the documentation required. Each order by a physician or Licensed Independent Practitioner (LIP) may authorize the RN to continue or terminate the restraint or seclusion based on the member's face to face evaluation. Each order for restraint or seclusion may only be renewed in accordance with the following limits for up to a total of 24 hours:

(A) four hours for children 18 to 20 years of age;

(B) two hours for children and adolescents nine to 17 years of age; or

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- (C) one hour for children under nine years of age.
- (2) The documentation required to insure that seclusion and restraint was appropriately implemented and monitored will include at a minimum:
- (A) documentation of events leading to intervention used to manage the violent or self-destructive behaviors that jeopardize the immediate physical safety of the member or others;
- (B) documentation of alternatives or less restrictive interventions attempted;
- (C) an order for seclusion/restraint including the name of the LIP, date and time of order;
- (D) orders for the use of seclusion/restraint must never be written as a standing order or on an as needed basis;
- (E) documentation that the member continually was monitored face to face by an assigned, trained staff member, or continually monitored by trained staff using both video and audio equipment during the seclusion/restraint;
- (F) the results of a face to face assessment completed within one hour by a LIP or RN who has been trained in accordance with the requirements specified at OAC 317:30-5-95.35 to include the:
- (i) member's immediate situation;
- (ii) member's reaction to intervention;
- (iii) member's medical and behavioral conditions; and
- (iv) need to continue or terminate the restraint or seclusion.
- (G) in events the face to face was completed by a trained RN, documentation that the trained RN consulted the attending physician or other LIP responsible for the care of the member as soon as possible after the completion of the one-hour face to face evaluation;
- (H) debriefing of the child within 24 hours by a LBHP;
- (I) debriefing of staff within 48 hours; and
- (J) notification of the parent/guardian.
- (b) Staff must be trained and able to demonstrate competency in the application of restraints, implementation of seclusion, monitoring, assessment, and providing care for a member in restraint or seclusion before performing any of these actions and subsequently on an annual basis. The PRTF must require appropriate staff to have education, training, and demonstrated knowledge based on the specific needs of the patient population in at least the following:
- (1) techniques to identify staff and patient behaviors, events, and environmental factors that may trigger circumstances that require the use of restraint or seclusion;
- (2) the use of nonphysical intervention skills;
- (3) choosing the least restrictive intervention based on an individualized assessment of the member's medical behavior status or condition;
- (4) the safe application and use of all types of restraint or seclusion used in the PRTF, including training in how

to recognize and respond to signs of physical and psychological distress;

(5) clinical identification of specific behavioral changes that indicate that restraint or seclusion is no longer necessary;

(6) monitoring the physical and psychological well being of the member who is restrained or secluded, including but not limited to, respiratory and circulatory status, skin integrity, vital signs, and any special requirements specified by the policy of the PRTF associated with the one hour face to face evaluation; and

(7) the use of first aid techniques and certification in the use of cardiopulmonary resuscitation, including annual re-certification.

(c) Individuals providing staff training must be qualified as evidence by education, training and experience in techniques used to address members' behaviors. The PRTF must document in staff personnel records that the training and demonstration of competency were successfully completed.

(d) The process by which a facility is required to inform the OHCA of a death, serious injury, or suicide attempt is as follows:

(1) The hospital administrator, executive director, or designee is required to contact the OHCA Behavioral Health Unit by phone no later than 5:00 p.m. on the business day following the incident.

(2) Information regarding the ~~Medicaid—recipient~~ Medicaid—recipient SoonerCare member involved, the basic facts of the incident, and follow-up to date must be reported. The agency will be asked to supply, at a minimum, follow-up information with regard to patient outcome, staff debriefing and programmatic changes implemented (if applicable).

(3) Within three days, the OHCA Behavioral Health Unit must receive the above information in writing (example: Facility Critical Incident Report).

(4) Patient death must be reported to the OHCA Behavioral Health Services Unit as well as to the Centers for Medicare and Medicaid Regional office in Dallas, Texas.

(5) Compliance with seclusion and restraint reporting requirements will be verified during the onsite inspection of care (~~Section 5, Quality of Care~~) see OAC 317:30-5-95.42, or using other methodologies.

317:30-5-95.41. Documentation of records for children's inpatient services

(a) All documentation for services provided under active treatment must be documented in an individual note and reflect the content of each session provided. Individual, Family, Process Group, Expressive Group, Individual Rehabilitative and Group Rehabilitative Services documentation must include, at a minimum, the following:

- (1) date;
- (2) start and stop time for each session;
- (3) signature of the therapist and/or staff that provided the service;
- (4) credentials of the therapist;
- (5) specific problem(s) addressed (problems must be identified on the plan of care);

- (6) method(s) used to address problems;
 - (7) progress made towards goals;
 - (8) ~~patient's~~ member's response to the session or intervention; and
 - (9) any new problem(s) identified during the session.
- (b) Signatures of the ~~patient member~~, parent/guardian for ~~patients members~~ under the age of 18, doctor, ~~MHP Licensed Behavioral Health Professional (LBHP)~~, and RN are required on the ~~Individual Plan of Care~~ individual plan of care and all plan of care reviews. The ~~Individual Plan of Care~~ individual plan of care and ~~Plan of Care Review~~ plan of care review are not valid until signed and separately dated by the ~~patient member~~, parent/legal guardian for ~~patients members~~ under the age of 18, doctor, RN, ~~MHP LBHP~~, and all other requirements are met. All treatment team staff providing individual therapy, family therapy and process group therapy must sign the individual plan of care and all plan of care reviews.

317:30-5-95.42. Inspection of care of psychiatric facilities providing services to children

- (a) There will be an on site Inspection of Care (IOC) of each psychiatric facility that provides care to ~~Medicaid~~ SoonerCare eligible children which will be performed by the OHCA or its designated agent. The Oklahoma Health Care Authority will designate the members of the Inspection of Care team.
- (b) The IOC team will consist of one to three team members and will be comprised of ~~Licensed Mental Health Professionals Behavioral Health Professionals (LBHP) and/or~~ Registered Nurses.
- (c) The inspection will include observation and contact with ~~recipients members~~. The Inspection of Care Review will consist of ~~recipients members~~ present or listed as facility residents at the beginning of the Inspection of Care visit as well as ~~recipients members~~ on which claims have been filed with OHCA for acute or PRTF levels of care. The review includes validation of certain factors, all of which must be met for the ~~Medicaid~~ services to be compensable.
- (d) Following the on-site inspection, the Inspection of Care Team will report its findings to the facility. The facility will be provided with written notification if the findings of the inspection of care have resulted in any deficiencies. A copy of the final report will be sent to the facility's accrediting agency.
- (e) Deficiencies found during the IOC may result in a partial per-diem recoupment or a full per-diem recoupment of the compensation received. The following documents are considered to be critical to the integrity of care and treatment and must be completed within the time lines designated in OAC 317:30-5-95.37(a)(1) and 317:30-5-95.35(a)(2):
 - (1) History and physical evaluation;
 - (2) Psychiatric evaluation;
 - (3) Psychosocial evaluation; and
 - (4) Individual Plan of Care.

(f) For each day that the History and Physical evaluation, Psychiatric evaluation, Psychosocial evaluation and Individual Plan of Care are not contained within the ~~patient's~~ member's records, those days will warrant a full per-diem recoupment of the compensation received. Full per-diem recoupment will only occur for those documents.

- (g) If the review findings have resulted in a partial per-diem recoupment of \$50.00 per event, the days of service involved will be reported in the notification. If the review findings have resulted in full per diem recoupment status, the non-compensable days of service will be reported in the notification. In the case of non-compensable days full per diem or partial per diem, the facility will be required to refund the amount.
- (h) Penalties of non-compensable days which are the result of the facility's failure to appropriately provide and document the services described herein, or adhere to applicable accreditation, certification, and/or state licensing standards, are not ~~Medicaid~~ compensable or billable to the ~~patient member~~ or the ~~patient's~~ member's family.

317:30-5-96.2. Payments definitions

The following words and terms, when used in Sections OAC 317:30-5-96.3 through 317:30-5-96.7, shall have the following meaning, unless the context clearly indicates otherwise:

"Allowable costs" means costs necessary for the efficient delivery of patient care.

"Ancillary Services" means the services for which charges are customarily made in addition to routine services. Ancillary services include, but are not limited to, physical therapy, speech therapy, laboratory, radiology and prescription drugs.

"Border Status" means a placement in a state that does not border Oklahoma but agrees to the same terms and conditions of in-state or border facilities.

"Community-Based, transitional (CBT)" means a non-secure PRTF that furnishes structured, therapeutic treatment services in the context of a family-like, small multiple resident home environment of 16 beds or less.

"Developmentally disabled child" means a child with deficits in adaptive behavior originating during the developmental period. This condition may exist concurrently with a significantly subaverage general intellectual functioning.

"Eating Disorders Programs" means acute or intensive residential behavioral, psychiatric and medical services provided in a discreet unit to individuals experiencing an eating disorder.

"Free-standing, Small" means ~~an entity that is not integrated with any other entity as a main provider, a department of a provider, remote location of a hospital, satellite facility, or a provider-based entity.~~ generally a small, non-secure PRTF with 16 beds or more but less than 32 beds. These facilities may or may not have lock-down.

"Free-standing, Medium" means generally a secure PRTF with bed size ranging from 32 to 49 beds. Some may be non-secure.

"Free-standing, Large" means generally a for-profit, secure PRTF with bed size ranging for 50 to over 100 beds. Some may be non-secure.

"Professional services" means services of a physician, psychologist or dentist legally authorized to practice medicine and/or surgery by the state in which the function is performed.

"Provider-Based PRTF" means a PRTF that is part of a larger general medical surgical main hospital, and the PRTF is

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treated as "provider based" under 42 CFR 413.65 and operates under the same license as the main hospital.

"Public" means a hospital or PRTF owned or operated by the state.

"Routine Services" means services that are considered routine in the freestanding PRTF setting. Routine services include, but are not limited to:

- (A) room and board;
- (B) treatment program components;
- (C) psychiatric treatment;
- (D) professional consultation;
- (E) medical management;
- (F) crisis intervention;
- (G) transportation;
- (H) rehabilitative services;
- (I) case management;
- (J) interpreter services (if applicable);
- (K) routine health care for individuals in good physical health; and
- (L) laboratory services for a substance abuse/detoxification program.

"Specialty treatment program/specialty unit" means acute or intensive residential behavioral, psychiatric and medical services that provide care to a population with a special need or issues such as developmentally disabled, mentally retarded, autistic/Asperger's, eating disorders, sexual offenders, or reactive attachment disorders. These patients members require a higher level of care and staffing ratio than a standard PRTF and typically have multiple problems.

"Sub-Acute Services" means a planned regimen of 24-hour professionally directed evaluation, care, and treatment for individuals. Care is delivered by an interdisciplinary team to individuals whose sub-acute neurological and emotional/behavioral problems are sufficiently severe to require 24-hour care. However, the full resources of an acute care general hospital or medically managed inpatient treatment is not necessary. An example of subacute care is services to children with pervasive developmental disabilities including autism, hearing impaired and dually diagnosed individuals with mental retardation and behavioral problems.

"Treatment Program Components" means therapies, activities of daily living and rehabilitative services furnished by physician/psychologist or other licensed mental health professionals.

"Usual and customary charges" refers to the uniform charges listed in a provider's established charge schedule which is in effect and applied consistently to most patients and recognized for program reimbursement. To be considered "customary" for Medicaid reimbursement, a provider's charges for like services must be imposed on most patients regardless of the type of patient treated or the party responsible for payment of such services.

[OAR Docket #07-1339; filed 8-1-07]

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

[OAR Docket #07-1340]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 17. Medical Suppliers

317:30-5-210. [AMENDED]

317:30-5-211. [REVOKED]

317:30-5-211.1. through 317:30-5-211.16. [NEW]

317:30-5-212. [AMENDED]

317:30-5-215. [REVOKED]

317:30-5-216. [NEW]

317:30-5-217. through 317:30-5-218. [AMENDED]

Part 61. Home Health Agencies

317:30-5-547. [AMENDED]

(Reference APA WF # 07-22)

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 424.57(c)

DATES:

Adoption:

May 10, 2007

Approved by Governor:

June 28, 2007

Effective:

Immediately upon Governor's approval or July 1, 2007, whichever is later

Expiration:

Effective through July 14, 2008, 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 Medicare guidelines and accreditation quality standards. Federal financial participation is at risk if rules are not brought into compliance with Medicare standards.

ANALYSIS:

Rules are revised to: (1) include supplier accreditation, medical necessity, prescription, documentation, and prior authorization requirements; (2) address rental, purchase, repairs, maintenance, replacement, and delivery of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS); (3) allow SoonerCare members freedom of provider choice; (4) provide guidelines for new billing and reimbursement requirements; and (5) reorganize and be more user friendly by adding definitions and separating services. Revisions are needed to assure federal financial participation. Additional revisions delete obsolete language and forms and clarify coverage for oxygen, nutritional support, prosthetic devices, and supplies.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR JULY 1, 2007, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 17. MEDICAL SUPPLIERS

317:30-5-210. Eligible providers

All eligible medical suppliers must have a current contract with the Oklahoma Health Care Authority. The supplier must comply with all applicable State and Federal laws. Effective January 1, 2008, all suppliers of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) must be accredited by a Medicare deemed accreditation organization for quality standards for DMEPOS suppliers in order to bill the SoonerCare program. OHCA may make exceptions to this standard if it is determined that a supplier may provide acceptable service to an under served location.

317:30-5-211. Coverage for adults [REVOKED]

(a) Durable medical equipment, adaptive equipment, medical supplies and prosthetic devices for adults are covered as set forth in this Section.

(1) ~~Durable medical equipment.~~ The Oklahoma Health Care Authority provides coverage for durable medical equipment that meets the definition below, is prescribed by the appropriate medical provider, is medically necessary and meets the special requirements noted below.

(A) **Definition of DME.** Durable medical equipment (DME) is equipment which can withstand repeated use, is used to serve a medical purpose, is not useful to a person in the absence of an illness or injury, and is used in the most appropriate setting including the home or workplace.

(B) **Purchase of DME.** All durable medical equipment purchased with Oklahoma Medicaid funds becomes the property of the Oklahoma Health Care Authority to be used by the recipient until no longer needed.

(C) **Provision of DME.**

(i) **Rental.** Rental is the preferred method of providing medical equipment if the anticipated length of usage is less than 10 months. Except for oxygen and other respiratory equipment, rental of durable medical equipment is limited to 10 consecutive months. After rental has been paid for 10 months, the equipment becomes the property of the Oklahoma Health Care Authority to be used by the recipient until no longer needed.

(ii) **Purchase.** The purchase of durable medical equipment, not otherwise addressed in the section, is covered when the anticipated length of usage exceeds 10 months.

(D) **Prior authorization.**

(i) **Rental.** Rental of hospital beds, support surfaces, wheelchairs, continuous positive airway

pressure devices and lifts require prior authorization initially and again before extending beyond five months of rental.

(ii) **Purchase.** DME with a fee schedule price of \$500 or more requires prior authorization. DME with a fee schedule price less than \$500 does not require prior authorization. An invoice or manufacturers quote may be required for pricing.

(iii) ~~Bath and toilet aids.~~ Bath and toilet aids, including commode chairs, sitz baths, and handrails require prior authorization. For bath and toilet aids to be medically necessary, patients must be confined to the bed or room, without indoor bathroom facilities, or unable to climb or descend the stairs necessary to reach the bathrooms of their homes. For a sitz bath to be medically necessary, the patient must have an infection or injury of the perineal area.

(E) ~~Requirement for Certificate of Medical Necessity.~~ For certain items of DME, a Certificate of Medical Necessity is required and should be submitted along with the request for prior authorization. These items are:

- (i) hospital beds,
- (ii) support surfaces,
- (iii) wheelchairs,
- (iv) continuous positive airway pressure devices, (BIPAP & CPAP)
- (v) lift devices,
- (vi) lymphedema pumps,
- (vii) external infusion pumps, and
- (viii) osteogenesis stimulators.

(2) ~~Adaptive equipment for ICF/MR residents.~~ Payment is made for certain adaptive equipment, for persons residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR). Adaptive equipment is defined as medically necessary equipment (equipment, appliances and prosthetic devices) required because of physical disabilities. To be covered, adaptive equipment must be unique, individualized or personalized to a specific individual resident. This would include modified equipment or devices to assist in ambulation. Standard wheelchairs, walkers, eyeglasses, etc. would not be considered adaptive equipment. All adaptive equipment must be prescribed by a physician, and prior authorization is required.

(3) **Supplies.** The Oklahoma Health Care Authority provides coverage for supplies that meet the definition below, are prescribed by the appropriate medical provider, are medically necessary and meet the special requirements noted below. Coverage is excluded for the items listed below:

(A) **Definition of supplies.** Medical supplies are defined as those disposable items which are used for the care and treatment of a medical condition.

(B) **Items not covered.** Items not covered include but are not limited to:

- (i) diapers,

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- (ii) underpads,
- (iii) medicine cups,
- (iv) eating utensils, and
- (v) personal comfort items.

~~(C) **Medical supplies for nursing facility patients.** For patients residing in nursing facilities, separate payment is not made for supplies which are normally considered to be furnished as part of nursing care. Payment can be made separately to a supplier, however, for the following items for patients who reside in nursing facilities:~~

- ~~(i) oxygen~~
- ~~(ii) catheters and catheter accessories~~
- ~~(iii) intravenous feeding supplies (see prosthetic devices/hyperalimentation for coverage of food supplements)~~
- ~~(iv) colostomy and urostomy bags and accessories~~
- ~~(v) tracheotomy supplies.~~
- ~~(vi) external breast prostheses and support accessories.~~

~~(D) **Special requirements.**~~

~~(i) **Intravenous therapy.** Supplies for intravenous therapy are covered. Drugs for IV therapy are covered only as specified on the Vendor Drug program.~~

~~(ii) **Diabetic supplies.** Payment is made for the purchase of one glucometer, one spring loaded lancet device, and three replacement batteries per year. In addition, payment will be made for a maximum of 100 glucose test strips and 100 lancets per month. Diabetic supplies in excess of these parameters must be prior authorized.~~

~~(4) **Prosthetic devices.** Coverage is provided for prosthetic devices prescribed by an appropriate medical provider as conditioned in this paragraph.~~

~~(A) **Catheters.** Payment is made for permanent indwelling catheters, male external catheters, drain bags and irrigation trays. Payment is also made for single use self catheters when the patient has a history of urinary tract infections. The prescription from the attending physician indicates that such documentation is available in the patient's medical record.~~

~~(B) **Nerve stimulators.** Payment is made for rental, not to exceed the purchase price, for transeutaneous nerve stimulators, implanted peripheral nerve stimulators, and neuromuscular stimulators. After rental has been paid for 10 months, the equipment becomes the property of the Oklahoma Health Care Authority to be used by the recipient until no longer needed.~~

~~(C) **Tracheotomy supplies.** Tracheotomy supplies are covered.~~

~~(D) **Home dialysis.** Equipment and supplies are covered for patients receiving home dialysis treatments.~~

~~(E) **Colostomy and urostomy supplies.** Payment is made for colostomy and urostomy bags and accessories.~~

~~(F) **Prosthetic devices inserted during surgery.** Payment is made for prosthetic devices inserted during the course of surgery when the prosthetic devices are not covered as a part of the inpatient hospital level of care per diem payment.~~

~~(G) **Breast Prosthesis, bras, and prosthetic garments.**~~

~~(i) Payment is made for:~~

~~(I) one prosthetic garment with mastectomy form every 12 months for use in the post-operative period prior to a permanent breast prosthesis or as an alternative to a mastectomy bra and breast prosthesis;~~

~~(II) two mastectomy bras per year; and~~

~~(III) one silicone or equal breast prosthetic per side every 24 months; or~~

~~(IV) one foam prosthetic per side every six months.~~

~~(ii) Payment is not made for both a silicone and a foam prosthetic in the same 12-month period.~~

~~(iii) Breast prostheses, bras, and prosthetic garments must be purchased from a Board-Certified Mastectomy Fitter.~~

~~(iv) A breast prosthesis can be replaced if:~~

~~(I) it is lost;~~

~~(II) it is irreparably damaged (other than ordinary wear and tear); or~~

~~(III) the member's medical condition necessitates a different type of item and the physician provides a new prescription explaining the need for a different type of prosthesis.~~

~~(v) External breast prostheses are not covered once breast reconstruction is performed.~~

~~(H) **Parenteral therapy.** Payment is made for hyperalimentation, including supplements, supplies and equipment rental, in behalf of persons having permanently inoperative internal body organ or function. Payment can also be made for the infusion pump in cases where a patient is on therapy for a paralyzed esophagus.~~

~~(I) **Oxygen.** Coverage is provided for oxygen and oxygen supplies. Medical necessity will be determined from the results of blood gas analysis tests or oximetry tests. The PO₂ level can not exceed 59mm Hg and the arterial blood saturation can not exceed 89% at rest on room air. The tests results to document medical necessity must be within 30 days of the date of the physician's prescription.~~

~~(i) **Oxygen rental.** A monthly rental payment will be made for rental of liquid oxygen systems, gaseous oxygen systems and oxygen concentrators. The rental payment includes all contents and supplies, i.e., regulators, tubing, masks, a back up oxygen system, etc. An additional monthly payment may be made for a portable liquid or gaseous~~

oxygen system for ambulatory patients only. When six or more liters are required, an additional amount will be paid up to 150% of the allowable.

(ii) **Oxygen concentrators in nursing facility.** Oxygen concentrators are covered for patients residing in their home or in a nursing facility. It is expected that patients in nursing facilities requiring oxygen PRN will be serviced by oxygen kept on hand.

(iii) **Prescription for oxygen.** Prescription for oxygen services must be updated annually or any time a change in prescription occurs. All DME suppliers will be responsible for maintaining the prescription(s) of oxygen services (HCFA 484, Certificate of Medical Necessity for Oxygen) in each Medicaid recipient file. If any change in prescription occurs, the physician must complete a new HCFA 484 and this must be maintained in the recipient files by the DME supplier. The Surveillance and Utilization Review System (SURS) will conduct on-going monitoring of prescriptions for oxygen services to ensure Medicaid guidelines are followed. Recoupment will be made on any cases not meeting the requirements.

(iv) **Oxygen for Medicare eligible nursing home patients.** Oxygen supplied to Medicare eligible nursing home patients may be billed directly to the fiscal agent. It is not necessary to obtain a rejection from Medicare prior to filing.

(b) **Miscellaneous non covered items.** Miscellaneous non covered durable medical equipment, adaptive equipment, medical supplies and prosthetic devices for adults are:

- (1) Sales taxes,
- (2) Enteral therapy and nutritional supplies and other food supplements, and
- (3) Electro spinal orthosis system (ESO).

(c) **Prior authorization.**

- (1) Prosthetic devices, except for cataract lenses, require prior authorization.
- (2) Total parenteral therapy is considered a prosthetic device and requires prior authorization. The request for prior authorization must include a fully completed Certificate of Medical Necessity, Form HCFA 852, including information from the attending physician regarding the patient's medical condition that necessitates the hyperalimentation and the expected length of treatment.
- (3) The purchase of any oxygen delivery system requires prior authorization.

(d) **Requirement for Certificate of Medical Necessity.**

- (1) The medical supplier must have a fully completed Certificate of Medical Necessity, Form HCFA 848, on file for certain prosthetic items including Parenteral Therapy and Transcutaneous Electric Nerve Stimulators (TENS).
- (2) The medical supplier must have a fully completed current Certificate of Medical Necessity, Form HCFA 484, on file to support the claims for oxygen or oxygen supplies to establish whether coverage criteria are met and to ensure that the oxygen services provided are consistent

with the physician's prescription (refer to instructions from Palmetto Government Benefits Administration, the Oklahoma Medicare Carrier, for further requirements for completion of the HCFA 484).

(3) The HCFA 484 must be completed and signed by the physician prior to submitting the initial claim. When a physician prescription for oxygen expires, a HCFA 484, including retesting, must be completed by the physician prior to the submission of claims. The medical and prescription information on HCFA 484 can be completed only by the attending physician or entered on the form from information in this patient's records by an employee of the physician for the physician's review and signature. In situations where the physician has prescribed oxygen over the phone, it is acceptable to have a cover letter containing the same information as the HCFA 484, stating the physician's orders, as long as the HCFA 484 has been signed by the physician or as set out above.

317:30-5-211.1. Definitions

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

"Adaptive equipment" means devices, aids, controls, appliances or supplies of either a communication or adaptive type, determined necessary to enable the person to increase his or her ability to function in a home and community based setting or private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) with independence and safety.

"Capped rental" means monthly payments for the use of the Durable Medical Equipment (DME) for a limited period of time not to exceed 13 months. Items are considered purchased after 13 months of continuous rental.

"Certificate of medical necessity (CMN)" means a certificate required to help document the medical necessity and other coverage criteria for selected items, those items are defined in this Chapter. The physician's certification must include the member's diagnosis, the reason the equipment is required, and the physician's estimate, in months, of the duration of its need.

"Customized DME" means items of DME which have been uniquely constructed or substantially modified for a specific member according to the description and orders of the member's treating physician. For instance, a wheelchair would be considered "customized" if it has been:

- (A) measured, fitted or adapted in consideration of the member's body size, disability, period of need, or intended use;
- (B) assembled by a supplier or ordered from a manufacturer who makes available customized features, modifications, or components for wheelchairs; and
- (C) intended for an individual member's use in accordance with instructions from the member's physician.

"DME information form (DIF)" means a document used to provide additional information needed to process a claim. The DIF is completed by the supplier and is not reviewed and signed by the physician. In the event of a post payment audit,

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the supplier must be able to produce the DIF and, if requested, produce information to substantiate the information on the DIF.

"Durable medical equipment (DME)" means equipment that can withstand repeated use, i.e.; the type of item that could normally be rented is used to serve a medical purpose, is not useful to a person in the absence of an illness or injury, and is used in the most appropriate setting including the home or workplace.

"Invoice" means a document that provides the following information when applicable; description of product, quantity, quantity in box, purchase price (less any discounts, rebates or commissions received), NDC, strength, dosage, provider, seller's name and address, purchaser's name and address and date of purchase. At times, visit notes will be required to determine how much of the supply was expended. When possible, the provider should identify the SoonerCare member receiving the equipment or supply on the invoice.

"Medical supplies" means an article used in the cure, mitigation, treatment, prevention, or diagnosis of illnesses. Disposable medical supplies are medical supplies consumed in a single usage and do not include skin care creams or cleansers. Medical supplies do not include surgical supplies or medical or surgical equipment.

"OHCA CMN" means a certificate required to help document the medical necessity and other coverage criteria for selected items. Those items are defined in this chapter. The physician's certification must include the member's diagnosis, the reason equipment is required, and the physician's estimate, in months, of the duration of its need. This certificate is used when the OHCA requires a CMN and one has not been established by CMS.

"Orthotics" means an item used for the correction or prevention of skeletal deformities.

"Prosthetic devices" means a replacement, corrective, or supportive device (including repair and replacement parts for same) worn on or in the body, to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body.

317:30-5-211.2. Medical necessity

(a) **Coverage.** Coverage is subject to the requirement that the equipment be necessary and reasonable for the treatment of an illness or injury, or to improve the functioning or malformed body member. The member's diagnosis must warrant the type of equipment or supply being purchased or rented.

(b) **Prescription requirements.** All DME, except for hearing aid batteries, require a prescription signed by a physician, a physician assistant, or an advanced practice nurse. Except as otherwise stated in state or federal law, the prescription must be in writing, or given orally and later reduced to writing by the provider filling the order. Prescriptions are valid for no more than one year from the date written. The prescription must include the following information:

- (1) date of the order;
- (2) name and address of the prescriber;
- (3) name and address of the member;

(4) name or description and quantity of the prescribed item;

(5) diagnosis for the item requested;

(6) directions for use of the prescribed item; and

(7) prescriber's signature.

(c) **Certificate of medical necessity.** For certain items or services, the supplier must receive a signed CMN/OHCA CMN from the treating physician. The supplier must have a signed CMN/OHCA CMN in their records before they submit a claim for payment. The CMN/OHCA CMN may be faxed, copied or the original hardcopy.

(d) **Place of service.**

(1) OHCA covers DMEPOS for use in the member's place of residence except if the member's place of residence is a nursing facility.

(2) For members residing in a nursing facility, most medical supplies and/or DME are considered part of the facility's per diem rate. Refer to coverage for nursing facility residents at OAC 317:30-5-211.16.

317:30-5-211.3. Prior authorization (PA)

(a) **General.** Prior authorization is the electronic or written authorization issued by OHCA to a provider prior to the provision of a service. Providers should obtain a PA before providing services. Prior Authorization is designed to:

(1) safeguard against unnecessary or inappropriate care and services;

(2) safeguard against excessive payments;

(3) assess the quality and timeliness of services;

(4) promote the most effective and appropriate use of available services and facilities;

(5) determine if less expensive alternative care, services, or supplies are permissible; and

(6) curtail inaccurate utilization practices of providers and members.

(b) **Requirements. The following services require prior authorization:**

(1) services that exceed quantity/frequency limits or established fees;

(2) medical need for an item is beyond OHCA's standards of coverage;

(3) use of a Not Otherwise Classified (NOC) code or miscellaneous codes;

(4) services for which a less costly alternative may exist; and

(5) procedures indicating PA is required on the OHCA fee schedule.

(c) **Prior authorization requests.** Refer to OAC 317:30-5-216.

317:30-5-211.4. Rental and/or purchase

(a) **Purchase (New or Used).** Items may be purchased if they are inexpensive accessories for other DME or the equipment itself will be used for an extended period of time. The OHCA reserves the right to determine whether items of DMEPOS will be rented or purchased.

(b) **Rental.**

(1) Continuous rental. Items that require regular and ongoing servicing/maintenance are rented for the duration indicated by the physician's order and medical necessity. Examples include but are not limited to oxygen and volume ventilators. The rental payment includes routine servicing and all necessary repairs or replacements to make the rented item functional.

(2) Capped rental. Items are rented until purchase price is reached. Capped rental items may be rented for a maximum of 13 months. If the member changes suppliers during or after the 13th continuous month rental period, this does not result in a new rental period. The supplier that provides the item to the member the 13th month of rental is responsible for supplying the equipment, as well as routine maintenance and servicing after the 13th month. If used equipment is issued to the member, the usual and customary charge reported to the OHCA, must accurately reflect that the item is used.

(c) Converting rental to purchase. The majority of DME can be rented as a capped rental for up to a maximum of 13 continuous months. When an item is converted to a purchase during the rental period, the provider must subtract the amount already paid for the rental item from the total purchase price.

317:30-5-211.5. Repairs, maintenance, replacement and delivery

(a) Repairs. Repairs to equipment that a member owns are covered when they are necessary to make the equipment usable. The repair charge includes the use of "loaner" equipment as required. If the expense for repairs exceeds the estimated expense of purchasing or renting another item of equipment for the remaining period of medical need, payment can not be made for the amount in excess.

(b) Maintenance. Routine periodic servicing, such as testing, cleaning, regulating, and checking the member's equipment is considered maintenance and not a separate covered service. However, more extensive maintenance as recommended by the manufacturer and performed by authorized technicians are considered repairs. This may include breaking down sealed components and performing tests that require specialized testing equipment not available to the member. The supplier of a capped rental item that supplied the item the 13th month must provide maintenance and service for the item. In very rare circumstances of malicious damage, culpable neglect, or wrongful disposition, the supplier may document the circumstances and be relieved of the obligation to provide maintenance and service.

(c) Replacement.

(1) If a capped rental item of equipment has been in continuous use by the member for the equipment's useful life or if the item is irreparably damaged, lost, or stolen, a prior authorization must be submitted to obtain new equipment. The reasonable useful life for capped rental equipment cannot be less than five years. Useful life is determined by the delivery of the equipment to the member, not the age of the equipment.

(2) Replacement parts must be billed with the appropriate HCPCS code that represents the item or part being replaced, along with a pricing modifier and replacement

modifier. If a part that has not been assigned a HCPCS code is being replaced, the provider should use a miscellaneous HCPCS code to bill each part. Each claim that contains miscellaneous codes for replacement parts must include a narrative description of the item, the brand name, model name/number of the item and an invoice.

(d) Delivery. Delivery costs are included in setting the price for covered items. Delivery costs are not allowed except in rare and unusual circumstances when the delivery is outside the supplier's normal range of operation and cannot be provided by a more local supplier.

317:30-5-211.6. General documentation requirements

Section 1833(e) of the Social Security Act precludes payment to any provider of service unless "there has been furnished such information as may be necessary in order to determine the amounts due such provider" [42 U.S.S. Section 13951(e)]. The member's medical records will reflect the need for the care provided. The member's medical records should include the physician's office records, hospital records, nursing home records, home health agency records, records from other health care professionals and test reports. This documentation must be provided for prior authorization requests and available to the OHCA or its designated agent upon request.

317:30-5-211.7. Free choice

A member has the choice of which provider will fill the prescription or order for a DMEPOS. The prescribing physician should give the written prescription or order to the member in order to allow the member freedom of choice.

317:30-5-211.8. Coverage

Durable medical equipment, adaptive equipment, medical supplies and prosthetic devices prescribed by the appropriate medical provider and medically necessary are covered for adults and children as set forth in this section.

317:30-5-211.9. Adaptive equipment

(a) Residents of ICF/MR facilities. Payment is made for customized adaptive equipment for persons residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR). This includes customized equipment or devices to assist in ambulation. Standard wheelchairs, walkers, eyeglasses, etc. would not be considered customized adaptive equipment. All customized adaptive equipment must be prescribed by a physician and requires prior authorization.

(b) Members in home and community-based waivers. Refer to OAC 317:40-5-100.

317:30-5-211.10. Durable medical equipment (DME)

(a) DME. DME includes, but is not limited to; medical supplies, orthotics and prosthetics, custom braces, therapeutic lenses, respiratory equipment and other qualifying items when acquired from a contracted DME provider.

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(b) **Certificate of medical necessity.** Certain items of DME require a CMN/OHCA CMN which should be submitted with the request for prior authorization. These items include but are not limited to:

- (1) hospital beds;
- (2) support surfaces;
- (3) wheelchairs;
- (4) continuous positive airway pressure devices (BI-PAP and CPAP);
- (5) patient lift devices;
- (6) external infusions pumps;
- (7) enteral and parenteral nutrition;
- (8) osteogenesis stimulators; and
- (9) pneumatic compression devices.

(c) **Prior authorization.**

(1) **Rental.** Rental of hospital beds, support surfaces, wheelchairs, continuous positive airway pressure devices (CPAP and BiPAP), pneumatic compression devices, and lifts require prior authorization and a completed CMN/OHCA CMN; medical necessity must be documented in the member's medical record and be signed by the physician.

(2) **Purchase.** Equipment will be purchased when a member requires the equipment for an extended period of time. During the prior authorization review the PA consultant may change the authorization from a rental to a purchase or a purchase to a rental based on the documentation submitted. The provider must indicate whether the DME item provided is new or used.

(d) **Backup equipment.** Backup equipment is considered part of the rental cost and not a covered service without prior authorization.

(e) **Home modification.** Equipment used for home modification is not a covered service.

317:30-5-211.11. Oxygen and oxygen equipment

(a) **Medical necessity.** Oxygen and oxygen supplies are covered when medically necessary. Medical necessity is determined from results of arterial blood gas analysis (ABG) or pulse oximetry tests (pO_2). The test results to document medical necessity must be within 30 days of the date of the physician's prescription. A copy of a report from an inpatient or outpatient hospital or emergency room setting will meet the requirement.

(1) For initial certification for oxygen, the ABG study or oximetry analysis used to determine medical necessity may not be performed by the DMEPOS or a related corporation. In addition, neither the study nor the analysis may be performed by a physician with a significant ownership interest in the DMEPOS performing such tests. These prohibitions include relationships through blood or marriage. A referring physician may perform the test in his/her office as part of routine member care.

(2) Initial certification is for no more than three months. Except in the case of sleep-induced hypoxemia, ABG or

oximetry is required within the third month of the initial certification period if the member has a continued need for supplemental oxygen. Re-certification will be required every 12 months.

(A) **Adults.** Initial requests for oxygen must include ABG results, unless the condition of the member is such that they cannot tolerate the invasive test or it is not possible to obtain the test. The prescribing physician must document why oximetry reading is necessary instead of ABG. The arterial blood saturation can not exceed 89% at rest on room air; the pO_2 level can not exceed 59mm Hg.

(B) **Children.** ABG's are not required for children. Requests for oxygen for children that do not meet the following requirements should include documentation of the medical necessity based on the child's clinical condition and are considered on a case-by-case basis. Members 20 years of age or less must meet the following requirements:

(i) birth through three years, SaO_2 level equal to or less than 94%; and

(ii) ages four and above, SaO_2 level equal to or less than 90%.

(b) **Certificate of medical necessity.**

(1) The medical supplier must have a fully completed current CMN on file to support the claims for oxygen or oxygen supplies, to establish whether coverage criteria are met and to ensure that the oxygen services provided are consistent with the physician's prescription (refer to instructions from Palmetto Government Benefits Administration, the Oklahoma Medicare Carrier, for further requirements for completion of the CMN).

(2) The CMN must be signed by the physician prior to submitting the initial claim. When a physician prescription for oxygen is renewed, a CMN, including the required retesting, must be completed by the physician prior to the submission of claims. The medical and prescription information on the CMN may be completed by a non physician clinician, or an employee of the physician for the physician's review and signature. In situations where the physician has prescribed oxygen over the phone, it is acceptable to have a cover letter containing the same information as the CMN, stating the physician's orders, as long as the CMN has been signed by the physician or as set out above.

(3) Prescription for oxygen services must be updated at least annually and at any time a change in prescription occurs during the year. All DMEPOS suppliers are responsible for maintaining the prescription(s) for oxygen services and CMN in each member's file. If any change in prescription occurs, the physician must complete a new CMN that must be maintained in the member's file by the DME supplier. The OHCA or its designated agent will conduct ongoing monitoring of prescriptions for oxygen services to ensure guidelines are followed. Payment adjustments will be made on claims not meeting these requirements.

317:30-5-211.12. Oxygen rental

A monthly rental payment is made for rental of liquid oxygen systems, gaseous oxygen systems and oxygen concentrators. The rental payment for a stationary system includes all contents and supplies, such as, regulators, tubing, masks, etc that are medically necessary. An additional monthly payment may be made for a portable liquid or gaseous oxygen system for ambulatory members only.

- (1) Oxygen concentrators are covered items for members residing in their home or in a nursing facility.
- (2) Portable oxygen and portable oxygen content for limited uses such as physician's visits or trips to the hospital are covered items. The reason for use of portable oxygen must be stated on the CMN. A portable system that is used as a standby only is not a covered item.
- (3) When six or more liters of oxygen are medically necessary, an additional payment will be paid up to 150% of the allowable for a stationary system when billed with the appropriate modifier.

317:30-5-211.13. Prosthetic devices

Prosthetic devices prescribed by an appropriate medical provider as conditioned in this section are covered items.

- (1) Certificate of medical necessity. The medical supplier must have a fully completed CMN on file for prosthetic items including Transcutaneous Electric Nerve Stimulators (TENS).
- (2) Prior authorization. Prosthetic devices, except for cataract lenses, require prior authorization.
- (3) Home dialysis. Equipment and supplies are covered items for members receiving home dialysis treatments only.
- (4) Nerve stimulators. Payment is made for rental equipment which must not exceed the purchase price, for transcutaneous nerve stimulators, implanted peripheral nerve stimulators, and neuromuscular stimulators. After continuous rental for 13 months, the equipment becomes the property of the OHCA to be used by the member until no longer medically necessary.
- (5) Breast prosthesis, bras, and prosthetic garments.

- (A) Payment is limited to:
 - (i) one prosthetic garment with mastectomy form every 12 months for use in the postoperative period prior to a permanent breast prosthesis or as an alternative to a mastectomy bra and breast prosthesis;
 - (ii) two mastectomy bras per year; and
 - (iii) one silicone or equal breast prosthetic per side every 24 months; or
 - (iv) one foam prosthetic per side every six months.
- (B) Payment will not be made for both a silicone and a foam prosthetic in the same 12 month period.
- (C) Breast prostheses, bras, and prosthetic garments must be purchased from a Board Certified Mastectomy Fitter.
- (D) A breast prosthesis can be replaced if:

- (i) lost;
- (ii) irreparably damaged (other than ordinary wear and tear); or
- (iii) the member's medical condition necessitates a different type of item and the physician provides a new prescription explaining the need for a different type of prosthesis.
- (E) External breast prostheses are not covered after breast reconstruction is performed.
- (6) Prosthetic devices inserted during surgery. Separate payment is made for prosthetic devices inserted during the course of surgery when the prosthetic devices are not integral to the procedure and are not included in the reimbursement for the procedure itself.

317:30-5-211.14. Nutritional support

(a) Parenteral nutrition. The member must require intravenous feedings to maintain weight and strength commensurate with the member's overall health status. Adequate nutrition must not be possible by dietary adjustment and/or oral supplements.

- (1) The member must have a permanent impairment. Permanence does not require a determination that there is no possibility that the member's condition may improve sometime in the future. If the judgment of the attending physician, substantiated in the medical record, is that the condition is of long and indefinite duration (ordinarily at least three months), the test of permanence is met. Parenteral nutrition will be denied as a non-covered service in situations involving temporary impairments.
- (2) The member must have a condition involving the small intestine, exocrine glands, or other conditions that significantly impair the absorption of nutrients. Coverage is also provided for a disease of the stomach and/or intestine that is a motility disorder and impairs the ability of nutrients to be transported through the GI system, and other conditions as deemed medically necessary. There must be objective medical evidence supporting the clinical diagnosis.
- (3) Re-certification of parenteral nutrition will be required as medically necessary and determined by the OHCA medical staff.

(b) Prior authorization. A written signed and dated order must be received by the supplier before a claim is submitted to the OHCA. If the supplier bills an item addressed in this policy without first receiving the completed order, the item will be denied as not medically necessary.

- (1) The ordering physician is expected to see the member within 30 days prior to the initial certification or required re-certification. If the physician does not see the member within this time frame, the physician must document the reason why and describe what other monitoring methods were used to evaluate the member's parenteral nutrition needs.
- (2) A completed DIF must be kept on file by the supplier and made available to the OHCA on request. The initial request for prior authorization must include a copy of the DIF.

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(c) **Enteral formulas.** Enteral formulas are covered for children only. See OAC 317:30-5-212.

317:30-5-211.15. Supplies

(a) The OHCA provides coverage for supplies that are prescribed by the appropriate medical provider, medically necessary and meet the special requirements below.

(b) **Special requirements:**

(1) **Intravenous therapy.** Supplies for intravenous therapy are covered items. Drugs for IV therapy are covered items only as specified by the Vendor Drug program.

(2) **Diabetic supplies.** The purchase of one glucometer, one spring loaded lancet device, and replacement batteries as defined by the life of the battery are covered items. In addition, a maximum of 200 glucose test strips and 200 lancets per month when medically necessary and prescribed by a physician are covered items. Diabetic supplies in excess of these parameters must be prior authorized.

(3) **Catheters.** Permanent indwelling catheters, male external catheters, drain bags and irrigation trays are covered items. Single use self catheters when the member has a history of urinary tract infections is a covered item. The prescription from the attending physician must indicate such documentation is available in the member's medical record.

(4) **Colostomy and urostomy supplies.** Colostomy and urostomy bags and accessories are covered items.

317:30-5-211.16. Coverage for nursing facility residents

(a) For residents in a nursing facility, most DMEPOS are considered part of the facility's per diem rate. The following are not included in the per diem rate and may be billed by the appropriate medical supplier:

(1) Services requiring prior authorization:

- (A) ventilators and supplies;
- (B) total parenteral nutrition (TPN), and supplies;
- (C) custom seating for wheelchairs; and
- (D) external breast prosthesis and support accessories.

(2) Services not requiring prior authorization:

- (A) permanent indwelling or male external catheters and catheter accessories;
- (B) colostomy and urostomy supplies;
- (C) tracheostomy supplies;
- (D) catheters and catheter accessories;
- (E) oxygen and oxygen concentrators.

(i) **PRN oxygen.** Members in nursing facilities requiring oxygen PRN will be serviced by oxygen kept on hand as part of the per diem rate.

(ii) **Billing for Medicare eligible nursing home members.** Oxygen supplied to Medicare eligible nursing home members may be billed directly to OHCA. It is not necessary to obtain a denial from Medicare prior to filing the claim with OHCA.

(b) Items not covered include but are not limited to:

- (1) diapers;
- (2) underpads;
- (3) medicine cups;
- (4) eating utensils; and
- (5) personal comfort items.

317:30-5-212. Coverage for children

(a) **Coverage.** Coverage of Durable Medical Equipment, Adaptive Equipment, Medical Supplies and Prosthetic Devices for children is the same as for adults. In addition the following are covered items:

(1) All orthotic equipment (procedures) listed by Health Care Finance Administration Common Procedural Code System (HCPCS).

(2) Durable medical equipment, adaptive equipment, medical supplies and prosthetic devices determined to be medically necessary.

(3) Enteral nutrition is considered medically necessary for certain conditions in which, without the products, the member's condition would deteriorate to the point of severe malnutrition.

(A) Enteral nutrition must be prior authorized. PA requests must include:

- (i) the member's diagnosis;
- (ii) the impairment that prevents adequate nutrition by conventional means;
- (iii) the member's weight history before initiating enteral nutrition that demonstrates oral intake without enteral nutrition is inadequate; and
- (iv) the percentage of the member's average daily nutrition taken by mouth and by tube; and
- (v) prescribed daily caloric intake.

(B) Enteral nutrition products that are administered orally and related supplies are not covered.

(b) ~~Prior authorization requirement.~~ **Prior authorization requirement.** Prior authorization is the same as adults and required for all L series HCPCS codes L5000 and above.

(c) **EPSDT.** Services deemed medically necessary and allowable under federal regulations may be covered by the EPSDT Child Health program even though those services may not be part of the SoonerCare program. These services must be prior authorized.

(d) Federal regulations require OHCA 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 that are considered experimental.

317:30-5-215. Billing requirements [REVOKED]

(a) ~~Billing.~~ It is the medical supplier's responsibility to ensure that claims are submitted with the most appropriate procedure code for the supply or equipment. When a specific procedure code has not been assigned to an item, the claim cannot be processed without a full description of the equipment or supply. In the case of supplies, a catalogue number must be

included in the narrative, along with a description of the unit being billed. An invoice is required for equipment.

(b) Prior authorization.

(1) ~~The prior authorization number must be entered on the appropriate claim form.~~

(2) ~~All requests are submitted to OHCA, Attention: Medical Authorization Unit, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, OK 73105. All requests for prior authorization should be submitted in the same manner regardless of the age of the patient.~~

(A) ~~Form CC 17. Form CC 17 may be obtained at the local county DHS offices and is also available on the OHCA web site at www.ohca.state.ok.us. Form CC 17 is completed in accordance with the instructions on the back of the form.~~

(B) ~~Certificate of Medical Necessity. The prescribing provider must complete Section B which contains questions pertaining to the medical necessity of the equipment. This section cannot be completed by the supplier. Section B can be completed by any health care clinician; however, only the patient's treating provider may sign the CMN. By signing the CMN, the physician is validating the completeness and accuracy of Section B. The patient's medical records must contain documentation substantiating that the patient's condition meets the coverage criteria and the answers given in Section B of the CMN. These records may be requested by OHCA or its representatives to confirm concurrence between the medical records and the information submitted with the prior authorization request.~~

(c) ~~OHCA response to prior authorization. After the CC 17 is processed, a notice will be issued advising whether or not the item is being authorized. If authorization is issued, the prior authorization notice will include an authorization number, the period for which the device is being authorized and the procedure code.~~

(d) ~~Place of service. The appropriate indicator for the patient's place of residence must be entered.~~

(e) ~~Prescribing provider. The name of the prescribing provider must be entered in Block 17.~~

317:30-5-216. Prior authorization requests

(a) **Prior authorization requirements.** Requirements vary for different types of services. Providers should refer to the service-specific sections of policy or the OHCA website for services requiring PA.

(1) **Required forms.** Form HCA-12A may be obtained at local county OKDHS offices and is available on the OHCA web site at www.okhca.org.

(2) **Certificate of medical necessity.** The prescribing provider must complete the medical necessity section of the CMN. This section cannot be completed by the supplier. The medical necessity section can be completed by any health care clinician; however, only the member's treating provider may sign the CMN. By signing the CMN, the physician is validating the completeness and accuracy of the medical necessity section. The member's medical

records must contain documentation substantiating that the member's condition meets the coverage criteria and the answers given in the medical necessity section of the CMN. These records may be requested by OHCA or its representatives to confirm concurrence between the medical records and the information submitted with the prior authorization request.

(3) **DIF.** The requesting supplier must complete and submit a DIF as indicated by Medicare standards unless OHCA policy indicates that a CMN or other documentation is required. By signing the DIF, the supplier is validating the information provided is complete and accurate. The member's medical records must contain documentation substantiating that the member's condition meets the coverage criteria and the information given in the DIF.

(b) **Submitting prior authorization requests.** All requests for PA are submitted to OHCA, Attention: Medical Authorization Unit, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, OK 73105, or faxed to (405)530-3496 or submitted on-line via Secured Website followed by fax. All requests for prior authorization should be submitted in the same manner regardless of the age of the member.

(c) **Prior authorization review.** Upon verifying the completeness and accuracy of clerical items, the PA request is reviewed by OHCA staff to evaluate whether or not each service being requested meets SoonerCare's definition of "medical necessity" [see OAC 317:30-3-1 (f)] as well as other criteria.

(d) **Prior authorization decisions.** After the HCA-12A is processed, a notice will be issued advising whether or not the item is authorized. If authorization is issued, the notice will include an authorization number, the time period for which the device is being authorized and the appropriate procedure code.

(e) **Prior authorization does not guarantee reimbursement.** Provider status, member eligibility, and medical status on the date of service, as well as all other SoonerCare requirements, must be met before the claim is reimbursed.

(f) **Prior authorization of manually-priced items.** Manually-priced items must include documentation showing the supplier's estimated cost of the item with the request for prior authorization. Reimbursement will be determined as per OAC 317:30-5-218.

317:30-5-217. Billing

(a) **Procedure codes.** It is the supplier's responsibility to ensure that claims are submitted with the most appropriate procedure code for the supply or equipment. When the most appropriate procedure code is not used, the claim will be denied. When a specific procedure code has not been assigned to an item, the claim cannot be processed without a full description of the equipment or supply. An invoice is required for equipment or supplies without an assigned procedure code.

(a) **Rental.** Claims for rental should ~~show~~ indicate the first date of service and in Block 24A. The ~~the~~ inclusive dates of rental should be entered in Block 24D as part of the description of services. The unit "1" should be entered in Block 24G for rental of equipment. The appropriate modifier must be included. Only one month's rental should be entered on each detail line.

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(b)c) **Prior authorization number.** The prior authorization number must be entered submitted with the claim in block 23 on claim for HCFA 1500 on the appropriate claim form.

(e)d) **Place of service.** The appropriate indicator for the patient's place of residence must be entered.

(d)e) **Prescribing provider.** The name of the prescribing provider must be included for claims processing and entered in Block 17 the appropriate block.

(f) Items must be received by the member before billing OHCA.

317:30-5-218. Reimbursement

(a) **Medical equipment and supplies.** Reimbursement for durable medical equipment and supplies will be made using the lesser an amount derived from one of the methods listed below: the lesser of the OHCA maximum allowable fee or the provider's usual and customary charge. The maximum allowable fee is the maximum amount that OHCA will pay a provider for an allowable procedure. When a code is not assigned a maximum allowable fee for a unit of service, a fee will be established based on efficiency, economy, and quality of care as determined by the OHCA. Once the service has been provided, the supplier is required to include a copy of the invoice documenting the supplier's cost of the item with the claim for proper reimbursement.

(1) Method 1. Reimbursement for durable medical equipment and supplies will be set at the lesser of the OHCA current allowed charge or the 1992 Medicare allowed charge; or

(2) Method 2. Reimbursement for durable medical equipment and supplies for which there is no allowable under method one will be made using the suppliers wholesale cost plus a price point percentage for profit and shipping. Wholesale Cost:

- (A) less than \$100: PLUS 30% of wholesale cost
- (B) \$100—\$500: PLUS 25% of wholesale cost
- (C) \$501—\$999: PLUS 20% of wholesale cost
- (D) \$1000 plus: PLUS 15% of wholesale cost, or

(3) Method 3. If there is no allowable charge derived by either (1) (2) of this subsection, reimbursement will be made using the lesser of billed charges or the suggested retail minus a percentage as shown below:

- (A) \$5000 plus: Suggested retail minus 20% of suggested retail
- (B) 0—\$5000: Suggested retail minus 15% of suggested retail

(b) Reimbursement for power wheelchairs will be made at billed charges minus 12% of billed charges. **Oxygen equipment and supplies.**

(1) Payment for stationary oxygen systems (liquid oxygen systems, gaseous oxygen systems and oxygen concentrators) is based on continuous rental, i.e., a continuous monthly payment is made as long as it is medically necessary. The rental payment includes all contents and supplies, i.e., regulators, tubing, masks, etc. Portable oxygen systems are considered continuous rental. Content for portable systems should be billed monthly with one unit

equal to one month's supply. Ownership of the equipment remains with the supplier.

(2) Separate payment will not be made for maintenance, servicing, delivery, or for the supplier to pickup the equipment when it is no longer medically necessary.

(3) Effective July 1, 2007, payment for oxygen equipment and supplies will be based on the Medicaid allowable in effect for the Oklahoma region on June 30, 2007. The fee schedule will be reviewed annually; adjustments to the fee schedule may be made based on efficiency, budget considerations, and quality of care as determined by the OHCA.

(e) Reimbursement for oxygen and oxygen supplies is made at the OHCA allowable in effect in calendar 1992.

PART 61. HOME HEALTH AGENCIES

317:30-5-547. Reimbursement

(a) Payment is made for nursing Nursing services and home health aide services at a rate established by OHCA are covered services on a per visit basis. Reimbursement for any combination thereof of nursing or home aid service shall not exceed 36 visits per calendar year per eligible recipient member. Additional visits for children must be prior authorized when medically necessary.

(b) Reimbursement for durable medical equipment and supplies will be made using the lesser amount derived from one of the methods listed below: the lesser of the OHCA fee schedule or the provider's usual and customary charge. The maximum allowable fee is the maximum amount that OHCA will pay a provider for an allowable procedure code. When a procedure code is not assigned a maximum allowable fee for a unit of service, a fee will be established based on efficiency, economy, and quality of care as determined by the OHCA. Once the service has been provided, the supplier is required to include a copy of the invoice documenting the supplier's cost of the item with the claim for proper reimbursement.

(1) Method 1. Reimbursement for durable medical equipment and supplies will be set at the lesser of the OHCA current allowed charge or the 1992 Medicare allowed charge; or

(2) Method 2. Reimbursement for durable medical equipment and supplies for which there is no allowable under method one will be made using the suppliers wholesale cost plus a price point percentage for profit and shipping. Wholesale Cost

- (A) less than \$100 PLUS 30% of wholesale cost
- (B) \$100—\$500 PLUS 25% of wholesale cost
- (C) \$501—\$999 PLUS 20% of wholesale cost
- (D) \$1000 or more PLUS 15% of wholesale cost; or

(3) Method 3. If there is no allowable charge derived by either (1) (2) of this subsection, billed charges less the percentage will be allowed. Billed Charges:

- (A) \$1000 or more MINUS 30% of billed charges
- (B) \$501—999 MINUS 25% of billed charges
- (C) \$100—\$500 MINUS 20% of billed charges

- (D) ~~less than \$100 MINUS 15% of billed charges~~
- (c) Reimbursement for oxygen and oxygen supplies is ~~made at the OHCA allowable in effect in calendar 1992, as follows:~~
- (1) Payment for oxygen systems (stationary, liquid and oxygen concentrators) is based on continuous rental, i.e., a continuous monthly payment is made as long as it is medically necessary. The rental payment includes all contents and supplies, i.e., regulators, tubing, masks, etc. Portable oxygen systems are also considered continuous rental. Content for portable systems should be billed monthly with one unit equal to one month's supply. Ownership of the equipment remains with the supplier.
 - (2) Separate payment will not be made for maintenance, servicing, delivery, or for the supplier to pickup the equipment when it is no longer medically necessary.
 - (3) Effective July 1, 2007, payment for oxygen equipment and supplies will be based on the Medicaid allowable rates in effect for the Oklahoma region on June 30, 2007. The fee schedule will be reviewed annually; adjustments to the fee schedule may be made based on efficiency, budget considerations, and quality of care as determined by the OHCA.

[OAR Docket #07-1340; filed 8-1-07]

**TITLE 457. OKLAHOMA STRATEGIC MILITARY PLANNING COMMISSION
CHAPTER 10. ADMINISTRATIVE OPERATIONS AND PROGRAM IMPLEMENTATION**

[OAR Docket #07-1347]

RULEMAKING ACTION:

Emergency Adoption

RULES:

- Subchapter 1. General Provisions [NEW]
457:10-1-1 through 10-1-4 [NEW]
- Subchapter 3. Organization and Administration [NEW]
457:10-3-1 through 10-3-3 [NEW]
- Subchapter 5. Cooperative Program with Local Governmental Entities [NEW]
457:10-5-1 [NEW]

AUTHORITY:

Oklahoma Strategic Military Planning Commission; Title 74, Section 5401, *et sequitur*, of the Oklahoma Statutes and Enrolled Senate Bill 138 of the First Session of the 47th Oklahoma Legislature.

DATES:

Adoption:

January 25, 2007

Approved by Governor:

February 23, 2007

Effective:

Immediately upon Governor's approval or March 12, 2007, whichever is sooner.

Expiration:

Effective through July 14, 2008, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

In the most recent round of the Base Realignment and Closure (BRAC) Commission, Oklahoma's three Air Force bases and two Army posts suffered no closure or major realignment action, and in fact garnered new missions for our state. The impact of these new missions on school districts, municipalities and counties which surround the military installations is becoming known, and it is apparent that the demands placed on community infrastructure clearly exceed the resources which exist. Further, the local governmental entities are at constitutional limits for levies and bonding capacities.

Earlier, recognizing the importance of these installations to the national defense and state economy, the Legislature created the Oklahoma Strategic Military Planning Commission (OSMPC) and charged it with coordinating state and local BRAC-related efforts. In support of this mission, Governor Brad Henry and the Legislature have appropriated funds to assist with various public projects, which funds have been and currently are being distributed by OSMPC. Much activity exists in affected communities for planning and responding to unforeseen situations which arise daily as a result of national BRAC actions. The OSMPC finds that these circumstances constitute a compelling public interest requiring immediate attention and therefore has promulgated rules for the operation of the commission, rules of eligibility for funds, and the distribution of funds. Local agencies need funds immediately to adequately and responsibly respond to challenges and opportunities brought about by BRAC-mandated changes.

ANALYSIS:

The rules set internal operating procedures for the Commission, such as meeting dates, election of officers and quorum requirements, establish a grant program for assisting local governmental units with BRAC assessment, planning and preparations and response to potentially adverse national BRAC actions. Local governmental units need to have funds as quickly as possible to begin work on assessment, planning and preparation and response to potentially adverse national BRAC actions.

CONTACT PERSON:

Don Davis (405)522-8883

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 MARCH 12, 2007, WHICHEVER DATE SHALL FIRST OCCUR:

SUBCHAPTER 1. GENERAL PROVISIONS

457:10-1-1. Purpose

(a) The rules in this Chapter are intended to establish policies and procedures to:

- (1) aid in the orderly administration of the Oklahoma Strategic Military Planning Commission;
- (2) ensure effective and coordinated efforts among officials and agencies of federal, state, county, municipal and local governments in support of Oklahoma's military installations, particularly in respect to BRAC matters.

(b) The authority for the rules in this Chapter is Title 74, Section 5401, et sequitur, of the Oklahoma Statutes, and Enrolled Senate Bill 138 of the First Session of the 47th Oklahoma Legislature.

457:10-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the meanings attributed to them in this section, unless the context clearly indicate otherwise.

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"BRAC" means Base Realignment and Closure processes of the United States Government.

"Commission" means Oklahoma Strategic Military Planning Commission.

"Local Government, Local Government Entity and Local Governmental Jurisdiction" means any political subdivision of this state; local school districts; sub-state planning districts; any public trust whose beneficiary is a municipality, county or the State of Oklahoma; or any voluntary association of such entities.

"Partnership Program" means any scheme promulgated by the Oklahoma Strategic Military Planning Commission for the distribution of funds to a local government, local government entity or local governmental jurisdiction for a public project.

"Public Project" means any activity in furtherance of a valid public purpose related to the Base Realignment and Closure processes of the United States Government, funded in whole or in part by public funds, authorized by a governmental unit, and for which there are written plans and a definable work product. A "Public Project" shall be deemed to include, without limitation, research and the work product thereof, planning processes, and the analysis and evaluation of the status of all aspects of defense installations and their environs.

457:10-1-3. Legal references

References to "Title" in this Chapter refer to Titles of the Oklahoma Statutes. References refer to the most recent version of the law unless another edition is specifically cited.

457:10-1-4. Severability

If any rule, or part of any rule, in this Chapter is found to be unenforceable by a court of competent jurisdiction, the remainder of the rules will not be impaired or invalidated. The remaining rules in this Chapter will be valid and enforceable to the fullest extent permitted by law.

SUBCHAPTER 3. ORGANIZATION AND ADMINISTRATION

457:10-3-1. Oklahoma Strategic Military Planning Commission; organization and meetings

(a) Membership of the Oklahoma Strategic Military Planning Commission consists of seven (7) members.

(b) Five (5) of these members shall be appointed by the Governor, and serve at the pleasure of the Governor, and respectively shall represent the interests of Altus Air Force Base, Fort Sill, McAlester Army Ammunition Depot, Tinker Air Force Base and Vance Air Force Base.

(c) Of the remaining two members, one (1) shall be appointed by the Speaker of the House of Representatives from the membership of the House and one (1) shall be appointed by the President Pro Tempore of the Senate from the membership of the Senate. Both legislative appointees shall be ex officio

and nonvoting members of the Commission and shall serve at the pleasure of their appointing authority.

(d) At least annually, the Commission shall elect a Chair and a Vice-Chair from among its members. Officers may be elected for succeeding terms.

(e) The Chair shall call and preside at meetings and may represent the Commission in such other matters as it may authorize. In the absence of the Chair, the Vice-Chair shall assume the Chair's duties and have the Chair's authority. The Vice-Chair shall also perform such duties as may be assigned by the Chair.

(f) All meetings of the Commission shall be held and conducted in accordance with the Open Meeting Act, Title 25 Oklahoma Statutes, Sections 301 et sequitur.

(g) A meeting schedule for the year shall be determined by the Commission and filed with the Secretary of State.

(h) The Chair may call special meetings or emergency meetings.

(i) Special or emergency Commission meetings shall also be called at the written request of a majority of the appointed members of the Commission.

(j) The Chair may cancel any regularly scheduled, special or emergency meeting upon a determination based on reliable information that a quorum will not be present. The Secretary of State and members of the Commission shall be notified of the cancellation at least twenty-four (24) hours prior to the time of the cancelled meeting.

(k) Items requested to be in the Agenda for a meeting should be submitted to the Office of the Governor to the attention of the Chair no later than ten (10) days prior to a regularly scheduled meeting, three (3) days prior to any special meeting, or twenty-four (24) hours prior to any emergency meeting of the Commission.

(l) A majority of the appointed members of the Commission shall constitute a quorum.

(m) A quorum of the members of the Commission shall be present to transact any business.

(n) An affirmative vote from a majority of a quorum shall be required for any action by the Commission.

(o) Meetings of the Commission shall be held at the Office of the Governor or at such other locations as the Commission may from time to time designate.

457:10-3-2. Locations for information and filing

Any person may obtain information from, make a submission to, or make a request of the Commission by submitting a written request. Documents may be mailed to the Commission, or they may be hand-delivered during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state-designated holidays. The location and mailing address for the Commission is: Oklahoma Strategic Military Planning Commission, Office of the Governor, State Capitol Building, Oklahoma City, Oklahoma, 73105. Telephone number for the Commission is (405) 521-2342. The date on which any document is actually received at the Office of the Governor shall be recorded as the date of filing.

457:10-3-3. Retention and public inspection of documents and release of records

(a) Documents filed with or presented to the Commission will be retained in the files of the Commission located at the Office of the Governor for the length of time required by state and federal laws. Documents will be disposed of in a manner consistent with the Oklahoma Records Management Act, found at Title 67, Oklahoma Statutes, Section 201 et sequitur, and rules promulgated by the Archives and Records Commission pursuant to Title 74, Oklahoma Statutes, Sections 564 et sequitur.

(b) Records may be released during the normal business hours of the Office of the Governor.

(c) The following fees have been determined by the Commission to fund the recovery of reasonable, direct costs of document copying or mechanical reproduction:

(1) Charges for copies of letter or legal-size documents shall be Twenty-five Cents (\$0.25) each for one-sided copies and Forty Cents (\$0.40) each for two-sided copies.

(2) In the event a request is solely for commercial purposes or clearly would cause excessive disruption of the Office of the Governor's essential functions, the Commission may charge the hourly rate of the person doing the search multiplied by the time required for the search.

(3) When materials from meetings or hearings are transcribed from tapes or notes, the charge will be calculated at a rate charged by a court reporter, or if done by Office of the Governor staff, will be \$5.00 per page. Copies of transcripts will be billed at regular copy rates.

SUBCHAPTER 5. COOPERATIVE PROGRAMS WITH LOCAL GOVERNMENTAL ENTITIES

457:10-5-1. Grants to Local Governmental Units

(a) From time to time, the Oklahoma Legislature and Governor appropriate funds to the Commission for distribution to impacted local governmental units through various grant programs to further the purposes and mission of the Commission.

(b) These grant programs shall consist of a series of application periods, continuing so long as funds are available. Maximum grants and applicable local/state support ratios, if any, may be established for each application period.

(c) Expenditures pursuant to these grant programs shall comply with applicable statutes and rules and shall be construed as an expenditure of public funds in furtherance of governmental functions and for the purpose of conferring general and uniform benefits resulting from the expenditures.

(d) Rules for the submission, award and administration of the grant programs follow:

(1) Eligible applicants include local governmental entities as defined by this Chapter.

(2) Any eligible entity which desires to participate in a grant program shall file a written plan of action and application for funds in support thereof which:

(A) describe how the realignment, expansion, reduction or closure of one of Oklahoma's military installations or national guard or reserve training centers would adversely affect its community of interest;

(B) describe the public project or projects proposed to protect the interests of the governmental entity and its constituents with respect to BRAC issues relevant to the affected military installation; and,

(C) set forth in detail or describe specifically the funds or other resources from local sources to be expended in pursuit of the public project or projects, which expenditures are sought to be matched with funds from this Program.

(3) The plan and application so submitted must have received a two-thirds (2/3) affirmative vote of the governing board of the local governmental entity, which vote shall be memorialized in a document executed under oath which states that the record of the vote is a true and accurate account of the proceedings approving the plan.

(4) If a plan and application are submitted by a voluntary association, evidence of eligibility under Rule (1), above, shall be submitted in addition to the required approval by the governing board of the local governmental entity.

(5) Expenditure of all funds from this grant program shall comply with the terms of the plan and application submitted to and approved by the Commission.

(6) A summary description of any public project, including any work product which is an analysis or recommendation, which results from any grant funded by this program, shall be filed with the Commission and may be used by the Commission for any lawful purpose.

(7) No funds from this grant program shall be used to pay any administrative expenses of the applicant, and the Commission shall cause expenditures of grant program funds to be monitored and audited to assure compliance with this requirement.

(8) Any entity which expends grant program funds for proscribed administrative expenses shall be liable to the State of Oklahoma for treble the amount of funds identified as misspent, together with costs associated with recovery of the funds, including reasonable attorney's fees. Funds so recovered shall become available for distribution to other participants. Misuse of any funds awarded pursuant to this Program shall disqualify the miscreant for further funding for a period of one (1) year from the date of issuance of the violation report.

[OAR Docket #07-1347; filed 8-8-07]

Emergency Adoptions

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

[OAR Docket #07-1337]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Appendix A. Pay Band Schedule [REVOKED]

Appendix A. Pay Band Schedule [NEW]

AUTHORITY:

The Administrator of the Office of Personnel Management; 74 O.S., §§ 840-1.6A, 840-2.1, 840-2.17, 840-5.16 and 4121.

DATES:

Adoption:

June 19, 2006

Approved by Governor:

June 26, 2006

Effective:

July 1, 2006

Expiration:

Effective through July 14, 2007, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTION:

None

INCORPORATIONS BY REFERENCE:

None

FINDING OF EMERGENCY:

The Office of Personnel Management received approval for a permanent rule to adjust the Pay Band Schedule upward by 2.5% that goes into effect July 14, 2006. However, the approved Pay Band Schedule needs to go into effect with the beginning of the fiscal year July 1, 2006 because state agencies have begun implementing budget plans for FY07. This emergency rule is necessary as a compelling public interest to insure that these actions cover the entire fiscal year.

ANALYSIS:

This amendment is needed to make sure the pay band increases for state employees correspond to the fiscal year and monthly pay period. Agencies have begun budget adjustments in the PeopleSoft human resources integrated system to accommodate these changes effective July 1, 2006. Failure to implement this rule may result in overpayments that will need to be retrieved by the agency resulting in unnecessary paperwork and cost.

CONTACT PERSON:

Oscar B. Jackson, Jr., IPMA-CP, Administrator and Cabinet Secretary of Human Resources and Administration, (405) 521-6301.

**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), AND EFFECTIVE
JULY 1, 2006:**

APPENDIX A. PAY BAND SCHEDULE [REVOKED]

APPENDIX A. PAY BAND SCHEDULE [NEW]

PAY BAND	MINIMUM	MIDPOINT	MAXIMUM
A	\$12,483*	\$16,367	\$20,459
B	\$12,865	\$17,153	\$21,441
C	\$13,610	\$18,147	\$22,684
D	\$14,673	\$19,564	\$24,455
E	\$16,141	\$21,521	\$26,901
F	\$17,754	\$23,672	\$29,590
G	\$19,531	\$26,041	\$32,551
H	\$21,484	\$28,645	\$35,806
I	\$23,792	\$31,722	\$39,653
J	\$26,156	\$34,874	\$43,593
K	\$28,590	\$38,120	\$47,650
L	\$31,448	\$41,931	\$52,414
M	\$34,907	\$46,543	\$58,179
N	\$38,748	\$51,664	\$64,580
O	\$43,397	\$57,862	\$72,328
P	\$49,039	\$65,385	\$81,731
Q	\$55,415	\$73,886	\$92,358
R	\$62,618	\$83,490	\$104,363

*Adjusted for state minimum wage of \$6.00/hour

[OAR Docket #07-1337; filed 7-27-07]

Emergency Adoptions

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

[OAR Docket #07-1346]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 7. Wholesalers and Pedigree Rules

535:20-7-1. Purpose [AMENDED]

535:20-7-2. Definitions [AMENDED]

535:20-7-3. Wholesale drug distributor licensing requirement [AMENDED]

535:20-7-4. Minimum required information for licensure [AMENDED]

535:20-7-5. Minimum qualifications [AMENDED]

535:20-7-6. Personnel [AMENDED]

535:20-7-7. Minimum requirements for the storage, and handling, transport, and shipment of prescription drugs and/or devices and for the establishment and maintenance of prescription drug distribution records [AMENDED]

535:20-7-7.1. Minimum requirements for the storage, and handling, transport, and shipment of prescription drugs and/or devices and for the establishment and maintenance of prescription drug distribution records [AMENDED]

535:20-7-7.2. Multiple Licensing [AMENDED]

535:20-7-7.3. Security and anti-counterfeiting [AMENDED]

535:20-7-7.4. Storage [AMENDED]

535:20-7-7.5. Examination of materials [AMENDED]

535:20-7-7.6. Drug returns, and returned, Returned, damaged, and outdated prescription drugs [AMENDED]

535:20-7-7.7. Recordkeeping [AMENDED]

535:20-7-7.8. Written policies and procedures [AMENDED]

535:20-7-7.9. Responsible persons [REVOKED]

535:20-7-7.10. Compliance with federal, state and local laws [AMENDED]

535:20-7-7.11. Salvaging and reprocessing [REVOKED]

535:20-7-9.1. Prohibited Conduct [NEW]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.18, and 353.24 through 353.26.

DATES:

Adoption:

June 6, 2007

Approved by Governor:

July 24, 2007

Effective:

Immediately upon Governor's approval or August 1, 2007, whichever is later.

Expiration:

Effective through July 14, 2008, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTION:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Oklahoma Board of Pharmacy finds that imminent peril exists to the preservation of public, health, safety and welfare and a compelling public interest exists to protect the integrity of the prescription drug supply chain and to comply with rulemaking requirements in SB-640 effective 6/07/2005 and HB-1347 effective 11/01/2005.

ANALYSIS:

Wholesale / pedigree rules are required by statute (SB-640 and HB-1347, 2005). The purpose statement in 535:20-7-1 is expanded to include the new statutory wholesaler pedigree requirement to ensure the integrity of wholesale drugs owned, purchased, distributed, transferred or sold. New and modified definitions in 535:20-7-2 include adulterated, authenticate, chain pharmacy warehouse, co-licensee, contraband drug, counterfeit drug, drop shipment, exclusive distributor, misbranded, normal distribution channel, packager, pedigree, prescription drug, repackager, and wholesale distributions. Changes were made in wholesale drug distributor licensing requirements in 535:20-7-3

to clarify the requirement in statute that each location be licensed and renew annually and provide the minimum required information for licensure and that such license be publicly displayed. Changes were made as required in statute in minimum required information for licensure in 535:20-7-4. In minimum qualifications in 535:20-7-5 revisions were made to clean up language and an addition to enable the Board to disallow renewal of a wholesaler license where there is no record of wholesale distributions. Revisions in 535:20-7-6 personnel describe designated manager requirements. 535:20-7-7 minimum requirement for storage handling transport and shipment of drugs or devices and maintenance of records language cleanup.

Revisions in 535:20-7-7.1 through 535:20-7-7.11 will bring Oklahoma rules into compliance with the updated federal Prescription Drug Marketing Act and improve clarity of the rules. 535:20-7-7.7 Adds effective date for pedigree after 1/01/2009 to allow systems to be established by wholesalers to accommodate the pedigree tracking requirement. Rule changes in 535:20-7-7-8 will establish an identifying / reporting procedure for discrepancies. Responsible person language in 535:20-7-7.9 is moved to 535:20-7-6 Personnel. New prohibited conduct for wholesalers is added at 535:20-7-9.1.

As long as those who divert drugs truthfully report such diversion in a pedigree and as long as wholesalers know who the "bad actors" are and refuse to accept drugs from the same, these rules will protect the drug supply chain.

Concerns regarding the federal injunction of federal FDA pedigree rules and restraint of trade issues; and the lengthy process of getting input from manufacturers, wholesale distributors, chain pharmacy warehouses, logistics providers and repackagers in order to draft these rules delayed the promulgation of these wholesale pedigree rule revision to protect the wholesale drug supply chain.

CONTACT PERSON:

Bryan Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 N Lincoln, Suite 112, Oklahoma City, OK 73105-3488, Phone: 405-521-3815.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), OR AUGUST 1, 2007 WHICHEVER IS LATER:

SUBCHAPTER 7. WHOLESALERS AND PEDIGREE RULES

535:20-7-1. Purpose

(a) The rules in this Subchapter set the minimum standards, terms, and conditions for persons who must license before engaging in wholesale distributions in interstate and/or intrastate commerce of Rx Only (prescription) drugs, and implement the Prescription Drug Marketing Act of 1987.

(b) The rules in this Subchapter are to implement the requirements authorized in Title 59, Oklahoma Statutes Section 353.1 et seq.

(c) The rules in this Subchapter are to implement Title 59 O.S. Section 353.18 (D).

(d) The rules in this Subchapter establish a pedigree or electronic file for the purpose of ensuring the integrity of drugs owned, purchased, distributed, returned, transferred and sold.

535:20-7-2. Definitions

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

"Adulterated" means a drug which shall be deemed to be adulterated if it meets the federal Food and Drug Administration (FDA)'s definition of adulterated. Or

(A) If it consists in whole or in part of any filthy, putrid, or decomposed substance; or

(B) If:

(i) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or

(ii) the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that the drug meets the requirements of this part as to safety and has the identity and strength, and meets the quality and purity characteristics which it purports or is represented to possess; or

(C) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(D) If:

(i) it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the Federal FDA Act; or

(ii) it is a color additive, the intended use of which is for purposes of coloring only, and is unsafe within the meaning of the Federal FDA Act; or

(E) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in the compendium. Such a determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in the compendium, or in the absence of or inadequacy of these tests or methods of assay, those prescribed under authority of the Federal FDA Act. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefore set forth in the compendium, if its difference in strength, quality, or purity from that standard is plainly stated on its label; or

(F) If it is not subject to subparagraph (E) and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess; or

(G) If it is a drug and any substance has been (A) mixed or packed therewith so as to reduce its quality or strength; or (B) substituted wholly or in part therefore.

"Authenticate" means to affirmatively verify before any wholesale distribution of a drug occurs that each transaction listed has occurred.

"Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

"Blood component" means that part of blood separated by physical or mechanical means.

"Chain pharmacy warehouse" means a central warehouse, licensed as a wholesaler, for prescription drugs that performs intra-company sales or intra-company transfers of such drugs to a group of chain pharmacies that have the same common ownership and control.

"Co-licensee" means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a Prescription Drug.

"Contraband drug" means a drug which is counterfeit, stolen, misbranded, obtained by fraud, or purchased and/or placed in commerce in violation of the federal Prescription Drug Marketing Act.

"Counterfeit drug" means a drug which, or the container, shipping container, seal, or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other manufacturer, processor, packer, or distributor.

"Drop shipment" means the sale of a prescription drug to a wholesale distributor by the manufacturer of the prescription drug, or that manufacturer's co-licensee, that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor, whereby the wholesaler distributor takes title but not physical possession of such prescription drug and the wholesaler distributor invoices the pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or administer such drug to a patient, and the pharmacy or chain pharmacy warehouse or other person authorized by law to dispense or administer such drug to a patient receives delivery of the prescription drug directly from the manufacturer, or that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor, or that manufacturer's co-licensee.

"Exclusive Distributor" means a licensed wholesaler that contracts with a Manufacturer to provide or coordinate warehousing, wholesale distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug.

"Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

"Manufacturer" means anyone who is engaged, except a pharmacy, in preparing, propagating, compounding, processing, packaging, repackaging and labeling or anyone who is engaged in manufacturing of a prescription drug—means manufacturer as defined in Title 59 O.S. Section 353.1.

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"Misbranded" means a drug which shall be deemed to be misbranded if it meets the federal Food and Drug Administration (FDA)'s definition of misbranded, or if the label is false or misleading; or the label does not bear the name and address of the manufacturer, packer, and/or distributor as required and does not have an accurate statement of the quantities of the active ingredients; or does not show an accurate monograph for legend drugs; or other considerations as noted in the Federal Food, Drug and Cosmetic Act.

"Normal distribution channel" means a chain of custody or drop shipment for a prescription drug that goes from a manufacturer of the prescription drug, or from the manufacturer's co-licensee, or from the manufacturer's third party logistics provider, or from the manufacturer's exclusive distributor to:

(A) pharmacy or other persons authorized by law to dispense or administer prescription drugs to a patient;
or,

(B) wholesaler to a pharmacy or other persons authorized by law to dispense or administer prescription drugs to a patient; or,

(C) wholesaler to a chain pharmacy warehouse wholesaler to their intra-company pharmacy to a patient by prescription; or,

(D) chain pharmacy warehouse wholesaler to their intra-company pharmacy to a patient by prescription;
or,

(E) wholesaler to a pharmacy buying cooperative warehouse wholesaler to a pharmacy that is a member owner of the buying cooperative to a patient by prescription; or,

(F) in limited situations where a documented product shortage, back orders, or emergency exists, one wholesaler to one other wholesaler to a pharmacy or other persons authorized by law to dispense or administer prescription drugs to a patient.

"Packager" means packager as defined in Title 59 O.S. Section 353.1 and includes anyone packaging or repackaging drugs.

"Pedigree" means a document, written or electronic, that records each wholesale distribution of any given drug, from the sale by a manufacturer through acquisition and sale by any wholesale distributor, packager or repackager and includes the information for each transaction shown in 535:20-7-7.7 (b) recordkeeping, et seq.

"Prescription Drug" or "Drug" means any human drug as defined in Title 59 O.S. Section 353.1(16) et seq. that is required by Federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act.

"Repackage" means changing the container, quantity, or labeling of a drug to further the distribution of the drug and requires a packager license. Repackaging does not include the filling of a prescription by a pharmacy.

"Wholesale distribution and wholesale distributions" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

(A) Intracompany sales of prescription drugs, between any division, subsidiary, parent or affiliated or related company under common ownership and control, or any transaction or transfer between co-licensees of a co-licensed product from one wholesale facility to another wholesale facility;

(B) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(C) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(D) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control; for purposes of this section, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract or otherwise;

(E) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; for purposes of this section "emergency medical reasons" includes transfers of prescription drug by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(F) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(G) The distribution of drug samples by manufacturers' representatives or distributors' representatives;
or

(H) The sale, purchase, or trade of blood and blood components intended for transfusion.

(I) The sale, transfer, merger or consolidation of all or part of the business of a licensed pharmacy or pharmacies from or with another licensed pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets.

(J) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, and such common carrier does not store, warehouse, or take legal ownership of the prescription drug.

"Wholesale distributor" means anyone engaged in the wholesale distribution of prescription drugs, including, but not limited to, manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain pharmacy drug warehouses, and wholesale drug warehouses; and independent wholesale drug traders.

"Wholesaler" means "Wholesaler or Distributor" as defined in Oklahoma Statutes, Title 59, Section 353.1(15).

535:20-7-3. Wholesale drug distributor licensing requirement

- (a) Every wholesale distributor conducting interstate and/or intrastate transactions in Oklahoma must be licensed before engaging in wholesale distributions of ~~prescription~~ drugs.
- (b) A wholesaler permit is only valid for the name, ownership and location listed on the permit. Changes of name, ownership or location shall require a new wholesaler permit.
- (c) Changes in any information required for licensure must be reported to the Board, in writing, within ten (10) days (e.g. manager, contact person, phone, etc.)
- (d) Each location shall possess a wholesaler permit. When wholesale distribution operations are conducted at more than one location, each location shall be licensed by the Board.
- (e) A wholesale distributor cannot operate from a place of residence.
- (f) Every wholesale distributor who engages in the wholesale distribution of drugs and/or devices shall pay the annual fee and license annually with the Board by application and provide information required on a Board approved application. Minimum required information for licensure is in 535:20-7-4.
- (g) Wholesale distributors must publicly display all licenses and have readily available the most recent Board inspection report.

535:20-7-4. Minimum required information for licensure

- (a) Minimum required information for licensure shall be that information as required by the FDA Adopted Guidelines for State licensing of wholesale prescription drug distributors, 21 CFR, Part 205.5(a) and the requirements of this section.
- (b) All wholesaler applicants must meet the requirements under the Oklahoma Pharmacy Act, this Title and the rules in 535:25 for applicants.
- (c) Wholesaler applicants must submit a satisfactorily completed application together with the required fee annually. ~~This application shall include at least the following:~~
 - (1) ~~The name, full business address, and telephone number;~~
 - (2) ~~All trade or business names used by the wholesaler applicant;~~
 - (3) ~~Address, telephone numbers, and the names of contact persons for the wholesaler facility;~~
 - (4) ~~The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship);~~
 - (5) ~~The name(s) of the owner and/or operator of the wholesaler applicant; and~~
 - (1) New applicants for both in- and out-of-state wholesalers (e.g.: wholesale distributors, chain pharmacy warehouses and repackagers) that ship into Oklahoma shall include at least, the following:
 - (A) Applicant's full name, full business address, all trade or business names used, and telephone number;

- (B) Type of ownership, e.g. individual, partnership or corporation;
- (C) Name(s) of the owner(s) and operator of the licensee (if not the same person), including:
 - (i) if a person; the name, address, social security number and date of birth;
 - (ii) if other than a person; the name, address, and social security number and date of birth of each partner, corporate officer, or limited liability company member, and the federal employer identification number;
 - (iii) if a publicly traded corporation, the information in (c)(1)(C)(i) and (c)(1)(C)(ii) above are not required for corporate officers. A publicly traded corporation shall provide information regarding the operator of the licenses; and as required in (c)(1)(D) below the designated manager information.
- (D) Names of designated managers (operators of the wholesaler applicant), their Social Security numbers and date of birth;
- (E) Applicant's and designated managers' fingerprints.
- (F) Criminal background check information for the applicants and designated managers as required by rule;
- (G) A surety bond of not less than \$10,000, or if located in another state which requires a surety bond, documentation of such bond;
- (H) A copy of the license from the resident (home) state where the wholesaler is located; and,

(2) Renewal applications for both in- and out-of-state wholesale distributors, chain pharmacy warehouses and repackagers that ship into Oklahoma shall include those things listed in 535:20-7-4. If such has previously been provided to the Board and has not changed then the applicant can use a Board renewal application.

(63) Any other information the Board deems necessary to protect the public health.

(d) The Board may use an outside agency, such as the National Association of Boards of Pharmacy (NABP) Verified-Accredited Wholesale Distributors (VAWD), to accredit wholesale distributors and repackagers. The Board may exempt wholesalers accredited by VAWD from some provisions of Subparagraphs (c) (1) of this section.

(e) Logistics providers that receive prescription drugs from original sponsors or manufacturers, deliver the drug products in commerce at the direction of the original sponsor or manufacturer, and do not purchase, sell, trade, or take title to any prescription drug are exempt from the provisions in (c) (1) of this section.

535:20-7-5. Minimum qualifications

- (a) The Board shall consider, at a minimum, the following factors in ~~reviewing the qualifications of determining the eligibility for, and renewal of licensure of persons who engage in wholesale distribution of prescription drug within this state or devices:~~

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- (1) ~~Any findings by the Board that convictions of the applicant has violated or been disciplined by a regulatory agency in any state for violating under any federal, state, or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;~~
 - (2) ~~Any felony criminal convictions of the applicant under federal, state, or local laws;~~
 - (3) ~~The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;~~
 - (3.4) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device manufacturing or distribution;
 - (4.5) Suspension, sanction, or revocation by federal, state, or local government of against any license currently or previously held by the applicant or any of its owners for violations of state or federal laws regarding drugs or devices for the manufacture or distribution of any drugs, including controlled substances;
 - (5.6) Compliance with licensing requirements under previously granted licenses, if any;
 - (6.7) Compliance with requirements to maintain and/or make available to the State Board of Pharmacy or to federal, state, or local law enforcement officials those records required to be maintained by wholesale drug distributors under this section; and,
 - (7) Any registrant who has no record of wholesaler distributions during routine inspection may have their subsequent renewal application referred to the Board for review and possible approval or disapproval, and such review may require registrant appearance before the Board.
 - (8) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.
- (b) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.

535:20-7-6. Personnel

- (a) Personnel employed in wholesale distribution shall have education, training and/or experience sufficient so that they may perform assigned functions related to compliance with state licensing requirements.
- (b) The Board shall as required in 353.18(B), at a minimum, consider those qualifications listed in 535:20-7-5 for personnel employed in wholesale distribution.
- (c) Wholesale drug distributors shall establish and maintain lists of officers, directors, managers and other persons in charge of wholesale drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications. Also known as responsible persons list. (AGENCY NOTE: Language in subsection (c) has been moved from 535:20-7-7.9.)
- (d) Each person issued a wholesaler license, initial or renewal, whether in or out-of-state, must designate, in writing, on a form required by the Board a person to serve as the designated manager of the wholesale distributor for each location licensed.

535:20-7-7. Minimum requirements for the storage, and handling, transport, and shipment of prescription drugs and/or devices and for the establishment and maintenance of prescription drug distribution records

The following ~~decimal sections shall describe the minimum requirements for the storage, and handling, transport and shipment of prescription drugs or devices, and for the establishment and maintenance of wholesale prescription drug distribution records, and requirement for by wholesale drug distributors distributor's and their officers, agents, representatives, and employees.~~

535:20-7-7.1. Facility requirements

- (a) All wholesalers of prescription drugs shall conform to ~~U. S. Food and Drug Administration (FDA) Current Good Manufacturing Practices (CGMP) the Prescription Drug Marketing Act of 1988 (21 USC 363) and applicable rules for the storage and handling of prescription drugs.~~
- (b) All wholesalers of prescription drugs shall conform to the Oklahoma Pharmacy Act and the rules of this Title, and be licensed by the Board.
- (c) ~~Each facility at which prescription drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:—All facilities at which drugs are received, stored, warehoused, handled, held, offered, marketed, displayed, or transported from shall:~~
 - (1) be of suitable construction to ensure that all drugs and devices in the facilities are maintained in accordance with labeling of such drugs, or in compliance with official compendium standards such as USP/NF;
 - (1) ~~Be licensed by the Board;~~
 - (2) be Be of suitable size and construction to facilitate cleaning, maintenance, and proper wholesale distribution operations;
 - (3) have adequate Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;
 - (4) have Have a quarantine area for storage of prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, counterfeit, or suspected of being counterfeit, otherwise unfit for distribution, or that are in immediate or sealed, secondary containers that have been opened;
 - (5) be Be maintained in a clean and orderly condition; and,
 - (6) be Be free from infestation by insects, rodents, birds, or vermin of any kind.
- (d) Each wholesaler shall be in a commercial location and not a personal dwelling or residence.
- (e) Wholesale distributors involved in the distribution of controlled substances shall be duly registered with the Drug Enforcement Administration (DEA) and the Oklahoma Bureau of Narcotics, if required, and shall be in compliance with all applicable laws and rules for the storage, handling, transport, shipment and distribution of controlled substances.

535:20-7-7.2. Multiple Licensing

- (a) A wholesale facility shall not be located in a facility where a retail pharmacy is located.
- (b) The wholesale facility shall be located apart and separate from any retail pharmacy, licensed by the Board of Pharmacy, as set forth in this Title and 535:25-3-5.

535:20-7-7.3. Security and anti-counterfeiting

- (a) All facilities used for wholesale drug distribution shall be secure from unauthorized entry.
 - (1) Access from outside the premises shall be kept to a minimum and be well-controlled.
 - (2) ~~The outside perimeter of the premises shall be well-lighted.~~
 - (3) Entry into areas where prescription drugs are held shall be limited to authorized personnel.
- (b) All facilities shall be equipped with an alarm system to detect entry after hours.
- (c) All facilities shall be equipped with a security system that will provide suitable protection against theft, counterfeiting, and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.
- (d) All facilities shall establish and maintain controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting.
- (e) If a wholesaler has reason to believe, based on the totality of the facts and circumstance, that any drug purchased is counterfeit, suspected of being counterfeit, misbranded, or adulterated, the purchasing wholesaler must authenticate the pedigree.

535:20-7-7.4. Storage

All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).

- (1) If no storage requirements are established for a ~~prescription~~ drug, the drug may be held at "controlled" room temperature, as defined in an official compendium such as USP/NF, to help ensure that its identity, strength, quality, and purity are not adversely affected.
- (2) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of ~~prescription~~ drugs.
- (3) ~~The recordkeeping requirement in this Title for wholesale drug distributors shall be followed for all stored prescription drugs.~~
- (3) Packaging of the drugs should be in accordance with an official compendium such as USP/NF and identify any compromise in the integrity of the drugs due to tampering or adverse storage conditions.
- (4) Controlled dangerous substance (CDS) drugs should be isolated from non-CDS drugs and stored in

a secure area in accordance with federal and state CDS security requirements and standards.

535:20-7-7.5. Examination of materials

- (a) Upon receipt, each ~~outside~~ shipping container shall be visually examined for identity and to prevent the acceptance ~~of~~ contaminated drugs that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination, adulteration, misbranding, counterfeiting or suspected of being counterfeit, or other damage to the contents.
- (b) The drugs found to be unacceptable under paragraph (a) should be quarantined from the rest of stock until the drugs are determined to be fit for human use.
- (b)(c) Each outgoing shipment shall be carefully inspected for identity of the ~~prescription drug products~~ drugs and to ensure that there is no delivery of ~~prescription~~ drugs that have been damaged in storage or held under improper conditions.
- (e)(d) The recordkeeping requirement in this Title for wholesale drug distributors shall be followed for all incoming and outgoing prescription drugs.
- (e) Wholesaler must use sound judgment to maintain a safe and secure drug supply.

535:20-7-7.6. Drug returns, and returned, Returned, damaged, and outdated prescription drugs

- (a) ~~Prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription drugs until they are destroyed or returned to their supplier. Wholesale distributors shall receive prescription drug returns or exchanges from a pharmacy, chain pharmacy warehouse, or other persons authorized by law to administer and dispense such drugs, pursuant to the terms and conditions of the agreement between the wholesale distributor and the pharmacy, chain pharmacy warehouse or other persons authorized by law to administer and dispense such drugs including the returns of expired, damaged, and recalled pharmaceutical product to either the manufacturer, the wholesaler, or a third party returns processor, and such returns shall not be subject to the pedigree requirement.~~
- (b) ~~Any prescription drugs whose immediate or sealed outer or sealed secondary containers have been opened or used shall be identified as such, and shall be quarantined and physically separated from other prescription drugs until they are either destroyed or returned to the supplier. If the returns described in (a) appear to be a suspicious, unusual or excessive quantity of drugs, such wholesale distributor shall report such returns to the Board.~~
- (c) Wholesale distributors shall be held accountable for administering their return process and ensuring that the aspects of this operation are secure, and do not permit the entry of adulterated, misbranded, and/or counterfeit drugs.
- (d) Any drug returned to a manufacturer or wholesale distributor shall be kept under proper conditions for storage, handling, transport, and shipment.

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(e) When drugs are adulterated, misbranded, counterfeited, or suspected of being counterfeit, notice shall be provided to the Board, FDA and manufacturer or wholesale distributor from which it was acquired within three (3) business days.

(f) Contraband, counterfeit, or suspected to be counterfeit drugs, other evidence of criminal activity, and accompanying documentation shall be retained and not destroyed until its disposition is authorized by the Board and/or FDA.

(e-g) If the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed or returned to the supplier, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity.

~~(1) In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the wholesale drug distributor shall consider, among other things:~~

~~(A) The conditions under which the drug has been held, stored or shipped before or during its return; and,~~

~~(B) The condition of the drug and its container, carton, or labeling, as a result of storage or shipping.~~

(h) Salvaging and reprocessing. Wholesale drug distributors shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to prescription drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.

(~~i~~) The recordkeeping requirements for wholesale prescription drug distributors in 535:20-7-7.7 ~~this Title~~ shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated prescription drugs.

535:20-7-7.7. Recordkeeping

(a) Wholesale drug distributors shall establish and maintain complete inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and devices. These records shall include the:

~~(1) source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;~~

~~(2) identity and quantity of the drugs received and distributed or disposed of; and~~

~~(3) dates of receipt and distribution or other disposition of the drugs.~~

(b) After January 1, 2009, each person who is engaged in wholesale distribution of prescription drugs, (including repackagers of the finished form of the prescription drug) whether located in or out-of-state, must maintain and provide a pedigree record developed in accordance with standards and requirements of the Board, for all drugs received, distributed, sold and/or offered for sale outside of the normal distribution channel, or that leave or have ever left the normal distribution channel and shall before each wholesale distribution of such drug provide a pedigree to the person who receives such prescription drug.

(1) A statement or record in written or electronic form shall be used to record each distribution of any given

drug, from the sale by a manufacturer through acquisition and sale by any wholesaler distributor, packager and/or repackager.

(2) The pedigree shall include, but not be limited to, the following information for each transaction:

(A) The source of the drug(s), including the name and principal address of the seller;

(B) The name of the drug and the national drug code (NDC) number, the amount of the drug, the date of the purchase, quantity (container size, number of containers), and lot number(s) of the drug;

(C) The business name and address of each owner of the drug, its shipping information, including the name and address of the facility of each person certifying delivery or receipt of the drug;

(D) A certification that the information contained therein is true and accurate under penalty of perjury.

(3) The wholesale distributor must conduct due diligence in verifying pedigrees.

(4) The pedigree or electronic record requirements do not apply to compressed medical gases (medical gas suppliers and medical gas distributors, etc.)

(5) The pedigree or electronic record requirements do not apply to drugs labeled for veterinarian use.

~~(b) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the drugs.~~

(c) Wholesale distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution, or other disposition of all drugs and devices. Such records shall include the dates of receipt and distribution or other disposition of the drugs and devices. Inventories and records shall be maintained and made available for inspection and photocopying for a period of two (2) years following their creation date.

~~(e)~~

(1) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period.

(2) Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

(d) Each wholesale distributor should maintain an ongoing list of persons with whom they do business.

535:20-7-7.8. Written policies and procedures

(a) Wholesale drug distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, transport, shipping and distribution of ~~prescription~~ drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, ~~and~~ for correcting all errors and inaccuracies in inventories and implementing and maintaining a continuous

quality improvement system. Such written policies and procedures shall be available for inspection.

(b) Wholesale drug distributors shall include in their written policies and procedures the following:

(1) A procedure whereby the oldest approved stock of a prescription drug product is distributed first. The procedure may permit deviation from this requirement, if such deviation is temporary and appropriate.

(2) A procedure to be followed for handling recalls and withdrawals of prescription drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:

(A) Action initiated at the request of the Food and drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board of Pharmacy;

(B) Voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

(C) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.

(3) A procedure to ensure that wholesale drug distributors prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.

(4) A procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed.

(A) This procedure shall provide for written documentation of the disposition of outdated prescription drugs.

(B) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.

(5) A procedure for identifying, investigating, and reporting significant drug inventory discrepancies involving counterfeit, suspected of being counterfeit, contraband, or suspected of being contraband; and for reporting of such discrepancies to the Board and to the appropriate federal agency upon discovery of such discrepancies shall be the same as in 535:20-7-7.6.

535:20-7-7.9. Responsible persons [REVOKED]

~~Wholesale drug distributors shall establish and maintain lists of officers, directors, managers and other persons in charge of wholesale drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.~~

AGENCY NOTE: moved to 535:20-7-6

535:20-7-7.10. Compliance with federal, state and local laws

(a) Wholesale drug distributors shall operate in compliance with applicable federal, state, and local laws and regulations.

(b) Wholesale drug distributors shall permit the Board of Pharmacy and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures, and to confiscate records to the extent authorized by law or rules.

(c) Wholesale drug distributors that deal in controlled substances shall register with the appropriate state controlled substance authority and with the drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulations.

535:20-7-7.11. Salvaging and reprocessing [REVOKED]

~~Wholesale drug distributors shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to prescription drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.~~

535:20-7-9.1. Prohibited Conduct

The following shall be considered prohibited conduct and be a violation of these rules:

(1) Engaging in the wholesale distribution of drugs

(A) with intent to defraud or deceive, failing to maintain or provide a complete and accurate pedigree and/or failure to authenticate a pedigree, when required;

(B) and destroying, altering, concealing, or failing to maintain complete and accurate pedigree concerning any drug in their possession, when required;

(C) and having possession of drug pedigree documents required by the board and failing to authenticate the matters contained in the documents as required, and nevertheless distributing or attempting to further distribute drugs;

(D) with intent to defraud or deceive, falsely swearing or certifying that they have authenticated any documents related to the wholesale distribution of drugs;
(E) and forging, counterfeiting, or falsely creating any pedigree, falsely representing any factual matter contained on any pedigree, or knowingly omitting to record material information required to be recorded in a pedigree;

(F) and knowingly purchasing or receiving drugs from a person, not authorized to distribute drugs, in wholesale distribution; or,

(G) and selling, bartering, brokering, or transferring drugs to a person not authorized to purchase drugs, under the jurisdiction in which the person receives the drug(s) in a wholesale distribution.

(2) Forging, counterfeiting, or falsely creating any label for a drug(s) or who falsely represents any factual matter contained in any label of a drug(s).

(3) Altering, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of a prescription drug or the commission of any other act with respect

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to a prescription drug that results in the prescription drug being misbranded.

(4) Manufacturing, purchasing, selling, delivering or bringing into the state contraband drug(s), or any one who illegally possesses any amount of contraband drug(s); or,

(5) Any violation of the rules of registrant conduct in 535:25:9 is prohibited conduct.

[OAR Docket #07-1346; filed 8-6-07]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 65. SALES AND USE TAX

[OAR Docket #07-1344]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 13. Sales and Use Tax Exemptions

Part 51. Sales Tax Holiday [NEW]

710:65-13-510 [RESERVED]

710:65-13-511 [NEW]

710:65-13-512 [NEW]

AUTHORITY:

68 O.S. §§ 203, 1354.18; Oklahoma Tax Commission

DATES:

Adoption:

July 10, 2007 (Commission Order No. 2007-07-10-04)

Approved by Governor:

July 24, 2007

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2008, unless superseded by another rule or disapproval by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Compelling public interest was found to warrant emergency promulgation of these rules for administration of the three (3) day sales tax holiday authorized by the 51st Legislature, 1st Regular Session, and due to commence August 3, 2007.

ANALYSIS:

These rules set out definitions, delineate in detail the clothing and footwear which qualify for the exemption and give specific examples of when the exemption will apply. The rules also provide a formula for reimbursement to the municipalities and counties.

CONTACT PERSON:

Lisa Haws, OBA #12695, Tax Policy Analyst; (405) 521-3133

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 13. SALES AND USE TAX EXEMPTIONS

PART 51. SALES TAX HOLIDAY

710:65-13-510. [RESERVED]

710:65-13-511. Exemption for sales of clothing and footwear during three-day period in August

(a) **General provisions.** Beginning at 12:01 a.m. on Friday August 3, 2007 and ending at twelve midnight on Sunday August 5, 2007, sales of any item of clothing or footwear with a sales price of less than one hundred dollars (\$100) per article will be exempt from sales and use tax.

(b) **Exemption applicability.** This exemption does not apply to the sale of any accessories, special clothing or footwear primarily designed for athletic activity or protective use that is not normally worn except when used for athletic activity or protective use, or to the rental of clothing or footwear.

(c) **Definitions.** For purposes of this section:

(1) "Accessories" means any item, other than clothing or footwear that is carried on or about the human body, without regard to whether the item is worn on the body in a manner that is characteristic of clothing or footwear. Such items include jewelry, nonprescription eyewear, handbags, wigs, hair pieces, wallets, purses, umbrellas, watches, cosmetics, briefcases, luggage, barrettes, cuff links, hair bows, hair clips, hair nets, handkerchiefs, and other similar type items.

(2) "Clothing" means all human wearing apparel suitable for general use.

(A) A nonexclusive list of clothing is as follows:

(i) Aprons, household and shop;

(ii) Athletic supporters;

(iii) Baby receiving blankets;

(iv) Bathing suits and caps;

(v) Beach capes and coats;

(vi) Belts and suspenders;

(vii) Boots;

(viii) Coats and jackets;

(ix) Costumes;

(x) Diapers, children and adult, including disposable diapers;

(xi) Ear muffs;

(xii) Footlets;

(xiii) Formal wear;

(xiv) Garters and garter belts;

(xv) Girdles;

(xvi) Gloves and mittens for general use;

(xvii) Hats and caps;

(xviii) Hosiery;

(xix) Insoles for shoes;

(xx) Lab coats;

(xxi) Neckties;

(xxii) Overshoes;

(xxiii) Pantyhose;

(xxiv) Rainwear;

(xxv) Rubber pants;

(xvi) Sandals;

(xvii) Scarves;

(xviii) Shoes and shoe laces;

(xxix) Slippers;

- (xxx) Sneakers;
 - (xxxi) Socks and stockings;
 - (xxxii) Steel toed shoes;
 - (xxxiii) Underwear;
 - (xxxiv) Uniforms, athletic and non-athletic; and
 - (xxxv) Wedding apparel.
- (B) "Clothing" shall not include:
- (i) Belt buckles sold separately;
 - (ii) Costume masks sold separately;
 - (iii) Patches and emblems sold separately;
 - (iv) Sewing equipment and supplies including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles; and
 - (v) Sewing materials that become part of "clothing" including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers.
- (3) "Eligible item" means tangible personal property that is exempt from tax under this Section that is purchased during the three day period in August and includes certain clothing and footwear with a sales price of less than \$100.00 per article of clothing or pair of footwear.
- (4) "Footwear" means any shoe, boot or other similar article that is designed to be worn on a foot.
- (5) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.
- (6) "Rain check" means the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.
- (7) "Special clothing or footwear primarily designed for protective use that is not normally worn except when used for the protective use for which it is designed" or "protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use. This type of clothing and footwear includes, but is not limited to, breathing masks; clean room apparel and equipment; ear and hearing protectors; face shields; hard hats; helmets; paint or dust respirators; protective gloves; safety glasses and goggles; safety belts; tool belts; and welder's gloves and masks.
- (8) "Special clothing or footwear that is primarily designed for athletic activity that is not normally worn except when used for the athletic activity for which it is designed" or "sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. This type of clothing and footwear includes, but is not limited to, ballet and tap shoes; cleated or spiked athletic shoes; gloves for athletic or recreational activity such as baseball, bowling, boxing, football, hockey, golf and other

sports gloves; goggles; elbow, hand, knee and shin guards or pads; life preservers and vests; mouth guards; roller and ice skates; shoulder pads; fishing and ski boots; and wet-suits and fins.

(c) **Exemption applications.** The application of the exemption to the sale of clothing or footwear during the exemption period is illustrated by the following examples:

(1) A customer purchases three shirts for \$45.00 per shirt. All three items qualify for the exemption, even though the customer's total purchase price (\$135.00) exceeds \$99.99.

(2) A customer purchases a pair of shoes for \$110.00. The purchase does not qualify for the exemption because the customer's purchase price exceeds \$99.99.

(3) A customer purchases a tie for \$50.00, a shirt for \$55.00 and a suit for \$300.00. The purchase of the tie and shirt qualify for the exemption, but the suit does not qualify.

(4) A customer purchases a sport's team jersey for \$35.00. The purchase would qualify for the exemption.

(5) A customer purchases a gold pin for \$99.00. The purchase would not qualify for the exemption because the item is an accessory.

(d) **Application of rules to exemption.**

(1) **Articles normally sold as a unit.** Articles that are normally sold as a unit may not be priced separately and sold as individual items in order to be exempt. The following examples illustrate the application of the rule to the exemption:

(A) A pair of shoes sells for \$198.00. The pair of shoes cannot be split in order to sell each shoe for \$99.00 to qualify for the exemption.

(B) A suit is normally priced at \$300.00. The suit cannot be split into a coat and slacks so that one of the articles may be sold for less than \$100.00 to qualify for the exemption. However, articles that are normally sold as separate articles, such as a sport coat and slacks, may continue to be sold as separate articles and qualify for the exemption.

(C) A packaged gift set consisting of a wallet (ineligible item) and tie (eligible item) would not qualify for the exemption.

(2) **"Buy One, Get One Free" and other similar offers.** If a seller offers "buy one, get one free" or "two for the price of one" on eligible items, the purchase shall qualify for the exemption when all other conditions of the exemption are met. However, if a seller offers a "buy one, get one for a reduced price" the two prices cannot be averaged to qualify both items for the exemption. The following examples illustrate the application of the rule to the exemption:

(A) A seller offers "buy one, get one free" on a pair of shoes. The first pair of shoes has a sale price of \$99.00 and the second pair is free. Both pairs of shoes will qualify for the exemption because the first pair of shoes does not exceed the less than \$100.00 exemption limitation.

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(B) A coat is purchased for \$120.00 and a second coat is purchased for half price (\$60.00) at the time the first coat is purchased. The second coat will qualify for the exemption, but the tax will be due on the first coat. In this example, the sales price of the items may not be averaged in order to qualify for the exemption.

(3) **Discounts, coupons, and rebates.** The application of the exemption to discounts, coupons and rebates extended on an eligible item during the exemption period is illustrated by the following examples:

(A) Discounts offered by the retailers at the time of sale and which are taken by the customer at the time of sale affect the sales price of the purchased item. For example, if a seller sells a pair of jeans with a sales price of \$110.00 and offers to discount the item 10 percent at the time of sale, the exemption would apply because the actual sales price of the jeans is \$99.00.

(B) Coupons offered by the seller or vendor and used at the time of sale to reduce the sales price of an eligible item affect the sales price of the purchased item. For example, if a seller offers a reduction in sales price of \$10.00 through a store coupon for an item of clothing with a sales price of \$100.00, the exemption would apply to the purchase because the seller's actual sales price to the customer is \$90.00.

(C) Coupons offered by a manufacturer that are used to pay for an eligible item do not affect the sales price of the purchased item. For example, if a customer gives to a seller a manufacturer's coupon for \$20.00 for a pair of tennis shoes with a sales price of \$100.00, the exemption would not apply.

(D) Rebates generally occur after the sale, thus the amount of the rebate does not affect the sales price of the purchased item. For example, if a pair of jeans was purchased for \$100.00 with a manufacturer's rebate for \$10.00, the exemption would not apply because the sales price is in excess of \$99.99.

(4) **Exchanges.** The application of the exemption to an exchange of an eligible item purchased during the exemption period is illustrated by the following examples:

(A) A customer purchases an eligible item during the exemption period, but later exchanges the item for a different size, color, or other feature. No additional tax is due even though the exchange is made after the exemption period.

(B) A customer purchases an eligible item during the exemption period. After the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item. Sales tax is due on the total sales price of the newly purchased item.

(C) A customer purchases an eligible item before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different eligible item, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.

(5) **Gift certificates and gift cards.** Eligible items purchased during the exemption period using a gift certificate or gift card will qualify for the exemption, regardless of when the gift certificate or gift card was purchased. Eligible items purchased after the exemption period using a gift certificate or gift card are taxable even if the gift certificate or gift card was purchased during the exemption period. A gift certificate or gift card cannot be used to reduce the selling price of an eligible item in order for the item to qualify for the exemption.

(6) **Layaways.** For the purposes of this exemption, an eligible item will qualify for the exemption when final payment on the layaway is made by, and the item is given to the customer during the exemption period. The application of the exemption to a layaway of an eligible item purchased during the exemption period is illustrated by the following examples:

(A) A dress with a sales price of \$75.00 is placed in layaway during the exemption period. The customer picks up the dress and makes final payment after the exemption period. The exemption does not apply.

(B) A coat with a sales price of \$95.00 is placed in layaway before the exemption period. The customer makes the final payment and picks up the coat out of layaway on August 3, 2007. The exemption would apply because the coat was paid for and picked up during the exemption period.

(7) **Mail, telephone, e-mail, and internet sales.** The sale of an eligible item of clothing or footwear may qualify for the exemption when sold through the mail, telephone, e-mail or internet sales if:

(A) The item is both paid for and delivered to the customer during the exemption period; or

(B) The customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. An order is considered for immediate shipment when the customer does not request delayed shipment. The seller must accept an order during the exemption period even if delivery is not made during the exemption period. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. If the seller delays shipment of an order because of a backlog, or because stock is currently unavailable, the order is still for immediate shipment.

(8) **Out of stock sales.** A purchase where a customer orders and pays for the eligible item and the seller accepts the order during the exemption period will be eligible for the exemption, even if delivery is made after the exemption period.

(9) **Rain checks.** Eligible items purchased during the exemption period with the use of a previously issued rain check will qualify for the exemption. However, a rain check that is issued during the exemption period will not qualify an eligible item for the exemption if purchased after the exemption period.

(10) **Preorder sales.** The preorder of an eligible item of clothing or footwear may qualify for the exemption if the payment occurs during the exemption period.

(e) **Records.** The retailer is not required to obtain an exemption certificate on sales of eligible items during the exemption period. However, the retailer's records should clearly identify the type of item sold, the date on which the item was sold, the sales price of all items and, if applicable, any tax charged.

(f) **Refunds, receipts.** For the period of 60 calendar days following the last day of the exemption period, when a customer returns an item that would qualify for the exemption, no refund of tax shall be given unless the customer provides a receipt or invoice showing tax was paid, or the retailer has sufficient documentation to show that tax was paid on the specific eligible item.

(g) **Time zones.** The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and the seller is located in another.

710:65-13-512. Reimbursement to municipality or county

For the fiscal year beginning July 1, 2007 and ending June 30, 2008, an amount of revenue shall be apportioned to

each municipality or county which levies a sales tax subject to the provisions of 68 O.S. §§1357.10 and 2701(F) equal to the amount of sales tax revenue of such municipality or county exempted by the provisions of 68 O.S. §§1357.10 and 2701(F) based upon an estimate, by the Oklahoma Tax Commission, of the aggregate cost of the exemption for the municipalities or counties. The sales tax revenue shall be apportioned to the municipalities and counties in the proportions which total municipal and county sales tax revenues were apportioned by the Tax Commission for sales in the month of August for the preceding calendar year. Each municipality's and county's sales tax revenue, collected for sales made in August 2006, shall be divided by the total municipal and county sales tax revenue collected for sales made in August, 2006. The resulting ratio shall determine the apportionment percentage for each municipality and county for August, 2007. The apportionment percentage shall be multiplied by the Tax Commission's estimated aggregate cost of the exemption to determine the amount of sales tax revenue each municipality or county is entitled to receive under 68 O.S. §1353(B).

[OAR Docket #07-1344; filed 8-6-07]

Permanent Final Adoptions

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

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

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

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

TITLE 457. OKLAHOMA STRATEGIC MILITARY PLANNING COMMISSION CHAPTER 10. ADMINISTRATIVE OPERATIONS AND PROGRAM IMPLEMENTATION

[OAR Docket #07-1348]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions [NEW]
457:10-1-1 through 10-1-4 [NEW]
- Subchapter 3. Organization and Administration [NEW]
457:10-3-1 through 10-3-3 [NEW]
- Subchapter 5. Cooperative Program with Local Governmental Entities [NEW]
457:10-5-1 [NEW]

AUTHORITY:

Oklahoma Strategic Military Planning Commission, Title 74, Section 5401, *et sequitur*, of the Oklahoma Statutes, Enrolled Senate Bill 138 of the First Session of the 47th Oklahoma Legislature and Enrolled Senate Bill 1675 of the Second Session of the 47th Oklahoma Legislature.

DATES:

Comment Period:

January 16, 2007, through February 15, 2007

Public Hearing:

None

Adoption:

February 22, 2007

Submitted to Governor:

February 26, 2007

Submitted to House:

February 26, 2007

Submitted to Senate:

February 26, 2007

Gubernatorial approval:

March 15, 2007

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 20, 2007

Final Adoption:

April 20, 2007

Effective:

September 14, 2007

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 1. General Provisions [NEW]
457:10-1-1 through 10-1-4 [NEW]
- Subchapter 3. Organization and Administration [NEW]
457:10-3-1 through 10-3-3 [NEW]
- Subchapter 5. Cooperative Program with Local Governmental Entities [NEW]
457:10-5-1 [NEW]

Gubernatorial approval:

February 23, 2007

Register publication:

24 Ok Reg 2901

Docket number:

07-1347

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The Oklahoma Strategic Military Planning Commission was established pursuant to Title 74, Section 5401, *et sequitur*, of the Oklahoma Statutes. These rules govern the organization and administration of the Commission and authorize cooperative projects with local governmental entities.

CONTACT PERSON:

Don Davis, Special Counsel, Office of the Governor, Suite 212, State Capitol Building, 2300 Lincoln Boulevard, Oklahoma City, OK 73105, 405-522-8883

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

457:10-1-1. Purpose

(a) The rules in this Chapter are intended to establish policies and procedures to:

- (1) aid in the orderly administration of the Oklahoma Strategic Military Planning Commission;
- (2) ensure effective and coordinated efforts among officials and agencies of federal, state, county, municipal and local governments in support of Oklahoma's military installations, particularly in respect to BRAC matters.

(b) The authority for the rules in this Chapter is Title 74, Section 5401, et sequitur, of the Oklahoma Statutes, and Enrolled Senate Bill 138 of the First Session of the 47th Oklahoma Legislature.

457:10-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the meanings attributed to them in this section, unless the context clearly indicate otherwise.

"BRAC" means Base Realignment and Closure processes of the United States Government.

"Commission" means Oklahoma Strategic Military Planning Commission.

"Local Government, Local Government Entity and Local Governmental Jurisdiction" means any political subdivision of this state; local school districts; sub-state planning districts; any public trust whose beneficiary is a municipality,

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county or the State of Oklahoma; or any voluntary association of such entities.

"Partnership Program" means any scheme promulgated by the Oklahoma Strategic Military Planning Commission for the distribution of funds to a local government, local government entity or local governmental jurisdiction for a public project.

"Public Project" means any activity in furtherance of a valid public purpose related to the Base Realignment and Closure processes of the United States Government, funded in whole or in part by public funds, authorized by a governmental unit, and for which there are written plans and a definable work product. A "Public Project" shall be deemed to include, without limitation, research and the work product thereof, planning processes, and the analysis and evaluation of the status of all aspects of defense installations and their environs.

457:10-1-3. Legal references

References to "Title" in this Chapter refer to Titles of the Oklahoma Statutes. References refer to the most recent version of the law unless another edition is specifically cited.

457:10-1-4. Severability

If any rule, or part of any rule, in this Chapter is found to be unenforceable by a court of competent jurisdiction, the remainder of the rules will not be impaired or invalidated. The remaining rules in this Chapter will be valid and enforceable to the fullest extent permitted by law.

SUBCHAPTER 3. ORGANIZATION AND ADMINISTRATION

457:10-3-1. Oklahoma Strategic Military Planning Commission; organization and meetings

(a) Membership of the Oklahoma Strategic Military Planning Commission consists of seven (7) members.

(b) Five (5) of these members shall be appointed by the Governor, and serve at the pleasure of the Governor, and respectively shall represent the interests of Altus Air Force Base, Fort Sill, McAlester Army Ammunition Depot, Tinker Air Force Base and Vance Air Force Base.

(c) Of the remaining two members, one (1) shall be appointed by the Speaker of the House of Representatives from the membership of the House and one (1) shall be appointed by the President Pro Tempore of the Senate from the membership of the Senate. Both legislative appointees shall be ex officio and nonvoting members of the Commission and shall serve at the pleasure of their appointing authority.

(d) At least annually, the Commission shall elect a Chair and a Vice-Chair from among its members. Officers may be elected for succeeding terms.

(e) The Chair shall call and preside at meetings and may represent the Commission in such other matters as it may authorize. In the absence of the Chair, the Vice-Chair shall assume the Chair's duties and have the Chair's authority. The

Vice-Chair shall also perform such duties as may be assigned by the Chair.

(f) All meetings of the Commission shall be held and conducted in accordance with the Open Meeting Act, Title 25 Oklahoma Statutes, Sections 301 et sequitur.

(g) A meeting schedule for the year shall be determined by the Commission and filed with the Secretary of State.

(h) The Chair may call special meetings or emergency meetings.

(i) Special or emergency Commission meetings shall also be called at the written request of a majority of the appointed members of the Commission.

(j) The Chair may cancel any regularly scheduled, special or emergency meeting upon a determination based on reliable information that a quorum will not be present. The Secretary of State and members of the Commission shall be notified of the cancellation at least twenty-four (24) hours prior to the time of the cancelled meeting.

(k) Items requested to be in the Agenda for a meeting should be submitted to the Office of the Governor to the attention of the Chair no later than ten (10) days prior to a regularly scheduled meeting, three (3) days prior to any special meeting, or twenty-four (24) hours prior to any emergency meeting of the Commission.

(l) A majority of the appointed members of the Commission shall constitute a quorum.

(m) A quorum of the members of the Commission shall be present to transact any business.

(n) An affirmative vote from a majority of a quorum shall be required for any action by the Commission.

(o) Meetings of the Commission shall be held at the Office of the Governor or at such other locations as the Commission may from time to time designate.

457:10-3-2. Locations for information and filing

Any person may obtain information from, make a submission to, or make a request of the Commission by submitting a written request. Documents may be mailed to the Commission, or they may be hand-delivered during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state-designated holidays. The location and mailing address for the Commission is: Oklahoma Strategic Military Planning Commission, Office of the Governor, State Capitol Building, Oklahoma City, Oklahoma, 73105. Telephone number for the Commission is (405) 521-2342. The date on which any document is actually received at the Office of the Governor shall be recorded as the date of filing.

457:10-3-3. Retention and public inspection of documents and release of records

(a) Documents filed with or presented to the Commission will be retained in the files of the Commission located at the Office of the Governor for the length of time required by state and federal laws. Documents will be disposed of in a manner consistent with the Oklahoma Records Management Act, found at Title 67, Oklahoma Statutes, Section 201 et sequitur.

and rules promulgated by the Archives and Records Commission pursuant to Title 74, Oklahoma Statutes, Sections 564 et sequitur.

(b) Records may be released during the normal business hours of the Office of the Governor.

(c) The following fees have been determined by the Commission to fund the recovery of reasonable, direct costs of document copying or mechanical reproduction:

(1) Charges for copies of letter or legal-size documents shall be Twenty-five Cents (\$0.25) each for one-sided copies and Forty Cents (\$0.40) each for two-sided copies.

(2) In the event a request is solely for commercial purposes or clearly would cause excessive disruption of the Office of the Governor's essential functions, the Commission may charge the hourly rate of the person doing the search multiplied by the time required for the search.

(3) When materials from meetings or hearings are transcribed from tapes or notes, the charge will be calculated at a rate charged by a court reporter, or if done by Office of the Governor staff, will be \$5.00 per page. Copies of transcripts will be billed at regular copy rates.

SUBCHAPTER 5. COOPERATIVE PROGRAMS WITH LOCAL GOVERNMENTAL ENTITIES

457:10-5-1. Grants to Local Governmental Units

(a) From time to time, the Oklahoma Legislature and Governor appropriate funds to the Commission for distribution to impacted local governmental units through various grant programs to further the purposes and mission of the Commission.

(b) These grant programs shall consist of a series of application periods, continuing so long as funds are available. Maximum grants and applicable local/state support ratios, if any, may be established for each application period.

(c) Expenditures pursuant to these grant programs shall comply with applicable statutes and rules and shall be construed as an expenditure of public funds in furtherance of governmental functions and for the purpose of conferring general and uniform benefits resulting from the expenditures.

(d) Rules for the submission, award and administration of the grant programs follow:

(1) Eligible applicants include local governmental entities as defined by this Chapter.

(2) Any eligible entity which desires to participate in a grant program shall file a written plan of action and application for funds in support thereof which:

(A) describe how the realignment, expansion, reduction or closure of one of Oklahoma's military installations or national guard or reserve training centers would adversely affect its community of interest;

(B) describe the public project or projects proposed to protect the interests of the governmental entity and its constituents with respect to BRAC issues relevant to the affected military installation; and,

(C) set forth in detail or describe specifically the funds or other resources from local sources to be expended in pursuit of the public project or projects,

which expenditures are sought to be matched with funds from this Program.

(3) The plan and application so submitted must have received a two-thirds (2/3) affirmative vote of the governing board of the local governmental entity, which vote shall be memorialized in a document executed under oath which states that the record of the vote is a true and accurate account of the proceedings approving the plan.

(4) If a plan and application are submitted by a voluntary association, evidence of eligibility under Rule (1), above, shall be submitted in addition to the required approval by the governing board of the local governmental entity.

(5) Expenditure of all funds from this grant program shall comply with the terms of the plan and application submitted to and approved by the Commission.

(6) A summary description of any public project, including any work product which is an analysis or recommendation, which results from any grant funded by this program, shall be filed with the Commission and may be used by the Commission for any lawful purpose.

(7) No funds from this grant program shall be used to pay any administrative expenses of the applicant, and the Commission shall cause expenditures of grant program funds to be monitored and audited to assure compliance with this requirement.

(8) Any entity which expends grant program funds for proscribed administrative expenses shall be liable to the State of Oklahoma for treble the amount of funds identified as misspent, together with costs associated with recovery of the funds, including reasonable attorney's fees. Funds so recovered shall become available for distribution to other participants. Misuse of any funds awarded pursuant to this Program shall disqualify the miscreant for further funding for a period of one (1) year from the date of issuance of the violation report.

[OAR Docket #07-1348; filed 8-8-07]

**TITLE 460. DEPARTMENT OF MINES
CHAPTER 10. NON-COAL RULES AND REGULATIONS**

[OAR Docket #07-1341]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 11. Non-Coal Surface Mining Permit Applications
460:10-11-5 [AMENDED]

AUTHORITY:

45 O.S. 1986, Section 1.5, 45 O.S. 1981, Section 732, Oklahoma Mining Commission

DATES:

Comment period:

January 17, 2007 through February 16, 2007

Public hearing:

February 20, 2007 and February 22, 2007

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March 22, 2007

Permanent Final Adoptions

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Submitted to Senate:

April 2, 2007

Gubernatorial approval:

May 11, 2007

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in final approval on May 25, 2007

Final adoption:

May 25, 2007

Effective date:

September 17, 2007

ANALYSIS:

Subsections (d) and (e) were added to 460:10-11-5, so that the regulations specifically state that when permit applications are applied for, within the application section pertaining to the identification of interests, the Oklahoma Department of Mines will not get involved in third party disputes over any interest in that property. Also, that upon receipt of notice of a third party dispute, the Department's review of any pending application for a permit, revision, amendment, renewal, or transfer shall be suspended until the Department receives notice the dispute has been resolved.

CONTACT PERSON:

Cathy Frank, Legal Officer, Department Of Mines Wagoner Field Office, 29858 E. 690 Road, Wagoner, OK, 74467, (918)485-3999

PURSUANT TO THE ACTIONS DESCRIBED HEREIN THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF SEPTEMBER 17, 2007:

SUBCHAPTER 11. NON-COAL SURFACE MINING PERMIT APPLICATIONS

460:10-11-5. Identification of interests

(a) Each application for a non-coal surface application permit shall contain the names and address of the permit applicant, including his or her telephone number.

(b) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity.

(c) Each application shall contain the names under which the applicant, partner, corporation, and or company previously operated a mining operation in this state within five years preceding the date of application.

(d) Nothing herein shall authorize the Department to adjudicate property disputes between any interested parties.

(e) Upon the Department's notice of any such property dispute from any reasonable source, the Department's review of any pending application for a new permit, revision, transfer, amendment or renewal shall be suspended until the Department receives notice that such dispute has been conclusively resolved.

[OAR Docket #07-1341; filed 8-3-07]

TITLE 460. DEPARTMENT OF MINES CHAPTER 20. THE PERMANENT REGULATIONS GOVERNING THE COAL RECLAMATION ACT OF 1979

[OAR Docket #07-1342]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Financial Interests of State Employees

460:20-5-13 [REVOKED]

460:20-5-14 [REVOKED]

Subchapter 59. State Enforcement

460:20-59-4 [AMENDED]

AUTHORITY:

45 O.S. Section 1.5, and 45 O.S. Section 789, Oklahoma Mining Commission

DATES:

Comment period:

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Effective date:

September 17, 2007

ANALYSIS:

The amendments to Subchapter 5, 460:20-5-13 and 460:20-5-14, consist of the revocation of sections 13 and 14 because they did not address prohibitive interests, as defined in 460:20-5-5, that apply on the state level. The amendment to Subchapter 59, requires that a permit revision submitted for the correct of a violation issued be filed alone and not added to or grouped with other revision(s) filed on that same permit. This is to keep the violation correction time for the violation from having to be extended beyond the one time 90 day extension period while the permit revision is being reviewed and processed.

CONTACT PERSON:

Cathy Frank, Legal Officer, Department Of Mines Wagoner Field Office, 29858 E. 690 Road, Wagoner, OK, 74467, (918)485-3999

PURSUANT TO THE ACTIONS DESCRIBED HEREIN THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF SEPTEMBER 17, 2007:

SUBCHAPTER 5. FINANCIAL INTERESTS OF STATE EMPLOYEES

460:20-5-13. Appeals procedures [REVOKED]

(a) ~~Employees have the right to appeal an order for remedial action under Section 460:20-5-12, and shall have 30 days to exercise this right before disciplinary action is initiated. Employees may file their appeal, in writing, with the Appeals Board established in Section 460:20-14 below.~~

(b) ~~Members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests should follow any appeals process provided for by the Oklahoma Governor's Office, Director of Appointments.~~

460:20-5-14. Appeals board [REVOKED]

~~A departmental appeals board, composed of three persons appointed by the Director as representative of the Department, shall hear any grievances from Departmental personal concerning termination, salary disputes, conflict of interest, or other personnel matters which have been determined by the Director.~~

~~(1) Any decisions rendered by the appeals board shall be a majority vote, after both parties have had an opportunity to be heard in an individual proceeding under the Administrative Procedures Act.~~

~~(2) Should the appeals board vote against the decision of the Chief Administrative Officer, the matter shall be taken to the Director, and his or her decision shall be considered an final order, appealable under the Administrative Procedures Act.~~

SUBCHAPTER 59. STATE ENFORCEMENT

460:20-59-4. Notices of violation

(a) The Director or his authorized representative shall issue a notice of violation if, on the basis of an inspection, he or she finds a violation of the Act, these regulations, or any condition of a permit or exploration approval imposed under the Act or these Regulations, which does not create an imminent danger or harm for which a cessation order must be issued under Section 460:20-59-3.

(b) A notice of violation issued under this Section shall be in writing and signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

- (1) The nature of the violation;
- (2) The remedial action required, which may include interim steps;
- (3) A reasonable time for abatement, which may include time for replacement of interim steps; and
- (4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

(c) The Director or his authorized representative may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee ~~permittee~~ that

it is not feasible to abate the Violation within 90 calendar days due to one or more of the circumstances in (f) of this Section. An extended abatement date pursuant to this Section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

(d) The following steps shall be taken:

(1) If the permittee fails to meet the time set for abatement, the authorized representative shall issue a cessation order under Section 460:20-29-3(b).

(2) If the permittee fails to meet the time set for accomplishment of any interim step the authorized representative may issue a cessation order under Section 460:20-59-3(b).

(e) The Director or his authorized representative shall terminate a notice of violation by written notice to the permittee when he determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the Department to assess civil penalties for those violations under Subchapter 61 of this Chapter.

(f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal ~~or other necessary approval of designs or plans~~ but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is require, for reasons not within the control of the permittee;

(2) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit revision which abates an outstanding violation and which includes no other changes to permit design or plans, but such revision approval has not or will not be issued within 90 days for reasons not within the control of the permittee;

~~(23) Where there are is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;~~

~~(34) Where the permittee cannot abate within 90 days due to a labor strike;~~

~~(45) Where climate conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or~~

~~(56) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.~~

(g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or to the environment.

(h) If any of the conditions in (f) of this Section exists, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have

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the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of (c) and (f) of this Section. In determining whether or not to grant an abatement period exceeding 90 days, the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reason for his or her concurrence or disapproval in the file.

(i) Any determination made under (h) of this Section shall contain a right of appeal to the Office Of Hearing and Appeals in accordance with these Regulations and the rules of practice and procedures.

(j) No extension granted under (h) of this Section may exceed 90 days in length. Where the conditions or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of (h) of this Section.

[OAR Docket #07-1342; filed 8-3-07]

TITLE 753. UNIVERSITY HOSPITALS TRUST CHAPTER 1. GENERAL AGENCY RULES

[OAR Docket #07-1354]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions [NEW]
753:1-1-1. through 753:1-1-8. [NEW]
Subchapter 3. General Operations of the University Hospitals Trust [NEW]
753:1-3-1. through 753:1-3-5. [NEW]
Subchapter 5. Administrative Rules [NEW]
753:1-5-1. through 753:1-5-2. [NEW]
Subchapter 7. Formal and Informal Procedures [NEW]
753:1-7-1. through 753:1-7-4 [NEW]

AUTHORITY:
University Hospitals Trust; 63 O.S. §§ 3224; 75 O.S. § 302(A)

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Failure of the legislature to disapprove these rules results in the approval on March 27, 2007

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Effective:
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SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
These Rules describe the organization of the University Hospitals Trust, state the general course and method of operations of the Trust and the methods by which the public may obtain information or make submissions or requests. The Rules set forth the nature and requirements of all formal and informal procedures available.

CONTACT PERSON:
Dean Gandy (405) 271-4962

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. § 308.1(A), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

753:1-1-1. Purpose and scope

The purpose of this Chapter is to establish policies, procedures and standards that apply to the University Hospitals Trust and to other Chapters in this Title. The rules in this Chapter describe:

- (1) The organization of the University Hospitals Trust
- (2) Procedures for obtaining information and filing documents; and
- (3) The general practices of the University Hospitals Trust.

753:1-1-2. Definitions

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

"Chief Executive Officer" or "CEO" means the Executive Director or the highest ranking administrator at the University Hospitals Trust.

"Trust" means the entity governed by the Trustees which is a public trust authorized by the laws of the State of Oklahoma with the State of Oklahoma as beneficiary.

"Trustees" or "Board of Trustees" or "Board" means the University Hospitals Trust Board of Trustees which is the governing body of the University Hospitals Trust.

753:1-1-3. Legal references

In this Title, italic type means it exactly repeats language from a law or another legal document. The specific reference is in brackets following the italics. Language in the rules that restates laws or other legal material in other words is also followed by a reference in brackets, but it is not printed in italics.

753:1-1-4. Severability

If a court of competent jurisdiction finds any rule or part of a rule in this Title to be unenforceable, it shall not impair or

invalidate the remaining rules in this Title; the remaining rules shall be valid and enforceable to the fullest extent allowed by law.

753:1-1-5. Organization

The Board of Trustees is the governing body of the Trust. The Board of Trustees appoints a CEO who is the highest ranking administrator at the Trust. The principal purpose of the Trust is to effectuate the purposes of the University Hospitals Authority as established by the University Hospitals Authority Act. [63:3224(A)(4)(a)]

753:1-1-6. Location for information and filing

(a) Unless otherwise specified in this Title, the address and telephone number for communications with the Trust is: The University Hospitals Trust, 800 N.E. 13th Street, P. O. Box 26307, Oklahoma City, Oklahoma 73126, Telephone (405) 271-4962.

(b) The normal business hours of the Trust are 8:30 a.m. to 5 p.m., Monday through Friday.

(c) Unless otherwise provided in this Title, anyone may file a document with the Trust by mail or hand delivery during normal business hours. The "filing date" is the date the Trust receives a document by mail or hand delivery, not the date it is mailed or postmarked. The Trust does not accept facsimiles or "FAXs" instead of original official documents.

(d) Unless a document clearly states otherwise, the signature of a person on a document filed with the Trust shall mean the person has read it and has personal knowledge of the information it contains, that every statement is true, that no statements are misleading; and that filing the document is not a delay tactic. If any document is not signed or is signed with intent to defeat the purposes of the rules in this Title, the CEO may ignore it and continue as though it had not been filed.

753:1-1-7. Records

(a) **Records retention and disposition.** The Trust keeps documents for at least the minimum time required by state and federal laws that pertain to archives and records. This varies depending on the type of document. The Trust has its records disposition schedules available for inspection.

(b) **Removal of documents.** Before the effective date of a document, the CEO or his/her designee may approve a written request from a person, an agency, or party that has filed the document to revise, replace, or withdraw it. After the effective date of a document, the CEO or designee may allow it to be removed on the order of a court or administrative agency with jurisdiction over the controversy before it.

(c) **Confidential and open records.**

(1) Many records in the Trust are available for public inspection and release, but some are not. The records that are not available for general public access may include records described as confidential in this Section or in other Chapters in this Title, and other records that laws require or permit the Trust to keep confidential. The CEO formally keeps the following records confidential but may

choose, in some cases, to make them public if law permits it.

(A) State employees' home addresses, home telephone numbers and social security numbers;

(B) Records which relate to internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation [51:24A.7(A)(1)];

(C) Employee evaluations, payroll deductions, employment applications not resulting in a person being hired by the state, and other records that would result in a clearly unwarranted invasion of personal privacy if they were disclosed [51:24A.7(A)(2)];

(D) Before taking action, personal notes and personally created materials (other than the Trust's budget request) prepared by the Trust staff as an aid to memory [51:24A.9];

(E) Before taking action, research material leading to the adoption of a policy or the implementation of a project [51:24A.9];

(F) Records coming into the possession of the Trust from the federal government or records generated or gathered as a result of federal legislation may be kept confidential to the extent required by federal law [51:24A.13];

(G) Documents, such as medical records and records protected by the attorney-client privilege, that are exempt from the Oklahoma Open Records Act or are specifically required or permitted by law to be kept confidential.

(2) All records that are not confidential are open for public inspection and copying. Examples of open records include:

(A) Employment applications that result in persons becoming state officials or employees [51:24A.7(B)(1); 51:24A.3(4)];

(B) Gross receipts of public funds [51:25A.7(B)(2)];

(C) Dates of an individual's employment with the state and his or her job title [51:24A.7(B)(3)]; and

(D) Any final disciplinary action resulting in loss of pay, suspension, demotion of positions or discharge [51:25A7(B)(4)].

(d) **Inspection and release of records.**

(1) Individuals may inspect and copy records during the Trust's regular business hours according to Trust procedures. The procedures protect the integrity and organization of the records and prevent excessive disruption of the Trust's essential functions [51:24A-5(5)].

(2) The CEO may give officers and employees of the state or federal government acting in their official capacities access to confidential records, when such disclosure is authorized by law.

(3) Each person shall have access to his or her own records in the Trust unless it is against the law [51:24A.7(C)].

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(e) The Trust staff shall only charge fees that are consistent with Section 24A.5 of Title 51 of the Oklahoma statutes.

753:1-1-8. Forms and instructions

Other Chapters in this Title contain reference to forms and instructions the Trust requires. Citizens may contact the Trust or request blank forms and general information about completing or submitting them.

SUBCHAPTER 3. GENERAL OPERATIONS OF THE UNIVERSITY HOSPITALS TRUST

753:1-3-1. Official office

The Office of the Trust and the Board of Trustees is 800 N.E. 13th Street, Oklahoma City, Oklahoma 73104. The telephone number is 271-4962. The office hours are from 8:30 a.m. to 5:00 p.m. Central Time, Monday through Friday, except legal holidays.

753:1-3-2. Meetings of Board of Trustees

The Board of Trustees shall file a schedule of regular meetings for the succeeding year with the Oklahoma Secretary of State by December 15th of each year. Special meetings may be called from time to time by the Chairman of the Board of Trustees, or the Vice-Chairman in his or her absence, with the required notice specified in the Oklahoma Open Meeting Act.

753:1-3-3. Executive sessions

The Board of Trustees may hold executive sessions as such meetings as are permitted by the Oklahoma Open Meeting Act.

753:1-3-4. Notice of meeting

Notice of regular and special meetings shall be given in accordance with the provisions of the Oklahoma Open Meeting Act.

753:1-3-5. Agenda items

The CEO prepares an agenda on behalf of the Board of Trustees for each meeting of the Board. The agenda is filed and posted in accordance with the Oklahoma Open Meeting Act. Members of the public may request the Board to place matters on the agenda for a meeting, and the CEO may use his or her discretion in placing such matters on the agenda.

SUBCHAPTER 5. ADMINISTRATIVE RULES

753:1-5-1. Procedure for adoption, amendment and repeal of rules

(a) The Board of Trustees may adopt, amend or repeal a rule on its own initiative, and may adopt, amend or repeal a rule at the request or recommendation of the CEO.

(b) The Board may on its own motion conduct hearings on proposed new rules, amendments or repeal of rules.

(c) Any interested person may petition the Board, requesting the adoption, amendment, or repeal of a rule. All such petitions shall be in writing and shall be filed with the principal office. The petition shall include the name and address of the petitioning party and shall state clearly and concisely all matters pertaining to the requested action and the reasons for the request.

(d) The time and location of hearing shall be stated in the notice as required under the Oklahoma Open Meeting Act and shall be conducted in accordance with the Administrative Procedures Act.

(e) Any person who is interested or affected by proposed actions may appear at the hearing, if such a hearing is held or required by law. An appearance may be made in person, by an attorney or by an authorized agent.

753:1-5-2. Requests for declaratory rulings

(a) Any interested person or entity may petition the Board of Trustees for a declaratory ruling as to the applicability of any rule of the Board.

(b) The petition must identify the rule questioned and the date on which such rule became effective and shall summarize the contents of the rule. The petition shall contain a brief statement of the issue or issues raised by the rule which cause such a request to be made, and a statement of the petitioner's personal interest in the ruling of the Board and how a ruling of the Board would affect those interests.

(c) Upon receipt of the petition for declaratory ruling the Trust shall consider the petition and, within a reasonable time following receipt thereof, either deny the petition in writing, stating its reasons for denial, or issue a declaratory ruling on the matter(s) contained in the petition.

SUBCHAPTER 7. FORMAL AND INFORMAL PROCEDURES

753:1-7-1. Purpose

The rules of this Subchapter describe general formal and informal procedures used by the Board of Trustees to take action and make decisions. Other Chapters in this Title describe informal procedures that apply specifically to individual programs under the Trust's authority.

753:1-7-2. Right of the CEO to initiate action

The CEO may take whatever action is consistent with the rules of this Title to carry out the duties of the CEO and accomplish the objectives of any program or activity within his or her authority. The CEO may use formal procedures or informal procedures, such as telephone calls, letters, meetings, mediation, investigations, electronic mail or other appropriate methods to resolve concerns.

753:1-7-3. Complaints

(a) Anyone may complain to the CEO about any matter under the CEO's authority. A complaint shall be in writing, and it shall include the following information:

- (1) The name, address and telephone number of the person making the complaint;
- (2) The name, address and telephone number of the organization the person represents, if applicable;
- (3) The name, address, telephone number and title of any representative of the person filing the complaint;
- (4) A brief, clear description of the charge, problem or issue that is the basis for the complaint including names, dates, places and actions;
- (5) The numbers and headings of the laws and rules that may apply;
- (6) The remedy, if any, the person making the complaint seeks;
- (7) The signature of the person making the complaint; and
- (8) The date.

(b) If the complaint is repetitive, concerns a matter that has already been resolved, or a matter outside the CEO's authority, the CEO may reject the complaint.

(c) The CEO may provide others with written notice of the complaint and give them an opportunity to respond in writing within 15 days. The response must contain all of the following information:

- (1) The name, address and telephone number of the person responding;
- (2) The name, address and telephone number of the organization the person represents, if applicable;
- (3) The name, address, telephone number and title of any representative of the person responding;

(4) A specific admission, denial or explanation of each charge;

(5) A brief, clear description of the facts, including names, dates, places and actions;

(6) A brief, clear explanation of the reasons for the action (or inaction) that is the basis for the complaint if the person admits to any charge;

(7) The numbers and headings of the laws and rules that may apply;

(8) The signature of the person responding; and

(9) The date.

(d) The CEO may refer complaints to informal procedures, such as telephone calls, letters, meetings, mediation, investigations, electronic mail or other appropriate procedures.

(e) The CEO shall make a decision about a complaint within 60 days after its receipt, unless the CEO needs more time. In that case, the Trust shall notify the person filing the complaint and persons filing any responses to the complaint.

753:1-7-4. Representation

In any administrative review or appeal authorized by this Title, any party has the right to have an attorney who is a member of the Oklahoma Bar Association. The attorney shall act for and bind the party he or she represents. After a party names an attorney, the Trust shall communicate with the attorney and not with the party. It shall be the responsibility of the party's attorney to communicate with the party.

[OAR Docket #07-1354; filed 8-14-07]

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

1:2007-31.

EXECUTIVE ORDER 2007-31

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Monday, August 6, 2007, to honor Army Staff Sgt. Jack D. Richards, an Oklahoma resident, who died on Thursday, July 5, 2007 at age 39. He served in the Army for ten years.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 3 day of August, 2007.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #07-1343; filed 8-3-07]

1:2007-32.

EXECUTIVE ORDER 2007-32

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Monday, August 13, 2007, to honor Army Private First Class Jaron D. Holliday, an Oklahoma resident, who died on Saturday, August 4, 2007 at age 21. He served in the Army since March 2005.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 9 day of August, 2007.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
Kathy Jekel
Acting Assistant Secretary of State

[OAR Docket #07-1352; filed 8-10-07]
